

Title 1

GENERAL PROVISIONS

Chapters

- 1.08 Statute law committee (Code reviser).**
1.16 General definitions.
1.20 General provisions.

Chapter 1.08 RCW STATUTE LAW COMMITTEE (CODE REVISER)

Sections

- 1.08.110 Publication of Washington State Register—Rule-making authority.
 1.08.130 Gender neutral language—Code improvement.

1.08.110 Publication of Washington State Register—Rule-making authority. The statute law committee, in addition to the other responsibilities enumerated in this chapter, shall publish the Washington State Register as created in RCW 34.08.020. The statute law committee or the code reviser may adopt rules as are necessary for the effective operation of this service. The statute law committee, in its discretion, may publish the Washington State Register exclusively by electronic means on the code reviser web site if it determines that public access to the Washington State Register is not substantially diminished. If the statute law committee publishes the Washington State Register exclusively by electronic means on the code reviser web site, the electronic copy posted on the code reviser web site shall be considered the official copy of the Washington State Register.

The code reviser shall provide a paper copy of any issue of the register or any register filing upon request. The code reviser may charge a reasonable fee for printing and mailing the paper copy. [2007 c 456 § 2; 1977 ex.s. c 240 § 2.]

Effective date—Severability—1977 ex.s. c 240: See RCW 34.08.905 and 34.08.910.

1.08.130 Gender neutral language—Code improvement. The office of the code reviser, in consultation with the statute law committee, shall develop and implement a plan to correct gender-specific references throughout the Revised Code of Washington, submitting recommendations to the legislature annually pursuant to RCW 1.08.025. The revision shall be complete by June 30, 2015. [2007 c 218 § 97.]

Intent—Finding—2007 c 218: "It is the intent of the legislature to make technical changes throughout chapters 41.08, 41.12, 41.16, and 41.18 RCW with regard to gender-specific terminology. The legislature finds that gender-neutral terms must be used in accordance with RCW 44.04.210. This act is technical in nature and no substantive legal changes are intended or implied." [2007 c 218 § 1.]

Chapter 1.16 RCW GENERAL DEFINITIONS

Sections

- 1.16.050 "Legal holidays and legislatively recognized days."

1.16.050 "Legal holidays and legislatively recognized days." The following are legal holidays: Sunday; the first

day of January, commonly called New Year's Day; the third Monday of January, being celebrated as the anniversary of the birth of Martin Luther King, Jr.; the third Monday of February to be known as Presidents' Day and to be celebrated as the anniversary of the births of Abraham Lincoln and George Washington; the last Monday of May, commonly known as Memorial Day; the fourth day of July, being the anniversary of the Declaration of Independence; the first Monday in September, to be known as Labor Day; the eleventh day of November, to be known as Veterans' Day; the fourth Thursday in November, to be known as Thanksgiving Day; the day immediately following Thanksgiving Day; and the twenty-fifth day of December, commonly called Christmas Day.

Employees of the state and its political subdivisions, except employees of school districts and except those non-classified employees of institutions of higher education who hold appointments or are employed under contracts to perform services for periods of less than twelve consecutive months, shall be entitled to one paid holiday per calendar year in addition to those specified in this section. Each employee of the state or its political subdivisions may select the day on which the employee desires to take the additional holiday provided for herein after consultation with the employer pursuant to guidelines to be promulgated by rule of the appropriate personnel authority, or in the case of local government by ordinance or resolution of the legislative authority.

If any of the above specified state legal holidays are also federal legal holidays but observed on different dates, only the state legal holidays shall be recognized as a paid legal holiday for employees of the state and its political subdivisions except that for port districts and the law enforcement and public transit employees of municipal corporations, either the federal or the state legal holiday, but in no case both, may be recognized as a paid legal holiday for employees.

Whenever any legal holiday, other than Sunday, falls upon a Sunday, the following Monday shall be the legal holiday.

Whenever any legal holiday falls upon a Saturday, the preceding Friday shall be the legal holiday.

Nothing in this section shall be construed to have the effect of adding or deleting the number of paid holidays provided for in an agreement between employees and employers of political subdivisions of the state or as established by ordinance or resolution of the local government legislative authority.

The legislature declares that the thirteenth day of January shall be recognized as Korean-American day but shall not be considered a legal holiday for any purposes.

The legislature declares that the twelfth day of October shall be recognized as Columbus day but shall not be considered a legal holiday for any purposes.

The legislature declares that the ninth day of April shall be recognized as former prisoner of war recognition day but shall not be considered a legal holiday for any purposes.

The legislature declares that the twenty-sixth day of January shall be recognized as Washington army and air national guard day but shall not be considered a legal holiday for any purposes.

The legislature declares that the seventh day of August shall be recognized as purple heart recipient recognition day but shall not be considered a legal holiday for any purposes.

The legislature declares that the second Sunday in October be recognized as Washington state children's day but shall not be considered a legal holiday for any purposes.

The legislature declares that the sixteenth day of April shall be recognized as Mother Joseph day and the fourth day of September as Marcus Whitman day, but neither shall be considered legal holidays for any purpose.

The legislature declares that the seventh day of December be recognized as Pearl Harbor remembrance day but shall not be considered a legal holiday for any purpose.

The legislature declares that the nineteenth day of February be recognized as civil liberties day of remembrance but shall not be considered a legal holiday for any purpose.

The legislature declares that the nineteenth day of June be recognized as Juneteenth, a day of remembrance for the day the slaves learned of their freedom, but shall not be considered a legal holiday for any purpose. [2007 c 61 § 2; 2007 c 19 § 2; 2003 c 68 § 2; 2000 c 60 § 1; 1999 c 26 § 1; 1993 c 129 § 2; 1991 sp.s. c 20 § 1; 1991 c 57 § 2; 1989 c 128 § 1; 1985 c 189 § 1; 1979 c 77 § 1; 1977 ex.s. c 111 § 1; 1975-'76 2nd ex.s. c 24 § 1; 1975 1st ex.s. c 194 § 1; 1973 2nd ex.s. c 1 § 1; 1969 c 11 § 1; 1955 c 20 § 1; 1927 c 51 § 1; RRS § 61. Prior: 1895 c 3 § 1; 1891 c 41 § 1; 1888 p 107 § 1.]

Reviser's note: This section was amended by 2007 c 19 § 2 and by 2007 c 61 § 2, each without reference to the other. Both amendments are incorporated in the publication of this section under RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

Finding—Declaration—2007 c 61: "The legislature recognizes that on June 19, 1865, Union soldiers landed at Galveston, Texas with news that the Civil War had ended and the slaves were now free; that this was two and a half years after President Lincoln signed the Emancipation Proclamation on January 1, 1863; that the end of slavery brought on new challenges and realities in establishing a previously nonexistent status for African-Americans in the United States; that racism and continued inequality is the legacy of slavery and acknowledging it is the first step in its eradication; and that since 1980 June 19th has been celebrated as Juneteenth across the United States as a day for people to come together in the spirit of reconciliation to commemorate the contributions of African-Americans to this country's history and culture.

The legislature declares that an annual day of recognition be observed in remembrance of the day the slaves realized they were free as a reminder that individual rights and freedoms must never be denied." [2007 c 61 § 1.]

Findings—2007 c 19: "The legislature finds that in the more than one hundred years that Koreans have immigrated to the United States, these immigrants and their descendants have made an invaluable contribution to our state and nation. Korean-Americans have worked for many years to better not only their community, but the communities in which they live and the state as a whole. The legislature further finds that due to the close friendship between the people of Korea and the United States, it is fitting to recognize Korean-American contributions to our society in a dignified and fitting manner, and to encourage Korean-Americans to honor the sacrifices made by American citizens during the Korean War." [2007 c 19 § 1.]

Finding—1993 c 129: "The legislature finds that Washington's children are one of our most valuable assets, representing hope for the future. Children today are at risk for many things, including drug and alcohol abuse, child abuse, suicide, peer pressure, and the economic and educational challenges of a changing world. It is increasingly important for families, schools, health professionals, caregivers, and workers at state agencies charged with the protection and help of children to listen to them, to support and encourage them, and to help them build their dreams for the future.

To increase recognition of children's issues, a national children's day is celebrated in October, with ceremonies and activities devoted to children. Washington state focuses special attention on its children by establishing a Washington state children's day." [1993 c 129 § 1.]

Finding—Declaration—1991 c 57: "The legislature finds that the Washington army and air national guard comprise almost nine thousand dedicated men and women who serve the state and nation on a voluntary basis. The legislature also finds that the state of Washington benefits from that dedication by immediate access to well-prepared resources in time of natural disasters and public emergency. The national guard has consistently and frequently responded to state and local emergencies with people and equipment to provide enforcement assistance, medical services, and overall support to emergency management services.

The legislature further declares that an annual day of commemoration should be observed in honor of the achievements, sacrifices, and dedication of the men and women of the Washington army and air national guard." [1991 c 57 § 1.]

Court business on legal holidays: RCW 2.28.100, 2.28.110.

School holidays: RCW 28A.150.050.

Chapter 1.20 RCW GENERAL PROVISIONS

Sections

1.20.140	State vegetable.
1.20.150	State amphibian.
1.20.160	State ship.

1.20.140 State vegetable. The Walla Walla sweet onion is designated as the official vegetable of the state of Washington. [2007 c 137 § 1.]

1.20.150 State amphibian. The Pacific chorus frog, *Pseudacris regilla*, is hereby designated as the official amphibian of the state of Washington. [2007 c 224 § 1.]

1.20.160 State ship. The Lady Washington is hereby designated as the official ship of the state of Washington. [2007 c 351 § 1.]

Title 2 COURTS OF RECORD

Chapters

2.06	Court of appeals.
2.08	Superior courts.
2.14	Retirement of judges—Supplemental retirement.
2.53	Civil legal aid.
2.56	Administrator for the courts.
2.72	Office of public guardianship.

Chapter 2.06 RCW COURT OF APPEALS

Sections

2.06.040	Panels—Decisions, publication as opinions, when—Sessions—Rules.
2.06.064	Reimbursement of expenses for travel to and from division headquarters.

2.06.040 Panels—Decisions, publication as opinions, when—Sessions—Rules. The court shall sit in panels of three judges and decisions shall be rendered by not less than a majority of the panel. In the determination of causes all decisions of the court shall be given in writing and the grounds of the decisions shall be stated. All decisions of the court having precedential value shall be published as opin-

ions of the court. Each panel shall determine whether a decision of the court has sufficient precedential value to be published as an opinion of the court. Decisions determined not to have precedential value shall not be published. Panels in the first division shall be comprised of such judges as the chief judge thereof shall from time to time direct. Judges of the respective divisions may sit in other divisions and causes may be transferred between divisions, as directed by written order of the chief justice. The court may hold sessions in cities as may be designated by rule.

The court may establish rules supplementary to and not in conflict with rules of the supreme court. [2007 c 34 § 1; 1987 c 43 § 1; 1984 c 258 § 91; 1971 c 41 § 1; 1969 ex.s. c 221 § 4.]

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

2.06.064 Reimbursement of expenses for travel to and from division headquarters. The court of appeals is authorized to adopt rules providing for the reimbursement of work-related travel expenses from a judge's customary residence to the division headquarters of the court and back. Judges elected from or residing in the county in which the division is headquartered are not eligible for reimbursement under this section. The rates of reimbursement are as set forth in RCW 43.03.050 and 43.03.060. [2007 c 34 § 2.]

Chapter 2.08 RCW SUPERIOR COURTS

Sections

2.08.065 Judges—Grant, Ferry, Okanogan, Mason, Thurston, Pacific, Wahkiakum, Pend Oreille, Stevens, San Juan, and Island counties.

2.08.065 Judges—Grant, Ferry, Okanogan, Mason, Thurston, Pacific, Wahkiakum, Pend Oreille, Stevens, San Juan, and Island counties. There shall be in the county of Grant, three judges of the superior court; in the county of Okanogan, two judges of the superior court; in the county of Mason, two judges of the superior court; in the county of Thurston, eight judges of the superior court; in the counties of Pacific and Wahkiakum jointly, one judge of the superior court; in the counties of Ferry, Pend Oreille, and Stevens jointly, two judges of the superior court; in the county of San Juan one judge of the superior court; and in the county of Island, two judges of the superior court. [2007 c 95 § 1; 1999 c 245 § 1; 1996 c 208 § 5; 1992 c 189 § 5; 1990 c 186 § 2; 1986 c 76 § 1; 1981 c 65 § 2; 1979 ex.s. c 202 § 4; 1977 ex.s. c 311 § 4; 1973 1st ex.s. c 27 § 3; 1971 ex.s. c 83 § 2; 1969 ex.s. c 213 § 3; 1955 c 159 § 1; 1951 c 125 § 7. Prior: 1927 c 135 § 1, part; 1917 c 97 §§ 4, 5, part; 1913 c 17 § 1; 1911 c 131 § 2; 1907 c 79 § 1, part; 1907 c 178 § 1, part; 1903 c 50 § 1, part; 1895 c 89 § 1, part; 1891 c 68 §§ 1, 3, part; 1890 p 341 § 1, part; RRS § 11045-1, part.]

Additional judicial positions subject to approval and agreement—2007 c 95: "The two judicial positions serving San Juan and Island counties jointly are allocated to Island county effective the date upon which the judge for San Juan county superior court assumes office. The additional judicial position created by section 1 of this act is allocated to San Juan county and becomes effective only if:

(1) San Juan county, through its duly constituted legislative authority,

documents its approval of the additional position and its agreement that it will pay out of county funds, without reimbursement from the state, the expenses of the additional judicial position as provided by state law or the state Constitution; and

(2) Island county, through its duly constituted legislative authority, documents its approval and its agreement that it will pay out of county funds, without reimbursement from the state, the expenses of the two judicial positions currently serving San Juan and Island counties jointly as provided by state law or the state Constitution." [2007 c 95 § 2.]

Additional judicial positions subject to approval and agreement—1999 c 245: "(1) The additional judicial position for Grant county created by section 1 of this act is effective only if Grant county through its duly constituted legislative authority documents its approval of the additional position and its agreement that it will pay out of county funds, without reimbursement from the state, the expenses of the additional judicial position as provided by state law or the state Constitution.

(2) The additional judicial position for Okanogan county created by section 1 of this act is effective only if Okanogan county through its duly constituted legislative authority documents its approval of the additional position and its agreement that it will pay out of county funds, without reimbursement from the state, the expenses of the existing and additional judicial positions as provided by state law or the state Constitution." [1999 c 245 § 2.]

Additional judicial positions in Thurston county subject to approval and agreement—1996 c 208: "The additional judicial positions created by section 5 of this act are effective only if Thurston county through its duly constituted legislative authority documents its approval of the additional positions and its agreement that it will pay out of county funds, without reimbursement from the state, the expenses of the additional judicial positions as provided by state law or the state Constitution." [1996 c 208 § 6.]

Effective dates of additional judicial positions in Thurston county—1996 c 208: "One judicial position created by section 5 of this act shall be effective July 1, 1996; the second position shall be effective July 1, 2000." [1996 c 208 § 7.]

Effective dates—Additional judicial positions subject to approval and agreement—1992 c 189: See notes following RCW 2.08.061.

Effective dates—Additional judicial positions in Kitsap and Thurston counties subject to approval and agreement—1990 c 186: See note following RCW 2.08.062.

Effective date—Appointment of additional judicial position—1986 c 76: "(1) Pursuant to RCW 2.08.069, the governor shall appoint a person to fill the judicial position created by section 1 of this act in Mason county. The five judges of the superior court serving in the Thurston/Mason judicial district on January 1, 1987, shall be assigned to the new Thurston county judicial district.

(2) This act shall take effect January 1, 1987. The additional judicial position created by section 1 of this act in Mason county shall be effective only if, before January 1, 1987, Thurston and Mason counties, through their duly constituted legislative authorities, document their approval of the additional position and their agreement that they will pay out of county funds, without reimbursement from the state, the expenses resulting from section 1 of this act." [1986 c 76 § 2.]

Additional judicial positions subject to approval and agreement: See note following RCW 2.08.064.

Adjustment in judicial services provided for Douglas, Grant, and Chelan counties: "The superior court judge serving in position two, as designated by the county auditors of Grant and Douglas counties for the 1976 general election, in the counties of Grant and Douglas prior to the effective date of this 1979 act, shall thereafter serve jointly in the counties of Douglas and Chelan, along with the judge previously serving only in Chelan county. The additional superior court judge position created by this 1979 act shall be for Grant county alone, which shall retain the judge in position one previously serving jointly in the counties of Grant and Douglas." [1979 ex.s. c 202 § 5.]

Effective date—1977 ex.s. c 311: See note following RCW 2.08.061.

Chapter 2.14 RCW

RETIREMENT OF JUDGES—
SUPPLEMENTAL RETIREMENT

Sections

- 2.14.100 Contributions—Distribution upon member's separation—
Exemption from taxation and judicial process—Assignability—Exceptions.
- 2.14.110 Payment of contributions upon member's death.

2.14.100 Contributions—Distribution upon member's separation—Exemption from taxation and judicial process—Assignability—Exceptions. (1) A member who separates from judicial service for any reason is entitled to receive a lump sum distribution of the member's accumulated contributions. The administrator for the courts may adopt rules establishing other payment options, in addition to lump sum distributions, if the other payment options conform to the requirements of the federal internal revenue code.

(2) The right of a person to receive a payment under this chapter and the moneys in the accounts created under this chapter are exempt from any state, county, municipal, or other local tax and are not subject to execution, garnishment, attachment, the operation of bankruptcy or insolvency law, or any other process of law whatsoever and is not assignable, except as is otherwise specifically provided in this section.

(3) If a judgment, decree or other order, including a court-approved property settlement agreement, that relates to the provision of child support, spousal maintenance, or the marital property rights of a spouse or former spouse, child, or other dependent of a member is made pursuant to the domestic relations law of the state of Washington or such order issued by a court of competent jurisdiction in another state or country, that has been registered or otherwise made enforceable in this state, then the amount of the member's accumulated contributions shall be paid in the manner and to the person or persons so directed in the domestic relations order. However, this subsection does not permit or require a benefit to be paid or to be provided that is not otherwise available under the terms of this chapter or any rules adopted under this chapter. The administrator for the courts shall establish reasonable procedures for determining the status or any such decree or order and for effectuating distribution pursuant to the domestic relations order.

(4) The administrator for the courts may pay from a member's accumulated contributions the amount that the administrator finds is lawfully demanded under a levy issued by the internal revenue service with respect to that member or is sought to be collected by the United States government under a judgment resulting from an unpaid tax assessment against the member. [2007 c 108 § 1; 1988 c 109 § 21.]

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

2.14.110 Payment of contributions upon member's death. If a member dies, the amount of the accumulated contributions standing to the member's credit at the time of the member's death, subject to the provisions of chapter 26.16 RCW, shall be paid to the member's estate, or such person or persons, trust, or organization as the member has nominated by written designation duly executed and filed with the administrative office of the courts. If there is no such designated person or persons still living at the time of the mem-

ber's death, the member's accumulated contributions shall be paid to the member's surviving spouse as if in fact the spouse had been nominated by written designation or, if there is no such surviving spouse, then to the member's legal representatives. [2007 c 108 § 2; 2005 c 282 § 1; 1996 c 42 § 1; 1988 c 109 § 22.]

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

Chapter 2.53 RCW

CIVIL LEGAL AID

Sections

- 2.53.040 Task force to establish statewide protocols for dissolution cases—Members—Reports. (*Expires June 30, 2009.*)

2.53.040 Task force to establish statewide protocols for dissolution cases—Members—Reports. (*Expires June 30, 2009.*) (1)(a) The legislature requests that the supreme court convene and support a task force to establish statewide protocols for dissolution cases.

(b) The task force shall develop: (i) Clear and concise dispute resolution procedures; (ii) in conjunction with the office of crime victims advocacy, a sexual assault training curriculum; (iii) consistent standards for parenting evaluators; and (iv) a domestic violence training curriculum for individuals making evaluations in dissolution cases. The task force shall make recommendations concerning specialized evaluators for dissolution cases, dissolution forms and procedures, and fees.

(c) The task force shall also study issues related to: (i) Venue for filing and modifying petitions; and (ii) the program established under RCW 26.12.260, including but not limited to: (A) The minimum components of the program; (B) the extent of the program; (C) the administration of the program; (D) the handling of confidential information obtained; and (E) the selection of appropriate short screen tools to be utilized in the administration of the program.

(2) The governor shall appoint the following members of the task force:

- (a) A representative of the office of crime victims advocacy;
- (b) A professor of law specializing in family law;
- (c) A representative from a statewide domestic violence advocacy group;
- (d) A representative from a community sexual assault program;
- (e) Two noncustodial parents with at least one representing the interests of low-income noncustodial parents; and
- (f) Two custodial parents with at least one representing the interests of low-income custodial parents.

(3) The chief justice of the supreme court is requested to appoint the following members of the task force:

- (a) Two representatives from the superior court judges association, including a superior court judge and a court commissioner who is familiar with dissolution issues;
- (b) A representative from the administrative office of the courts;
- (c) A representative from the Washington state bar association's family law executive committee;

(d) A representative from a qualified legal aid provider that receives funding from the office of civil legal aid;

(e) A representative of the Washington state association of county clerks; and

(f) A guardian ad litem.

(4) The president of the senate shall appoint one member from each of the two largest caucuses of the senate.

(5) The speaker of the house of representatives shall appoint one member from each of the two largest caucuses of the house of representatives, with at least one member.

(6) Membership of the task force may also include members of the civil legal aid oversight committee, including but not limited to the legislative members of the committee.

(7) The task force shall carefully consider all input received from interested organizations and individuals during the task force process.

(8) The task force may form an executive committee, create subcommittees, designate alternative representatives, and define other procedures, as needed, for operation of the task force.

(9) Legislative members of the task force shall be reimbursed for travel expenses under RCW 44.04.120. Nonlegislative members, except those representing an employee or organization, are entitled to be reimbursed for travel expenses in accordance with RCW 43.03.050 and 43.03.060.

(10) The task force shall present preliminary findings and conclusions to the governor's office, the supreme court, and the appropriate committees of the legislature by September 1, 2008. A final report and recommendations, including recommendations for legislative action, if necessary, and recommendations regarding the program under RCW 26.12.260, shall be completed by December 1, 2008.

(11) This section expires June 30, 2009. [2007 c 496 § 306.]

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

Chapter 2.56 RCW

ADMINISTRATOR FOR THE COURTS

Sections

2.56.030 Powers and duties.
2.56.180 Family law handbook. (*Effective January 1, 2008.*)

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

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

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

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

(4) Collect and compile statistical and other data and make reports of the business transacted by the courts and

transmit the same to the chief justice to the end that proper action may be taken in respect thereto;

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

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

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

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

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

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

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

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

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

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

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

(16) Develop a curriculum for a general understanding of crimes of malicious harassment, as well as specific legal skills and knowledge of RCW 9A.36.080, relevant cases, court rules, and the special needs of malicious harassment

victims. This curriculum shall be made available to all superior court and court of appeals judges and to all justices of the supreme court;

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

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

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

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

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

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

- (i) The judge is serving in an elected position;
- (ii) The city has established by ordinance that a full-time judge is compensated at a rate equivalent to at least ninety-five percent, but not more than one hundred percent, of a district court judge salary or for a part-time judge on a pro rata basis the same equivalent; and
- (iii) The city has certified to the office of the administrator for the courts that the conditions in (b)(i) and (ii) of this subsection have been met. [2007 c 496 § 302. Prior: 2005 c 457 § 7; 2005 c 282 § 7; 2002 c 49 § 2; 1997 c 41 § 2; 1996 c 249 § 2; 1994 c 240 § 1; 1993 c 415 § 3; 1992 c 205 § 115; 1989 c 95 § 2; prior: 1988 c 234 § 2; 1988 c 109 § 23; 1987 c 363 § 6; 1981 c 132 § 1; 1957 c 259 § 3.]

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

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

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

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

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

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

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

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

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

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

2.56.180 Family law handbook. (Effective January 1, 2008.) (1) The administrative office of the courts shall create a handbook explaining the sections of Washington law pertaining to the rights and responsibilities of marital partners to each other and to any children during a marriage and a dissolution of marriage. The handbook may also be provided in videotape or other electronic form.

(2) The handbook created under subsection (1) of this section shall be provided by the county auditor when an individual applies for a marriage license under RCW 26.04.140.

(3) The handbook created under subsection (1) of this section shall also be provided to the petitioner when he or she files a petition for dissolution, and to the respondent, unless the respondent did not file a response, notice of appearance, or any other paper in the case or did not appear in court. The administrative office of the courts shall on an annual basis reimburse the counties for each copy of the handbook that is distributed directly to family law parties under this section, provided that the county submits documentation of the number of handbooks distributed on an annual basis.

(4) The information contained in the handbook created under subsection (1) of this section shall be reviewed and updated annually. The handbook must contain the following information:

(a) Information on prenuptial agreements as contracts and as a means of structuring financial arrangements and other aspects of the marital relationship;

(b) Information on shared parental responsibility for children, including establishing a residential schedule for the child in the event of the dissolution of the marriage;

(c) Information on notice requirements and standards for parental relocation;

(d) Information on child support for minor children;

(e) Information on property rights, including equitable distribution of assets and premarital and postmarital property rights;

(f) Information on spousal maintenance;

(g) Information on domestic violence, child abuse, and neglect, including penalties;

(h) Information on the court process for dissolution;

(i) Information on the effects of dissolution on children;

(j) Information on community resources that are available to separating or divorcing persons and their children. [2007 c 496 § 202; 2005 c 282 § 10; 2003 c 225 § 1; 2002 c 49 § 3.]

Effective dates—2007 c 496 §§ 201, 202, 204, and 501: See note following RCW 26.12.260.

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

Declaration—2002 c 49: "The legislature declares that:

(1) Strong marital relationships result in stronger families, children, and ultimately, stronger communities and place less of a fiscal burden on the state; and

(2) The state has a compelling interest in providing couples, applying

for a marriage license, information with regard to marriage and, if contemplated, the effects of divorce." [2002 c 49 § 1.]

Chapter 2.72 RCW
OFFICE OF PUBLIC GUARDIANSHIP

Sections

2.72.005	Intent.
2.72.010	Definitions.
2.72.020	Office of public guardianship created—Appointment of public guardianship administrator.
2.72.030	Public guardianship program—Contracts for public guardianship services—Adoption of eligibility criteria and minimum standards of practice—Duties of office—Report to legislature, study.
2.72.040	Waiver of court costs.
2.72.050	Administrator may develop rules.
2.72.900	Severability—2007 c 364.

2.72.005 Intent. In establishing an office of public guardianship, the legislature intends to promote the availability of guardianship services for individuals who need them and for whom adequate services may otherwise be unavailable. The legislature reaffirms its commitment to treat liberty and autonomy as paramount values for all Washington residents and to authorize public guardianship only to the minimum extent necessary to provide for health or safety, or to manage financial affairs, when the legal conditions for appointment of a guardian are met. It does not intend to alter those legal conditions or to expand judicial authority to determine that any individual is incapacitated. [2007 c 364 § 1.]

2.72.010 Definitions. The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

(1) "Office" means the office of public guardianship.

(2) "Public guardian" means an individual or entity providing public guardianship services.

(3) "Public guardianship services" means the services provided by a guardian or limited guardian appointed under chapters 11.88 and 11.92 RCW, who is compensated under a contract with the office of public guardianship.

(4) "Long-term care services" means services provided through the department of social and health services either in a hospital or skilled nursing facility, or in another setting under a home and community-based waiver authorized under 42 U.S.C. Sec. 1396n. [2007 c 364 § 2.]

2.72.020 Office of public guardianship created—Appointment of public guardianship administrator. (1) There is created an office of public guardianship within the administrative office of the courts.

(2) The supreme court shall appoint a public guardianship administrator to establish and administer a public guardianship program in the office of public guardianship. The public guardianship administrator serves at the pleasure of the supreme court. [2007 c 364 § 3.]

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

ship administrator is authorized to establish and administer a public guardianship program as follows:

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

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

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

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

(2) The office shall, within one year of the commencement of its operation, adopt eligibility criteria to enable it to serve individuals with the greatest need when the number of cases in which courts propose to appoint a public guardian exceeds the number of cases in which public guardianship services can be provided. In adopting such criteria, the office may consider factors including, but not limited to, the following: Whether an incapacitated individual is at significant risk of harm from abuse, exploitation, abandonment, neglect, or self-neglect; and whether an incapacitated person is in imminent danger of loss or significant reduction in public services that are necessary for the individual to live successfully in the most integrated and least restrictive environment that is appropriate in light of the individual's needs and values.

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

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

(5) The office shall not petition for appointment of a public guardian for any individual. It may develop, and shall consult with the *advisory committee regarding the need to develop, a proposal for the legislature to make affordable legal assistance available to petition for guardianships.

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

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

(8) The office shall collect uniform and consistent basic data elements regarding service delivery. This data shall be

made available to the legislature and supreme court in a format that is not identifiable by individual incapacitated person to protect confidentiality.

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

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

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

(12) The office shall adopt a process for receipt and consideration of and response to complaints against the office and contracted providers of public guardianship services. The process shall include investigation in cases in which investigation appears warranted in the judgment of the administrator. The office shall provide the *advisory committee with a summary and analysis of the results of these complaints. When requested by the complaining party, his or her identity shall not be disclosed to the *advisory committee created under section 5 of this act.

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

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

(15) The office shall identify training needs for guardians it contracts with, and shall make recommendations, after consultation with the *advisory committee, to the supreme court, the certified professional guardian board, and the legislature for improvements in guardianship training. The office may offer training to individuals providing services pursuant to this chapter.

(16) The office shall establish a system for monitoring the performance of public guardians, and office staff shall make in-home visits to a randomly selected sample of public

guardianship clients. The office may conduct further monitoring, including in-home visits, as the administrator deems appropriate. For monitoring purposes, office staff shall have access to any information relating to a public guardianship client that is available to the guardian. The office shall confer with the *advisory committee in developing its monitoring process.

(17) During the first five years of its operations, the office shall issue annual reports of its activities, after review of and comment by the *advisory committee. [2007 c 364 § 4.]

***Reviser's note:** Section 5, chapter 364, Laws of 2007, which provided for the advisory committee, was vetoed by the governor.

2.72.040 Waiver of court costs. The courts shall waive court costs and filing fees in any proceeding in which an incapacitated person is receiving public guardianship services funded under this chapter. [2007 c 364 § 6.]

2.72.050 Administrator may develop rules. The public guardianship administrator may develop rules to implement this chapter. The administrator shall request and consider recommendations from the *advisory committee in the development of rules. [2007 c 364 § 7.]

***Reviser's note:** Section 5, chapter 364, Laws of 2007, which provided for the advisory committee, was vetoed by the governor.

2.72.900 Severability—2007 c 364. If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected. [2007 c 364 § 8.]

Title 3

DISTRICT COURTS—COURTS OF LIMITED JURISDICTION

Chapters

3.62 Income of court.

3.66 Jurisdiction and venue.

Chapter 3.62 RCW INCOME OF COURT

Sections

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

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

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

court any other fees or charges up to and including the rendition of judgment in the action other than those listed.

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

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

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

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

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

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

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

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

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

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

Effective date—1992 c 62: See RCW 27.24.900.

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

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

Intent—1984 c 258: See note following RCW 3.46.120.

Severability—1981 c 330: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1981 c 330 § 11.]

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

Chapter 3.66 RCW

JURISDICTION AND VENUE

Sections

3.66.020	Civil jurisdiction.
3.66.040	Venue—Civil action.

3.66.020 Civil jurisdiction. If the value of the claim or the amount at issue does not exceed fifty thousand dollars, exclusive of interest, costs, and attorneys' fees, the district court shall have jurisdiction and cognizance of the following civil actions and proceedings:

(1) Actions arising on contract for the recovery of money;

(2) Actions for damages for injuries to the person, or for taking or detaining personal property, or for injuring personal property, or for an injury to real property when no issue

raised by the answer involves the plaintiff's title to or possession of the same and actions to recover the possession of personal property;

(3) Actions for a penalty;

(4) Actions upon a bond conditioned for the payment of money, when the amount claimed does not exceed fifty thousand dollars, though the penalty of the bond exceeds that sum, the judgment to be given for the sum actually due, not exceeding the amount claimed in the complaint;

(5) Actions on an undertaking or surety bond taken by the court;

(6) Actions for damages for fraud in the sale, purchase, or exchange of personal property;

(7) Proceedings to take and enter judgment on confession of a defendant;

(8) Proceedings to issue writs of attachment, garnishment and replevin upon goods, chattels, moneys, and effects;

(9) Actions arising under the provisions of chapter 19.190 RCW;

(10) Proceedings to civilly enforce any money judgment entered in any municipal court or municipal department of a district court organized under the laws of this state; and

(11) All other actions and proceedings of which jurisdiction is specially conferred by statute, when the title to, or right of possession of, real property is not involved. [2007 c 46 § 1; 2003 c 27 § 1; 2000 c 49 § 1; 1997 c 246 § 1; 1991 c 33 § 1; 1984 c 258 § 41; 1981 c 331 § 7; 1979 c 102 § 3; 1965 c 95 § 1; 1961 c 299 § 113.]

Effective date—1991 c 33: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and shall take effect July 1, 1991." [1991 c 33 § 7.]

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

Court Congestion Reduction Act of 1981—Purpose—Severability—1981 c 331: See notes following RCW 2.32.070.

Application, savings—1979 c 102: "Sections 2, 3, and 4 of this 1979 amendatory act upon taking effect shall apply to all actions filed on or after December 8, 1977. Any party to an action which is pending on the effective date of this act shall be permitted to amend any pleadings to reflect such increase in court jurisdiction: PROVIDED, That nothing in this act shall affect the validity of judicial acts taken prior to its effective date." [1979 c 102 § 5.]

Severability—1979 c 102: "If any provision of this amendatory act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1979 c 102 § 6.]

Effective date—1979 c 102: "Sections 2 through 5 of this 1979 amendatory act are necessary for the immediate preservation of the public peace, health, and safety, the support of the state government and its existing public institutions, and shall take effect May 1, 1979." [1979 c 102 § 7.]

3.66.040 Venue—Civil action. (1) An action arising under RCW 3.66.020 (1), (4), (6), (7), and (11) may be brought in any district in which the defendant, or, if there be more than one defendant, where some one of the defendants, resides at the time the complaint is filed or in which the defendant, or if there be more than one defendant, where some one of the defendants may be served with the notice and complaint in which latter case, however, the district where the defendant or defendants is or are served must be within the county in which the defendant or defendants reside. If the residence of the defendant is not ascertained by reasonable

efforts, the action may be brought in the district in which the defendant's place of actual physical employment is located.

(2) An action arising under RCW 3.66.020(2) for the recovery of possession of personal property and RCW 3.66.020(8) shall be brought in the district in which the subject matter of the action or some part thereof is situated.

(3) An action arising under RCW 3.66.020 (3) and (5) shall be brought in the district in which the cause of action, or some part thereof arose.

(4) An action arising under RCW 3.66.020(2) for the recovery of damages for injuries to the person or for injury to personal property may be brought, at the plaintiff's option, either in the district in which the cause of action, or some part thereof, arose, or in the district in which the defendant, or, if there be more than one defendant, where some one of the defendants, resides at the time the complaint is filed.

(5) A proceeding under RCW 3.66.020(10) may be brought in the district within which the municipal court or municipal department is located.

(6) An action against a nonresident of this state, including an action arising under the provisions of chapter 19.190 RCW, may be brought in any district where service of process may be had, or in which the cause of action or some part thereof arose, or in which the plaintiff or one of them resides.

(7) An action upon the unlawful issuance of a check or draft may be brought in any district in which the defendant resides or may be brought in any district in which the check was issued or presented as payment.

(8) For the purposes of chapters 3.30 through 3.74 RCW, the residence of a corporation defendant shall be deemed to be in any district where the corporation transacts business or has an office for the transaction of business or transacted business at the time the cause of action arose or where any person resides upon whom process may be served upon the corporation, unless herein otherwise provided. [2007 c 46 § 2; 2003 c 27 § 2; 2001 c 45 § 1; 1988 c 71 § 1; 1984 c 258 § 42; 1961 c 299 § 115.]

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

Title 4

CIVIL PROCEDURE

Chapters

- 4.16** Limitation of actions.
- 4.20** Survival of actions.
- 4.24** Special rights of action and special immunities.
- 4.84** Costs.

Chapter 4.16 RCW

LIMITATION OF ACTIONS

Sections

- 4.16.040 Actions limited to six years.

4.16.040 Actions limited to six years. The following actions shall be commenced within six years:

(1) An action upon a contract in writing, or liability express or implied arising out of a written agreement.

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(2) An action upon an account receivable. For purposes of this section, an account receivable is any obligation for payment incurred in the ordinary course of the claimant's business or profession, whether arising from one or more transactions and whether or not earned by performance.

(3) An action for the rents and profits or for the use and occupation of real estate. [2007 c 124 § 1; 1989 c 38 § 1; 1980 c 105 § 2; 1927 c 137 § 1; Code 1881 § 27; 1854 p 363 § 3; RRS § 157.]

Application—2007 c 124: "This act applies to all causes of action on accounts receivable, whether commenced before or after July 22, 2007." [2007 c 124 § 2.]

Application—1980 c 105: See note following RCW 4.16.020.

Chapter 4.20 RCW

SURVIVAL OF ACTIONS

Sections

- 4.20.020 Wrongful death—Beneficiaries of action.
- 4.20.060 Action for personal injury survives to surviving spouse, state registered domestic partner, child, stepchildren, or heirs.

4.20.020 Wrongful death—Beneficiaries of action.

Every such action shall be for the benefit of the wife, husband, state registered domestic partner, child or children, including stepchildren, of the person whose death shall have been so caused. If there be no wife, husband, state registered domestic partner, or such child or children, such action may be maintained for the benefit of the parents, sisters, or brothers, who may be dependent upon the deceased person for support, and who are resident within the United States at the time of his death.

In every such action the jury may give such damages as, under all circumstances of the case, may to them seem just. [2007 c 156 § 29; 1985 c 139 § 1; 1973 1st ex.s. c 154 § 2; 1917 c 123 § 2; RRS § 183-1.]

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

4.20.060 Action for personal injury survives to surviving spouse, state registered domestic partner, child, stepchildren, or heirs.

No action for a personal injury to any person occasioning death shall abate, nor shall such right of action determine, by reason of such death, if such person has a surviving spouse, state registered domestic partner, or child living, including stepchildren, or leaving no surviving spouse, state registered domestic partner, or such children, if there is dependent upon the deceased for support and resident within the United States at the time of decedent's death, parents, sisters, or brothers; but such action may be prosecuted, or commenced and prosecuted, by the executor or administrator of the deceased, in favor of such surviving spouse or state registered domestic partner, or in favor of the surviving spouse or state registered domestic partner and such children, or if no surviving spouse or state registered domestic partner, in favor of such child or children, or if no surviving spouse, state registered domestic partner, or such child or children, then in favor of the decedent's parents, sisters, or brothers who may be dependent upon such person for support, and resident in the United States at the time of decedent's death. [2007 c 156 § 30; 1985 c 139 § 2; 1973 1st ex.s. c 154 § 3;

1927 c 156 § 1; 1909 c 144 § 1; Code 1881 § 18; 1854 p 220 § 495; RRS § 194.]

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

Chapter 4.24 RCW

SPECIAL RIGHTS OF ACTION AND SPECIAL IMMUNITIES

Sections

- 4.24.750 Monitoring of persons charged with or convicted of misdemeanors—Decisions concerning release of criminal offenders—Findings.
- 4.24.760 Limited jurisdiction courts—Limitation on liability for inadequate supervision or monitoring—Definitions.

4.24.750 Monitoring of persons charged with or convicted of misdemeanors—Decisions concerning release of criminal offenders—Findings. The legislature finds that the provision of preconviction and postconviction misdemeanor probation and supervision services, and the monitoring of persons charged with or convicted of misdemeanors to ensure their compliance with preconviction or postconviction orders of the court, are essential to improving the safety of the public in general. Furthermore, the legislature finds that decisions concerning whether criminal offenders are released into the community pretrial or postconviction, including the revocation of probation, rest with the judiciary. [2007 c 174 § 1.]

4.24.760 Limited jurisdiction courts—Limitation on liability for inadequate supervision or monitoring—Definitions. (1) A limited jurisdiction court that provides misdemeanor supervision services is not liable for civil damages based on the inadequate supervision or monitoring of a misdemeanor defendant or probationer unless the inadequate supervision or monitoring constitutes gross negligence.

(2) For the purposes of this section:

(a) "Limited jurisdiction court" means a district court or a municipal court, and anyone acting or operating at the direction of such court, including but not limited to its officers, employees, agents, contractors, and volunteers.

(b) "Misdemeanor supervision services" means preconviction or postconviction misdemeanor probation or supervision services, or the monitoring of a misdemeanor defendant's compliance with a preconviction or postconviction order of the court, including but not limited to community corrections programs, probation supervision, pretrial supervision, or pretrial release services.

(3) This section does not create any duty and shall not be construed to create a duty where none exists. Nothing in this section shall be construed to affect judicial immunity. [2007 c 174 § 2.]

Chapter 4.84 RCW

COSTS

Sections

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

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

- (1) Filing fees;
- (2) Fees for the service of process by a public officer, registered process server, or other means, as follows:
 - (a) When service is by a public officer, the recoverable cost is the fee authorized by law at the time of service.
 - (b) If service is by a process server registered pursuant to chapter 18.180 RCW or a person exempt from registration, the recoverable cost is the amount actually charged and incurred in effecting service;
- (3) Fees for service by publication;
- (4) Notary fees, but only to the extent the fees are for services that are expressly required by law and only to the extent they represent actual costs incurred by the prevailing party;
- (5) Reasonable expenses, exclusive of attorneys' fees, incurred in obtaining reports and records, which are admitted into evidence at trial or in mandatory arbitration in superior or district court, including but not limited to medical records, tax records, personnel records, insurance reports, employment and wage records, police reports, school records, bank records, and legal files;
- (6) Statutory attorney and witness fees; and
- (7) To the extent that the court or arbitrator finds that it was necessary to achieve the successful result, the reasonable expense of the transcription of depositions used at trial or at the mandatory arbitration hearing: PROVIDED, That the expenses of depositions shall be allowed on a pro rata basis for those portions of the depositions introduced into evidence or used for purposes of impeachment. [2007 c 121 § 1; 1993 c 48 § 1; 1984 c 258 § 92; 1983 1st ex.s. c 45 § 7; Code 1881 § 505; 1877 p 108 § 509; 1869 p 123 § 459; 1854 p 201 § 367; RRS § 474.]

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

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

Process server fees: RCW 18.180.035.

Title 5

EVIDENCE

Chapters

- 5.60 Witnesses—Competency.
- 5.68 News media.

Chapter 5.60 RCW

WITNESSES—COMPETENCY

Sections

- 5.60.060 Who are disqualified—Privileged communications.

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

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

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

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

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

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

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

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

(6)(a) A peer support group counselor shall not, without consent of the law enforcement officer or firefighter making the communication, be compelled to testify about any communication made to the counselor by the officer or firefighter while receiving counseling. The counselor must be design-

nated as such by the sheriff, police chief, fire chief, or chief of the Washington state patrol, prior to the incident that results in counseling. The privilege only applies when the communication was made to the counselor while acting in his or her capacity as a peer support group counselor. The privilege does not apply if the counselor was an initial responding officer or firefighter, a witness, or a party to the incident which prompted the delivery of peer support group counseling services to the law enforcement officer or firefighter.

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

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

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

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

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

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

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

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

(b) A domestic violence advocate may disclose a confidential communication without the consent of the victim if failure to disclose is likely to result in a clear, imminent risk of serious physical injury or death of the victim or another person. This section does not relieve a domestic violence advocate from the requirement to report or cause to be reported an incident under RCW 26.44.030(1) or to disclose relevant records relating to a child as required by *RCW 26.44.030(11). Any domestic violence advocate participating in good faith in the disclosing of communications under this subsection is immune from liability, civil, criminal, or otherwise, that might result from the action. In any proceeding, civil or criminal, arising out of a disclosure under this subsection, the good faith of the domestic violence advocate who disclosed the confidential communication shall be presumed. [2007 c 472 § 1. Prior: 2006 c 259 § 2; 2006 c 202 § 1; 2006 c 30 § 1; 2005 c 504 § 705; 2001 c 286 § 2; 1998 c 72 § 1; 1997 c 338 § 1; 1996 c 156 § 1; 1995 c 240 § 1; 1989 c 271 § 301; prior: 1989 c 10 § 1; 1987 c 439 § 11; 1987 c 212 § 1501; 1986 c 305 § 101; 1982 c 56 § 1; 1979 ex.s. c 215 § 2; 1965 c 13 § 7; Code 1881 § 392; 1879 p 118 § 1; 1877 p 86 § 394; 1873 p 107 § 385; 1869 p 104 § 387; 1854 p 187 § 294; RRS § 1214. Cf. 1886 p 73 § 1.]

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

***Reviser's note:** RCW 26.44.030 was amended by 2007 c 220 § 2, changing subsection (11) to subsection (12).

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

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

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

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

Severability—1997 c 338: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1997 c 338 § 74.]

Effective dates—1997 c 338: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect July 1, 1997, except sections 10, 12, 18, 24 through 26, 30, 38, and 59 of this act which take effect July 1, 1998." [1997 c 338 § 75.]

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

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

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

Severability—1982 c 56: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the

application of the provision to other persons or circumstances is not affected." [1982 c 56 § 2.]

Non-support or family desertion, spouse as witness: RCW 26.20.071.

Optometrist—Client, privileged communications: RCW 18.53.200.

Psychologist—Client, privileged communications: RCW 18.83.110.

Report of abuse of children: Chapter 26.44 RCW.

Chapter 5.68 RCW NEWS MEDIA

Sections

5.68.010 Protection from compelled disclosure—Exceptions—Definition.

5.68.010 Protection from compelled disclosure—Exceptions—Definition. (1) Except as provided in subsection (2) of this section, no judicial, legislative, administrative, or other body with the power to issue a subpoena or other compulsory process may compel the news media to testify, produce, or otherwise disclose:

(a) The identity of a source of any news or information or any information that would tend to identify the source where such source has a reasonable expectation of confidentiality; or

(b) Any news or information obtained or prepared by the news media in its capacity in gathering, receiving, or processing news or information for potential communication to the public, including, but not limited to, any notes, outtakes, photographs, video or sound tapes, film, or other data of whatever sort in any medium now known or hereafter devised. This does not include physical evidence of a crime.

(2) A court may compel disclosure of the news or information described in subsection (1)(b) of this section if the court finds that the party seeking such news or information established by clear and convincing evidence:

(a)(i) In a criminal investigation or prosecution, based on information other than that information being sought, that there are reasonable grounds to believe that a crime has occurred; or

(ii) In a civil action or proceeding, based on information other than that information being sought, that there is a prima facie cause of action; and

(b) In all matters, whether criminal or civil, that:

(i) The news or information is highly material and relevant;

(ii) The news or information is critical or necessary to the maintenance of a party's claim, defense, or proof of an issue material thereto;

(iii) The party seeking such news or information has exhausted all reasonable and available means to obtain it from alternative sources; and

(iv) There is a compelling public interest in the disclosure. A court may consider whether or not the news or information was obtained from a confidential source in evaluating the public interest in disclosure.

(3) The protection from compelled disclosure contained in subsection (1) of this section also applies to any subpoena issued to, or other compulsory process against, a nonnews media party where such subpoena or process seeks records, information, or other communications relating to business transactions between such nonnews media party and the news

media for the purpose of discovering the identity of a source or obtaining news or information described in subsection (1) of this section. Whenever a subpoena is issued to, or other compulsory process is initiated against, a nonnews media party where such subpoena or process seeks information or communications on business transactions with the news media, the affected news media shall be given reasonable and timely notice of the subpoena or compulsory process before it is executed or initiated, as the case may be, and an opportunity to be heard. In the event that the subpoena to, or other compulsory process against, the nonnews media party is in connection with a criminal investigation in which the news media is the express target, and advance notice as provided in this section would pose a clear and substantial threat to the integrity of the investigation, the governmental authority shall so certify to such a threat in court and notification of the subpoena or compulsory process shall be given to the affected news media as soon thereafter as it is determined that such notification will no longer pose a clear and substantial threat to the integrity of the investigation.

(4) Publication or dissemination by the news media of news or information described in subsection (1) of this section, or a portion thereof, shall not constitute a waiver of the protection from compelled disclosure that is contained in subsection (1) of this section. In the event that the fact of publication of news or information must be proved in any proceeding, that fact and the contents of the publication may be established by judicial notice.

(5) The term "news media" means:

(a) Any newspaper, magazine or other periodical, book publisher, news agency, wire service, radio or television station or network, cable or satellite station or network, or audio or audiovisual production company, or any entity that is in the regular business of news gathering and disseminating news or information to the public by any means, including, but not limited to, print, broadcast, photographic, mechanical, internet, or electronic distribution;

(b) Any person who is or has been an employee, agent, or independent contractor of any entity listed in (a) of this subsection, who is or has been engaged in bona fide news gathering for such entity, and who obtained or prepared the news or information that is sought while serving in that capacity; or

(c) Any parent, subsidiary, or affiliate of the entities listed in (a) or (b) of this subsection to the extent that the subpoena or other compulsory process seeks news or information described in subsection (1) of this section.

(6) In all matters adjudicated pursuant to this section, a court of competent jurisdiction may exercise its inherent powers to conduct all appropriate proceedings required in order to make necessary findings of fact and enter conclusions of law. [2007 c 196 § 1.]

Title 6

ENFORCEMENT OF JUDGMENTS

Chapters

6.13 Homesteads.

6.15 Personal property exemptions.

6.17 Executions.

[2007 RCW Supp—page 14]

Chapter 6.13 RCW

HOMESTEADS

Sections

6.13.030	Homestead exemption limited.
6.13.080	Homestead exemption, when not available.
6.13.090	Judgment against homestead owner—Lien on excess value of homestead property.

6.13.030 Homestead exemption limited. A homestead may consist of lands, as described in RCW 6.13.010, regardless of area, but the homestead exemption amount shall not exceed the lesser of (1) the total net value of the lands, manufactured homes, mobile home, improvements, and other personal property, as described in RCW 6.13.010, or (2) the sum of one hundred twenty-five thousand dollars in the case of lands, manufactured homes, mobile home, and improvements, or the sum of fifteen thousand dollars in the case of other personal property described in RCW 6.13.010, except where the homestead is subject to execution, attachment, or seizure by or under any legal process whatever to satisfy a judgment in favor of any state for failure to pay that state's income tax on benefits received while a resident of the state of Washington from a pension or other retirement plan, in which event there shall be no dollar limit on the value of the exemption. [2007 c 429 § 1; 1999 c 403 § 4; 1993 c 200 § 2; 1991 c 123 § 2; 1987 c 442 § 203; 1983 1st ex.s. c 45 § 4; 1981 c 329 § 10; 1977 ex.s. c 98 § 3; 1971 ex.s. c 12 § 1; 1955 c 29 § 1; 1945 c 196 § 3; 1895 c 64 § 24; Rem. Supp. 1945 § 552. Formerly RCW 6.12.050.]

Purpose—1991 c 123: "The legislature recognizes that retired persons generally are financially dependent on fixed pension or retirement benefits and passive income from investment property. Because of this dependency, retired persons are more vulnerable than others to inflation and depletion of their assets. It is the purpose of this act to increase the protection of income of retired persons residing in the state of Washington from collection of income taxes imposed by other states." [1991 c 123 § 1.]

Severability—1981 c 329: See note following RCW 6.21.020.

Severability—1971 ex.s. c 12: "If any provision of this 1971 amendatory act, or its application to any person or circumstance is held invalid, the remainder of the act, or the application of the provision to other persons or circumstances is not affected." [1971 ex.s. c 12 § 5.]

6.13.080 Homestead exemption, when not available. The homestead exemption is not available against an execution or forced sale in satisfaction of judgments obtained:

(1) On debts secured by mechanic's, laborer's, construction, maritime, automobile repair, materialmen's or vendor's liens arising out of and against the particular property claimed as a homestead;

(2) On debts secured (a) by security agreements describing as collateral the property that is claimed as a homestead or (b) by mortgages or deeds of trust on the premises that have been executed and acknowledged by the husband and wife or by any unmarried claimant;

(3) On one spouse's or the community's debts existing at the time of that spouse's bankruptcy filing where (a) bankruptcy is filed by both spouses within a six-month period, other than in a joint case or a case in which their assets are jointly administered, and (b) the other spouse exempts property from property of the estate under the bankruptcy exemption provisions of 11 U.S.C. Sec. 522(d);

(4) On debts arising from a lawful court order or decree or administrative order establishing a child support obligation or obligation to pay spousal maintenance;

(5) On debts owing to the state of Washington for recovery of medical assistance correctly paid on behalf of an individual consistent with 42 U.S.C. Sec. 1396p;

(6) On debts secured by a condominium's or homeowner association's lien. In order for an association to be exempt under this provision, the association must have provided a homeowner with notice that nonpayment of the association's assessment may result in foreclosure of the association lien and that the homestead protection under this chapter shall not apply. An association has complied with this notice requirement by mailing the notice, by first class mail, to the address of the owner's lot or unit. The notice required in this subsection shall be given within thirty days from the date the association learns of a new owner, but in all cases the notice must be given prior to the initiation of a foreclosure. The phrase "learns of a new owner" in this subsection means actual knowledge of the identity of a homeowner acquiring title after June 9, 1988, and does not require that an association affirmatively ascertain the identity of a homeowner. Failure to give the notice specified in this subsection affects an association's lien only for debts accrued up to the time an association complies with the notice provisions under this subsection; or

(7) On debts owed for taxes collected under chapters 82.08, 82.12, and 82.14 RCW but not remitted to the department of revenue. [2007 c 429 § 2; 2005 c 292 § 4; 1993 c 200 § 4. Prior: 1988 c 231 § 3; 1988 c 192 § 1; 1987 c 442 § 208; 1984 c 260 § 16; 1982 c 10 § 1; prior: 1981 c 304 § 17; 1981 c 149 § 1; 1909 c 44 § 1; 1895 c 64 § 5; RRS § 533. Formerly RCW 6.12.100.]

Severability—1988 c 231: See note following RCW 6.01.050.

Severability—1984 c 260: See RCW 26.18.900.

Severability—1982 c 10: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1982 c 10 § 19.]

Severability—1981 c 304: See note following RCW 26.16.030.

6.13.090 Judgment against homestead owner—Lien on excess value of homestead property. A judgment against the owner of a homestead shall become a lien on the value of the homestead property in excess of the homestead exemption from the time the judgment creditor records the judgment with the recording officer of the county where the property is located. However, if a judgment of a district court of this state has been transferred to a superior court, the judgment becomes a lien from the time of recording with such recording officer a duly certified abstract of the record of such judgment as it appears in the office of the clerk in which the transfer was originally filed. A department of revenue tax warrant filed pursuant to RCW 82.32.210 shall become a lien on the value of the homestead property in excess of the homestead exemption from the time of filing in superior court. [2007 c 429 § 3; 1988 c 231 § 4; 1987 c 442 § 209; 1984 c 260 § 30. Formerly RCW 6.12.105.]

Severability—1988 c 231: See note following RCW 6.01.050.

Severability—1984 c 260: See RCW 26.18.900.

Chapter 6.15 RCW

PERSONAL PROPERTY EXEMPTIONS

Sections

6.15.020 Pension money exempt—Exceptions—Transfer of spouse's interest in individual retirement account.

6.15.020 Pension money exempt—Exceptions—Transfer of spouse's interest in individual retirement account. (1) It is the policy of the state of Washington to ensure the well-being of its citizens by protecting retirement income to which they are or may become entitled. For that purpose generally and pursuant to the authority granted to the state of Washington under 11 U.S.C. Sec. 522(b)(2), the exemptions in this section relating to retirement benefits are provided.

(2) Unless otherwise provided by federal law, any money received by any citizen of the state of Washington as a pension from the government of the United States, whether the same be in the actual possession of such person or be deposited or loaned, shall be exempt from execution, attachment, garnishment, or seizure by or under any legal process whatever, and when a debtor dies, or absconds, and leaves his or her family any money exempted by this subsection, the same shall be exempt to the family as provided in this subsection. This subsection shall not apply to child support collection actions issued under chapter 26.18, 26.23, or 74.20A RCW, if otherwise permitted by federal law.

(3) The right of a person to a pension, annuity, or retirement allowance or disability allowance, or death benefits, or any optional benefit, or any other right accrued or accruing to any citizen of the state of Washington under any employee benefit plan, and any fund created by such a plan or arrangement, shall be exempt from execution, attachment, garnishment, or seizure by or under any legal process whatever. This subsection shall not apply to child support collection actions issued under chapter 26.18, 26.23, or 74.20A RCW if otherwise permitted by federal law. This subsection shall permit benefits under any such plan or arrangement to be payable to a spouse, former spouse, child, or other dependent of a participant in such plan to the extent expressly provided for in a qualified domestic relations order that meets the requirements for such orders under the plan, or, in the case of benefits payable under a plan described in sections 403(b) or 408 of the internal revenue code of 1986, as amended, or section 409 of such code as in effect before January 1, 1984, to the extent provided in any order issued by a court of competent jurisdiction that provides for maintenance or support. This subsection shall not prohibit actions against an employee benefit plan, or fund for valid obligations incurred by the plan or fund for the benefit of the plan or fund.

(4) For the purposes of this section, the term "employee benefit plan" means any plan or arrangement that is described in RCW 49.64.020, including any Keogh plan, whether funded by a trust or by an annuity contract, and in sections 401(a) or 403(a) of the internal revenue code of 1986, as amended; or that is a tax-sheltered annuity described in section 403(b) of such code or an individual retirement account described in section 408 of such code; or a Roth individual retirement account described in section 408A of such code; or a medical savings account described in section 220 of such

code; or an education individual retirement account described in section 530 of such code; or a retirement bond described in section 409 of such code as in effect before January 1, 1984. The term "employee benefit plan" also means any rights accruing on account of money paid currently or in advance for purchase of tuition units under the advanced college tuition payment program in chapter 28B.95 RCW. The term "employee benefit plan" shall not include any employee benefit plan that is established or maintained for its employees by the government of the United States, by the state of Washington under chapter 2.10, 2.12, 41.26, 41.32, 41.34, 41.35, 41.37, 41.40, or 43.43 RCW or RCW 41.50.770, or by any agency or instrumentality of the government of the United States.

(5) An employee benefit plan shall be deemed to be a spendthrift trust, regardless of the source of funds, the relationship between the trustee or custodian of the plan and the beneficiary, or the ability of the debtor to withdraw or borrow or otherwise become entitled to benefits from the plan before retirement. This subsection shall not apply to child support collection actions issued under chapter 26.18, 26.23, or 74.20A RCW, if otherwise permitted by federal law. This subsection shall permit benefits under any such plan or arrangement to be payable to a spouse, former spouse, child, or other dependent of a participant in such plan to the extent expressly provided for in a qualified domestic relations order that meets the requirements for such orders under the plan, or, in the case of benefits payable under a plan described in sections 403(b) or 408 of the internal revenue code of 1986, as amended, or section 409 of such code as in effect before January 1, 1984, to the extent provided in any order issued by a court of competent jurisdiction that provides for maintenance or support.

(6) Unless contrary to applicable federal law, nothing contained in subsection (3), (4), or (5) of this section shall be construed as a termination or limitation of a spouse's community property interest in an individual retirement account held in the name of or on account of the other spouse, the account holder spouse. At the death of the nonaccount holder spouse, the nonaccount holder spouse may transfer or distribute the community property interest of the nonaccount holder spouse in the account holder spouse's individual retirement account to the nonaccount holder spouse's estate, testamentary trust, inter vivos trust, or other successor or successors pursuant to the last will of the nonaccount holder spouse or the law of intestate succession, and that distributee may, but shall not be required to, obtain an order of a court of competent jurisdiction, including a nonjudicial dispute resolution agreement or other order entered under chapter 11.96A RCW, to confirm the distribution. For purposes of subsection (3) of this section, the distributee of the nonaccount holder spouse's community property interest in an individual retirement account shall be considered a person entitled to the full protection of subsection (3) of this section. The nonaccount holder spouse's consent to a beneficiary designation by the account holder spouse with respect to an individual retirement account shall not, absent clear and convincing evidence to the contrary, be deemed a release, gift, relinquishment, termination, limitation, or transfer of the nonaccount holder spouse's community property interest in an individual retirement account. For purposes of this subsection, the term

"nonaccount holder spouse" means the spouse of the person in whose name the individual retirement account is maintained. The term "individual retirement account" includes an individual retirement account and an individual retirement annuity both as described in section 408 of the internal revenue code of 1986, as amended, a Roth individual retirement account as described in section 408A of the internal revenue code of 1986, as amended, and an individual retirement bond as described in section 409 of the internal revenue code as in effect before January 1, 1984. As used in this subsection, an order of a court of competent jurisdiction includes an agreement, as that term is used under RCW 11.96A.220. [2007 c 492 § 1. Prior: 1999 c 81 § 1; 1999 c 42 § 603; 1997 c 20 § 1; 1990 c 237 § 1; 1989 c 360 § 21; 1988 c 231 § 6; prior: 1987 c 64 § 1; 1890 p 88 § 1; RRS § 566. Formerly RCW 6.16.030.]

Part headings and captions not law—Effective date—1999 c 42: See RCW 11.96A.901 and 11.96A.902.

Severability—1990 c 237: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1990 c 237 § 2.]

Severability—1988 c 231: See note following RCW 6.01.050.

Chapter 6.17 RCW EXECUTIONS

Sections

6.17.160 Sheriff's execution of writ—Manner of levy.

6.17.160 Sheriff's execution of writ—Manner of levy.

The sheriff to whom the writ is directed and delivered shall execute the same without delay as follows:

(1) Real property, including a vendee's interests under a real estate contract, shall be levied on by recording a copy of the writ, together with a description of the property attached, with the recording officer of the county in which the real estate is situated.

(2) Personal property, capable of manual delivery, shall be levied on by taking into custody. If the property or any part of it may be concealed in a building or enclosure, the sheriff may publicly demand delivery of the property. If the property is not delivered and if the order of execution so directs, the sheriff may cause the building or enclosure to be broken open and take possession of the property.

(3) Shares of stock and other investment securities shall be levied on in accordance with the requirements of *RCW 62A.8-317.

(4) A fund in court shall be levied on by leaving a copy of the writ with the clerk of the court with notice in writing specifying the fund.

(5) A franchise granted by a public or quasi-public corporation shall be levied on by (a) serving a copy of the writ on, or mailing it to, the judgment debtor as required by RCW 6.17.130 and (b) filing a copy of the writ in the office of the auditor of the county in which the franchise was granted together with a notice in writing that the franchise has been levied on to be sold, specifying the time and place of sale, the name of the owner, the amount of the judgment for which the franchise is to be sold, and the name of the judgment creditor.

(6) A vendor's interest under a real estate contract shall be levied on by (a) recording a copy of the writ, with descriptions of the contract and of the real property covered by the contract, with the recording officer of the county in which the real estate is located and (b) serving a copy of the writ, with a copy of the descriptions, on, or mailing the same to, the judgment debtor and the vendee under the contract in the manner as described in RCW 6.17.130.

(7) Other intangible personal property may be levied on by serving a copy of the writ on, or mailing it to, the judgment debtor in the manner as required by RCW 6.17.130, together with a description of the property. If the property is a claim on which suit has been commenced, a copy of the writ and of the description shall also be filed with the clerk of the court in which the suit is pending. [2007 c 37 § 1; 1988 c 231 § 12; 1987 c 442 § 416; 1927 c 100 § 1; 1886 p 42 § 13; RRS § 659. Prior: Code 1881 §§ 174-192; 1877 pp 35-40; 1873 pp 43-50; 1871 pp 9, 10; 1869 pp 41-47; 1863 pp 112-120; 1860 pp 30-36; 1854 pp 155-162. Formerly RCW 7.12.130.]

*Reviser's note: RCW 62A.8-317 was repealed by 1995 c 48 § 52.

Severability—1988 c 231: See note following RCW 6.01.050.

Sheriff's fees for service of process and other official services: RCW 36.18.040.

Title 7

SPECIAL PROCEEDINGS AND ACTIONS

Chapters

- 7.48 Nuisances.
- 7.70 Actions for injuries resulting from health care.
- 7.90 Sexual assault protection order act.

Chapter 7.48 RCW NUISANCES

Sections

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

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

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

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

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

7.48.310 Agricultural activities and forest practices—Definitions. As used in RCW 7.48.305:

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

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

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

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

(5) "Forest practice" means "forest practice" as defined in RCW 76.09.020. [2007 c 331 § 3; 1992 c 52 § 4; 1991 c 317 § 2; 1979 c 122 § 3.]

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

Chapter 7.70 RCW

ACTIONS FOR INJURIES RESULTING FROM HEALTH CARE

Sections

7.70.060	Consent form—Contents—Prima facie evidence—Shared decision making—Patient decision aid—Failure to use.
7.70.065	Informed consent—Persons authorized to provide for patients who are not competent—Priority.
7.70.100	Mandatory mediation of health care claims—Procedures.

7.70.060 Consent form—Contents—Prima facie evidence—Shared decision making—Patient decision aid—Failure to use. (1) If a patient while legally competent, or his or her representative if he or she is not competent, signs a consent form which sets forth the following, the signed consent form shall constitute prima facie evidence that the patient gave his or her informed consent to the treatment administered and the patient has the burden of rebutting this by a preponderance of the evidence:

(a) A description, in language the patient could reasonably be expected to understand, of:

- (i) The nature and character of the proposed treatment;
- (ii) The anticipated results of the proposed treatment;
- (iii) The recognized possible alternative forms of treatment; and
- (iv) The recognized serious possible risks, complications, and anticipated benefits involved in the treatment and in the recognized possible alternative forms of treatment, including nontreatment;

(b) Or as an alternative, a statement that the patient elects not to be informed of the elements set forth in (a) of this subsection.

(2) If a patient while legally competent, or his or her representative if he or she is not competent, signs an acknowledgement of shared decision making as described in this section, such acknowledgement shall constitute prima facie evidence that the patient gave his or her informed consent to the treatment administered and the patient has the burden of rebutting this by clear and convincing evidence. An acknowledgement of shared decision making shall include:

(a) A statement that the patient, or his or her representative, and the health care provider have engaged in shared decision making as an alternative means of meeting the informed consent requirements set forth by laws, accreditation standards, and other mandates;

(b) A brief description of the services that the patient and provider jointly have agreed will be furnished;

(c) A brief description of the patient decision aid or aids that have been used by the patient and provider to address the needs for (i) high-quality, up-to-date information about the condition, including risk and benefits of available options and, if appropriate, a discussion of the limits of scientific knowledge about outcomes; (ii) values clarification to help patients sort out their values and preferences; and (iii) guidance or coaching in deliberation, designed to improve the patient's involvement in the decision process;

(d) A statement that the patient or his or her representative understands: The risk or seriousness of the disease or condition to be prevented or treated; the available treatment alternatives, including nontreatment; and the risks, benefits,

and uncertainties of the treatment alternatives, including non-treatment; and

(e) A statement certifying that the patient or his or her representative has had the opportunity to ask the provider questions, and to have any questions answered to the patient's satisfaction, and indicating the patient's intent to receive the identified services.

(3) As used in this section, "shared decision making" means a process in which the physician or other health care practitioner discusses with the patient or his or her representative the information specified in subsection (2) of this section with the use of a patient decision aid and the patient shares with the provider such relevant personal information as might make one treatment or side effect more or less tolerable than others.

(4) As used in this section, "patient decision aid" means a written, audio-visual, or online tool that provides a balanced presentation of the condition and treatment options, benefits, and harms, including, if appropriate, a discussion of the limits of scientific knowledge about outcomes, and that is certified by one or more national certifying organizations.

(5) Failure to use a form or to engage in shared decision making, with or without the use of a patient decision aid, shall not be admissible as evidence of failure to obtain informed consent. There shall be no liability, civil or otherwise, resulting from a health care provider choosing either the signed consent form set forth in subsection (1)(a) of this section or the signed acknowledgement of shared decision making as set forth in subsection (2) of this section. [2007 c 259 § 3; 1975-'76 2nd ex.s. c 56 § 11.]

Severability—Subheadings not law—2007 c 259: See notes following RCW 41.05.033.

Severability—1975-'76 2nd ex.s. c 56: See note following RCW 4.16.350.

Minors

- access to personal records: RCW 42.48.020.*
- alcohol and drug treatment: RCW 70.96A.095.*
- liability of provider: RCW 26.09.310.*
- mental health treatment: Chapter 71.34 RCW.*
- sexually transmitted diseases: RCW 70.24.110.*

Records, rights: RCW 70.02.130.

7.70.065 Informed consent—Persons authorized to provide for patients who are not competent—Priority. (1) Informed consent for health care for a patient who is not competent, as defined in RCW 11.88.010(1)(e), to consent may be obtained from a person authorized to consent on behalf of such patient.

(a) Persons authorized to provide informed consent to health care on behalf of a patient who is not competent to consent, based upon a reason other than incapacity as defined in RCW 11.88.010(1)(d), shall be a member of one of the following classes of persons in the following order of priority:

- (i) The appointed guardian of the patient, if any;
- (ii) The individual, if any, to whom the patient has given a durable power of attorney that encompasses the authority to make health care decisions;
- (iii) The patient's spouse or state registered domestic partner;
- (iv) Children of the patient who are at least eighteen years of age;
- (v) Parents of the patient; and

(vi) Adult brothers and sisters of the patient.

(b) If the health care provider seeking informed consent for proposed health care of the patient who is not competent to consent under RCW 11.88.010(1)(e), other than a person determined to be incapacitated because he or she is under the age of majority and who is not otherwise authorized to provide informed consent, makes reasonable efforts to locate and secure authorization from a competent person in the first or succeeding class and finds no such person available, authorization may be given by any person in the next class in the order of descending priority. However, no person under this section may provide informed consent to health care:

(i) If a person of higher priority under this section has refused to give such authorization; or

(ii) If there are two or more individuals in the same class and the decision is not unanimous among all available members of that class.

(c) Before any person authorized to provide informed consent on behalf of a patient not competent to consent under RCW 11.88.010(1)(e), other than a person determined to be incapacitated because he or she is under the age of majority and who is not otherwise authorized to provide informed consent, exercises that authority, the person must first determine in good faith that that patient, if competent, would consent to the proposed health care. If such a determination cannot be made, the decision to consent to the proposed health care may be made only after determining that the proposed health care is in the patient's best interests.

(2) Informed consent for health care, including mental health care, for a patient who is not competent, as defined in RCW 11.88.010(1)(e), because he or she is under the age of majority and who is not otherwise authorized to provide informed consent, may be obtained from a person authorized to consent on behalf of such a patient.

(a) Persons authorized to provide informed consent to health care, including mental health care, on behalf of a patient who is incapacitated, as defined in RCW 11.88.010(1)(e), because he or she is under the age of majority and who is not otherwise authorized to provide informed consent, shall be a member of one of the following classes of persons in the following order of priority:

(i) The appointed guardian, or legal custodian authorized pursuant to Title 26 RCW, of the minor patient, if any;

(ii) A person authorized by the court to consent to medical care for a child in out-of-home placement pursuant to chapter 13.32A or 13.34 RCW, if any;

(iii) Parents of the minor patient;

(iv) The individual, if any, to whom the minor's parent has given a signed authorization to make health care decisions for the minor patient; and

(v) A competent adult representing himself or herself to be a relative responsible for the health care of such minor patient or a competent adult who has signed and dated a declaration under penalty of perjury pursuant to RCW 9A.72.085 stating that the adult person is a relative responsible for the health care of the minor patient. Such declaration shall be effective for up to six months from the date of the declaration.

(b) A health care provider may, but is not required to, rely on the representations or declaration of a person claiming to be a relative responsible for the care of the minor patient, under (a)(v) of this subsection, if the health care pro-

vider does not have actual notice of the falsity of any of the statements made by the person claiming to be a relative responsible for the health care of the minor patient.

(c) A health care facility or a health care provider may, in its discretion, require documentation of a person's claimed status as being a relative responsible for the health care of the minor patient. However, there is no obligation to require such documentation.

(d) The health care provider or health care facility where services are rendered shall be immune from suit in any action, civil or criminal, or from professional or other disciplinary action when such reliance is based on a declaration signed under penalty of perjury pursuant to RCW 9A.72.085 stating that the adult person is a relative responsible for the health care of the minor patient under (a)(v) of this subsection.

(3) For the purposes of this section, "health care," "health care provider," and "health care facility" shall be defined as established in RCW 70.02.010. [2007 c 156 § 11; 2006 c 93 § 1; 2005 c 440 § 2; 2003 c 283 § 29; 1987 c 162 § 1.]

Intent—2005 c 440: "(1) It is the intent of the legislature to assist children in the care of kin to access appropriate medical services. Children being raised by kin have faced barriers to medical care because their kinship caregivers have not been able to verify that they are the identified primary caregivers of these children. Such barriers pose an especially significant challenge to kinship caregivers in dealing with health professionals when children are left in their care.

(2) It is the intent of the legislature to assist kinship caregivers in accessing appropriate medical care to meet the needs of a child in their care by permitting such responsible adults who are providing care to a child to give informed consent to medical care." [2005 c 440 § 1.]

Severability—Part headings not law—2003 c 283: See RCW 71.32.900 and 71.32.901.

7.70.100 Mandatory mediation of health care

claims—Procedures. (1) No action based upon a health care provider's professional negligence may be commenced unless the defendant has been given at least ninety days' notice of the intention to commence the action. The notice required by this section shall be given by regular mail, registered mail, or certified mail with return receipt requested, by depositing the notice, with postage prepaid, in the post office addressed to the defendant. If the defendant is a health care provider entity defined in RCW 7.70.020(3) or, at the time of the alleged professional negligence, was acting as an actual agent or employee of such a health care provider entity, the notice may be addressed to the chief executive officer, administrator, office of risk management, if any, or registered agent for service of process, if any, of such health care provider entity. Notice for a claim against a local government entity shall be filed with the agent as identified in RCW 4.96.020(2). Proof of notice by mail may be made in the same manner as that prescribed by court rule or statute for proof of service by mail. If the notice is served within ninety days of the expiration of the applicable statute of limitations, the time for the commencement of the action must be extended ninety days from the date the notice was mailed, and after the ninety-day extension expires, the claimant shall have an additional five court days to commence the action.

(2) The provisions of subsection (1) of this section are not applicable with respect to any defendant whose name is unknown to the plaintiff at the time of filing the complaint and who is identified therein by a fictitious name.

(3) After the filing of the ninety-day presuit notice, and before a superior court trial, all causes of action, whether based in tort, contract, or otherwise, for damages arising from injury occurring as a result of health care provided after July 1, 1993, shall be subject to mandatory mediation prior to trial except as provided in subsection (6) of this section.

(4) The supreme court shall by rule adopt procedures to implement mandatory mediation of actions under this chapter. The implementation contemplates the adoption of rules by the supreme court which will require mandatory mediation without exception unless subsection (6) of this section applies. The rules on mandatory mediation shall address, at a minimum:

(a) Procedures for the appointment of, and qualifications of, mediators. A mediator shall have experience or expertise related to actions arising from injury occurring as a result of health care, and be a member of the state bar association who has been admitted to the bar for a minimum of five years or who is a retired judge. The parties may stipulate to a nonlawyer mediator. The court may prescribe additional qualifications of mediators;

(b) Appropriate limits on the amount or manner of compensation of mediators;

(c) The number of days following the filing of a claim under this chapter within which a mediator must be selected;

(d) The method by which a mediator is selected. The rule shall provide for designation of a mediator by the superior court if the parties are unable to agree upon a mediator;

(e) The number of days following the selection of a mediator within which a mediation conference must be held;

(f) A means by which mediation of an action under this chapter may be waived by a mediator who has determined that the claim is not appropriate for mediation; and

(g) Any other matters deemed necessary by the court.

(5) Mediators shall not impose discovery schedules upon the parties.

(6) The mandatory mediation requirement of subsection (4) of this section does not apply to an action subject to mandatory arbitration under chapter 7.06 RCW or to an action in which the parties have agreed, subsequent to the arising of the claim, to submit the claim to arbitration under chapter 7.04A or 7.70A RCW.

(7) The implementation also contemplates the adoption of a rule by the supreme court for procedures for the parties to certify to the court the manner of mediation used by the parties to comply with this section. [2007 c 119 § 1; 2006 c 8 § 314; 1993 c 492 § 419.]

Findings—Intent—Part headings and subheadings not law—Severability—2006 c 8: See notes following RCW 5.64.010.

Medical malpractice review—1993 c 492: "(1) The administrator for the courts shall coordinate a collaborative effort to develop a voluntary system for review of medical malpractice claims by health services experts prior to the filing of a cause of action under chapter 7.70 RCW.

(2) The system shall have at least the following components:

(a) Review would be initiated, by agreement of the injured claimant and the health care provider, at the point at which a medical malpractice claim is submitted to a malpractice insurer or a self-insured health care provider.

(b) By agreement of the parties, an expert would be chosen from a pool of health services experts who have agreed to review claims on a voluntary basis.

(c) The mutually agreed upon expert would conduct an impartial review of the claim and provide his or her opinion to the parties.

(d) A pool of available experts would be established and maintained for

each category of health care practitioner by the corresponding practitioner association, such as the Washington state medical association and the Washington state nurses association.

(3) The administrator for the courts shall seek to involve at least the following organizations in a collaborative effort to develop the informal review system described in subsection (2) of this section:

(a) The Washington defense trial lawyers association;

(b) The Washington state trial lawyers association;

(c) The Washington state medical association;

(d) The Washington state nurses association and other employee organizations representing nurses;

(e) The Washington state hospital association;

(f) The Washington state physicians insurance exchange and association;

(g) The Washington casualty company;

(h) The doctor's agency;

(i) Group health cooperative of Puget Sound;

(j) The University of Washington;

(k) Washington osteopathic medical association;

(l) Washington state chiropractic association;

(m) Washington association of naturopathic physicians; and

(n) The department of health.

(4) On or before January 1, 1994, the administrator for the courts shall provide a report on the status of the development of the system described in this section to the governor and the appropriate committees of the senate and the house of representatives." [1993 c 492 § 418.]

Findings—Intent—1993 c 492: See notes following RCW 43.72.005.

Short title—Severability—Savings—Captions not law—Reservation of legislative power—Effective dates—1993 c 492: See RCW 43.72.910 through 43.72.915.

Chapter 7.90 RCW

SEXUAL ASSAULT PROTECTION ORDER ACT

Sections

7.90.005	Legislative declaration.
7.90.020	Petition for a sexual assault protection order—Creation—Contents—Administration.
7.90.030	Petition—Who may file.
7.90.055	Fees not permitted—Filing, service of process, certified copies.
7.90.110	Ex parte temporary sexual assault protection orders—Issuance.

7.90.005 Legislative declaration. Sexual assault is the most heinous crime against another person short of murder. Sexual assault inflicts humiliation, degradation, and terror on victims. According to the FBI, a woman is raped every six minutes in the United States. Rape is recognized as the most underreported crime; estimates suggest that only one in seven rapes is reported to authorities. Victims who do not report the crime still desire safety and protection from future interactions with the offender. Some cases in which the rape is reported are not prosecuted. In these situations, the victim should be able to seek a civil remedy requiring that the offender stay away from the victim. It is the intent of the legislature that the sexual assault protection order created by this chapter be a remedy for victims who do not qualify for a domestic violence order of protection. [2007 c 212 § 1; 2006 c 138 § 1.]

7.90.020 Petition for a sexual assault protection order—Creation—Contents—Administration. There shall exist an action known as a petition for a sexual assault protection order.

(1) A petition for relief shall allege the existence of non-consensual sexual conduct or nonconsensual sexual penetration, and shall be accompanied by an affidavit made under

oath stating the specific statements or actions made at the same time of the sexual assault or subsequently thereafter, which give rise to a reasonable fear of future dangerous acts, for which relief is sought. Petitioner and respondent shall disclose the existence of any other litigation or of any other restraining, protection, or no-contact orders between the parties.

(2) A petition for relief may be made regardless of whether or not there is a pending lawsuit, complaint, petition, or other action between the parties.

(3) Within ninety days of receipt of the master copy from the administrative office of the courts, all court clerk's offices shall make available the standardized forms, instructions, and informational brochures required by RCW 7.90.180 and shall fill in and keep current specific program names and telephone numbers for community resources. Any assistance or information provided by clerks under this section does not constitute the practice of law and clerks are not responsible for incorrect information contained in a petition.

(4) Forms and instructional brochures and the necessary number of certified copies shall be provided free of charge.

(5) A person is not required to post a bond to obtain relief in any proceeding under this section.

(6) If the petition states that disclosure of the petitioner's address would risk abuse of the petitioner or any member of the petitioner's family or household, that address may be omitted from all documents filed with the court. If the petitioner has not disclosed an address under this subsection, the petitioner shall designate an alternative address at which the respondent may serve notice of any motions. [2007 c 55 § 1; 2006 c 138 § 5.]

7.90.030 Petition—Who may file. (1) A petition for a sexual assault protection order may be filed by a person:

(a) Who does not qualify for a protection order under chapter 26.50 RCW and who is a victim of nonconsensual sexual conduct or nonconsensual sexual penetration, including a single incident of nonconsensual sexual conduct or nonconsensual sexual penetration; or

(b) On behalf of any of the following persons who is a victim of nonconsensual sexual conduct or nonconsensual sexual penetration and who does not qualify for a protection order under chapter 26.50 RCW:

(i) A minor child;

(ii) A vulnerable adult as defined in RCW 74.34.020 or 74.34.021; or

(iii) Any other adult who, because of age, disability, health, or inaccessibility, cannot file the petition. [2007 c 212 § 2; 2006 c 138 § 3.]

7.90.055 Fees not permitted—Filing, service of process, certified copies. No fees for filing or service of process may be charged by a public agency to petitioners seeking relief under this chapter. Petitioners shall be provided the necessary number of certified copies at no cost. [2007 c 55 § 2.]

7.90.110 Ex parte temporary sexual assault protection orders—Issuance. (1) An ex parte temporary sexual assault protection order shall issue if the petitioner satisfies

the requirements of this subsection by a preponderance of the evidence. The petitioner shall establish that:

(a) The petitioner has been a victim of nonconsensual sexual conduct or nonconsensual sexual penetration by the respondent; and

(b) There is good cause to grant the remedy, regardless of the lack of prior service of process or of notice upon the respondent, because the harm which that remedy is intended to prevent would be likely to occur if the respondent were given any prior notice, or greater notice than was actually given, of the petitioner's efforts to obtain judicial relief.

(2) If the respondent appears in court for this hearing for an ex parte temporary order, he or she may elect to file a general appearance and testify. Any resulting order may be an ex parte temporary order, governed by this section.

(3) If the court declines to issue an ex parte temporary sexual assault protection order, the court shall state the particular reasons for the court's denial. The court's denial of a motion for an ex parte temporary order shall be filed with the court.

(4) A knowing violation of a court order issued under this section is punishable under RCW 26.50.110. [2007 c 212 § 3; 2006 c 138 § 12.]

Title 8

EMINENT DOMAIN

Chapters

8.04 Eminent domain by state.

8.08 Eminent domain by counties.

8.12 Eminent domain by cities.

8.16 Eminent domain by school districts.

8.20 Eminent domain by corporations.

8.25 Additional provisions applicable to eminent domain proceedings.

Chapter 8.04 RCW

EMINENT DOMAIN BY STATE

Sections

8.04.005 Condemnation final actions—Notice requirements.

8.04.005 Condemnation final actions—Notice requirements. Proceedings under this chapter are subject to the notice requirements of RCW 8.25.290. Compliance with RCW 8.25.290 is required before an action can be filed under this chapter. [2007 c 68 § 2.]

Chapter 8.08 RCW

EMINENT DOMAIN BY COUNTIES

Sections

8.08.005 Condemnation final actions—Notice requirements.

8.08.005 Condemnation final actions—Notice requirements. Proceedings under this chapter are subject to the notice requirements of RCW 8.25.290. Compliance with RCW 8.25.290 is required before an action can be filed under this chapter. [2007 c 68 § 3.]

Chapter 8.12 RCW

EMINENT DOMAIN BY CITIES

Sections

8.12.005	Condemnation final actions—Notice requirements.
8.12.530	Discontinuance of proceedings.

8.12.005 Condemnation final actions—Notice requirements. Proceedings under this chapter are subject to the notice requirements of RCW 8.25.290. Compliance with RCW 8.25.290 is required before an action can be filed under this chapter. [2007 c 68 § 4.]

8.12.530 Discontinuance of proceedings. At any time within six months from the date of rendition of the last judgment awarding compensation for any such improvement in the superior court, or if appellate review is sought, then within two months after the final determination of the proceeding in the supreme court or the court of appeals, any such city may discontinue the proceedings by ordinance passed for that purpose before making payment or proceeding with the improvement by paying or depositing in court all taxable costs incurred by any parties to the proceedings up to the time of such discontinuance. Except as provided in RCW 8.25.290(3), if any such improvement be discontinued, no new proceedings shall be undertaken therefor until the expiration of one year from the date of such discontinuance. [2007 c 68 § 7; 1988 c 202 § 11; 1971 c 81 § 40; 1915 c 154 § 21; 1907 c 153 § 49; RRS § 9274. Prior: 1905 c 55 § 48; 1893 c 84 § 48.]

Severability—1988 c 202: See note following RCW 2.24.050.

Chapter 8.16 RCW

EMINENT DOMAIN BY SCHOOL DISTRICTS

Sections

8.16.005	Condemnation final actions—Notice requirements.
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8.16.005 Condemnation final actions—Notice requirements. Proceedings under this chapter are subject to the notice requirements of RCW 8.25.290. Compliance with RCW 8.25.290 is required before an action can be filed under this chapter. [2007 c 68 § 5.]

Chapter 8.20 RCW

EMINENT DOMAIN BY CORPORATIONS

Sections

8.20.005	Condemnation final actions—Notice requirements.
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8.20.005 Condemnation final actions—Notice requirements. Proceedings under this chapter are subject to the notice requirements of RCW 8.25.290. Compliance with RCW 8.25.290 is required before an action can be filed under this chapter. [2007 c 68 § 6.]

[2007 RCW Supp—page 22]

Chapter 8.25 RCW

ADDITIONAL PROVISIONS APPLICABLE TO EMINENT DOMAIN PROCEEDINGS

Sections

8.25.290	Condemnation final actions—Notice required—"Final action" defined.
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8.25.290 Condemnation final actions—Notice required—"Final action" defined. (1) The condemnor must provide notice as required by this section before:

(a) A state agency or other entity subject to chapter 8.04 RCW takes a final action to authorize the condemnation of a specific property;

(b) A county or other entity subject to chapter 8.08 RCW takes a final action deeming a specific property to be "for county purposes" as provided in RCW 8.08.010;

(c) A city or town or other entity subject to chapter 8.12 RCW takes a final action authorizing condemnation as provided in RCW 8.12.040;

(d) A school district or other entity subject to chapter 8.16 RCW takes a final action selecting property for condemnation as provided in RCW 8.16.010;

(e) Any other corporation authorized to condemn property takes a final action to authorize condemnation as provided in RCW 8.20.010; or

(f) Any other entity subject to chapter 8.04, 8.08, 8.12, 8.16, or 8.20 RCW takes any final action to authorize the condemnation of a specific property.

(2)(a)(i) Notice of the planned final action shall be mailed by certified mail to each and every property owner of record as indicated on the tax rolls of the county to the address provided on such tax rolls, for each property potentially subject to condemnation, at least fifteen days before the final action. If no address is provided for a property on the tax rolls of the county, the potential condemnor shall conduct a diligent inquiry for the address for each and every property owner of record and send the notice to that address. In case the property sought to be appropriated is school or county land, such notice shall be mailed to the auditor of the county in which the property sought to be acquired and appropriated is situated.

(ii) The notice must contain a general description of the property such as an address, lot number, or parcel number and specify that condemnation of the property will be considered during the final action. The notice must also describe the date, time, and location of the final action at which the potential condemnor will decide whether or not to authorize the condemnation of the property.

(iii) Mailing of the certified letter to the proper addressee or addressees is deemed to be sufficient notice under this subsection (2)(a).

(b)(i) Notice of a planned final action described in subsection (1) of this section shall also be given by publication in the legal newspaper with the largest circulation in the jurisdiction where such property is located once a week for two successive weeks before the final action. A second publication must also be given in the legal newspaper routinely used by the potential condemnor, where such newspaper does not also have the largest circulation in the jurisdiction. Proof of circulation shall be established by publisher's affidavit filed

with the potential condemnor. Such publication shall be deemed sufficient notice in lieu of a certified letter for each property owner of record for the property whose address is unknown and cannot be ascertained after a diligent inquiry.

(ii) The notice published under this subsection (2)(b) shall contain the same information as is required under (a) of this subsection.

(3) In a condemnation action subject to this section in which a condemnee alleges insufficient notice under this section, the court may determine whether the condemnor made a diligent attempt to provide sufficient notice and issue a finding on the sufficiency of the notice. Lack of sufficient notice under this section shall render the subsequent proceedings void as to the person improperly notified, but the subsequent proceedings shall not be void as to all persons or parties having been notified as provided in this section, either by publication or otherwise. A potential condemnor may cure insufficient notice under this section by providing an additional sufficient notice prior to taking a new final action, and filing a new petition if one was previously filed, for condemnation for the property owner of record who received insufficient notice. In such a case, RCW 8.12.530 shall not apply and a subsequent proceeding may be filed sooner than one year after discontinuance.

(4)(a) For potential condemnors subject to chapter 42.30 RCW, the open public meetings act, "final action" has the same meaning as that provided in RCW 42.30.020.

(b) For state agencies not subject to chapter 42.30 RCW, the office of the attorney general shall publish procedures that define "final action" for state agencies to ensure that property owners of record are provided with notice and opportunity for comment before the agency makes a final decision to authorize the condemnation of specific property.

(c) For all other entities subject to chapter 68, Laws of 2007, "final action" means a public meeting at which the entity informs potentially affected property owners of record about the scope and reasons for a potential condemnation action. A meeting must be held in each county where property being considered for condemnation is located. The meeting must be open to the public and conducted by a duly authorized representative of the entity. [2007 c 68 § 1.]

Title 9

CRIMES AND PUNISHMENTS

Chapters

- 9.40** Fire, crimes relating to.
- 9.41** Firearms and dangerous weapons.
- 9.46** Gambling—1973 act.
- 9.68A** Sexual exploitation of children.
- 9.91** Miscellaneous crimes.
- 9.94A** Sentencing reform act of 1981.
- 9.95** Indeterminate sentences.
- 9.96** Restoration of civil rights.

Chapter 9.40 RCW

FIRE, CRIMES RELATING TO

Sections

- 9.40.130 Incendiary devices—Exceptions.

9.40.130 Incendiary devices—Exceptions. RCW 9.40.120, as now or hereafter amended, shall not prohibit the authorized use or possession of any material, substance, or device described therein by a member of the armed forces of the United States or by firefighters, or peace officers, nor shall these sections prohibit the use or possession of any material, substance, or device described therein when used solely for scientific research or educational purposes or for any lawful purpose. RCW 9.40.120, as now or hereafter amended, shall not prohibit the manufacture or disposal of an incendiary device for the parties or purposes described in this section. [2007 c 218 § 62; 1971 ex.s. c 302 § 5; 1969 ex.s. c 79 § 4.]

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

Severability—1971 ex.s. c 302: See note following RCW 9.41.010.

Chapter 9.41 RCW

FIREARMS AND DANGEROUS WEAPONS

Sections

- 9.41.250 Dangerous weapons—Penalty—Exemption for law enforcement officers.

9.41.250 Dangerous weapons—Penalty—Exemption for law enforcement officers. (1) Every person who:

(a) Manufactures, sells, or disposes of or possesses any instrument or weapon of the kind usually known as slung shot, sand club, or metal knuckles, or spring blade knife, or any knife the blade of which is automatically released by a spring mechanism or other mechanical device, or any knife having a blade which opens, or falls, or is ejected into position by the force of gravity, or by an outward, downward, or centrifugal thrust or movement;

(b) Furtively carries with intent to conceal any dagger, dirk, pistol, or other dangerous weapon; or

(c) Uses any contrivance or device for suppressing the noise of any firearm,

is guilty of a gross misdemeanor punishable under chapter 9A.20 RCW.

(2) Subsection (1)(a) of this section does not apply to:

(a) The possession of a spring blade knife by a law enforcement officer while the officer:

(i) Is on official duty; or

(ii) Is transporting the knife to or from the place where the knife is stored when the officer is not on official duty; or

(b) The storage of a spring blade knife by a law enforcement officer. [2007 c 379 § 1; 1994 sp.s. c 7 § 424; 1959 c 143 § 1; 1957 c 93 § 1; 1909 c 249 § 265; 1886 p 81 § 1; Code 1881 § 929; RRS § 2517.]

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

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

Chapter 9.46 RCW

GAMBLING—1973 ACT

Sections

- 9.46.020 "Bona fide charitable or nonprofit organization."
- 9.46.070 Gambling commission—Powers and duties.
- 9.46.36001 Tribal actions—Federal jurisdiction.

9.46.0209 "Bona fide charitable or nonprofit organization." (1)(a) "Bona fide charitable or nonprofit organization," as used in this chapter, means:

(i) Any organization duly existing under the provisions of chapter 24.12, 24.20, or 24.28 RCW, any agricultural fair authorized under the provisions of chapters 15.76 or 36.37 RCW, or any nonprofit corporation duly existing under the provisions of chapter 24.03 RCW for charitable, benevolent, eleemosynary, educational, civic, patriotic, political, social, fraternal, athletic or agricultural purposes only, or any nonprofit organization, whether incorporated or otherwise, when found by the commission to be organized and operating for one or more of the aforesaid purposes only, all of which in the opinion of the commission have been organized and are operated primarily for purposes other than the operation of gambling activities authorized under this chapter; or

(ii) Any corporation which has been incorporated under Title 36 U.S.C. and whose principal purposes are to furnish volunteer aid to members of the armed forces of the United States and also to carry on a system of national and international relief and to apply the same in mitigating the sufferings caused by pestilence, famine, fire, floods, and other national calamities and to devise and carry on measures for preventing the same.

(b) An organization defined under (a) of this subsection must:

(i) Have been organized and continuously operating for at least twelve calendar months immediately preceding making application for any license to operate a gambling activity, or the operation of any gambling activity authorized by this chapter for which no license is required;

(ii) Have not less than fifteen bona fide active members each with the right to an equal vote in the election of the officers, or board members, if any, who determine the policies of the organization in order to receive a gambling license; and

(iii) Demonstrate to the commission that it has made significant progress toward the accomplishment of the purposes of the organization during the twelve consecutive month period preceding the date of application for a license or license renewal. The fact that contributions to an organization do not qualify for charitable contribution deduction purposes or that the organization is not otherwise exempt from payment of federal income taxes pursuant to the internal revenue code of 1954, as amended, shall constitute prima facie evidence that the organization is not a bona fide charitable or nonprofit organization for the purposes of this section.

(c) Any person, association or organization which pays its employees, including members, compensation other than is reasonable therefor under the local prevailing wage scale shall be deemed paying compensation based in part or whole upon receipts relating to gambling activities authorized under this chapter and shall not be a bona fide charitable or nonprofit organization for the purposes of this chapter.

(2) For the purposes of RCW 9.46.0315 and 9.46.110, a bona fide nonprofit organization also includes:

(a) A credit union organized and operating under state or federal law. All revenue less prizes and expenses received from raffles conducted by credit unions must be devoted to purposes authorized under this section for charitable and nonprofit organizations; and

(b) A group of executive branch state employees that:

(i) Has requested and received revocable approval from the agency's chief executive official, or such official's designee, to conduct one or more raffles in compliance with this section;

(ii) Conducts a raffle solely to raise funds for either the state combined fund drive, created under RCW 41.04.033; an entity approved to receive funds from the state combined fund drive; or a charitable or benevolent entity, including but not limited to a person or family in need, as determined by a majority vote of the approved group of employees. No person or other entity may receive compensation in any form from the group for services rendered in support of this purpose;

(iii) Promptly provides such information about the group's receipts, expenditures, and other activities as the agency's chief executive official or designee may periodically require, and otherwise complies with this section and RCW 9.46.0315; and

(iv) Limits the participation in the raffle such that raffle tickets are sold only to, and winners are determined only from, the employees of the agency. [2007 c 452 § 1; 2000 c 233 § 1; 1987 c 4 § 4. Formerly RCW 9.46.020(3).]

9.46.070 Gambling commission—Powers and duties.

The commission shall have the following powers and duties:

(1) To authorize and issue licenses for a period not to exceed one year to bona fide charitable or nonprofit organizations approved by the commission meeting the requirements of this chapter and any rules and regulations adopted pursuant thereto permitting said organizations to conduct bingo games, raffles, amusement games, and social card games, to utilize punch boards and pull-tabs in accordance with the provisions of this chapter and any rules and regulations adopted pursuant thereto and to revoke or suspend said licenses for violation of any provisions of this chapter or any rules and regulations adopted pursuant thereto: PROVIDED, That the commission shall not deny a license to an otherwise qualified applicant in an effort to limit the number of licenses to be issued: PROVIDED FURTHER, That the commission or director shall not issue, deny, suspend, or revoke any license because of considerations of race, sex, creed, color, or national origin: AND PROVIDED FURTHER, That the commission may authorize the director to temporarily issue or suspend licenses subject to final action by the commission;

(2) To authorize and issue licenses for a period not to exceed one year to any person, association, or organization operating a business primarily engaged in the selling of items of food or drink for consumption on the premises, approved by the commission meeting the requirements of this chapter and any rules and regulations adopted pursuant thereto permitting said person, association, or organization to utilize punch boards and pull-tabs and to conduct social card games as a commercial stimulant in accordance with the provisions of this chapter and any rules and regulations adopted pursuant thereto and to revoke or suspend said licenses for violation of any provisions of this chapter and any rules and regulations adopted pursuant thereto: PROVIDED, That the commission shall not deny a license to an otherwise qualified applicant in an effort to limit the number of licenses to be issued: PROVIDED FURTHER, That the commission may

authorize the director to temporarily issue or suspend licenses subject to final action by the commission;

(3) To authorize and issue licenses for a period not to exceed one year to any person, association, or organization approved by the commission meeting the requirements of this chapter and meeting the requirements of any rules and regulations adopted by the commission pursuant to this chapter as now or hereafter amended, permitting said person, association, or organization to conduct or operate amusement games in such manner and at such locations as the commission may determine. The commission may authorize the director to temporarily issue or suspend licenses subject to final action by the commission;

(4) To authorize, require, and issue, for a period not to exceed one year, such licenses as the commission may by rule provide, to any person, association, or organization to engage in the selling, distributing, or otherwise supplying or in the manufacturing of devices for use within this state for those activities authorized by this chapter. The commission may authorize the director to temporarily issue or suspend licenses subject to final action by the commission;

(5) To establish a schedule of annual license fees for carrying on specific gambling activities upon the premises, and for such other activities as may be licensed by the commission, which fees shall provide to the commission not less than an amount of money adequate to cover all costs incurred by the commission relative to licensing under this chapter and the enforcement by the commission of the provisions of this chapter and rules and regulations adopted pursuant thereto: PROVIDED, That all licensing fees shall be submitted with an application therefor and such portion of said fee as the commission may determine, based upon its cost of processing and investigation, shall be retained by the commission upon the withdrawal or denial of any such license application as its reasonable expense for processing the application and investigation into the granting thereof: PROVIDED FURTHER, That if in a particular case the basic license fee established by the commission for a particular class of license is less than the commission's actual expenses to investigate that particular application, the commission may at any time charge to that applicant such additional fees as are necessary to pay the commission for those costs. The commission may decline to proceed with its investigation and no license shall be issued until the commission has been fully paid therefor by the applicant: AND PROVIDED FURTHER, That the commission may establish fees for the furnishing by it to licensees of identification stamps to be affixed to such devices and equipment as required by the commission and for such other special services or programs required or offered by the commission, the amount of each of these fees to be not less than is adequate to offset the cost to the commission of the stamps and of administering their dispersal to licensees or the cost of administering such other special services, requirements or programs;

(6) To prescribe the manner and method of payment of taxes, fees and penalties to be paid to or collected by the commission;

(7) To require that applications for all licenses contain such information as may be required by the commission: PROVIDED, That all persons (a) having a managerial or ownership interest in any gambling activity, or the building in

which any gambling activity occurs, or the equipment to be used for any gambling activity, or (b) participating as an employee in the operation of any gambling activity, shall be listed on the application for the license and the applicant shall certify on the application, under oath, that the persons named on the application are all of the persons known to have an interest in any gambling activity, building, or equipment by the person making such application: PROVIDED FURTHER, That the commission shall require fingerprinting and national criminal history background checks on any persons seeking licenses, certifications, or permits under this chapter or of any person holding an interest in any gambling activity, building, or equipment to be used therefor, or of any person participating as an employee in the operation of any gambling activity. All national criminal history background checks shall be conducted using fingerprints submitted to the United States department of justice-federal bureau of investigation. The commission must establish rules to delineate which persons named on the application are subject to national criminal history background checks. In identifying these persons, the commission must take into consideration the nature, character, size, and scope of the gambling activities requested by the persons making such applications;

(8) To require that any license holder maintain records as directed by the commission and submit such reports as the commission may deem necessary;

(9) To require that all income from bingo games, raffles, and amusement games be recorded and reported as established by rule or regulation of the commission to the extent deemed necessary by considering the scope and character of the gambling activity in such a manner that will disclose gross income from any gambling activity, amounts received from each player, the nature and value of prizes, and the fact of distributions of such prizes to the winners thereof;

(10) To regulate and establish maximum limitations on income derived from bingo. In establishing limitations pursuant to this subsection the commission shall take into account (a) the nature, character, and scope of the activities of the licensee; (b) the source of all other income of the licensee; and (c) the percentage or extent to which income derived from bingo is used for charitable, as distinguished from non-profit, purposes. However, the commission's powers and duties granted by this subsection are discretionary and not mandatory;

(11) To regulate and establish the type and scope of and manner of conducting the gambling activities authorized by this chapter, including but not limited to, the extent of wager, money, or other thing of value which may be wagered or contributed or won by a player in any such activities;

(12) To regulate the collection of and the accounting for the fee which may be imposed by an organization, corporation, or person licensed to conduct a social card game on a person desiring to become a player in a social card game in accordance with RCW 9.46.0282;

(13) To cooperate with and secure the cooperation of county, city, and other local or state agencies in investigating any matter within the scope of its duties and responsibilities;

(14) In accordance with RCW 9.46.080, to adopt such rules and regulations as are deemed necessary to carry out the purposes and provisions of this chapter. All rules and regula-

tions shall be adopted pursuant to the administrative procedure act, chapter 34.05 RCW;

(15) To set forth for the perusal of counties, city-counties, cities and towns, model ordinances by which any legislative authority thereof may enter into the taxing of any gambling activity authorized by this chapter;

(16)(a) To establish and regulate a maximum limit on salaries or wages which may be paid to persons employed in connection with activities conducted by bona fide charitable or nonprofit organizations and authorized by this chapter, where payment of such persons is allowed, and to regulate and establish maximum limits for other expenses in connection with such authorized activities, including but not limited to rent or lease payments. However, the commissioner's powers and duties granted by this subsection are discretionary and not mandatory.

(b) In establishing these maximum limits the commission shall take into account the amount of income received, or expected to be received, from the class of activities to which the limits will apply and the amount of money the games could generate for authorized charitable or nonprofit purposes absent such expenses. The commission may also take into account, in its discretion, other factors, including but not limited to, the local prevailing wage scale and whether charitable purposes are benefited by the activities;

(17) To authorize, require, and issue for a period not to exceed one year such licenses or permits, for which the commission may by rule provide, to any person to work for any operator of any gambling activity authorized by this chapter in connection with that activity, or any manufacturer, supplier, or distributor of devices for those activities in connection with such business. The commission may authorize the director to temporarily issue or suspend licenses subject to final action by the commission. The commission shall not require that persons working solely as volunteers in an authorized activity conducted by a bona fide charitable or bona fide nonprofit organization, who receive no compensation of any kind for any purpose from that organization, and who have no managerial or supervisory responsibility in connection with that activity, be licensed to do such work. The commission may require that licensees employing such unlicensed volunteers submit to the commission periodically a list of the names, addresses, and dates of birth of the volunteers. If any volunteer is not approved by the commission, the commission may require that the licensee not allow that person to work in connection with the licensed activity;

(18) To publish and make available at the office of the commission or elsewhere to anyone requesting it a list of the commission licensees, including the name, address, type of license, and license number of each licensee;

(19) To establish guidelines for determining what constitutes active membership in bona fide nonprofit or charitable organizations for the purposes of this chapter;

(20) To renew the license of every person who applies for renewal within six months after being honorably discharged, removed, or released from active military service in the armed forces of the United States upon payment of the renewal fee applicable to the license period, if there is no cause for denial, suspension, or revocation of the license; and

(21) To perform all other matters and things necessary to carry out the purposes and provisions of this chapter. [2007

c 206 § 1; 2002 c 119 § 1; 1999 c 143 § 6; 1993 c 344 § 1; 1987 c 4 § 38; 1981 c 139 § 3. Prior: 1977 ex.s. c 326 § 3; 1977 ex.s. c 76 § 2; 1975-'76 2nd ex.s. c 87 § 4; 1975 1st ex.s. c 259 § 4; 1974 ex.s. c 155 § 4; 1974 ex.s. c 135 § 4; 1973 2nd ex.s. c 41 § 4; 1973 1st ex.s. c 218 § 7.]

Effective date—1993 c 344: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and shall take effect June 1, 1993." [1993 c 344 § 2.]

Severability—1981 c 139: "If any provision of this amendatory act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1981 c 139 § 19.]

Severability—1974 ex.s. c 155: See note following RCW 9.46.010.

Enforcement—Commission as a law enforcement agency: RCW 9.46.210.

9.46.36001 Tribal actions—Federal jurisdiction. The state consents to the jurisdiction of the federal courts in actions brought by a tribe pursuant to the Indian gaming regulatory act of 1988 or seeking enforcement of a state/tribal compact adopted under the Indian gaming regulatory act, conditioned upon the tribe entering into such a compact and providing similar consent. This limited waiver of sovereign immunity shall not extend to actions other than those expressly set forth herein. [2007 c 321 § 1; 2001 c 236 § 1.]

Chapter 9.68A RCW

SEXUAL EXPLOITATION OF CHILDREN

Sections

9.68A.001	Legislative findings, intent.
9.68A.100	Commercial sexual abuse of a minor—Penalties.
9.68A.101	Promoting commercial sexual abuse of a minor—Penalty.
9.68A.102	Promoting travel for commercial sexual abuse of a minor—Penalty.
9.68A.103	Permitting commercial sexual abuse of a minor—Penalty.
9.68A.105	Additional fee assessment.
9.68A.110	Certain defenses barred, permitted.

9.68A.001 Legislative findings, intent. The legislature finds that the prevention of sexual exploitation and abuse of children constitutes a government objective of surpassing importance. The care of children is a sacred trust and should not be abused by those who seek commercial gain or personal gratification based on the exploitation of children.

The legislature further finds that the protection of children from sexual exploitation can be accomplished without infringing on a constitutionally protected activity. The definition of "sexually explicit conduct" and other operative definitions demarcate a line between protected and prohibited conduct and should not inhibit legitimate scientific, medical, or educational activities.

The legislature further finds that children engaged in sexual conduct for financial compensation are frequently the victims of sexual abuse. Approximately eighty to ninety percent of children engaged in sexual activity for financial compensation have a history of sexual abuse victimization. It is the intent of the legislature to encourage these children to engage in prevention and intervention services and to hold those who pay to engage in the sexual abuse of children accountable for the trauma they inflict on children. [2007 c 368 § 1; 1984 c 262 § 1.]

9.68A.100 Commercial sexual abuse of a minor—Penalties. (1) A person is guilty of commercial sexual abuse of a minor if:

(a) He or she pays a fee to a minor or a third person as compensation for a minor having engaged in sexual conduct with him or her;

(b) He or she pays or agrees to pay a fee to a minor or a third person pursuant to an understanding that in return therefore such minor will engage in sexual conduct with him or her; or

(c) He or she solicits, offers, or requests to engage in sexual conduct with a minor in return for a fee.

(2) Commercial sexual abuse of a minor is a class C felony punishable under chapter 9A.20 RCW.

(3) In addition to any other penalty provided under chapter 9A.20 RCW, a person guilty of commercial sexual abuse of a minor is subject to the provisions under RCW 9A.88.130 and 9A.88.140.

(4) For purposes of this section, "sexual conduct" means sexual intercourse or sexual contact, both as defined in chapter 9A.44 RCW. [2007 c 368 § 2; 1999 c 327 § 4; 1989 c 32 § 8; 1984 c 262 § 9.]

Findings—Intent—1999 c 327: See note following RCW 9A.88.130.

Additional requirements: RCW 9A.88.130.

Vehicle impoundment: RCW 9A.88.140.

9.68A.101 Promoting commercial sexual abuse of a minor—Penalty. (1) A person is guilty of promoting commercial sexual abuse of a minor if he or she knowingly advances commercial sexual abuse of a minor or profits from a minor engaged in sexual conduct.

(2) Promoting commercial sexual abuse of a minor is a class B felony.

(3) For the purposes of this section:

(a) A person "advances commercial sexual abuse of a minor" if, acting other than as a minor receiving compensation for personally rendered sexual conduct or as a person engaged in commercial sexual abuse of a minor, he or she causes or aids a person to commit or engage in commercial sexual abuse of a minor, procures or solicits customers for commercial sexual abuse of a minor, provides persons or premises for the purposes of engaging in commercial sexual abuse of a minor, operates or assists in the operation of a house or enterprise for the purposes of engaging in commercial sexual abuse of a minor, or engages in any other conduct designed to institute, aid, cause, assist, or facilitate an act or enterprise of commercial sexual abuse of a minor.

(b) A person "profits from commercial sexual abuse of a minor" if, acting other than as a minor receiving compensation for personally rendered sexual conduct, he or she accepts or receives money or other property pursuant to an agreement or understanding with any person whereby he or she participates or will participate in the proceeds of commercial sexual abuse of a minor.

(4) For purposes of this section, "sexual conduct" means sexual intercourse or sexual contact, both as defined in chapter 9A.44 RCW. [2007 c 368 § 4.]

9.68A.102 Promoting travel for commercial sexual abuse of a minor—Penalty. (1) A person commits the

offense of promoting travel for commercial sexual abuse of a minor if he or she knowingly sells or offers to sell travel services that include or facilitate travel for the purpose of engaging in what would be commercial sexual abuse of a minor or promoting commercial sexual abuse of a minor, if occurring in this state.

(2) Promoting travel for commercial sexual abuse of a minor is a class C felony.

(3) For purposes of this section, "travel services" has the same meaning as defined in RCW 19.138.021. [2007 c 368 § 5.]

9.68A.103 Permitting commercial sexual abuse of a minor—Penalty. (1) A person is guilty of permitting commercial sexual abuse of a minor if, having possession or control of premises which he or she knows are being used for the purpose of commercial sexual abuse of a minor, he or she fails without lawful excuse to make reasonable effort to halt or abate such use and to make a reasonable effort to notify law enforcement of such use.

(2) Permitting commercial sexual abuse of a minor is a gross misdemeanor. [2007 c 368 § 7.]

9.68A.105 Additional fee assessment. (1)(a) In addition to penalties set forth in RCW 9.68A.100, a person who is either convicted or given a deferred sentence or a deferred prosecution or who has entered into a statutory or nonstatutory diversion agreement as a result of an arrest for violating RCW 9.68A.100 or a comparable county or municipal ordinance shall be assessed a five hundred fifty dollar fee.

(b) The court may not suspend payment of all or part of the fee unless it finds that the person does not have the ability to pay.

(c) When a minor has been adjudicated a juvenile offender or has entered into a statutory or nonstatutory diversion agreement for an offense which, if committed by an adult, would constitute a violation of RCW 9.68A.100 or a comparable county or municipal ordinance, the court shall assess the fee under (a) of this subsection. The court may not suspend payment of all or part of the fee unless it finds that the minor does not have the ability to pay the fee.

(2) The fee assessed under subsection (1) of this section shall be collected by the clerk of the court and distributed each month to the state treasurer for deposit in the prostitution prevention and intervention account under RCW 43.63A.740 for the purpose of funding prostitution prevention and intervention activities.

(3) For the purposes of this section:

(a) "Statutory or nonstatutory diversion agreement" means an agreement under RCW 13.40.080 or any written agreement between a person accused of an offense listed in subsection (1) of this section and a court, county or city prosecutor, or designee thereof, whereby the person agrees to fulfill certain conditions in lieu of prosecution.

(b) "Deferred sentence" means a sentence that will not be carried out if the defendant meets certain requirements, such as complying with the conditions of probation. [2007 c 368 § 11; 1995 c 353 § 12.]

9.68A.110 Certain defenses barred, permitted. (1) In a prosecution under RCW 9.68A.040, it is not a defense that the defendant was involved in activities of law enforcement and prosecution agencies in the investigation and prosecution of criminal offenses. Law enforcement and prosecution agencies shall not employ minors to aid in the investigation of a violation of RCW 9.68A.090 or 9.68A.100. This chapter does not apply to lawful conduct between spouses.

(2) In a prosecution under RCW 9.68A.050, 9.68A.060, 9.68A.070, or 9.68A.080, it is not a defense that the defendant did not know the age of the child depicted in the visual or printed matter: PROVIDED, That it is a defense, which the defendant must prove by a preponderance of the evidence, that at the time of the offense the defendant was not in possession of any facts on the basis of which he or she should reasonably have known that the person depicted was a minor.

(3) In a prosecution under RCW 9.68A.040, 9.68A.090, 9.68A.101, or 9.68A.102, it is not a defense that the defendant did not know the alleged victim's age: PROVIDED, That it is a defense, which the defendant must prove by a preponderance of the evidence, that at the time of the offense, the defendant made a reasonable bona fide attempt to ascertain the true age of the minor by requiring production of a driver's license, marriage license, birth certificate, or other governmental or educational identification card or paper and did not rely solely on the oral allegations or apparent age of the minor.

(4) In a prosecution under RCW 9.68A.050, 9.68A.060, or 9.68A.070, it shall be an affirmative defense that the defendant was a law enforcement officer in the process of conducting an official investigation of a sex-related crime against a minor, or that the defendant was providing individual case treatment as a recognized medical facility or as a psychiatrist or psychologist licensed under Title 18 RCW.

(5) In a prosecution under RCW 9.68A.050, 9.68A.060, or 9.68A.070, the state is not required to establish the identity of the alleged victim. [2007 c 368 § 3; 1992 c 178 § 1; 1989 c 32 § 9; 1986 c 319 § 3; 1984 c 262 § 10.]

Severability—1992 c 178: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1992 c 178 § 2.]

Chapter 9.91 RCW

MISCELLANEOUS CRIMES

Sections

9.91.110 Repealed.

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

Chapter 9.94A RCW

SENTENCING REFORM ACT OF 1981

Sections

9.94A.515 Table 2—Crimes included within each seriousness level.
 9.94A.525 Offender score.
 9.94A.533 Adjustments to standard sentences.
 9.94A.535 Departures from the guidelines.
 9.94A.537 Aggravating circumstances—Sentences above standard range.

9.94A.637 Discharge upon completion of sentence—Certificate of discharge—Obligations, counseling after discharge.
 9.94A.728 Earned release time.
 9.94A.734 Home detention—Conditions.
 9.94A.737 Community custody—Violations.
 9.94A.839 Special allegation—Sexual conduct with victim in return for a fee—Procedures.

9.94A.515 Table 2—Crimes included within each seriousness level.

TABLE 2

CRIMES INCLUDED WITHIN EACH SERIOUSNESS LEVEL

XVI	Aggravated Murder 1 (RCW 10.95.020)
XV	Homicide by abuse (RCW 9A.32.055) Malicious explosion 1 (RCW 70.74.280(1)) Murder 1 (RCW 9A.32.030)
XIV	Murder 2 (RCW 9A.32.050) Trafficking 1 (RCW 9A.40.100(1))
XIII	Malicious explosion 2 (RCW 70.74.280(2)) Malicious placement of an explosive 1 (RCW 70.74.270(1))
XII	Assault 1 (RCW 9A.36.011) Assault of a Child 1 (RCW 9A.36.120) Malicious placement of an imitation device 1 (RCW 70.74.272(1)(a)) Rape 1 (RCW 9A.44.040) Rape of a Child 1 (RCW 9A.44.073) Trafficking 2 (RCW 9A.40.100(2))
XI	Manslaughter 1 (RCW 9A.32.060) Rape 2 (RCW 9A.44.050) Rape of a Child 2 (RCW 9A.44.076)
X	Child Molestation 1 (RCW 9A.44.083) Indecent Liberties (with forcible compulsion) (RCW 9A.44.100(1)(a)) Kidnapping 1 (RCW 9A.40.020) Leading Organized Crime (RCW 9A.82.060(1)(a)) Malicious explosion 3 (RCW 70.74.280(3)) Sexually Violent Predator Escape (RCW 9A.76.115)
IX	Abandonment of Dependent Person 1 (RCW 9A.42.060) Assault of a Child 2 (RCW 9A.36.130) Criminal Mistreatment 1 (RCW 9A.42.020) Explosive devices prohibited (RCW 70.74.180) Hit and Run—Death (RCW 46.52.020(4)(a))

- Homicide by Watercraft, by being under the influence of intoxicating liquor or any drug (RCW 79A.60.050)
- Inciting Criminal Profiteering (RCW 9A.82.060(1)(b))
- Malicious placement of an explosive 2 (RCW 70.74.270(2))
- Robbery 1 (RCW 9A.56.200)
- Sexual Exploitation (RCW 9.68A.040)
- Vehicular Homicide, by being under the influence of intoxicating liquor or any drug (RCW 46.61.520)
- VIII Arson 1 (RCW 9A.48.020)
- Homicide by Watercraft, by the operation of any vessel in a reckless manner (RCW 79A.60.050)
- Manslaughter 2 (RCW 9A.32.070)
- Promoting Commercial Sexual Abuse of a Minor (RCW 9.68A.101)
- Promoting Prostitution 1 (RCW 9A.88.070)
- Theft of Ammonia (RCW 69.55.010)
- Vehicular Homicide, by the operation of any vehicle in a reckless manner (RCW 46.61.520)
- VII Burglary 1 (RCW 9A.52.020)
- Child Molestation 2 (RCW 9A.44.086)
- Civil Disorder Training (RCW 9A.48.120)
- Dealing in depictions of minor engaged in sexually explicit conduct (RCW 9.68A.050)
- Drive-by Shooting (RCW 9A.36.045)
- Homicide by Watercraft, by disregard for the safety of others (RCW 79A.60.050)
- Indecent Liberties (without forcible compulsion) (RCW 9A.44.100(1)(b) and (c))
- Introducing Contraband 1 (RCW 9A.76.140)
- Malicious placement of an explosive 3 (RCW 70.74.270(3))
- Negligently Causing Death By Use of a Signal Preemption Device (RCW 46.37.675)
- Sending, bringing into state depictions of minor engaged in sexually explicit conduct (RCW 9.68A.060)
- Unlawful Possession of a Firearm in the first degree (RCW 9A.41.040(1))
- Use of a Machine Gun in Commission of a Felony (RCW 9A.41.225)
- Vehicular Homicide, by disregard for the safety of others (RCW 46.61.520)
- VI Bail Jumping with Murder 1 (RCW 9A.76.170(3)(a))
- Bribery (RCW 9A.68.010)
- Incest 1 (RCW 9A.64.020(1))
- Intimidating a Judge (RCW 9A.72.160)
- Intimidating a Juror/Witness (RCW 9A.72.110, 9A.72.130)
- Malicious placement of an imitation device 2 (RCW 70.74.272(1)(b))
- Possession of Depictions of a Minor Engaged in Sexually Explicit Conduct (RCW 9.68A.070)
- Rape of a Child 3 (RCW 9A.44.079)
- Theft of a Firearm (RCW 9A.56.300)
- Unlawful Storage of Ammonia (RCW 69.55.020)
- V Abandonment of Dependent Person 2 (RCW 9A.42.070)
- Advancing money or property for extortionate extension of credit (RCW 9A.82.030)
- Bail Jumping with class A Felony (RCW 9A.76.170(3)(b))
- Child Molestation 3 (RCW 9A.44.089)
- Criminal Mistreatment 2 (RCW 9A.42.030)
- Custodial Sexual Misconduct 1 (RCW 9A.44.160)
- Domestic Violence Court Order Violation (RCW 10.99.040, 10.99.050, 26.09.300, 26.10.220, 26.26.138, 26.50.110, 26.52.070, or 74.34.145)
- Driving While Under the Influence (RCW 46.61.502(6))
- Extortion 1 (RCW 9A.56.120)
- Extortionate Extension of Credit (RCW 9A.82.020)
- Extortionate Means to Collect Extensions of Credit (RCW 9A.82.040)
- Incest 2 (RCW 9A.64.020(2))
- Kidnapping 2 (RCW 9A.40.030)
- Perjury 1 (RCW 9A.72.020)
- Persistent prison misbehavior (RCW 9.94.070)
- Physical Control of a Vehicle While Under the Influence (RCW 46.61.504(6))
- Possession of a Stolen Firearm (RCW 9A.56.310)
- Rape 3 (RCW 9A.44.060)

- Rendering Criminal Assistance 1 (RCW 9A.76.070)
- Sexual Misconduct with a Minor 1 (RCW 9A.44.093)
- Sexually Violating Human Remains (RCW 9A.44.105)
- Stalking (RCW 9A.46.110)
- Taking Motor Vehicle Without Permission 1 (RCW 9A.56.070)
- IV Arson 2 (RCW 9A.48.030)
- Assault 2 (RCW 9A.36.021)
- Assault 3 (of a Peace Officer with a Projectile Stun Gun) (RCW 9A.36.031(1)(h))
- Assault by Watercraft (RCW 79A.60.060)
- Bribing a Witness/Bribe Received by Witness (RCW 9A.72.090, 9A.72.100)
- Cheating 1 (RCW 9.46.1961)
- Commercial Bribery (RCW 9A.68.060)
- Counterfeiting (RCW 9.16.035(4))
- Endangerment with a Controlled Substance (RCW 9A.42.100)
- Escape 1 (RCW 9A.76.110)
- Hit and Run—Injury (RCW 46.52.020(4)(b))
- Hit and Run with Vessel—Injury Accident (RCW 79A.60.200(3))
- Identity Theft 1 (RCW 9.35.020(2))
- Indecent Exposure to Person Under Age Fourteen (subsequent sex offense) (RCW 9A.88.010)
- Influencing Outcome of Sporting Event (RCW 9A.82.070)
- Malicious Harassment (RCW 9A.36.080)
- Residential Burglary (RCW 9A.52.025)
- Robbery 2 (RCW 9A.56.210)
- Theft of Livestock 1 (RCW 9A.56.080)
- Threats to Bomb (RCW 9.61.160)
- Trafficking in Stolen Property 1 (RCW 9A.82.050)
- Unlawful factoring of a credit card or payment card transaction (RCW 9A.56.290(4)(b))
- Unlawful transaction of health coverage as a health care service contractor (RCW 48.44.016(3))
- Unlawful transaction of health coverage as a health maintenance organization (RCW 48.46.033(3))
- Unlawful transaction of insurance business (RCW 48.15.023(3))
- Unlicensed practice as an insurance professional (*RCW 48.17.063(3))
- Use of Proceeds of Criminal Profiteering (RCW 9A.82.080 (1) and (2))
- Vehicular Assault, by being under the influence of intoxicating liquor or any drug, or by the operation or driving of a vehicle in a reckless manner (RCW 46.61.522)
- Willful Failure to Return from Furlough (**RCW 72.66.060)
- III Animal Cruelty 1 (Sexual Conduct or Contact) (RCW 16.52.205(3))
- Assault 3 (Except Assault 3 of a Peace Officer With a Projectile Stun Gun) (RCW 9A.36.031 except subsection (1)(h))
- Assault of a Child 3 (RCW 9A.36.140)
- Bail Jumping with class B or C Felony (RCW 9A.76.170(3)(c))
- Burglary 2 (RCW 9A.52.030)
- Commercial Sexual Abuse of a Minor (RCW 9.68A.100)
- Communication with a Minor for Immoral Purposes (RCW 9.68A.090)
- Criminal Gang Intimidation (RCW 9A.46.120)
- Custodial Assault (RCW 9A.36.100)
- Cyberstalking (subsequent conviction or threat of death) (RCW 9.61.260(3))
- Escape 2 (RCW 9A.76.120)
- Extortion 2 (RCW 9A.56.130)
- Harassment (RCW 9A.46.020)
- Intimidating a Public Servant (RCW 9A.76.180)
- Introducing Contraband 2 (RCW 9A.76.150)
- Malicious Injury to Railroad Property (RCW 81.60.070)
- Negligently Causing Substantial Bodily Harm By Use of a Signal Preemption Device (RCW 46.37.674)
- Organized Retail Theft 1 (RCW 9A.56.350(2))
- Perjury 2 (RCW 9A.72.030)
- Possession of Incendiary Device (RCW 9.40.120)
- Possession of Machine Gun or Short-Barreled Shotgun or Rifle (RCW 9.41.190)

- Promoting Prostitution 2 (RCW 9A.88.080)
- Retail Theft with Extenuating Circumstances 1 (RCW 9A.56.360(2))
- Securities Act violation (RCW 21.20.400)
- Tampering with a Witness (RCW 9A.72.120)
- Telephone Harassment (subsequent conviction or threat of death) (RCW 9.61.230(2))
- Theft of Livestock 2 (RCW 9A.56.083)
- Theft with the Intent to Resell 1 (RCW 9A.56.340(2))
- Trafficking in Stolen Property 2 (RCW 9A.82.055)
- Unlawful Imprisonment (RCW 9A.40.040)
- Unlawful possession of firearm in the second degree (RCW 9.41.040(2))
- Vehicular Assault, by the operation or driving of a vehicle with disregard for the safety of others (RCW 46.61.522)
- Willful Failure to Return from Work Release (**RCW 72.65.070)
- II Computer Trespass 1 (RCW 9A.52.110)
- Counterfeiting (RCW 9.16.035(3))
- Escape from Community Custody (RCW 72.09.310)
- Failure to Register as a Sex Offender (second or subsequent offense) (**RCW 9A.44.130(10)(a))
- Health Care False Claims (RCW 48.80.030)
- Identity Theft 2 (RCW 9.35.020(3))
- Improperly Obtaining Financial Information (RCW 9.35.010)
- Malicious Mischief 1 (RCW 9A.48.070)
- Organized Retail Theft 2 (RCW 9A.56.350(3))
- Possession of Stolen Property 1 (RCW 9A.56.150)
- Possession of a Stolen Vehicle (RCW 9A.56.068)
- Retail Theft with Extenuating Circumstances 2 (RCW 9A.56.360(3))
- Theft 1 (RCW 9A.56.030)
- Theft of a Motor Vehicle (RCW 9A.56.065)
- Theft of Rental, Leased, or Lease-purchased Property (valued at one thousand five hundred dollars or more) (RCW 9A.56.096(5)(a))
- Theft with the Intent to Resell 2 (RCW 9A.56.340(3))
- Trafficking in Insurance Claims (RCW 48.30A.015)
- Unlawful factoring of a credit card or payment card transaction (RCW 9A.56.290(4)(a))
- Unlawful Practice of Law (RCW 2.48.180)
- Unlicensed Practice of a Profession or Business (RCW 18.130.190(7))
- Voyeurism (RCW 9A.44.115)
- I Attempting to Elude a Pursuing Police Vehicle (RCW 46.61.024)
- False Verification for Welfare (RCW 74.08.055)
- Forgery (RCW 9A.60.020)
- Fraudulent Creation or Revocation of a Mental Health Advance Directive (RCW 9A.60.060)
- Malicious Mischief 2 (RCW 9A.48.080)
- Mineral Trespass (RCW 78.44.330)
- Possession of Stolen Property 2 (RCW 9A.56.160)
- Reckless Burning 1 (RCW 9A.48.040)
- Taking Motor Vehicle Without Permission 2 (RCW 9A.56.075)
- Theft 2 (RCW 9A.56.040)
- Theft of Rental, Leased, or Lease-purchased Property (valued at two hundred fifty dollars or more but less than one thousand five hundred dollars) (RCW 9A.56.096(5)(b))
- Transaction of insurance business beyond the scope of licensure (****RCW 48.17.063(4))
- Unlawful Issuance of Checks or Drafts (RCW 9A.56.060)
- Unlawful Possession of Fictitious Identification (RCW 9A.56.320)
- Unlawful Possession of Instruments of Financial Fraud (RCW 9A.56.320)
- Unlawful Possession of Payment Instruments (RCW 9A.56.320)
- Unlawful Possession of a Personal Identification Device (RCW 9A.56.320)
- Unlawful Production of Payment Instruments (RCW 9A.56.320)
- Unlawful Trafficking in Food Stamps (RCW 9.91.142)
- Unlawful Use of Food Stamps (RCW 9.91.144)
- Vehicle Prowl 1 (RCW 9A.52.095)

[2007 c 368 § 14; 2007 c 199 § 10. Prior: 2006 c 277 § 6; 2006 c 228 § 9; 2006 c 191 § 2; 2006 c 139 § 2; 2006 c 128 § 3; 2006 c 73 § 12; prior: (2006 c 125 § 5 repealed by 2006 c 126 § 7); 2005 c 458 § 2; 2005 c 183 § 9; prior: 2004 c 176 § 2; 2004 c 94 § 3; (2004 c 94 § 2 expired July 1, 2004); prior: 2003 c 335 § 5; (2003 c 335 § 4 expired July 1, 2004); 2003 c 283 § 33; (2003 c 283 § 32 expired July 1, 2004); 2003 c 267 § 3; (2003 c 267 § 2 expired July 1, 2004); 2003 c 250 § 14; (2003 c 250 § 13 expired July 1, 2004); 2003 c 119 § 8; (2003 c 119 § 7 expired July 1, 2004); 2003 c 53 § 56; 2003 c 52 § 4; (2003 c 52 § 3 expired July 1, 2004); prior: 2002 c 340 § 2; 2002 c 324 § 2; 2002 c 290 § 7; (2002 c 290 § 2 expired July 1, 2003); 2002 c 253 § 4; 2002 c 229 § 2; 2002 c 134 § 2; 2002 c 133 § 4; prior: 2001 2nd sp.s. c 12 § 361; 2001 c 300 § 4; 2001 c 217 § 12; 2001 c 17 § 1; prior: 2001 c 310 § 4; 2001 c 287 § 3; 2001 c 224 § 3; 2001 c 222 § 24; 2001 c 207 § 3; 2000 c 225 § 5; 2000 c 119 § 17; 2000 c 66 § 2; prior: 1999 c 352 § 3; 1999 c 322 § 5; 1999 c 45 § 4; prior: 1998 c 290 § 4; 1998 c 219 § 4; 1998 c 82 § 1; 1998 c 78 § 1; prior: 1997 c 365 § 4; 1997 c 346 § 3; 1997 c 340 § 1; 1997 c 338 § 51; 1997 c 266 § 15; 1997 c 120 § 5; prior: 1996 c 302 § 6; 1996 c 205 § 3; 1996 c 36 § 2; prior: 1995 c 385 § 2; 1995 c 285 § 28; 1995 c 129 § 3 (Initiative Measure No. 159); prior: (1994 sp.s. c 7 § 510 repealed by 1995 c 129 § 19 (Initiative Measure No. 159)); 1994 c 275 § 20; 1994 c 53 § 2; prior: 1992 c 145 § 4; 1992 c 75 § 3; 1991 c 32 § 3; 1990 c 3 § 702; prior: 1989 2nd ex.s. c 1 § 3; 1989 c 412 § 3; 1989 c 405 § 1; 1989 c 271 § 102; 1989 c 99 § 1; prior: 1988 c 218 § 2; 1988 c 145 § 12; 1988 c 62 § 2; prior: 1987 c 224 § 1; 1987 c 187 § 4; 1986 c 257 § 23; 1984 c 209 § 17; 1983 c 115 § 3. Formerly RCW 9.94A.320.]

Reviser's note: *(1) RCW 48.17.063 was amended by 2007 c 117 § 4, changing subsection (3) to subsection (2).

** (2) RCW 72.66.060 and 72.65.070 were repealed by 2001 c 264 § 7. Cf. 2001 c 264 § 8.

*** (3) RCW 9A.44.130 was amended by 2006 c 129 § 2, changing subsection (10)(a) to subsection (11)(a).

**** (4) RCW 48.17.063 was amended by 2007 c 117 § 4, deleting subsection (4).

(5) This section was amended by 2007 c 199 § 10 and by 2007 c 368 § 14, each without reference to the other. Both amendments are incorporated in the publication of this section under RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

(6) In keeping with the directive of 1999 c 352 § 6, the offenses within each seriousness level have been maintained in alphabetical order.

Findings—Intent—Short title—2007 c 199: See notes following RCW 9A.56.065.

Intent—Severability—Effective date—2006 c 125: See notes following RCW 9A.44.190.

Effective date—2006 c 73: See note following RCW 46.61.502.

Severability—2004 c 176: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [2004 c 176 § 8.]

Effective date—2004 c 176: "Sections 2 through 6 of this act take effect July 1, 2005." [2004 c 176 § 9.]

Expiration date—2004 c 94 § 2: "Section 2 of this act expires July 1, 2004." [2004 c 94 § 8.]

Severability—Effective dates—2004 c 94: See notes following RCW 9.61.260.

Effective date—2003 c 335 § 5: "Section 5 of this act takes effect July 1, 2004." [2003 c 335 § 8.]

Expiration date—2003 c 335 § 4: "Section 4 of this act expires July 1, 2004." [2003 c 335 § 7.]

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Effective date—2003 c 283 § 33: "Section 33 of this act takes effect July 1, 2004." [2003 c 283 § 37.]

Expiration date—2003 c 283 § 32: "Section 32 of this act expires July 1, 2004." [2003 c 283 § 36.]

Severability—Part headings not law—2003 c 283: See RCW 71.32.900 and 71.32.901.

Effective date—2003 c 267 § 3: "Section 3 of this act takes effect July 1, 2004." [2003 c 267 § 9.]

Expiration date—2003 c 267 § 2: "Section 2 of this act expires July 1, 2004." [2003 c 267 § 8.]

Effective date—2003 c 250 § 14: "Section 14 of this act takes effect July 1, 2004." [2003 c 250 § 17.]

Expiration date—2003 c 250 § 13: "Section 13 of this act expires July 1, 2004." [2003 c 250 § 16.]

Severability—2003 c 250: See note following RCW 48.01.080.

Effective date—2003 c 119 § 8: "Section 8 of this act takes effect July 1, 2004." [2003 c 119 § 10.]

Expiration date—2003 c 119 § 7: "Section 7 of this act expires July 1, 2004." [2003 c 119 § 9.]

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

Effective date—2003 c 52 § 4: "Section 4 of this act takes effect July 1, 2004." [2003 c 52 § 6.]

Expiration date—2003 c 52 § 3: "Section 3 of this act expires July 1, 2004." [2003 c 52 § 5.]

Study and report—2002 c 324: See note following RCW 9A.56.070.

Effective date—2002 c 290 §§ 7-11 and 14-23: "Sections 7 through 11 and 14 through 23 of this act take effect July 1, 2003." [2003 c 379 § 10; 2002 c 290 § 31.]

Effective date—2002 c 290 §§ 2 and 3: "Sections 2 and 3 of this act take effect July 1, 2002, and apply to crimes committed on or after July 1, 2002." [2002 c 290 § 29.]

Expiration date—2002 c 290 § 2: "Section 2 of this act expires July 1, 2003." [2003 c 379 § 9; 2002 c 290 § 30.]

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

Effective date—2002 c 229: See note following RCW 9A.42.100.

Effective date—2002 c 134: See note following RCW 69.50.440.

Effective date—2002 c 133: See note following RCW 69.55.010.

Intent—Severability—Effective dates—2001 2nd sp.s. c 12: See notes following RCW 71.09.250.

Application—2001 2nd sp.s. c 12 §§ 301-363: See note following RCW 9.94A.030.

Purpose—Effective date—2001 c 310: See notes following RCW 2.48.180.

Effective dates—2001 c 287: See note following RCW 9A.76.115.

Purpose—Effective date—2001 c 224: See notes following RCW 9A.68.060.

Purpose—Effective date—2001 c 222: See notes following RCW 9A.82.001.

Captions not law—2001 c 217: See note following RCW 9.35.005.

Purpose—Effective date—2001 c 207: See notes following RCW 18.130.190.

Severability—2000 c 225: See note following RCW 69.55.010.

Effective date—2000 c 119 § 17: "Section 17 of this act takes effect July 1, 2000." [2000 c 119 § 30.]

Application—2000 c 119: See note following RCW 26.50.021.

Alphabetization—1999 c 352: "The code reviser shall alphabetize the offenses within each seriousness level in RCW 9.94A.320, including any offenses added in the 1999 legislative session." [1999 c 352 § 6.]

Application—1999 c 352 §§ 3-5: "The amendments made by sections 3 through 5, chapter 352, Laws of 1999 shall apply to offenses committed on or after July 25, 1999, except that the amendments made by chapter 352, Laws of 1999 to seriousness level V in RCW 9.94A.320 shall apply to offenses committed on or after July 1, 2000." [1999 c 352 § 7.]

Application—Effective date—Severability—1998 c 290: See notes following RCW 69.50.401.

Application—1998 c 78: "This act applies to crimes committed on or after July 1, 1998." [1998 c 78 § 2.]

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

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

Findings—Intent—Severability—1997 c 266: See notes following RCW 28A.600.455.

Severability—1996 c 302: See note following RCW 9A.42.010.

Effective date—1995 c 285: See RCW 48.30A.900.

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

Contingent expiration date—1994 sp.s. c 7: See note following RCW 43.70.540.

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

Short title—Effective date—1994 c 275: See notes following RCW 46.04.015.

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

Effective date—1989 2nd ex.s. c 1: See note following RCW 9A.52.025.

Finding—Intent—1989 c 271 §§ 102, 109, and 110: See note following RCW 9A.36.050.

Application—1989 c 271 §§ 101-111: See note following RCW 9.94A.510.

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

Application—1989 c 99: "This act applies to crimes committed after July 1, 1989." [1989 c 99 § 2.]

Effective date—1989 c 99: "This act is necessary for the immediate preservation of the public peace, health, and safety, the support of the state government and its existing public institutions, and shall take effect July 1, 1989." [1989 c 99 § 3.]

Effective date—Savings—Application—1988 c 145: See notes following RCW 9A.44.010.

Effective date—Application—1987 c 224: "This act is necessary for the immediate preservation of the public peace, health, and safety, the support of the state government and its existing public institutions, and shall take effect on July 1, 1987. It shall apply to crimes committed on or after July 1, 1987." [1987 c 224 § 2.]

Severability—1986 c 257: See note following RCW 9A.56.010.

Effective date—1986 c 257 §§ 17-35: See note following RCW 9.94A.030.

Effective dates—1984 c 209: See note following RCW 9.94A.030.

9.94A.525 Offender score. The offender score is measured on the horizontal axis of the sentencing grid. The offender score rules are as follows:

The offender score is the sum of points accrued under this section rounded down to the nearest whole number.

(1) A prior conviction is a conviction which exists before the date of sentencing for the offense for which the offender score is being computed. Convictions entered or sentenced on the same date as the conviction for which the offender score is being computed shall be deemed "other current offenses" within the meaning of RCW 9.94A.589.

(2)(a) Class A and sex prior felony convictions shall always be included in the offender score.

(b) Class B prior felony convictions other than sex offenses shall not be included in the offender score, if since the last date of release from confinement (including full-time residential treatment) pursuant to a felony conviction, if any,

or entry of judgment and sentence, the offender had spent ten consecutive years in the community without committing any crime that subsequently results in a conviction.

(c) Except as provided in (e) of this subsection, class C prior felony convictions other than sex offenses shall not be included in the offender score if, since the last date of release from confinement (including full-time residential treatment) pursuant to a felony conviction, if any, or entry of judgment and sentence, the offender had spent five consecutive years in the community without committing any crime that subsequently results in a conviction.

(d) Except as provided in (e) of this subsection, serious traffic convictions shall not be included in the offender score if, since the last date of release from confinement (including full-time residential treatment) pursuant to a felony conviction, if any, or entry of judgment and sentence, the offender spent five years in the community without committing any crime that subsequently results in a conviction.

(e) If the present conviction is felony driving while under the influence of intoxicating liquor or any drug (RCW 46.61.502(6)) or felony physical control of a vehicle while under the influence of intoxicating liquor or any drug (RCW 46.61.504(6)), prior convictions of felony driving while under the influence of intoxicating liquor or any drug, felony physical control of a vehicle while under the influence of intoxicating liquor or any drug, and serious traffic offenses shall be included in the offender score if: (i) The prior convictions were committed within five years since the last date of release from confinement (including full-time residential treatment) or entry of judgment and sentence; or (ii) the prior convictions would be considered "prior offenses within ten years" as defined in RCW 46.61.5055.

(f) This subsection applies to both adult and juvenile prior convictions.

(3) Out-of-state convictions for offenses shall be classified according to the comparable offense definitions and sentences provided by Washington law. Federal convictions for offenses shall be classified according to the comparable offense definitions and sentences provided by Washington law. If there is no clearly comparable offense under Washington law or the offense is one that is usually considered subject to exclusive federal jurisdiction, the offense shall be scored as a class C felony equivalent if it was a felony under the relevant federal statute.

(4) Score prior convictions for felony anticipatory offenses (attempts, criminal solicitations, and criminal conspiracies) the same as if they were convictions for completed offenses.

(5)(a) In the case of multiple prior convictions, for the purpose of computing the offender score, count all convictions separately, except:

(i) Prior offenses which were found, under RCW 9.94A.589(1)(a), to encompass the same criminal conduct, shall be counted as one offense, the offense that yields the highest offender score. The current sentencing court shall determine with respect to other prior adult offenses for which sentences were served concurrently or prior juvenile offenses for which sentences were served consecutively, whether those offenses shall be counted as one offense or as separate offenses using the "same criminal conduct" analysis found in RCW 9.94A.589(1)(a), and if the court finds that they shall

be counted as one offense, then the offense that yields the highest offender score shall be used. The current sentencing court may presume that such other prior offenses were not the same criminal conduct from sentences imposed on separate dates, or in separate counties or jurisdictions, or in separate complaints, indictments, or informations;

(ii) In the case of multiple prior convictions for offenses committed before July 1, 1986, for the purpose of computing the offender score, count all adult convictions served concurrently as one offense, and count all juvenile convictions entered on the same date as one offense. Use the conviction for the offense that yields the highest offender score.

(b) As used in this subsection (5), "served concurrently" means that: (i) The latter sentence was imposed with specific reference to the former; (ii) the concurrent relationship of the sentences was judicially imposed; and (iii) the concurrent timing of the sentences was not the result of a probation or parole revocation on the former offense.

(6) If the present conviction is one of the anticipatory offenses of criminal attempt, solicitation, or conspiracy, count each prior conviction as if the present conviction were for a completed offense. When these convictions are used as criminal history, score them the same as a completed crime.

(7) If the present conviction is for a nonviolent offense and not covered by subsection (11), (12), or (13) of this section, count one point for each adult prior felony conviction and one point for each juvenile prior violent felony conviction and 1/2 point for each juvenile prior nonviolent felony conviction.

(8) If the present conviction is for a violent offense and not covered in subsection (9), (10), (11), (12), or (13) of this section, count two points for each prior adult and juvenile violent felony conviction, one point for each prior adult nonviolent felony conviction, and 1/2 point for each prior juvenile nonviolent felony conviction.

(9) If the present conviction is for a serious violent offense, count three points for prior adult and juvenile convictions for crimes in this category, two points for each prior adult and juvenile violent conviction (not already counted), one point for each prior adult nonviolent felony conviction, and 1/2 point for each prior juvenile nonviolent felony conviction.

(10) If the present conviction is for Burglary 1, count prior convictions as in subsection (8) of this section; however count two points for each prior adult Burglary 2 or residential burglary conviction, and one point for each prior juvenile Burglary 2 or residential burglary conviction.

(11) If the present conviction is for a felony traffic offense count two points for each adult or juvenile prior conviction for Vehicular Homicide or Vehicular Assault; for each felony offense count one point for each adult and 1/2 point for each juvenile prior conviction; for each serious traffic offense, other than those used for an enhancement pursuant to RCW 46.61.520(2), count one point for each adult and 1/2 point for each juvenile prior conviction; count one point for each adult and 1/2 point for each juvenile prior conviction for operation of a vessel while under the influence of intoxicating liquor or any drug.

(12) If the present conviction is for homicide by watercraft or assault by watercraft count two points for each adult or juvenile prior conviction for homicide by watercraft or

assault by watercraft; for each felony offense count one point for each adult and 1/2 point for each juvenile prior conviction; count one point for each adult and 1/2 point for each juvenile prior conviction for driving under the influence of intoxicating liquor or any drug, actual physical control of a motor vehicle while under the influence of intoxicating liquor or any drug, or operation of a vessel while under the influence of intoxicating liquor or any drug.

(13) If the present conviction is for manufacture of methamphetamine count three points for each adult prior manufacture of methamphetamine conviction and two points for each juvenile manufacture of methamphetamine offense. If the present conviction is for a drug offense and the offender has a criminal history that includes a sex offense or serious violent offense, count three points for each adult prior felony drug offense conviction and two points for each juvenile drug offense. All other adult and juvenile felonies are scored as in subsection (8) of this section if the current drug offense is violent, or as in subsection (7) of this section if the current drug offense is nonviolent.

(14) If the present conviction is for Escape from Community Custody, RCW 72.09.310, count only prior escape convictions in the offender score. Count adult prior escape convictions as one point and juvenile prior escape convictions as 1/2 point.

(15) If the present conviction is for Escape 1, RCW 9A.76.110, or Escape 2, RCW 9A.76.120, count adult prior convictions as one point and juvenile prior convictions as 1/2 point.

(16) If the present conviction is for Burglary 2 or residential burglary, count priors as in subsection (7) of this section; however, count two points for each adult and juvenile prior Burglary 1 conviction, two points for each adult prior Burglary 2 or residential burglary conviction, and one point for each juvenile prior Burglary 2 or residential burglary conviction.

(17) If the present conviction is for a sex offense, count priors as in subsections (7) through (11) and (13) through (16) of this section; however count three points for each adult and juvenile prior sex offense conviction.

(18) If the present conviction is for failure to register as a sex offender under *RCW 9A.44.130(10), count priors as in subsections (7) through (11) and (13) through (16) of this section; however count three points for each adult and juvenile prior sex offense conviction, excluding prior convictions for failure to register as a sex offender under *RCW 9A.44.130(10), which shall count as one point.

(19) If the present conviction is for an offense committed while the offender was under community placement, add one point.

(20) If the present conviction is for Theft of a Motor Vehicle, Possession of a Stolen Vehicle, Taking a Motor Vehicle Without Permission 1, or Taking a Motor Vehicle Without Permission 2, count priors as in subsections (7) through (18) of this section; however count one point for prior convictions of Vehicle Prowling 2, and three points for each adult and juvenile prior Theft 1 (of a motor vehicle), Theft 2 (of a motor vehicle), Possession of Stolen Property 1 (of a motor vehicle), Possession of Stolen Property 2 (of a motor vehicle), Theft of a Motor Vehicle, Possession of a Stolen Vehicle, Taking a Motor Vehicle Without Permission

1, or Taking a Motor Vehicle Without Permission 2 conviction.

(21) The fact that a prior conviction was not included in an offender's offender score or criminal history at a previous sentencing shall have no bearing on whether it is included in the criminal history or offender score for the current offense. Accordingly, prior convictions that were not counted in the offender score or included in criminal history under repealed or previous versions of the sentencing reform act shall be included in criminal history and shall count in the offender score if the current version of the sentencing reform act requires including or counting those convictions. [2007 c 199 § 8; 2007 c 116 § 1. Prior: 2006 c 128 § 6; 2006 c 73 § 7; prior: 2002 c 290 § 3; 2002 c 107 § 3; 2001 c 264 § 5; 2000 c 28 § 15; prior: 1999 c 352 § 10; 1999 c 331 § 1; 1998 c 211 § 4; 1997 c 338 § 5; prior: 1995 c 316 § 1; 1995 c 101 § 1; prior: 1992 c 145 § 10; 1992 c 75 § 4; 1990 c 3 § 706; 1989 c 271 § 103; prior: 1988 c 157 § 3; 1988 c 153 § 12; 1987 c 456 § 4; 1986 c 257 § 25; 1984 c 209 § 19; 1983 c 115 § 7. Formerly RCW 9.94A.360.]

Reviser's note: *(1) RCW 9A.44.130 was amended by 2006 c 129 § 2, changing subsection (10) to subsection (11).

(2) This section was amended by 2007 c 116 § 1 and by 2007 c 199 § 8, each without reference to the other. Both amendments are incorporated in the publication of this section under RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

Findings—Intent—Short title—2007 c 199: See notes following RCW 9A.56.065.

Effective date—2007 c 116: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect July 1, 2007." [2007 c 116 § 2.]

Effective date—2006 c 73: See note following RCW 46.61.502.

Effective date—2002 c 290 §§ 2 and 3: See note following RCW 9.94A.515.

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

Finding—Application—2002 c 107: See notes following RCW 9.94A.030.

Effective date—2001 c 264: See note following RCW 9A.76.110.

Technical correction bill—2000 c 28: See note following RCW 9.94A.015.

Effective date—1999 c 331: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately [May 14, 1999]." [1999 c 331 § 5.]

Effective date—1998 c 211: See note following RCW 46.61.5055.

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

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

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

Application—1989 c 271 §§ 101-111: See note following RCW 9.94A.510.

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

Application—1988 c 157: See note following RCW 9.94A.030.

Effective date—Application of increased sanctions—1988 c 153: See notes following RCW 9.94A.030.

Severability—1986 c 257: See note following RCW 9A.56.010.

Effective date—1986 c 257 §§ 17-35: See note following RCW 9.94A.030.

Effective dates—1984 c 209: See note following RCW 9.94A.030.

9.94A.533 Adjustments to standard sentences. (1)

The provisions of this section apply to the standard sentence ranges determined by RCW 9.94A.510 or 9.94A.517.

(2) For persons convicted of the anticipatory offenses of criminal attempt, solicitation, or conspiracy under chapter 9A.28 RCW, the standard sentence range is determined by locating the sentencing grid sentence range defined by the appropriate offender score and the seriousness level of the completed crime, and multiplying the range by seventy-five percent.

(3) The following additional times shall be added to the standard sentence range for felony crimes committed after July 23, 1995, if the offender or an accomplice was armed with a firearm as defined in RCW 9.41.010 and the offender is being sentenced for one of the crimes listed in this subsection as eligible for any firearm enhancements based on the classification of the completed felony crime. If the offender is being sentenced for more than one offense, the firearm enhancement or enhancements must be added to the total period of confinement for all offenses, regardless of which underlying offense is subject to a firearm enhancement. If the offender or an accomplice was armed with a firearm as defined in RCW 9.41.010 and the offender is being sentenced for an anticipatory offense under chapter 9A.28 RCW to commit one of the crimes listed in this subsection as eligible for any firearm enhancements, the following additional times shall be added to the standard sentence range determined under subsection (2) of this section based on the felony crime of conviction as classified under RCW 9A.28.020:

(a) Five years for any felony defined under any law as a class A felony or with a statutory maximum sentence of at least twenty years, or both, and not covered under (f) of this subsection;

(b) Three years for any felony defined under any law as a class B felony or with a statutory maximum sentence of ten years, or both, and not covered under (f) of this subsection;

(c) Eighteen months for any felony defined under any law as a class C felony or with a statutory maximum sentence of five years, or both, and not covered under (f) of this subsection;

(d) If the offender is being sentenced for any firearm enhancements under (a), (b), and/or (c) of this subsection and the offender has previously been sentenced for any deadly weapon enhancements after July 23, 1995, under (a), (b), and/or (c) of this subsection or subsection (4)(a), (b), and/or (c) of this section, or both, all firearm enhancements under this subsection shall be twice the amount of the enhancement listed;

(e) Notwithstanding any other provision of law, all firearm enhancements under this section are mandatory, shall be served in total confinement, and shall run consecutively to all other sentencing provisions, including other firearm or deadly weapon enhancements, for all offenses sentenced under this chapter. However, whether or not a mandatory minimum term has expired, an offender serving a sentence under this subsection may be granted an extraordinary medical placement when authorized under RCW 9.94A.728(4);

(f) The firearm enhancements in this section shall apply to all felony crimes except the following: Possession of a machine gun, possessing a stolen firearm, drive-by shooting,

theft of a firearm, unlawful possession of a firearm in the first and second degree, and use of a machine gun in a felony;

(g) If the standard sentence range under this section exceeds the statutory maximum sentence for the offense, the statutory maximum sentence shall be the presumptive sentence unless the offender is a persistent offender. If the addition of a firearm enhancement increases the sentence so that it would exceed the statutory maximum for the offense, the portion of the sentence representing the enhancement may not be reduced.

(4) The following additional times shall be added to the standard sentence range for felony crimes committed after July 23, 1995, if the offender or an accomplice was armed with a deadly weapon other than a firearm as defined in RCW 9.41.010 and the offender is being sentenced for one of the crimes listed in this subsection as eligible for any deadly weapon enhancements based on the classification of the completed felony crime. If the offender is being sentenced for more than one offense, the deadly weapon enhancement or enhancements must be added to the total period of confinement for all offenses, regardless of which underlying offense is subject to a deadly weapon enhancement. If the offender or an accomplice was armed with a deadly weapon other than a firearm as defined in RCW 9.41.010 and the offender is being sentenced for an anticipatory offense under chapter 9A.28 RCW to commit one of the crimes listed in this subsection as eligible for any deadly weapon enhancements, the following additional times shall be added to the standard sentence range determined under subsection (2) of this section based on the felony crime of conviction as classified under RCW 9A.28.020:

(a) Two years for any felony defined under any law as a class A felony or with a statutory maximum sentence of at least twenty years, or both, and not covered under (f) of this subsection;

(b) One year for any felony defined under any law as a class B felony or with a statutory maximum sentence of ten years, or both, and not covered under (f) of this subsection;

(c) Six months for any felony defined under any law as a class C felony or with a statutory maximum sentence of five years, or both, and not covered under (f) of this subsection;

(d) If the offender is being sentenced under (a), (b), and/or (c) of this subsection for any deadly weapon enhancements and the offender has previously been sentenced for any deadly weapon enhancements after July 23, 1995, under (a), (b), and/or (c) of this subsection or subsection (3)(a), (b), and/or (c) of this section, or both, all deadly weapon enhancements under this subsection shall be twice the amount of the enhancement listed;

(e) Notwithstanding any other provision of law, all deadly weapon enhancements under this section are mandatory, shall be served in total confinement, and shall run consecutively to all other sentencing provisions, including other firearm or deadly weapon enhancements, for all offenses sentenced under this chapter. However, whether or not a mandatory minimum term has expired, an offender serving a sentence under this subsection may be granted an extraordinary medical placement when authorized under RCW 9.94A.728(4);

(f) The deadly weapon enhancements in this section shall apply to all felony crimes except the following: Possession

of a machine gun, possessing a stolen firearm, drive-by shooting, theft of a firearm, unlawful possession of a firearm in the first and second degree, and use of a machine gun in a felony;

(g) If the standard sentence range under this section exceeds the statutory maximum sentence for the offense, the statutory maximum sentence shall be the presumptive sentence unless the offender is a persistent offender. If the addition of a deadly weapon enhancement increases the sentence so that it would exceed the statutory maximum for the offense, the portion of the sentence representing the enhancement may not be reduced.

(5) The following additional times shall be added to the standard sentence range if the offender or an accomplice committed the offense while in a county jail or state correctional facility and the offender is being sentenced for one of the crimes listed in this subsection. If the offender or an accomplice committed one of the crimes listed in this subsection while in a county jail or state correctional facility, and the offender is being sentenced for an anticipatory offense under chapter 9A.28 RCW to commit one of the crimes listed in this subsection, the following additional times shall be added to the standard sentence range determined under subsection (2) of this section:

(a) Eighteen months for offenses committed under RCW 69.50.401(2) (a) or (b) or 69.50.410;

(b) Fifteen months for offenses committed under RCW 69.50.401(2) (c), (d), or (e);

(c) Twelve months for offenses committed under RCW 69.50.4013.

For the purposes of this subsection, all of the real property of a state correctional facility or county jail shall be deemed to be part of that facility or county jail.

(6) An additional twenty-four months shall be added to the standard sentence range for any ranked offense involving a violation of chapter 69.50 RCW if the offense was also a violation of RCW 69.50.435 or 9.94A.605. All enhancements under this subsection shall run consecutively to all other sentencing provisions, for all offenses sentenced under this chapter.

(7) An additional two years shall be added to the standard sentence range for vehicular homicide committed while under the influence of intoxicating liquor or any drug as defined by RCW 46.61.502 for each prior offense as defined in RCW 46.61.5055.

(8)(a) The following additional times shall be added to the standard sentence range for felony crimes committed on or after July 1, 2006, if the offense was committed with sexual motivation, as that term is defined in RCW 9.94A.030. If the offender is being sentenced for more than one offense, the sexual motivation enhancement must be added to the total period of total confinement for all offenses, regardless of which underlying offense is subject to a sexual motivation enhancement. If the offender committed the offense with sexual motivation and the offender is being sentenced for an anticipatory offense under chapter 9A.28 RCW, the following additional times shall be added to the standard sentence range determined under subsection (2) of this section based on the felony crime of conviction as classified under RCW 9A.28.020:

(i) Two years for any felony defined under the law as a class A felony or with a statutory maximum sentence of at least twenty years, or both;

(ii) Eighteen months for any felony defined under any law as a class B felony or with a statutory maximum sentence of ten years, or both;

(iii) One year for any felony defined under any law as a class C felony or with a statutory maximum sentence of five years, or both;

(iv) If the offender is being sentenced for any sexual motivation enhancements under (i), (ii), and/or (iii) of this subsection and the offender has previously been sentenced for any sexual motivation enhancements on or after July 1, 2006, under (i), (ii), and/or (iii) of this subsection, all sexual motivation enhancements under this subsection shall be twice the amount of the enhancement listed;

(b) Notwithstanding any other provision of law, all sexual motivation enhancements under this subsection are mandatory, shall be served in total confinement, and shall run consecutively to all other sentencing provisions, including other sexual motivation enhancements, for all offenses sentenced under this chapter. However, whether or not a mandatory minimum term has expired, an offender serving a sentence under this subsection may be granted an extraordinary medical placement when authorized under RCW 9.94A.728(4);

(c) The sexual motivation enhancements in this subsection apply to all felony crimes;

(d) If the standard sentence range under this subsection exceeds the statutory maximum sentence for the offense, the statutory maximum sentence shall be the presumptive sentence unless the offender is a persistent offender. If the addition of a sexual motivation enhancement increases the sentence so that it would exceed the statutory maximum for the offense, the portion of the sentence representing the enhancement may not be reduced;

(e) The portion of the total confinement sentence which the offender must serve under this subsection shall be calculated before any earned early release time is credited to the offender;

(f) Nothing in this subsection prevents a sentencing court from imposing a sentence outside the standard sentence range pursuant to RCW 9.94A.535.

(9) An additional one-year enhancement shall be added to the standard sentence range for the felony crimes of RCW 9A.44.073, 9A.44.076, 9A.44.079, 9A.44.083, 9A.44.086, or 9A.44.089 committed on or after July 22, 2007, if the offender engaged, agreed, or offered to engage the victim in the sexual conduct in return for a fee. If the offender is being sentenced for more than one offense, the one-year enhancement must be added to the total period of total confinement for all offenses, regardless of which underlying offense is subject to the enhancement. If the offender is being sentenced for an anticipatory offense for the felony crimes of RCW 9A.44.073, 9A.44.076, 9A.44.079, 9A.44.083, 9A.44.086, or 9A.44.089, and the offender attempted, solicited another, or conspired to engage, agree, or offer to engage the victim in [the] sexual conduct in return for a fee, an additional one-year enhancement shall be added to the standard sentence range determined under subsection (2) of this section. For purposes of this subsection, "sexual conduct"

means sexual intercourse or sexual contact, both as defined in chapter 9A.44 RCW. [2007 c 368 § 9. Prior: 2006 c 339 § 301; 2006 c 123 § 1; 2003 c 53 § 58; 2002 c 290 § 11.]

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

Effective date—2006 c 123: "This act takes effect July 1, 2006." [2006 c 123 § 4.]

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

Effective date—2002 c 290 §§ 7-11 and 14-23: See note following RCW 9.94A.515.

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

9.94A.535 Departures from the guidelines. The court may impose a sentence outside the standard sentence range for an offense if it finds, considering the purpose of this chapter, that there are substantial and compelling reasons justifying an exceptional sentence. Facts supporting aggravated sentences, other than the fact of a prior conviction, shall be determined pursuant to the provisions of RCW 9.94A.537.

Whenever a sentence outside the standard sentence range is imposed, the court shall set forth the reasons for its decision in written findings of fact and conclusions of law. A sentence outside the standard sentence range shall be a determinate sentence.

If the sentencing court finds that an exceptional sentence outside the standard sentence range should be imposed, the sentence is subject to review only as provided for in RCW 9.94A.585(4).

A departure from the standards in RCW 9.94A.589 (1) and (2) governing whether sentences are to be served consecutively or concurrently is an exceptional sentence subject to the limitations in this section, and may be appealed by the offender or the state as set forth in RCW 9.94A.585 (2) through (6).

(1) Mitigating Circumstances - Court to Consider

The court may impose an exceptional sentence below the standard range if it finds that mitigating circumstances are established by a preponderance of the evidence. The following are illustrative only and are not intended to be exclusive reasons for exceptional sentences.

(a) To a significant degree, the victim was an initiator, willing participant, aggressor, or provoker of the incident.

(b) Before detection, the defendant compensated, or made a good faith effort to compensate, the victim of the criminal conduct for any damage or injury sustained.

(c) The defendant committed the crime under duress, coercion, threat, or compulsion insufficient to constitute a complete defense but which significantly affected his or her conduct.

(d) The defendant, with no apparent predisposition to do so, was induced by others to participate in the crime.

(e) The defendant's capacity to appreciate the wrongfulness of his or her conduct, or to conform his or her conduct to the requirements of the law, was significantly impaired. Voluntary use of drugs or alcohol is excluded.

(f) The offense was principally accomplished by another person and the defendant manifested extreme caution or sincere concern for the safety or well-being of the victim.

(g) The operation of the multiple offense policy of RCW 9.94A.589 results in a presumptive sentence that is clearly

excessive in light of the purpose of this chapter, as expressed in RCW 9.94A.010.

(h) The defendant or the defendant's children suffered a continuing pattern of physical or sexual abuse by the victim of the offense and the offense is a response to that abuse.

(2) Aggravating Circumstances - Considered and Imposed by the Court

The trial court may impose an aggravated exceptional sentence without a finding of fact by a jury under the following circumstances:

(a) The defendant and the state both stipulate that justice is best served by the imposition of an exceptional sentence outside the standard range, and the court finds the exceptional sentence to be consistent with and in furtherance of the interests of justice and the purposes of the sentencing reform act.

(b) The defendant's prior unscored misdemeanor or prior unscored foreign criminal history results in a presumptive sentence that is clearly too lenient in light of the purpose of this chapter, as expressed in RCW 9.94A.010.

(c) The defendant has committed multiple current offenses and the defendant's high offender score results in some of the current offenses going unpunished.

(d) The failure to consider the defendant's prior criminal history which was omitted from the offender score calculation pursuant to RCW 9.94A.525 results in a presumptive sentence that is clearly too lenient.

(3) Aggravating Circumstances - Considered by a Jury - Imposed by the Court

Except for circumstances listed in subsection (2) of this section, the following circumstances are an exclusive list of factors that can support a sentence above the standard range. Such facts should be determined by procedures specified in RCW 9.94A.537.

(a) The defendant's conduct during the commission of the current offense manifested deliberate cruelty to the victim.

(b) The defendant knew or should have known that the victim of the current offense was particularly vulnerable or incapable of resistance.

(c) The current offense was a violent offense, and the defendant knew that the victim of the current offense was pregnant.

(d) The current offense was a major economic offense or series of offenses, so identified by a consideration of any of the following factors:

(i) The current offense involved multiple victims or multiple incidents per victim;

(ii) The current offense involved attempted or actual monetary loss substantially greater than typical for the offense;

(iii) The current offense involved a high degree of sophistication or planning or occurred over a lengthy period of time; or

(iv) The defendant used his or her position of trust, confidence, or fiduciary responsibility to facilitate the commission of the current offense.

(e) The current offense was a major violation of the Uniform Controlled Substances Act, chapter 69.50 RCW (VUCSA), related to trafficking in controlled substances, which was more onerous than the typical offense of its statu-

tory definition: The presence of ANY of the following may identify a current offense as a major VUCSA:

(i) The current offense involved at least three separate transactions in which controlled substances were sold, transferred, or possessed with intent to do so;

(ii) The current offense involved an attempted or actual sale or transfer of controlled substances in quantities substantially larger than for personal use;

(iii) The current offense involved the manufacture of controlled substances for use by other parties;

(iv) The circumstances of the current offense reveal the offender to have occupied a high position in the drug distribution hierarchy;

(v) The current offense involved a high degree of sophistication or planning, occurred over a lengthy period of time, or involved a broad geographic area of disbursement; or

(vi) The offender used his or her position or status to facilitate the commission of the current offense, including positions of trust, confidence or fiduciary responsibility (e.g., pharmacist, physician, or other medical professional).

(f) The current offense included a finding of sexual motivation pursuant to RCW 9.94A.835.

(g) The offense was part of an ongoing pattern of sexual abuse of the same victim under the age of eighteen years manifested by multiple incidents over a prolonged period of time.

(h) The current offense involved domestic violence, as defined in RCW 10.99.020, and one or more of the following was present:

(i) The offense was part of an ongoing pattern of psychological, physical, or sexual abuse of the victim manifested by multiple incidents over a prolonged period of time;

(ii) The offense occurred within sight or sound of the victim's or the offender's minor children under the age of eighteen years; or

(iii) The offender's conduct during the commission of the current offense manifested deliberate cruelty or intimidation of the victim.

(i) The offense resulted in the pregnancy of a child victim of rape.

(j) The defendant knew that the victim of the current offense was a youth who was not residing with a legal custodian and the defendant established or promoted the relationship for the primary purpose of victimization.

(k) The offense was committed with the intent to obstruct or impair human or animal health care or agricultural or forestry research or commercial production.

(l) The current offense is trafficking in the first degree or trafficking in the second degree and any victim was a minor at the time of the offense.

(m) The offense involved a high degree of sophistication or planning.

(n) The defendant used his or her position of trust, confidence, or fiduciary responsibility to facilitate the commission of the current offense.

(o) The defendant committed a current sex offense, has a history of sex offenses, and is not amenable to treatment.

(p) The offense involved an invasion of the victim's privacy.

(q) The defendant demonstrated or displayed an egregious lack of remorse.

(r) The offense involved a destructive and foreseeable impact on persons other than the victim.

(s) The defendant committed the offense to obtain or maintain his or her membership or to advance his or her position in the hierarchy of an organization, association, or identifiable group.

(t) The defendant committed the current offense shortly after being released from incarceration.

(u) The current offense is a burglary and the victim of the burglary was present in the building or residence when the crime was committed.

(v) The offense was committed against a law enforcement officer who was performing his or her official duties at the time of the offense, the offender knew that the victim was a law enforcement officer, and the victim's status as a law enforcement officer is not an element of the offense.

(w) The defendant committed the offense against a victim who was acting as a good samaritan.

(x) The defendant committed the offense against a public official or officer of the court in retaliation of the public official's performance of his or her duty to the criminal justice system.

(y) The victim's injuries substantially exceed the level of bodily harm necessary to satisfy the elements of the offense. This aggravator is not an exception to RCW 9.94A.530(2).

(z)(i)(A) The current offense is theft in the first degree, theft in the second degree, possession of stolen property in the first degree, or possession of stolen property in the second degree; (B) the stolen property involved is metal property; and (C) the property damage to the victim caused in the course of the theft of metal property is more than three times the value of the stolen metal property, or the theft of the metal property creates a public hazard.

(ii) For purposes of this subsection, "metal property" means commercial metal property or nonferrous metal property, as defined in RCW 19.290.010. [2007 c 377 § 10; 2005 c 68 § 3; 2003 c 267 § 4; 2002 c 169 § 1; 2001 2nd sp.s. c 12 § 314; 2000 c 28 § 8; 1999 c 330 § 1; 1997 c 52 § 4. Prior: 1996 c 248 § 2; 1996 c 121 § 1; 1995 c 316 § 2; 1990 c 3 § 603; 1989 c 408 § 1; 1987 c 131 § 2; 1986 c 257 § 27; 1984 c 209 § 24; 1983 c 115 § 10. Formerly RCW 9.94A.390.]

Captions not law—Severability—2007 c 377: See RCW 19.290.900 and 19.290.901.

Intent—Severability—Effective date—2005 c 68: See notes following RCW 9.94A.537.

Intent—Severability—Effective dates—2001 2nd sp.s. c 12: See notes following RCW 71.09.250.

Application—2001 2nd sp.s. c 12 §§ 301-363: See note following RCW 9.94A.030.

Technical correction bill—2000 c 28: See note following RCW 9.94A.015.

Effective date—1996 c 121: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and shall take effect immediately [March 21, 1996]." [1996 c 121 § 2.]

Effective date—Application—1990 c 3 §§ 601 through 605: See note following RCW 9.94A.835.

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

Severability—1986 c 257: See note following RCW 9A.56.010.

Effective date—1986 c 257 §§ 17 through 35: See note following RCW 9.94A.030.

Effective dates—1984 c 209: See note following RCW 9.94A.030.

9.94A.537 Aggravating circumstances—Sentences above standard range. (1) At any time prior to trial or entry of the guilty plea if substantial rights of the defendant are not prejudiced, the state may give notice that it is seeking a sentence above the standard sentencing range. The notice shall state aggravating circumstances upon which the requested sentence will be based.

(2) In any case where an exceptional sentence above the standard range was imposed and where a new sentencing hearing is required, the superior court may impanel a jury to consider any alleged aggravating circumstances listed in RCW 9.94A.535(3), that were relied upon by the superior court in imposing the previous sentence, at the new sentencing hearing.

(3) The facts supporting aggravating circumstances shall be proved to a jury beyond a reasonable doubt. The jury's verdict on the aggravating factor must be unanimous, and by special interrogatory. If a jury is waived, proof shall be to the court beyond a reasonable doubt, unless the defendant stipulates to the aggravating facts.

(4) Evidence regarding any facts supporting aggravating circumstances under RCW 9.94A.535(3) (a) through (y) shall be presented to the jury during the trial of the alleged crime, unless the jury has been impaneled solely for resentencing, or unless the state alleges the aggravating circumstances listed in RCW 9.94A.535(3) (e)(iv), (h)(i), (o), or (t). If one of these aggravating circumstances is alleged, the trial court may conduct a separate proceeding if the evidence supporting the aggravating fact is not part of the res geste of the charged crime, if the evidence is not otherwise admissible in trial of the charged crime, and if the court finds that the probative value of the evidence to the aggravated fact is substantially outweighed by its prejudicial effect on the jury's ability to determine guilt or innocence for the underlying crime.

(5) If the superior court conducts a separate proceeding to determine the existence of aggravating circumstances listed in RCW 9.94A.535(3) (e)(iv), (h)(i), (o), or (t), the proceeding shall immediately follow the trial on the underlying conviction, if possible. If any person who served on the jury is unable to continue, the court shall substitute an alternate juror.

(6) If the jury finds, unanimously and beyond a reasonable doubt, one or more of the facts alleged by the state in support of an aggravated sentence, the court may sentence the offender pursuant to RCW 9.94A.535 to a term of confinement up to the maximum allowed under RCW 9A.20.021 for the underlying conviction if it finds, considering the purposes of this chapter, that the facts found are substantial and compelling reasons justifying an exceptional sentence. [2007 c 205 § 2; 2005 c 68 § 4.]

Intent—2007 c 205: "In *State v. Pillatos*, 150 P.3d 1130 (2007), the Washington supreme court held that the changes made to the sentencing reform act concerning exceptional sentences in chapter 68, Laws of 2005 do not apply to cases where the trials had already begun or guilty pleas had already been entered prior to the effective date of the act on April 15, 2005. The legislature intends that the superior courts shall have the authority to impanel juries to find aggravating circumstances in all cases that come before the courts for trial or sentencing, regardless of the date of the original trial or sentencing." [2007 c 205 § 1.]

Effective date—2007 c 205: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately [April 27, 2007]." [2007 c 205 § 3.]

Intent—2005 c 68: "The legislature intends to conform the sentencing reform act, chapter 9.94A RCW, to comply with the ruling in *Blakely v. Washington*, 542 U.S. ... (2004). In that case, the United States supreme court held that a criminal defendant has a Sixth Amendment right to have a jury determine beyond a reasonable doubt any aggravating fact, other than the fact of a prior conviction, that is used to impose greater punishment than the standard range or standard conditions. The legislature intends that aggravating facts, other than the fact of a prior conviction, will be placed before the jury. The legislature intends that the sentencing court will then decide whether or not the aggravating fact is a substantial and compelling reason to impose greater punishment. The legislature intends to create a new criminal procedure for imposing greater punishment than the standard range or conditions and to codify existing common law aggravating factors, without expanding or restricting existing statutory or common law aggravating circumstances. The legislature does not intend the codification of common law aggravating factors to expand or restrict currently available statutory or common law aggravating circumstances. The legislature does not intend to alter how mitigating facts are to be determined under the sentencing reform act, and thus intends that mitigating facts will be found by the sentencing court by a preponderance of the evidence.

While the legislature intends to bring the sentencing reform act into compliance as previously indicated, the legislature recognizes the need to restore the judicial discretion that has been limited as a result of the *Blakely* decision." [2005 c 68 § 1.]

Severability—2005 c 68: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [2005 c 68 § 6.]

Effective date—2005 c 68: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately [April 15, 2005]." [2005 c 68 § 7.]

9.94A.637 Discharge upon completion of sentence—Certificate of discharge—Obligations, counseling after discharge. (1)(a) When an offender has completed all requirements of the sentence, including any and all legal financial obligations, and while under the custody and supervision of the department, the secretary or the secretary's designee shall notify the sentencing court, which shall discharge the offender and provide the offender with a certificate of discharge by issuing the certificate to the offender in person or by mailing the certificate to the offender's last known address.

(b)(i) When an offender has reached the end of his or her supervision with the department and has completed all the requirements of the sentence except his or her legal financial obligations, the secretary's designee shall provide the county clerk with a notice that the offender has completed all nonfinancial requirements of the sentence.

(ii) When the department has provided the county clerk with notice that an offender has completed all the requirements of the sentence and the offender subsequently satisfies all legal financial obligations under the sentence, the county clerk shall notify the sentencing court, including the notice from the department, which shall discharge the offender and provide the offender with a certificate of discharge by issuing the certificate to the offender in person or by mailing the certificate to the offender's last known address.

(c) When an offender who is subject to requirements of the sentence in addition to the payment of legal financial obligations either is not subject to supervision by the department or does not complete the requirements while under supervi-

sion of the department, it is the offender's responsibility to provide the court with verification of the completion of the sentence conditions other than the payment of legal financial obligations. When the offender satisfies all legal financial obligations under the sentence, the county clerk shall notify the sentencing court that the legal financial obligations have been satisfied. When the court has received both notification from the clerk and adequate verification from the offender that the sentence requirements have been completed, the court shall discharge the offender and provide the offender with a certificate of discharge by issuing the certificate to the offender in person or by mailing the certificate to the offender's last known address.

(2) Every signed certificate and order of discharge shall be filed with the county clerk of the sentencing county. In addition, the court shall send to the department a copy of every signed certificate and order of discharge for offender sentences under the authority of the department. The county clerk shall enter into a database maintained by the administrator for the courts the names of all felons who have been issued certificates of discharge, the date of discharge, and the date of conviction and offense.

(3) An offender who is not convicted of a violent offense or a sex offense and is sentenced to a term involving community supervision may be considered for a discharge of sentence by the sentencing court prior to the completion of community supervision, provided that the offender has completed at least one-half of the term of community supervision and has met all other sentence requirements.

(4) Except as provided in subsection (5) of this section, the discharge shall have the effect of restoring all civil rights lost by operation of law upon conviction, and the certificate of discharge shall so state. Nothing in this section prohibits the use of an offender's prior record for purposes of determining sentences for later offenses as provided in this chapter. Nothing in this section affects or prevents use of the offender's prior conviction in a later criminal prosecution either as an element of an offense or for impeachment purposes. A certificate of discharge is not based on a finding of rehabilitation.

(5) Unless otherwise ordered by the sentencing court, a certificate of discharge shall not terminate the offender's obligation to comply with an order issued under chapter 10.99 RCW that excludes or prohibits the offender from having contact with a specified person or coming within a set distance of any specified location that was contained in the judgment and sentence. An offender who violates such an order after a certificate of discharge has been issued shall be subject to prosecution according to the chapter under which the order was originally issued.

(6) Upon release from custody, the offender may apply to the department for counseling and help in adjusting to the community. This voluntary help may be provided for up to one year following the release from custody. [2007 c 171 § 1; 2004 c 121 § 2; 2003 c 379 § 19; 2002 c 16 § 2; 2000 c 119 § 3; 1994 c 271 § 901; 1984 c 209 § 14; 1981 c 137 § 22. Formerly RCW 9.94A.220.]

Severability—Effective dates—2003 c 379: See notes following RCW 9.94A.728.

Intent—Purpose—2003 c 379 §§ 13-27: See note following RCW 9.94A.760.

Intent—2002 c 16: "The legislature recognizes that an individual's right to vote is a hallmark of a free and inclusive society and that it is in the best interests of society to provide reasonable opportunities and processes for an offender to regain the right to vote after completion of all of the requirements of his or her sentence. The legislature intends to clarify the method by which the court may fulfill its already existing direction to provide discharged offenders with their certificates of discharge." [2002 c 16 § 1.]

Application—2000 c 119: See note following RCW 26.50.021.

Purpose—Severability—1994 c 271: See notes following RCW 9A.28.020.

Effective dates—1984 c 209: See note following RCW 9.94A.030.

Effective date—1981 c 137: See RCW 9.94A.905.

9.94A.728 Earned release time. No person serving a sentence imposed pursuant to this chapter and committed to the custody of the department shall leave the confines of the correctional facility or be released prior to the expiration of the sentence except as follows:

(1) Except as otherwise provided for in subsection (2) of this section, the term of the sentence of an offender committed to a correctional facility operated by the department may be reduced by earned release time in accordance with procedures that shall be developed and promulgated by the correctional agency having jurisdiction in which the offender is confined. The earned release time shall be for good behavior and good performance, as determined by the correctional agency having jurisdiction. The correctional agency shall not credit the offender with earned release credits in advance of the offender actually earning the credits. Any program established pursuant to this section shall allow an offender to earn early release credits for presentence incarceration. If an offender is transferred from a county jail to the department, the administrator of a county jail facility shall certify to the department the amount of time spent in custody at the facility and the amount of earned release time. An offender who has been convicted of a felony committed after July 23, 1995, that involves any applicable deadly weapon enhancements under RCW 9.94A.533 (3) or (4), or both, shall not receive any good time credits or earned release time for that portion of his or her sentence that results from any deadly weapon enhancements.

(a) In the case of an offender convicted of a serious violent offense, or a sex offense that is a class A felony, committed on or after July 1, 1990, and before July 1, 2003, the aggregate earned release time may not exceed fifteen percent of the sentence. In the case of an offender convicted of a serious violent offense, or a sex offense that is a class A felony, committed on or after July 1, 2003, the aggregate earned release time may not exceed ten percent of the sentence.

(b)(i) In the case of an offender who qualifies under (b)(ii) of this subsection, the aggregate earned release time may not exceed fifty percent of the sentence.

(ii) An offender is qualified to earn up to fifty percent of aggregate earned release time under this subsection (1)(b) if he or she:

(A) Is classified in one of the two lowest risk categories under (b)(iii) of this subsection;

(B) Is not confined pursuant to a sentence for:

(I) A sex offense;

(II) A violent offense;

(III) A crime against persons as defined in RCW 9.94A.411;

(IV) A felony that is domestic violence as defined in RCW 10.99.020;

(V) A violation of RCW 9A.52.025 (residential burglary);

(VI) A violation of, or an attempt, solicitation, or conspiracy to violate, RCW 69.50.401 by manufacture or delivery or possession with intent to deliver methamphetamine; or

(VII) A violation of, or an attempt, solicitation, or conspiracy to violate, RCW 69.50.406 (delivery of a controlled substance to a minor);

(C) Has no prior conviction for:

(I) A sex offense;

(II) A violent offense;

(III) A crime against persons as defined in RCW 9.94A.411;

(IV) A felony that is domestic violence as defined in RCW 10.99.020;

(V) A violation of RCW 9A.52.025 (residential burglary);

(VI) A violation of, or an attempt, solicitation, or conspiracy to violate, RCW 69.50.401 by manufacture or delivery or possession with intent to deliver methamphetamine; or

(VII) A violation of, or an attempt, solicitation, or conspiracy to violate, RCW 69.50.406 (delivery of a controlled substance to a minor);

(D) Participates in programming or activities as directed by the offender's individual reentry plan as provided under RCW 72.09.270 to the extent that such programming or activities are made available by the department; and

(E) Has not committed a new felony after July 22, 2007, while under community supervision, community placement, or community custody.

(iii) For purposes of determining an offender's eligibility under this subsection (1)(b), the department shall perform a risk assessment of every offender committed to a correctional facility operated by the department who has no current or prior conviction for a sex offense, a violent offense, a crime against persons as defined in RCW 9.94A.411, a felony that is domestic violence as defined in RCW 10.99.020, a violation of RCW 9A.52.025 (residential burglary), a violation of, or an attempt, solicitation, or conspiracy to violate, RCW 69.50.401 by manufacture or delivery or possession with intent to deliver methamphetamine, or a violation of, or an attempt, solicitation, or conspiracy to violate, RCW 69.50.406 (delivery of a controlled substance to a minor). The department must classify each assessed offender in one of four risk categories between highest and lowest risk.

(iv) The department shall recalculate the earned release time and reschedule the expected release dates for each qualified offender under this subsection (1)(b).

(v) This subsection (1)(b) applies retroactively to eligible offenders serving terms of total confinement in a state correctional facility as of July 1, 2003.

(vi) This subsection (1)(b) does not apply to offenders convicted after July 1, 2010.

(c) In no other case shall the aggregate earned release time exceed one-third of the total sentence;

(2)(a) A person convicted of a sex offense or an offense categorized as a serious violent offense, assault in the second

degree, vehicular homicide, vehicular assault, assault of a child in the second degree, any crime against persons where it is determined in accordance with RCW 9.94A.602 that the offender or an accomplice was armed with a deadly weapon at the time of commission, or any felony offense under chapter 69.50 or 69.52 RCW, committed before July 1, 2000, may become eligible, in accordance with a program developed by the department, for transfer to community custody status in lieu of earned release time pursuant to subsection (1) of this section;

(b) A person convicted of a sex offense, a violent offense, any crime against persons under RCW 9.94A.411(2), or a felony offense under chapter 69.50 or 69.52 RCW, committed on or after July 1, 2000, may become eligible, in accordance with a program developed by the department, for transfer to community custody status in lieu of earned release time pursuant to subsection (1) of this section;

(c) The department shall, as a part of its program for release to the community in lieu of earned release, require the offender to propose a release plan that includes an approved residence and living arrangement. All offenders with community placement or community custody terms eligible for release to community custody status in lieu of earned release shall provide an approved residence and living arrangement prior to release to the community;

(d) The department may deny transfer to community custody status in lieu of earned release time pursuant to subsection (1) of this section if the department determines an offender's release plan, including proposed residence location and living arrangements, may violate the conditions of the sentence or conditions of supervision, place the offender at risk to violate the conditions of the sentence, place the offender at risk to reoffend, or present a risk to victim safety or community safety. The department's authority under this section is independent of any court-ordered condition of sentence or statutory provision regarding conditions for community custody or community placement;

(e) If the department denies transfer to community custody status in lieu of earned early release pursuant to (d) of this subsection, the department may transfer an offender to partial confinement in lieu of earned early release up to three months. The three months in partial confinement is in addition to that portion of the offender's term of confinement that may be served in partial confinement as provided in this section;

(f) An offender serving a term of confinement imposed under RCW 9.94A.670(4)(a) is not eligible for earned release credits under this section;

(3) An offender may leave a correctional facility pursuant to an authorized furlough or leave of absence. In addition, offenders may leave a correctional facility when in the custody of a corrections officer or officers;

(4)(a) The secretary may authorize an extraordinary medical placement for an offender when all of the following conditions exist:

(i) The offender has a medical condition that is serious enough to require costly care or treatment;

(ii) The offender poses a low risk to the community because he or she is physically incapacitated due to age or the medical condition; and

(iii) Granting the extraordinary medical placement will result in a cost savings to the state.

(b) An offender sentenced to death or to life imprisonment without the possibility of release or parole is not eligible for an extraordinary medical placement.

(c) The secretary shall require electronic monitoring for all offenders in extraordinary medical placement unless the electronic monitoring equipment interferes with the function of the offender's medical equipment or results in the loss of funding for the offender's medical care. The secretary shall specify who shall provide the monitoring services and the terms under which the monitoring shall be performed.

(d) The secretary may revoke an extraordinary medical placement under this subsection at any time;

(5) The governor, upon recommendation from the clemency and pardons board, may grant an extraordinary release for reasons of serious health problems, senility, advanced age, extraordinary meritorious acts, or other extraordinary circumstances;

(6) No more than the final six months of the offender's term of confinement may be served in partial confinement designed to aid the offender in finding work and reestablishing himself or herself in the community. This is in addition to that period of earned early release time that may be exchanged for partial confinement pursuant to subsection (2)(e) of this section;

(7) The governor may pardon any offender;

(8) The department may release an offender from confinement any time within ten days before a release date calculated under this section; and

(9) An offender may leave a correctional facility prior to completion of his or her sentence if the sentence has been reduced as provided in RCW 9.94A.870.

Notwithstanding any other provisions of this section, an offender sentenced for a felony crime listed in RCW 9.94A.540 as subject to a mandatory minimum sentence of total confinement shall not be released from total confinement before the completion of the listed mandatory minimum sentence for that felony crime of conviction unless allowed under RCW 9.94A.540, however persistent offenders are not eligible for extraordinary medical placement. [2007 c 483 § 304; 2004 c 176 § 6; 2003 c 379 § 1. Prior: 2002 c 290 § 21; 2002 c 50 § 2; 2000 c 28 § 28; prior: 1999 c 324 § 1; 1999 c 37 § 1; 1996 c 199 § 2; 1995 c 129 § 7 (Initiative Measure No. 159); 1992 c 145 § 8; 1990 c 3 § 202; 1989 c 248 § 2; prior: 1988 c 153 § 3; 1988 c 3 § 1; 1984 c 209 § 8; 1982 c 192 § 6; 1981 c 137 § 15. Formerly RCW 9.94A.150.]

Findings—Part headings not law—Severability—2007 c 483: See RCW 72.78.005, 72.78.900, and 72.78.901.

Severability—Effective date—2004 c 176: See notes following RCW 9.94A.515.

Severability—2003 c 379: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [2003 c 379 § 28.]

Effective dates—2003 c 379: "(1) Sections 1 through 12, 20, and 28 of this act are necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and take effect July 1, 2003.

(2) Sections 13 through 19 and 21 through 27 of this act take effect October 1, 2003." [2003 c 379 § 29.]

Effective date—2002 c 290 §§ 7-11 and 14-23: See note following RCW 9.94A.515.

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

Intent—2002 c 50: "The legislature has determined in RCW 9.94A.728(2) that the department of corrections may transfer offenders to community custody status in lieu of earned release time in accordance with a program developed by the department of corrections. It is the legislature's intent, in response to: *In re: Capello 106 Wn.App. 576 (2001)*, to clarify the law to reflect that the secretary of the department has, and has had since enactment of the community placement act of 1988, the authority to require all offenders, eligible for release to community custody status in lieu of earned release, to provide a release plan that includes an approved residence and living arrangement prior to any transfer to the community." [2002 c 50 § 1.]

Application—2002 c 50: "This act applies to all offenders with community placement or community custody terms currently incarcerated either before, on, or after March 14, 2002." [2002 c 50 § 3.]

Severability—2002 c 50: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [2002 c 50 § 4.]

Effective date—2002 c 50: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately [March 14, 2002]." [2002 c 50 § 5.]

Technical correction bill—2000 c 28: See note following RCW 9.94A.015.

Severability—1996 c 199: See note following RCW 9.94A.505.

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

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

Application—1989 c 248: See note following RCW 9.92.151.

Effective date—Application of increased sanctions—1988 c 153: See notes following RCW 9.94A.030.

Effective dates—1984 c 209: See note following RCW 9.94A.030.

Effective date—1981 c 137: See RCW 9.94A.905.

9.94A.734 Home detention—Conditions. (1) Home detention may not be imposed for offenders convicted of:

- (a) A violent offense;
- (b) Any sex offense;
- (c) Any drug offense;
- (d) Reckless burning in the first or second degree as defined in RCW 9A.48.040 or 9A.48.050;
- (e) Assault in the third degree as defined in RCW 9A.36.031;
- (f) Assault of a child in the third degree;
- (g) Unlawful imprisonment as defined in RCW 9A.40.040; or
- (h) Harassment as defined in RCW 9A.46.020.

Home detention may be imposed for offenders convicted of possession of a controlled substance under RCW 69.50.4013 or forged prescription for a controlled substance under RCW 69.50.403 if the offender fulfills the participation conditions set forth in this section and is monitored for drug use by a treatment alternatives to street crime program or a comparable court or agency-referred program.

(2) Home detention may be imposed for offenders convicted of burglary in the second degree as defined in RCW 9A.52.030 or residential burglary conditioned upon the offender:

- (a) Successfully completing twenty-one days in a work release program;
- (b) Having no convictions for burglary in the second degree or residential burglary during the preceding two years

and not more than two prior convictions for burglary or residential burglary;

(c) Having no convictions for a violent felony offense during the preceding two years and not more than two prior convictions for a violent felony offense;

(d) Having no prior charges of escape; and

(e) Fulfilling the other conditions of the home detention program.

(3) Home detention may be imposed for offenders convicted of taking a motor vehicle without permission in the second degree as defined in RCW 9A.56.075, theft of a motor vehicle as defined under RCW 9A.56.065, or possession of a stolen motor vehicle as defined under RCW 9A.56.068 conditioned upon the offender:

(a) Having no convictions for taking a motor vehicle without permission, theft of a motor vehicle or possession of a stolen motor vehicle during the preceding five years and not more than two prior convictions for taking a motor vehicle without permission, theft of a motor vehicle or possession of a stolen motor vehicle;

(b) Having no convictions for a violent felony offense during the preceding two years and not more than two prior convictions for a violent felony offense;

(c) Having no prior charges of escape; and

(d) Fulfilling the other conditions of the home detention program.

(4) Participation in a home detention program shall be conditioned upon:

(a) The offender obtaining or maintaining current employment or attending a regular course of school study at regularly defined hours, or the offender performing parental duties to offspring or minors normally in the custody of the offender;

(b) Abiding by the rules of the home detention program; and

(c) Compliance with court-ordered legal financial obligations. The home detention program may also be made available to offenders whose charges and convictions do not otherwise disqualify them if medical or health-related conditions, concerns or treatment would be better addressed under the home detention program, or where the health and welfare of the offender, other inmates, or staff would be jeopardized by the offender's incarceration. Participation in the home detention program for medical or health-related reasons is conditioned on the offender abiding by the rules of the home detention program and complying with court-ordered restitution. [2007 c 199 § 9; 2003 c 53 § 62; 2000 c 28 § 30; 1995 c 108 § 2. Formerly RCW 9.94A.185.]

Findings—Intent—Short title—2007 c 199: See notes following RCW 9A.56.065.

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

Technical correction bill—2000 c 28: See note following RCW 9.94A.015.

Effective date—1995 c 108: See note following RCW 9.94A.030.

9.94A.737 Community custody—Violations. (1) If an offender violates any condition or requirement of community custody, the department may transfer the offender to a more restrictive confinement status to serve up to the remaining portion of the sentence, less credit for any period actually

spent in community custody or in detention awaiting disposition of an alleged violation and subject to the limitations of subsection (3) of this section.

(2) If an offender has not completed his or her maximum term of total confinement and is subject to a third violation hearing for any violation of community custody and is found to have committed the violation, the department shall return the offender to total confinement in a state correctional facility to serve up to the remaining portion of his or her sentence, unless it is determined that returning the offender to a state correctional facility would substantially interfere with the offender's ability to maintain necessary community supports or to participate in necessary treatment or programming and would substantially increase the offender's likelihood of reoffending.

(3)(a) For a sex offender sentenced to a term of community custody under RCW 9.94A.670 who violates any condition of community custody, the department may impose a sanction of up to sixty days' confinement in a local correctional facility for each violation. If the department imposes a sanction, the department shall submit within seventy-two hours a report to the court and the prosecuting attorney outlining the violation or violations and the sanctions imposed.

(b) For a sex offender sentenced to a term of community custody under RCW 9.94A.710 who violates any condition of community custody after having completed his or her maximum term of total confinement, including time served on community custody in lieu of earned release, the department may impose a sanction of up to sixty days in a local correctional facility for each violation.

(c) For an offender sentenced to a term of community custody under RCW 9.94A.505(2)(b), 9.94A.650, or 9.94A.715, or under RCW 9.94A.545, for a crime committed on or after July 1, 2000, who violates any condition of community custody after having completed his or her maximum term of total confinement, including time served on community custody in lieu of earned release, the department may impose a sanction of up to sixty days in total confinement for each violation. The department may impose sanctions such as work release, home detention with electronic monitoring, work crew, community restitution, inpatient treatment, daily reporting, curfew, educational or counseling sessions, supervision enhanced through electronic monitoring, or any other sanctions available in the community.

(d) For an offender sentenced to a term of community placement under RCW 9.94A.705 who violates any condition of community placement after having completed his or her maximum term of total confinement, including time served on community custody in lieu of earned release, the department may impose a sanction of up to sixty days in total confinement for each violation. The department may impose sanctions such as work release, home detention with electronic monitoring, work crew, community restitution, inpatient treatment, daily reporting, curfew, educational or counseling sessions, supervision enhanced through electronic monitoring, or any other sanctions available in the community.

(4) If an offender has been arrested for a new felony offense while under community supervision, community custody, or community placement, the department shall hold the offender in total confinement until a hearing before the

department as provided in this section or until the offender has been formally charged for the new felony offense, whichever is earlier. Nothing in this subsection shall be construed as to permit the department to hold an offender past his or her maximum term of total confinement if the offender has not completed the maximum term of total confinement or to permit the department to hold an offender past the offender's term of community supervision, community custody, or community placement.

(5) The department shall be financially responsible for any portion of the sanctions authorized by this section that are served in a local correctional facility as the result of action by the department.

(6) If an offender is accused of violating any condition or requirement of community custody, he or she is entitled to a hearing before the department prior to the imposition of sanctions. The hearing shall be considered as offender disciplinary proceedings and shall not be subject to chapter 34.05 RCW. The department shall develop hearing procedures and a structure of graduated sanctions.

(7) The hearing procedures required under subsection (6) of this section shall be developed by rule and include the following:

(a) Hearing officers shall report through a chain of command separate from that of community corrections officers;

(b) The department shall provide the offender with written notice of the violation, the evidence relied upon, and the reasons the particular sanction was imposed. The notice shall include a statement of the rights specified in this subsection, and the offender's right to file a personal restraint petition under court rules after the final decision of the department;

(c) The hearing shall be held unless waived by the offender, and shall be electronically recorded. For offenders not in total confinement, the hearing shall be held within fifteen working days, but not less than twenty-four hours, after notice of the violation. For offenders in total confinement, the hearing shall be held within five working days, but not less than twenty-four hours, after notice of the violation;

(d) The offender shall have the right to: (i) Be present at the hearing; (ii) have the assistance of a person qualified to assist the offender in the hearing, appointed by the hearing officer if the offender has a language or communications barrier; (iii) testify or remain silent; (iv) call witnesses and present documentary evidence; and (v) question witnesses who appear and testify; and

(e) The sanction shall take effect if affirmed by the hearing officer. Within seven days after the hearing officer's decision, the offender may appeal the decision to a panel of three reviewing officers designated by the secretary or by the secretary's designee. The sanction shall be reversed or modified if a majority of the panel finds that the sanction was not reasonably related to any of the following: (i) The crime of conviction; (ii) the violation committed; (iii) the offender's risk of reoffending; or (iv) the safety of the community.

(8) For purposes of this section, no finding of a violation of conditions may be based on unconfirmed or unconfirmable allegations.

(9) The department shall work with the Washington association of sheriffs and police chiefs to establish and operate an electronic monitoring program for low-risk offenders who violate the terms of their community custody. Between

January 1, 2006, and December 31, 2006, the department shall endeavor to place at least one hundred low-risk community custody violators on the electronic monitoring program per day if there are at least that many low-risk offenders who qualify for the electronic monitoring program.

(10) Local governments, their subdivisions and employees, the department and its employees, and the Washington association of sheriffs and police chiefs and its employees shall be immune from civil liability for damages arising from incidents involving low-risk offenders who are placed on electronic monitoring unless it is shown that an employee acted with gross negligence or bad faith. [2007 c 483 § 305; 2005 c 435 § 3; 2002 c 175 § 15; 1999 c 196 § 8; 1996 c 275 § 3; 1988 c 153 § 4. Formerly RCW 9.94A.205.]

Findings—Part headings not law—Severability—2007 c 483: See RCW 72.78.005, 72.78.900, and 72.78.901.

Finding—Intent—2005 c 435: "The legislature believes that electronic monitoring, as an alternative to incarceration, is a proper and cost-effective method of punishment and supervision for many criminal offenders. The legislature further finds that advancements in electronic monitoring technology have made the technology more common and acceptable to criminal justice system personnel, policymakers, and the general public.

In an effort to reduce prison and jail populations, many states are increasing their utilization of electronic monitoring. However, Washington state's use of electronic monitoring has been relatively stagnant.

The intent of this act is to determine what electronic monitoring policies and programs have been implemented in the other forty-nine states, in order that Washington state can learn from the other states' experiences." [2005 c 435 § 1.]

Effective date—2002 c 175: See note following RCW 7.80.130.

Construction—Short title—1999 c 196: See RCW 72.09.904 and 72.09.905.

Severability—1999 c 196: See note following RCW 9.94A.010.

Finding—1996 c 275: See note following RCW 9.94A.505.

Application—1996 c 275 §§ 1-5: See note following RCW 9.94A.505.

Effective date—Application of increased sanctions—1988 c 153: See notes following RCW 9.94A.030.

9.94A.839 Special allegation—Sexual conduct with victim in return for a fee—Procedures. (1) In a prosecution for a violation of RCW 9A.44.073, 9A.44.076, 9A.44.079, 9A.44.083, 9A.44.086, or 9A.44.089, or an anticipatory offense for a violation of RCW 9A.44.073, 9A.44.076, 9A.44.079, 9A.44.083, 9A.44.086, or 9A.44.089, committed on or after July 22, 2007, the prosecuting attorney may file a special allegation that the defendant engaged, agreed, offered, attempted, solicited another, or conspired to engage the victim in the sexual conduct in return for a fee, when sufficient admissible evidence exists, which, when considered with the most plausible, reasonably foreseeable defense that could be raised under the evidence, would justify a finding by a reasonable and objective fact-finder that the defendant engaged, agreed, offered, attempted, solicited another, or conspired to engage the victim in the sexual conduct in return for a fee.

(2) Once a special allegation has been made under this section, the state has the burden to prove beyond a reasonable doubt that the defendant engaged, agreed, offered, attempted, solicited another, or conspired to engage the victim in the sexual conduct in return for a fee. If a jury is had, the jury shall, if it finds the defendant guilty, also find a special verdict as to whether the defendant engaged, agreed, offered, attempted, solicited another, or conspired to engage the vic-

tim in the sexual conduct in exchange for a fee. If no jury is had, the court shall make a finding of fact as to whether the defendant engaged, agreed, offered, attempted, solicited another, or conspired to engage the victim in the sexual conduct in exchange for a fee.

(3) For purposes of this section, "sexual conduct" means sexual intercourse or sexual contact as defined in chapter 9A.44 RCW. [2007 c 368 § 10.]

Chapter 9.95 RCW

INDETERMINATE SENTENCES

Sections

9.95.003	Appointment of board members—Qualifications—Duties of chairman—Salaries and travel expenses—Employees.
9.95.011	Minimum terms.
9.95.420	Sex offenders—End of sentence review—Victim input.
9.95.435	Sex offenders—Postrelease transfer to more restrictive confinement.

9.95.003 Appointment of board members—Qualifications—Duties of chairman—Salaries and travel expenses—Employees. The board shall consist of a chairman and four other members, each of whom shall be appointed by the governor with the consent of the senate. Each member shall hold office for a term of five years, and until his or her successor is appointed and qualified. The terms shall expire on April 15th of the expiration year. Vacancies in the membership of the board shall be filled by appointment by the governor with the consent of the senate. In the event of the inability of any member to act, the governor shall appoint some competent person to act in his stead during the continuance of such inability. The members shall not be removable during their respective terms except for cause determined by the superior court of Thurston county. The governor in appointing the members shall designate one of them to serve as chairman at the governor's pleasure. The appointed chairman shall serve as a fully participating board member and as the director of the agency.

The members of the board and its officers and employees shall not engage in any other business or profession or hold any other public office without the prior approval of the executive ethics board indicating compliance with RCW 42.52.020, 42.52.030, 42.52.040 and 42.52.120; nor shall they, at the time of appointment or employment or during their incumbency, serve as the representative of any political party on an executive committee or other governing body thereof, or as an executive officer or employee of any political committee or association. The members of the board shall each severally receive salaries fixed by the governor in accordance with the provisions of RCW 43.03.040, and in addition shall receive travel expenses incurred in the discharge of their official duties in accordance with RCW 43.03.050 and 43.03.060.

The board may employ, and fix, with the approval of the governor, the compensation of and prescribe the duties of a senior administrative officer and such officers, employees, and assistants as may be necessary, and provide necessary quarters, supplies, and equipment. [2007 c 362 § 1; 1997 c 350 § 2; 1986 c 224 § 3; 1975-76 2nd ex.s. c 34 § 8; 1969 c 98 § 9; 1959 c 32 § 1; 1955 c 340 § 9. Prior: 1945 c 155 § 1,

part; 1935 c 114 § 8, part; Rem. Supp. 1945 § 10249-8, part. Formerly RCW 43.67.020.]

Effective date—Severability—1986 c 224: See notes following RCW 9.95.001.

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

Severability—Effective date—1969 c 98: See notes following RCW 9.95.120.

9.95.011 Minimum terms. (1) When the court commits a convicted person to the department of corrections on or after July 1, 1986, for an offense committed before July 1, 1984, the court shall, at the time of sentencing or revocation of probation, fix the minimum term. The term so fixed shall not exceed the maximum sentence provided by law for the offense of which the person is convicted.

The court shall attempt to set the minimum term reasonably consistent with the purposes, standards, and sentencing ranges adopted under RCW 9.94A.850, but the court is subject to the same limitations as those placed on the board under RCW 9.92.090, 9.95.040 (1) through (4), 9.95.115, 9A.32.040, 9A.44.045, and chapter 69.50 RCW. The court's minimum term decision is subject to review to the same extent as a minimum term decision by the parole board before July 1, 1986.

Thereafter, the expiration of the minimum term set by the court minus any time credits earned under RCW 9.95.070 and 9.95.110 constitutes the parole eligibility review date, at which time the board may consider the convicted person for parole under RCW 9.95.100 and 9.95.110 and chapter 72.04A RCW. Nothing in this section affects the board's authority to reduce or increase the minimum term, once set by the court, under RCW 9.95.040, 9.95.052, 9.95.055, 9.95.070, 9.95.080, 9.95.100, 9.95.115, 9.95.125, or 9.95.047.

(2)(a) Except as provided in (b) of this subsection, not less than ninety days prior to the expiration of the minimum term of a person sentenced under RCW 9.94A.712, for a sex offense committed on or after September 1, 2001, less any time credits permitted by statute, the board shall review the person for conditional release to community custody as provided in RCW 9.95.420. If the board does not release the person, it shall set a new minimum term not to exceed an additional five years. The board shall review the person again not less than ninety days prior to the expiration of the new minimum term.

(b) If at the time a person sentenced under RCW 9.94A.712 for a sex offense committed on or after September 1, 2001, arrives at a department of corrections facility, the offender's minimum term has expired or will expire within one hundred twenty days of the offender's arrival, then no later than one hundred twenty days after the offender's arrival at a department of corrections facility, but after the board receives the results from the end of sentence review process and the recommendations for additional or modified conditions of community custody from the department, the board shall review the person for conditional release to community custody as provided in RCW 9.95.420. If the board does not release the person, it shall set a new minimum term not to exceed an additional five years. The board shall review the

person again not less than ninety days prior to the expiration of the new minimum term.

(c) In setting a new minimum term, the board may consider the length of time necessary for the offender to complete treatment and programming as well as other factors that relate to the offender's release under RCW 9.95.420. The board's rules shall permit an offender to petition for an earlier review if circumstances change or the board receives new information that would warrant an earlier review. [2007 c 363 § 1; 2002 c 174 § 2; 2001 2nd sp.s. c 12 § 320; 1993 c 144 § 3; 1986 c 224 § 7.]

Effective date—2002 c 174: See note following RCW 9.95.420.

Intent—Severability—Effective dates—2001 2nd sp.s. c 12: See notes following RCW 71.09.250.

Application—2001 2nd sp.s. c 12 §§ 301-363: See note following RCW 9.94A.030.

Effective date—1993 c 144: See note following RCW 9.95.045.

Effective date—Severability—1986 c 224: See notes following RCW 9.95.001.

9.95.420 Sex offenders—End of sentence review—Victim input. (1)(a) Except as provided in (c) of this subsection, before the expiration of the minimum term, as part of the end of sentence review process under RCW 72.09.340, 72.09.345, and where appropriate, 72.09.370, the department shall conduct, and the offender shall participate in, an examination of the offender, incorporating methodologies that are recognized by experts in the prediction of sexual dangerousness, and including a prediction of the probability that the offender will engage in sex offenses if released.

(b) The board may contract for an additional, independent examination, subject to the standards in this section.

(c) If at the time the sentence is imposed by the superior court the offender's minimum term has expired or will expire within one hundred twenty days of the sentencing hearing, the department shall conduct, within ninety days of the offender's arrival at a department of corrections facility, and the offender shall participate in, an examination of the offender, incorporating methodologies that are recognized by experts in the prediction of sexual dangerousness, and including a prediction of the probability that the offender will engage in sex offenses if released.

(2) The board shall impose the conditions and instructions provided for in RCW 9.94A.720. The board shall consider the department's recommendations and may impose conditions in addition to those recommended by the department. The board may impose or modify conditions of community custody following notice to the offender.

(3)(a) Except as provided in (b) of this subsection, no later than ninety days before expiration of the minimum term, but after the board receives the results from the end of sentence review process and the recommendations for additional or modified conditions of community custody from the department, the board shall conduct a hearing to determine whether it is more likely than not that the offender will engage in sex offenses if released on conditions to be set by the board. The board may consider an offender's failure to participate in an evaluation under subsection (1) of this section in determining whether to release the offender. The board shall order the offender released, under such affirmative and other conditions as the board determines appropriate,

unless the board determines by a preponderance of the evidence that, despite such conditions, it is more likely than not that the offender will commit sex offenses if released. If the board does not order the offender released, the board shall establish a new minimum term as provided in RCW 9.95.011.

(b) If at the time the offender's minimum term has expired or will expire within one hundred twenty days of the offender's arrival at a department of correction's facility, then no later than one hundred twenty days after the offender's arrival at a department of corrections facility, but after the board receives the results from the end of sentence review process and the recommendations for additional or modified conditions of community custody from the department, the board shall conduct a hearing to determine whether it is more likely than not that the offender will engage in sex offenses if released on conditions to be set by the board. The board may consider an offender's failure to participate in an evaluation under subsection (1) of this section in determining whether to release the offender. The board shall order the offender released, under such affirmative and other conditions as the board determines appropriate, unless the board determines by a preponderance of the evidence that, despite such conditions, it is more likely than not that the offender will commit sex offenses if released. If the board does not order the offender released, the board shall establish a new minimum term as provided in RCW 9.95.011.

(4) In a hearing conducted under subsection (3) of this section, the board shall provide opportunities for the victims of any crimes for which the offender has been convicted to present oral, video, written, or in-person testimony to the board. The procedures for victim input shall be developed by rule. To facilitate victim involvement, county prosecutor's offices shall ensure that any victim impact statements and known contact information for victims of record are forwarded as part of the judgment and sentence. [2007 c 363 § 2; 2006 c 313 § 2; 2002 c 174 § 1; 2001 2nd sp.s. c 12 § 306.]

Effective date—2002 c 174: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately [March 27, 2002]." [2002 c 174 § 3.]

Intent—Severability—Effective dates—2001 2nd sp.s. c 12: See notes following RCW 71.09.250.

Application—2001 2nd sp.s. c 12 §§ 301-363: See note following RCW 9.94A.030.

9.95.435 Sex offenders—Postrelease transfer to more restrictive confinement. (1) If an offender released by the board under RCW 9.95.420 violates any condition or requirement of community custody, the board may transfer the offender to a more restrictive confinement status to serve up to the remaining portion of the sentence, less credit for any period actually spent in community custody or in detention awaiting disposition of an alleged violation and subject to the limitations of subsection (2) of this section.

(2) Following the hearing specified in subsection (3) of this section, the board may impose sanctions such as work release, home detention with electronic monitoring, work crew, community restitution, inpatient treatment, daily reporting, curfew, educational or counseling sessions, supervision enhanced through electronic monitoring, or any other sanctions available in the community, or may suspend the

release and sanction up to sixty days' confinement in a local correctional facility for each violation, or revoke the release to community custody whenever an offender released by the board under RCW 9.95.420 violates any condition or requirement of community custody.

(3) If an offender released by the board under RCW 9.95.420 is accused of violating any condition or requirement of community custody, he or she is entitled to a hearing before the board or a designee of the board prior to the imposition of sanctions. The hearing shall be considered as offender disciplinary proceedings and shall not be subject to chapter 34.05 RCW. The board shall develop hearing procedures and a structure of graduated sanctions consistent with the hearing procedures and graduated sanctions developed pursuant to RCW 9.94A.737. The board may suspend the offender's release to community custody and confine the offender in a correctional institution owned, operated by, or operated under contract with the state prior to the hearing unless the offender has been arrested and confined for a new criminal offense.

(4) The hearing procedures required under subsection (3) of this section shall be developed by rule and include the following:

(a) Hearings shall be conducted by members or designees of the board unless the board enters into an agreement with the department to use the hearing officers established under RCW 9.94A.737;

(b) The board shall provide the offender with findings and conclusions which include the evidence relied upon, and the reasons the particular sanction was imposed. The board shall notify the offender of the right to appeal the sanction and the right to file a personal restraint petition under court rules after the final decision of the board;

(c) The hearing shall be held unless waived by the offender, and shall be electronically recorded. For offenders not in total confinement, the hearing shall be held within thirty days of service of notice of the violation, but not less than twenty-four hours after notice of the violation. For offenders in total confinement, the hearing shall be held within thirty days of service of notice of the violation, but not less than twenty-four hours after notice of the violation. The board or its designee shall make a determination whether probable cause exists to believe the violation or violations occurred. The determination shall be made within forty-eight hours of receipt of the allegation;

(d) The offender shall have the right to: (i) Be present at the hearing; (ii) have the assistance of a person qualified to assist the offender in the hearing, appointed by the presiding hearing officer if the offender has a language or communications barrier; (iii) testify or remain silent; (iv) call witnesses and present documentary evidence; (v) question witnesses who appear and testify; and (vi) be represented by counsel if revocation of the release to community custody upon a finding of violation is a probable sanction for the violation. The board may not revoke the release to community custody of any offender who was not represented by counsel at the hearing, unless the offender has waived the right to counsel; and

(e) The sanction shall take effect if affirmed by the presiding hearing officer.

(5) Within seven days after the presiding hearing officer's decision, the offender may appeal the decision to the

full board or to a panel of three reviewing examiners designated by the chair of the board or by the chair's designee. The sanction shall be reversed or modified if a majority of the panel finds that the sanction was not reasonably related to any of the following: (a) The crime of conviction; (b) the violation committed; (c) the offender's risk of reoffending; or (d) the safety of the community.

(6) For purposes of this section, no finding of a violation of conditions may be based on unconfirmed or unconfirmable allegations. [2007 c 363 § 3; 2003 c 218 § 1; 2002 c 175 § 17; 2001 2nd sp.s. c 12 § 309.]

Effective date—2002 c 175: See note following RCW 7.80.130.

Intent—Severability—Effective dates—2001 2nd sp.s. c 12: See notes following RCW 71.09.250.

Application—2001 2nd sp.s. c 12 §§ 301-363: See note following RCW 9.94A.030.

Chapter 9.96 RCW

RESTORATION OF CIVIL RIGHTS

Sections

9.96.050 Final discharge of parolee—Restoration of civil rights—Governor's pardoning power not affected.

9.96.050 Final discharge of parolee—Restoration of civil rights—Governor's pardoning power not affected.

(1)(a) When an offender on parole has performed all obligations of his or her release, including any and all legal financial obligations, for such time as shall satisfy the indeterminate sentence review board that his or her final release is not incompatible with the best interests of society and the welfare of the paroled individual, the board may make a final order of discharge and issue a certificate of discharge to the offender.

(b) The board retains the jurisdiction to issue a certificate of discharge after the expiration of the offender's or parolee's maximum statutory sentence. If not earlier granted and any and all legal financial obligations have been paid, the board shall issue a final order of discharge three years from the date of parole unless the parolee is on suspended or revoked status at the expiration of the three years.

(c) The discharge, regardless of when issued, shall have the effect of restoring all civil rights lost by operation of law upon conviction, and the certification of discharge shall so state.

(d) This restoration of civil rights shall not restore the right to receive, possess, own, or transport firearms.

(e) The board shall issue a certificate of discharge to the offender in person or by mail to the offender's last known address.

(2) The board shall send to the department of corrections a copy of every signed certificate of discharge for offender sentences under the authority of the department of corrections. (3) The discharge provided for in this section shall be considered as a part of the sentence of the convicted person and shall not in any manner be construed as affecting the powers of the governor to pardon any such person. [2007 c 363 § 4; 2007 c 171 § 2; 2002 c 16 § 3; 1993 c 140 § 4; 1980 c 75 § 1; 1961 c 187 § 1.]

Reviser's note: This section was amended by 2007 c 171 § 2 and by 2007 c 363 § 4, each without reference to the other. Both amendments are

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incorporated in the publication of this section under RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

Intent—2002 c 16: See note following RCW 9.94A.637.

Title 9A

WASHINGTON CRIMINAL CODE

Chapters

9A.04 Preliminary article.

9A.36 Assault—Physical harm.

9A.44 Sex offenses.

9A.46 Harassment.

9A.48 Arson, reckless burning, and malicious mischief.

9A.56 Theft and robbery.

9A.84 Public disturbance.

9A.88 Indecent exposure—Prostitution.

Chapter 9A.04 RCW

PRELIMINARY ARTICLE

Sections

9A.04.110 Definitions.

9A.04.110 Definitions. In this title unless a different meaning plainly is required:

(1) "Acted" includes, where relevant, omitted to act;

(2) "Actor" includes, where relevant, a person failing to act;

(3) "Benefit" is any gain or advantage to the beneficiary, including any gain or advantage to a third person pursuant to the desire or consent of the beneficiary;

(4)(a) "Bodily injury," "physical injury," or "bodily harm" means physical pain or injury, illness, or an impairment of physical condition;

(b) "Substantial bodily harm" means bodily injury which involves a temporary but substantial disfigurement, or which causes a temporary but substantial loss or impairment of the function of any bodily part or organ, or which causes a fracture of any bodily part;

(c) "Great bodily harm" means bodily injury which creates a probability of death, or which causes significant serious permanent disfigurement, or which causes a significant permanent loss or impairment of the function of any bodily part or organ;

(5) "Building", in addition to its ordinary meaning, includes any dwelling, fenced area, vehicle, railway car, cargo container, or any other structure used for lodging of persons or for carrying on business therein, or for the use, sale or deposit of goods; each unit of a building consisting of two or more units separately secured or occupied is a separate building;

(6) "Deadly weapon" means any explosive or loaded or unloaded firearm, and shall include any other weapon, device, instrument, article, or substance, including a "vehicle" as defined in this section, which, under the circumstances in which it is used, attempted to be used, or threatened to be used, is readily capable of causing death or substantial bodily harm;

(7) "Dwelling" means any building or structure, though movable or temporary, or a portion thereof, which is used or ordinarily used by a person for lodging;

(8) "Government" includes any branch, subdivision, or agency of the government of this state and any county, city, district, or other local governmental unit;

(9) "Governmental function" includes any activity which a public servant is legally authorized or permitted to undertake on behalf of a government;

(10) "Indicted" and "indictment" include "informed against" and "information", and "informed against" and "information" include "indicted" and "indictment";

(11) "Judge" includes every judicial officer authorized alone or with others, to hold or preside over a court;

(12) "Malice" and "maliciously" shall import an evil intent, wish, or design to vex, annoy, or injure another person. Malice may be inferred from an act done in wilful disregard of the rights of another, or an act wrongfully done without just cause or excuse, or an act or omission of duty betraying a wilful disregard of social duty;

(13) "Officer" and "public officer" means a person holding office under a city, county, or state government, or the federal government who performs a public function and in so doing is vested with the exercise of some sovereign power of government, and includes all assistants, deputies, clerks, and employees of any public officer and all persons lawfully exercising or assuming to exercise any of the powers or functions of a public officer;

(14) "Omission" means a failure to act;

(15) "Peace officer" means a duly appointed city, county, or state law enforcement officer;

(16) "Pecuniary benefit" means any gain or advantage in the form of money, property, commercial interest, or anything else the primary significance of which is economic gain;

(17) "Person", "he", and "actor" include any natural person and, where relevant, a corporation, joint stock association, or an unincorporated association;

(18) "Place of work" includes but is not limited to all the lands and other real property of a farm or ranch in the case of an actor who owns, operates, or is employed to work on such a farm or ranch;

(19) "Prison" means any place designated by law for the keeping of persons held in custody under process of law, or under lawful arrest, including but not limited to any state correctional institution or any county or city jail;

(20) "Prisoner" includes any person held in custody under process of law, or under lawful arrest;

(21) "Projectile stun gun" means an electronic device that projects wired probes attached to the device that emit an electrical charge and that is designed and primarily employed to incapacitate a person or animal;

(22) "Property" means anything of value, whether tangible or intangible, real or personal;

(23) "Public servant" means any person other than a witness who presently occupies the position of or has been elected, appointed, or designated to become any officer or employee of government, including a legislator, judge, judicial officer, juror, and any person participating as an advisor, consultant, or otherwise in performing a governmental function;

(24) "Signature" includes any memorandum, mark, or sign made with intent to authenticate any instrument or writing, or the subscription of any person thereto;

(25) "Statute" means the Constitution or an act of the legislature or initiative or referendum of this state;

(26) "Strangulation" means to compress a person's neck, thereby obstructing the person's blood flow or ability to breathe, or doing so with the intent to obstruct the person's blood flow or ability to breathe;

(27) "Threat" means to communicate, directly or indirectly the intent:

(a) To cause bodily injury in the future to the person threatened or to any other person; or

(b) To cause physical damage to the property of a person other than the actor; or

(c) To subject the person threatened or any other person to physical confinement or restraint; or

(d) To accuse any person of a crime or cause criminal charges to be instituted against any person; or

(e) To expose a secret or publicize an asserted fact, whether true or false, tending to subject any person to hatred, contempt, or ridicule; or

(f) To reveal any information sought to be concealed by the person threatened; or

(g) To testify or provide information or withhold testimony or information with respect to another's legal claim or defense; or

(h) To take wrongful action as an official against anyone or anything, or wrongfully withhold official action, or cause such action or withholding; or

(i) To bring about or continue a strike, boycott, or other similar collective action to obtain property which is not demanded or received for the benefit of the group which the actor purports to represent; or

(j) To do any other act which is intended to harm substantially the person threatened or another with respect to his health, safety, business, financial condition, or personal relationships;

(28) "Vehicle" means a "motor vehicle" as defined in the vehicle and traffic laws, any aircraft, or any vessel equipped for propulsion by mechanical means or by sail;

(29) Words in the present tense shall include the future tense; and in the masculine shall include the feminine and neuter genders; and in the singular shall include the plural; and in the plural shall include the singular. [2007 c 79 § 3; 2005 c 458 § 3; 1988 c 158 § 1; 1987 c 324 § 1; 1986 c 257 § 3; 1975 1st ex.s. c 260 § 9A.04.110.]

Finding—2007 c 79: See note following RCW 9A.36.021.

Effective date—1988 c 158: "This act shall take effect July 1, 1988." [1988 c 158 § 4.]

Effective date—1987 c 324: "Section 3 of this act is necessary for the immediate preservation of the public peace, health, and safety, the support of the state government and its existing public institutions, and shall take effect immediately. The remainder of this act shall take effect July 1, 1988." [1987 c 324 § 4.]

Effective date—1986 c 257 §§ 3-10: "Sections 3 through 10 of this act shall take effect on July 1, 1988." [1987 c 324 § 3; 1986 c 257 § 12.]

Severability—1986 c 257: See note following RCW 9A.56.010.

Chapter 9A.36 RCW

ASSAULT—PHYSICAL HARM

Sections

9A.36.021 Assault in the second degree.

9A.36.021 Assault in the second degree. (1) A person is guilty of assault in the second degree if he or she, under circumstances not amounting to assault in the first degree:

(a) Intentionally assaults another and thereby recklessly inflicts substantial bodily harm; or

(b) Intentionally and unlawfully causes substantial bodily harm to an unborn quick child by intentionally and unlawfully inflicting any injury upon the mother of such child; or

(c) Assaults another with a deadly weapon; or

(d) With intent to inflict bodily harm, administers to or causes to be taken by another, poison or any other destructive or noxious substance; or

(e) With intent to commit a felony, assaults another; or

(f) Knowingly inflicts bodily harm which by design causes such pain or agony as to be the equivalent of that produced by torture; or

(g) Assaults another by strangulation.

(2)(a) Except as provided in (b) of this subsection, assault in the second degree is a class B felony.

(b) Assault in the second degree with a finding of sexual motivation under RCW 9.94A.835 or 13.40.135 is a class A felony. [2007 c 79 § 2; 2003 c 53 § 64; 2001 2nd sp.s. c 12 § 355; 1997 c 196 § 2. Prior: 1988 c 266 § 2; 1988 c 206 § 916; 1988 c 158 § 2; 1987 c 324 § 2; 1986 c 257 § 5.]

Finding—2007 c 79: "The legislature finds that assault by strangulation may result in immobilization of a victim, may cause a loss of consciousness, injury, or even death, and has been a factor in a significant number of domestic violence related assaults and fatalities. While not limited to acts of assault against an intimate partner, assault by strangulation is often knowingly inflicted upon an intimate partner with the intent to commit physical injury, or substantial or great bodily harm. Strangulation is one of the most lethal forms of domestic violence. The particular cruelty of this offense and its potential effects upon a victim both physically and psychologically, merit its categorization as a ranked felony offense under chapter 9A.36 RCW." [2007 c 79 § 1.]

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

Intent—Severability—Effective dates—2001 2nd sp.s. c 12: See notes following RCW 71.09.250.

Application—2001 2nd sp.s. c 12 §§ 301-363: See note following RCW 9.94A.030.

Effective date—1988 c 266: "This act is necessary for the immediate preservation of the public peace, health, and safety, the support of the state government and its existing public institutions, and shall take effect July 1, 1988." [1988 c 266 § 3.]

Effective date—1988 c 206 §§ 916, 917: "Sections 916 and 917 of this act shall take effect July 1, 1988." [1988 c 206 § 922.]

Severability—1988 c 206: See RCW 70.24.900.

Effective date—1988 c 158: See note following RCW 9A.04.110.

Effective date—1987 c 324: See note following RCW 9A.04.110.

Severability—1986 c 257: See note following RCW 9A.56.010.

Effective date—1986 c 257 §§ 3-10: See note following RCW 9A.04.110.

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Chapter 9A.44 RCW

SEX OFFENSES

Sections

9A.44.010 Definitions.
9A.44.050 Rape in the second degree.
9A.44.100 Indecent liberties.

9A.44.010 Definitions. As used in this chapter:

(1) "Sexual intercourse" (a) has its ordinary meaning and occurs upon any penetration, however slight, and

(b) Also means any penetration of the vagina or anus however slight, by an object, when committed on one person by another, whether such persons are of the same or opposite sex, except when such penetration is accomplished for medically recognized treatment or diagnostic purposes, and

(c) Also means any act of sexual contact between persons involving the sex organs of one person and the mouth or anus of another whether such persons are of the same or opposite sex.

(2) "Sexual contact" means any touching of the sexual or other intimate parts of a person done for the purpose of gratifying sexual desire of either party or a third party.

(3) "Married" means one who is legally married to another, but does not include a person who is living separate and apart from his or her spouse and who has filed in an appropriate court for legal separation or for dissolution of his or her marriage.

(4) "Mental incapacity" is that condition existing at the time of the offense which prevents a person from understanding the nature or consequences of the act of sexual intercourse whether that condition is produced by illness, defect, the influence of a substance or from some other cause.

(5) "Physically helpless" means a person who is unconscious or for any other reason is physically unable to communicate unwillingness to an act.

(6) "Forcible compulsion" means physical force which overcomes resistance, or a threat, express or implied, that places a person in fear of death or physical injury to herself or himself or another person, or in fear that she or he or another person will be kidnapped.

(7) "Consent" means that at the time of the act of sexual intercourse or sexual contact there are actual words or conduct indicating freely given agreement to have sexual intercourse or sexual contact.

(8) "Significant relationship" means a situation in which the perpetrator is:

(a) A person who undertakes the responsibility, professionally or voluntarily, to provide education, health, welfare, or organized recreational activities principally for minors;

(b) A person who in the course of his or her employment supervises minors; or

(c) A person who provides welfare, health or residential assistance, personal care, or organized recreational activities to frail elders or vulnerable adults, including a provider, employee, temporary employee, volunteer, or independent contractor who supplies services to long-term care facilities licensed or required to be licensed under chapter 18.20, 18.51, 72.36, or 70.128 RCW, and home health, hospice, or home care agencies licensed or required to be licensed under chapter 70.127 RCW, but not including a consensual sexual partner.

(9) "Abuse of a supervisory position" means:

(a) To use a direct or indirect threat or promise to exercise authority to the detriment or benefit of a minor; or

(b) To exploit a significant relationship in order to obtain the consent of a minor.

(10) "Person with a developmental disability," for purposes of RCW 9A.44.050(1)(c) and 9A.44.100(1)(c), means a person with a developmental disability as defined in RCW 71A.10.020.

(11) "Person with supervisory authority," for purposes of RCW 9A.44.050(1)(c) or (e) and 9A.44.100(1)(c) or (e), means any proprietor or employee of any public or private care or treatment facility who directly supervises developmentally disabled, mentally disordered, or chemically dependent persons at the facility.

(12) "Person with a mental disorder" for the purposes of RCW 9A.44.050(1)(e) and 9A.44.100(1)(e) means a person with a "mental disorder" as defined in RCW 71.05.020.

(13) "Person with a chemical dependency" for purposes of RCW 9A.44.050(1)(e) and 9A.44.100(1)(e) means a person who is "chemically dependent" as defined in RCW 70.96A.020(4).

(14) "Health care provider" for purposes of RCW 9A.44.050 and 9A.44.100 means a person who is, holds himself or herself out to be, or provides services as if he or she were: (a) A member of a health care profession under chapter 18.130 RCW; or (b) registered under chapter 18.19 RCW or licensed under chapter 18.225 RCW, regardless of whether the health care provider is licensed, certified, or registered by the state.

(15) "Treatment" for purposes of RCW 9A.44.050 and 9A.44.100 means the active delivery of professional services by a health care provider which the health care provider holds himself or herself out to be qualified to provide.

(16) "Frail elder or vulnerable adult" means a person sixty years of age or older who has the functional, mental, or physical inability to care for himself or herself. "Frail elder or vulnerable adult" also includes a person found incapacitated under chapter 11.88 RCW, a person over eighteen years of age who has a developmental disability under chapter 71A.10 RCW, a person admitted to a long-term care facility that is licensed or required to be licensed under chapter 18.20, 18.51, 72.36, or 70.128 RCW, and a person receiving services from a home health, hospice, or home care agency licensed or required to be licensed under chapter 70.127 RCW. [2007 c 20 § 3; 2005 c 262 § 1; 2001 c 251 § 28. Prior: 1997 c 392 § 513; 1997 c 112 § 37; 1994 c 271 § 302; 1993 c 477 § 1; 1988 c 146 § 3; 1988 c 145 § 1; 1981 c 123 § 1; 1975 1st ex.s. c 14 § 1. Formerly RCW 9.79.140.]

Effective date—2007 c 20: See note following RCW 9A.44.050.

Severability—2001 c 251: See RCW 18.225.900.

Short title—Findings—Construction—Conflict with federal requirements—Part headings and captions not law—1997 c 392: See notes following RCW 74.39A.009.

Intent—1994 c 271: "The legislature hereby reaffirms its desire to protect the children of Washington from sexual abuse and further reaffirms its condemnation of child sexual abuse that takes the form of causing one child to engage in sexual contact with another child for the sexual gratification of the one causing such activities to take place." [1994 c 271 § 301.]

Purpose—Severability—1994 c 271: See notes following RCW 9A.28.020.

Severability—Effective dates—1988 c 146: See notes following RCW 9A.44.050.

Effective date—1988 c 145: "This act shall take effect July 1, 1988." [1988 c 145 § 26.]

Savings—Application—1988 c 145: "This act shall not have the effect of terminating or in any way modifying any liability, civil or criminal, which is already in existence on July 1, 1988, and shall apply only to offenses committed on or after July 1, 1988." [1988 c 145 § 25.]

9A.44.050 Rape in the second degree. (1) A person is guilty of rape in the second degree when, under circumstances not constituting rape in the first degree, the person engages in sexual intercourse with another person:

(a) By forcible compulsion;

(b) When the victim is incapable of consent by reason of being physically helpless or mentally incapacitated;

(c) When the victim is a person with a developmental disability and the perpetrator is a person who is not married to the victim and who:

(i) Has supervisory authority over the victim; or

(ii) Was providing transportation, within the course of his or her employment, to the victim at the time of the offense;

(d) When the perpetrator is a health care provider, the victim is a client or patient, and the sexual intercourse occurs during a treatment session, consultation, interview, or examination. It is an affirmative defense that the defendant must prove by a preponderance of the evidence that the client or patient consented to the sexual intercourse with the knowledge that the sexual intercourse was not for the purpose of treatment;

(e) When the victim is a resident of a facility for persons with a mental disorder or chemical dependency and the perpetrator is a person who is not married to the victim and has supervisory authority over the victim; or

(f) When the victim is a frail elder or vulnerable adult and the perpetrator is a person who is not married to the victim and who:

(i) Has a significant relationship with the victim; or

(ii) Was providing transportation, within the course of his or her employment, to the victim at the time of the offense.

(2) Rape in the second degree is a class A felony. [2007 c 20 § 1; 1997 c 392 § 514; 1993 c 477 § 2; 1990 c 3 § 901; 1988 c 146 § 1; 1983 c 118 § 2; 1979 ex.s. c 244 § 2; 1975 1st ex.s. c 14 § 5. Formerly RCW 9.79.180.]

Effective date—2007 c 20: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately [April 10, 2007]." [2007 c 20 § 4.]

Short title—Findings—Construction—Conflict with federal requirements—Part headings and captions not law—1997 c 392: See notes following RCW 74.39A.009.

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

Severability—1988 c 146: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1988 c 146 § 5.]

Effective dates—1988 c 146: "Section 4 of this act is necessary for the immediate preservation of the public peace, health, and safety, the support of the state government and its existing public institutions, and shall take effect immediately [March 21, 1988]. The remainder of this act shall take effect July 1, 1988." [1988 c 146 § 6.]

9A.44.100 Indecent liberties. (1) A person is guilty of indecent liberties when he or she knowingly causes another person who is not his or her spouse to have sexual contact with him or her or another:

- (a) By forcible compulsion;
- (b) When the other person is incapable of consent by reason of being mentally defective, mentally incapacitated, or physically helpless;
- (c) When the victim is a person with a developmental disability and the perpetrator is a person who is not married to the victim and who:
 - (i) Has supervisory authority over the victim; or
 - (ii) Was providing transportation, within the course of his or her employment, to the victim at the time of the offense;
- (d) When the perpetrator is a health care provider, the victim is a client or patient, and the sexual contact occurs during a treatment session, consultation, interview, or examination. It is an affirmative defense that the defendant must prove by a preponderance of the evidence that the client or patient consented to the sexual contact with the knowledge that the sexual contact was not for the purpose of treatment;
- (e) When the victim is a resident of a facility for persons with a mental disorder or chemical dependency and the perpetrator is a person who is not married to the victim and has supervisory authority over the victim; or
- (f) When the victim is a frail elder or vulnerable adult and the perpetrator is a person who is not married to the victim and who:
 - (i) Has a significant relationship with the victim; or
 - (ii) Was providing transportation, within the course of his or her employment, to the victim at the time of the offense.

(2)(a) Except as provided in (b) of this subsection, indecent liberties is a class B felony.

(b) Indecent liberties by forcible compulsion is a class A felony. [2007 c 20 § 2; 2003 c 53 § 67; 2001 2nd sp.s. c 12 § 359; 1997 c 392 § 515; 1993 c 477 § 3; 1988 c 146 § 2; 1988 c 145 § 10; 1986 c 131 § 1; 1975 1st ex.s. c 260 § 9A.88.100. Formerly RCW 9A.88.100.]

Effective date—2007 c 20: See note following RCW 9A.44.050.

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

Intent—Severability—Effective dates—2001 2nd sp.s. c 12: See notes following RCW 71.09.250.

Application—2001 2nd sp.s. c 12 §§ 301-363: See note following RCW 9.94A.030.

Short title—Findings—Construction—Conflict with federal requirements—Part headings and captions not law—1997 c 392: See notes following RCW 74.39A.009.

Severability—Effective dates—1988 c 146: See notes following RCW 9A.44.050.

Effective date—Savings—Application—1988 c 145: See notes following RCW 9A.44.010.

Chapter 9A.46 RCW HARASSMENT

Sections

9A.46.110 Stalking.

9A.46.110 Stalking. (1) A person commits the crime of stalking if, without lawful authority and under circumstances not amounting to a felony attempt of another crime:

- (a) He or she intentionally and repeatedly harasses or repeatedly follows another person; and
- (b) The person being harassed or followed is placed in fear that the stalker intends to injure the person, another person, or property of the person or of another person. The feeling of fear must be one that a reasonable person in the same situation would experience under all the circumstances; and
- (c) The stalker either:
 - (i) Intends to frighten, intimidate, or harass the person; or
 - (ii) Knows or reasonably should know that the person is afraid, intimidated, or harassed even if the stalker did not intend to place the person in fear or intimidate or harass the person.

(2)(a) It is not a defense to the crime of stalking under subsection (1)(c)(i) of this section that the stalker was not given actual notice that the person did not want the stalker to contact or follow the person; and

(b) It is not a defense to the crime of stalking under subsection (1)(c)(ii) of this section that the stalker did not intend to frighten, intimidate, or harass the person.

(3) It shall be a defense to the crime of stalking that the defendant is a licensed private investigator acting within the capacity of his or her license as provided by chapter 18.165 RCW.

(4) Attempts to contact or follow the person after being given actual notice that the person does not want to be contacted or followed constitutes prima facie evidence that the stalker intends to intimidate or harass the person. "Contact" includes, in addition to any other form of contact or communication, the sending of an electronic communication to the person.

(5)(a) Except as provided in (b) of this subsection, a person who stalks another person is guilty of a gross misdemeanor.

(b) A person who stalks another is guilty of a class C felony if any of the following applies: (i) The stalker has previously been convicted in this state or any other state of any crime of harassment, as defined in RCW 9A.46.060, of the same victim or members of the victim's family or household or any person specifically named in a protective order; (ii) the stalking violates any protective order protecting the person being stalked; (iii) the stalker has previously been convicted of a gross misdemeanor or felony stalking offense under this section for stalking another person; (iv) the stalker was armed with a deadly weapon, as defined in RCW 9.94A.602, while stalking the person; (v)(A) the stalker's victim is or was a law enforcement officer; judge; juror; attorney; victim advocate; legislator; community correction's officer; an employee, contract staff person, or volunteer of a correctional agency; or an employee of the child protective, child welfare, or adult protective services division within the department of social and health services; and (B) the stalker stalked the victim to retaliate against the victim for an act the victim performed during the course of official duties or to influence the victim's performance of official duties; or (vi) the stalker's victim is a current, former, or prospective witness in an adjudicative proceeding, and the stalker stalked the victim to retaliate

against the victim as a result of the victim's testimony or potential testimony.

(6) As used in this section:

(a) "Correctional agency" means a person working for the department of natural resources in a correctional setting or any state, county, or municipally operated agency with the authority to direct the release of a person serving a sentence or term of confinement and includes but is not limited to the department of corrections, the indeterminate sentence review board, and the department of social and health services.

(b) "Follows" means deliberately maintaining visual or physical proximity to a specific person over a period of time. A finding that the alleged stalker repeatedly and deliberately appears at the person's home, school, place of employment, business, or any other location to maintain visual or physical proximity to the person is sufficient to find that the alleged stalker follows the person. It is not necessary to establish that the alleged stalker follows the person while in transit from one location to another.

(c) "Harasses" means unlawful harassment as defined in RCW 10.14.020.

(d) "Protective order" means any temporary or permanent court order prohibiting or limiting violence against, harassment of, contact or communication with, or physical proximity to another person.

(e) "Repeatedly" means on two or more separate occasions. [2007 c 201 § 1; 2006 c 95 § 3; 2003 c 53 § 70. Prior: 1999 c 143 § 35; 1999 c 27 § 3; 1994 c 271 § 801; 1992 c 186 § 1.]

Findings—Intent—2006 c 95: See note following RCW 74.04.790.

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

Intent—1999 c 27: See note following RCW 9A.46.020.

Purpose—Severability—1994 c 271: See notes following RCW 9A.28.020.

Severability—1992 c 186: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1992 c 186 § 10.]

Chapter 9A.48 RCW

ARSON, RECKLESS BURNING, AND MALICIOUS MISCHIEF

Sections

9A.48.020 Arson in the first degree.

9A.48.020 Arson in the first degree. (1) A person is guilty of arson in the first degree if he or she knowingly and maliciously:

(a) Causes a fire or explosion which is manifestly dangerous to any human life, including firefighters; or

(b) Causes a fire or explosion which damages a dwelling; or

(c) Causes a fire or explosion in any building in which there shall be at the time a human being who is not a participant in the crime; or

(d) Causes a fire or explosion on property valued at ten thousand dollars or more with intent to collect insurance proceeds.

(2) Arson in the first degree is a class A felony. [2007 c 218 § 63; 1981 c 203 § 2; 1975 1st ex.s. c 260 § 9A.48.020.]

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

Chapter 9A.56 RCW

THEFT AND ROBBERY

Sections

9A.56.030 Theft in the first degree—Other than firearm or motor vehicle.
9A.56.040 Theft in the second degree—Other than firearm or motor vehicle.

9A.56.063 Making or possessing motor vehicle theft tools.

9A.56.065 Theft of motor vehicle.

9A.56.068 Possession of stolen vehicle.

9A.56.070 Taking motor vehicle without permission in the first degree.

9A.56.078 Motor vehicle crimes—Civil action.

9A.56.096 Theft of rental, leased, lease-purchased, or loaned property.

9A.56.150 Possessing stolen property in the first degree—Other than firearm or motor vehicle.

9A.56.160 Possessing stolen property in the second degree—Other than firearm or motor vehicle.

9A.56.030 Theft in the first degree—Other than firearm or motor vehicle. (1) A person is guilty of theft in the first degree if he or she commits theft of:

(a) Property or services which exceed(s) one thousand five hundred dollars in value other than a firearm as defined in RCW 9.41.010;

(b) Property of any value, other than a firearm as defined in RCW 9.41.010 or a motor vehicle, taken from the person of another; or

(c) A search and rescue dog, as defined in RCW 9.91.175, while the search and rescue dog is on duty.

(2) Theft in the first degree is a class B felony. [2007 c 199 § 3; 2005 c 212 § 2; 1995 c 129 § 11 (Initiative Measure No. 159); 1975 1st ex.s. c 260 § 9A.56.030.]

Findings—Intent—Short title—2007 c 199: See notes following RCW 9A.56.065.

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

Civil action for shoplifting by adults, minors: RCW 4.24.230.

9A.56.040 Theft in the second degree—Other than firearm or motor vehicle. (1) A person is guilty of theft in the second degree if he or she commits theft of:

(a) Property or services which exceed(s) two hundred fifty dollars in value but does not exceed one thousand five hundred dollars in value, other than a firearm as defined in RCW 9.41.010 or a motor vehicle; or

(b) A public record, writing, or instrument kept, filed, or deposited according to law with or in the keeping of any public office or public servant; or

(c) An access device.

(2) Theft in the second degree is a class C felony. [2007 c 199 § 4; 1995 c 129 § 12 (Initiative Measure No. 159); 1994 sp.s. c 7 § 433; 1987 c 140 § 2; 1982 1st ex.s. c 47 § 15; 1975 1st ex.s. c 260 § 9A.56.040.]

Findings—Intent—Short title—2007 c 199: See notes following RCW 9A.56.065.

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

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

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

Severability—1982 1st ex.s. c 47: See note following RCW 9.41.190.
Civil action for shoplifting by adults, minors: RCW 4.24.230.

9A.56.063 Making or possessing motor vehicle theft tools. (1) Any person who makes or mends, or causes to be made or mended, uses, or has in his or her possession any motor vehicle theft tool, that is adapted, designed, or commonly used for the commission of motor vehicle related theft, under circumstances evincing an intent to use or employ, or allow the same to be used or employed, in the commission of motor vehicle theft, or knowing that the same is intended to be so used, is guilty of making or having motor vehicle theft tools.

(2) For the purpose of this section, motor vehicle theft tool includes, but is not limited to, the following: Slim jim, false master key, master purpose key, altered or shaved key, trial or jiggle key, slide hammer, lock puller, picklock, bit, nipper, any other implement shown by facts and circumstances that is intended to be used in the commission of a motor vehicle related theft, or knowing that the same is intended to be so used.

(3) For the purposes of this section, the following definitions apply:

(a) "False master" or "master key" is any key or other device made or altered to fit locks or ignitions of multiple vehicles, or vehicles other than that for which the key was originally manufactured.

(b) "Altered or shaved key" is any key so altered, by cutting, filing, or other means, to fit multiple vehicles or vehicles other than the vehicles for which the key was originally manufactured.

(c) "Trial keys" or "jiggler keys" are keys or sets designed or altered to manipulate a vehicle locking mechanism other than the lock for which the key was originally manufactured.

(4) Making or having motor vehicle theft tools is a gross misdemeanor. [2007 c 199 § 18.]

Findings—Intent—Short title—2007 c 199: See notes following RCW 9A.56.065.

9A.56.065 Theft of motor vehicle. (1) A person is guilty of theft of a motor vehicle if he or she commits theft of a motor vehicle.

(2) Theft of a motor vehicle is a class B felony. [2007 c 199 § 2.]

Findings—Intent—2007 c 199: "(1) The legislature finds that:

(a) Automobiles are an essential part of our everyday lives. The west coast is the only region of the United States with an increase of over three percent in motor vehicle thefts over the last several years. The family car is a priority of most individuals and families. The family car is typically the second largest investment a person has next to the home, so when a car is stolen, it causes a significant loss and inconvenience to people, imposes financial hardship, and negatively impacts their work, school, and personal activities. Appropriate and meaningful penalties that are proportionate to the crime committed must be imposed on those who steal motor vehicles;

(b) In Washington, more than one car is stolen every eleven minutes, one hundred thirty-eight cars are stolen every day, someone's car has a one in one hundred seventy-nine chance of being stolen, and more vehicles were stolen in 2005 than in any other previous year. Since 1994, auto theft has increased over fifty-five percent, while other property crimes like burglary are on the decline or holding steady. The national crime insurance bureau reports that Seattle and Tacoma ranked in the top ten places for the most auto

thefts, ninth and tenth respectively, in 2004. In 2005, over fifty thousand auto thefts were reported costing Washington citizens more than three hundred twenty-five million dollars in higher insurance rates and lost vehicles. Nearly eighty percent of these crimes occurred in the central Puget Sound region consisting of the heavily populated areas of King, Pierce, and Snohomish counties;

(c) Law enforcement has determined that auto theft, along with all the grief it causes the immediate victims, is linked more and more to offenders engaged in other crimes. Many stolen vehicles are used by criminals involved in such crimes as robbery, burglary, and assault. In addition, many people who are stopped in stolen vehicles are found to possess the personal identification of other persons, or to possess methamphetamine, precursors to methamphetamine, or equipment used to cook methamphetamine;

(d) Juveniles account for over half of the reported auto thefts with many of these thefts being their first criminal offense. It is critical that they, along with first time adult offenders, are appropriately punished for their crimes. However, it is also important that first time offenders who qualify receive appropriate counseling treatment for associated problems that may have contributed to the commission of the crime, such as drugs, alcohol, and anger management; and

(e) A coordinated and concentrated enforcement mechanism is critical to an effective statewide offensive against motor vehicle theft. Such a system provides for better communications between and among law enforcement agencies, more efficient implementation of efforts to discover, track, and arrest auto thieves, quicker recovery, and the return of stolen vehicles, saving millions of dollars in potential loss to victims and their insurers.

(2) It is the intent of this act to deter motor vehicle theft through a statewide cooperative effort by combating motor vehicle theft through tough laws, supporting law enforcement activities, improving enforcement and administration, effective prosecution, public awareness, and meaningful treatment for first time offenders where appropriate. It is also the intent of the legislature to ensure that adequate funding is provided to implement this act in order for real, observable reductions in the number of auto thefts in Washington state." [2007 c 199 § 1.]

Short title—2007 c 199: "This act shall be known as the Elizabeth Nowak-Washington auto theft prevention act." [2007 c 199 § 29.]

9A.56.068 Possession of stolen vehicle. (1) A person is guilty of possession of a stolen vehicle if he or she possess [possesses] a stolen motor vehicle.

(2) Possession of a stolen motor vehicle is a class B felony. [2007 c 199 § 5.]

Findings—Intent—Short title—2007 c 199: See notes following RCW 9A.56.065.

9A.56.070 Taking motor vehicle without permission in the first degree. (1) A person is guilty of taking a motor vehicle without permission in the first degree if he or she, without the permission of the owner or person entitled to possession, intentionally takes or drives away an automobile or motor vehicle, whether propelled by steam, electricity, or internal combustion engine, that is the property of another, and he or she:

(a) Alters the motor vehicle for the purpose of changing its appearance or primary identification, including obscuring, removing, or changing the manufacturer's serial number or the vehicle identification number plates;

(b) Removes, or participates in the removal of, parts from the motor vehicle with the intent to sell the parts;

(c) Exports, or attempts to export, the motor vehicle across state lines or out of the United States for profit;

(d) Intends to sell the motor vehicle; or

(e) Is engaged in a conspiracy and the central object of the conspiratorial agreement is the theft of motor vehicles for sale to others for profit or is engaged in a conspiracy and has solicited a juvenile to participate in the theft of a motor vehicle.

(2) Taking a motor vehicle without permission in the first degree is a class B felony. [2007 c 199 § 16; 2003 c 53 § 72; 2002 c 324 § 1; 1975 1st ex.s. c 260 § 9A.56.070.]

Findings—Intent—Short title—2007 c 199: See notes following RCW 9A.56.065.

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

Study and report—2002 c 324: "The sentencing guidelines commission shall study the impact of the sentencing changes in this act upon the incidence of the crime of taking a motor vehicle without permission. By December 2004, the commission shall submit a report to the governor and the legislature. The report shall address:

(1) Whether the creation of the crime of taking a motor vehicle without permission in the first degree and the increased penalties for that new crime have resulted in a reduction in the number of convictions for taking a motor vehicle without permission in the first or second degree; and

(2) Whether there are other actions, either civil or criminal, that could have the effect of further decreasing the incidence of these crimes, including but not limited to: The revocation of driving privileges, double scoring of prior convictions, or increasing penalties for juveniles." [2002 c 324 § 4.]

9A.56.078 Motor vehicle crimes—Civil action. (1) A person who is deprived of his or her motor vehicle because of a violation of RCW 9A.56.030, 9A.56.040, 9A.56.070, or 9A.56.075 may file an action in superior court against the perpetrator for the recovery of actual damages, limited to the value of any damage to the vehicle and any property stolen from the vehicle, civil damages of up to five thousand dollars, and the costs of the suit, including reasonable attorneys' fees.

(2)(a) Except as provided in (b) of this subsection, service of any summons or other process under this section shall be by personal service.

(b)(i) If the defendant cannot be found after a due and diligent search, the defendant's violation of RCW 9A.56.030, 9A.56.040, 9A.56.070, or 9A.56.075 shall be deemed to constitute an appointment by the defendant of the secretary of state of the state of Washington to be his or her true and lawful attorney upon whom may be served all lawful summons and processes against him or her under this section. The plaintiff shall perform the service allowed under this subsection (2)(b)(i) by leaving two copies of the summons or other process with the secretary of state or at the secretary of state's office. Service in this manner constitutes sufficient and valid personal service upon the defendant.

(ii) After performing service under (b)(i) of this subsection, the plaintiff shall promptly send notice of service under (b)(i) of this subsection and a copy of the summons or process to the defendant by registered mail, with return receipt requested, to the defendant's last known address. After complying with this subsection (2)(b)(ii), the plaintiff shall file the following with the secretary of state to be attached to the summons or process filed under (b)(i) of this subsection:

(A) An affidavit from the plaintiff attesting to compliance with (b)(ii) of this subsection; and

(B) An affidavit from the plaintiff's attorney that he or she has, with due diligence, attempted to serve personal process upon the defendant at all addresses known to him or her and listing the addresses at which he or she attempted to personally serve the defendant. However, if the defendant's endorsed return receipt is received, then the affidavit need only show that the defendant received personal service by mail.

(iii) The secretary of state shall send, by prepaid mail, a copy of the summons or process received under (b)(i) of this subsection to the defendant's address, if known. The secretary of state shall keep a record that shows the day of service of all summons and processes made under (b)(i) of this subsection.

(iv) The court in which an action is brought under this section may order continuances as may be necessary to afford the defendant a reasonable opportunity to defend the action.

(v) The secretary of state may charge a fee for his or her services under (b) of this subsection. The fee shall be part of the costs of suit that may be awarded to the plaintiff.

(3) The department of licensing shall suspend the driver's license or driving privilege of a defendant until any monetary obligation imposed under subsection (1) of this section is paid in full, unless the defendant has entered into a payment plan under subsection (4) of this section.

(4) If the court determines that a person is not able to pay a monetary obligation made under subsection (1) of this section in full, the court may enter into a payment plan with the person. If the person fails to meet the obligations of the payment plan, the court may modify or revoke the plan and order the defendant to pay the obligation in full. If the court revokes the plan, it shall notify the department of licensing and the department of licensing shall suspend the driver's license or driving privilege of the defendant until the monetary obligation is paid in full.

(5) The court shall notify the department of licensing when the monetary obligation of a defendant whose license is suspended under this section is paid in full. [2007 c 393 § 1.]

9A.56.096 Theft of rental, leased, lease-purchased, or loaned property. (1) A person who, with intent to deprive the owner or owner's agent, wrongfully obtains, or exerts unauthorized control over, or by color or aid of deception gains control of personal property that is rented, leased, or loaned by written agreement to the person, is guilty of theft of rental, leased, lease-purchased, or loaned property.

(2) The finder of fact may presume intent to deprive if the finder of fact finds either of the following:

(a) That the person who rented or leased the property failed to return or make arrangements acceptable to the owner of the property or the owner's agent to return the property to the owner or the owner's agent within seventy-two hours after receipt of proper notice following the due date of the rental, lease, lease-purchase, or loan agreement; or

(b) That the renter, lessee, or borrower presented identification to the owner or the owner's agent that was materially false, fictitious, or not current with respect to name, address, place of employment, or other appropriate items.

(3) As used in subsection (2) of this section, "proper notice" consists of a written demand by the owner or the owner's agent made after the due date of the rental, lease, lease-purchase, or loan period, mailed by certified or registered mail to the renter, lessee, or borrower at: (a) The address the renter, lessee, or borrower gave when the contract was made; or (b) the renter, lessee, or borrower's last known address if later furnished in writing by the renter, lessee, borrower, or the agent of the renter, lessee, or borrower.

(4) The replacement value of the property obtained must be utilized in determining the amount involved in the theft of rental, leased, lease-purchased, or loaned property.

(5)(a) Theft of rental, leased, lease-purchased, or loaned property is a class B felony if the rental, leased, lease-purchased, or loaned property is valued at one thousand five hundred dollars or more.

(b) Theft of rental, leased, lease-purchased, or loaned property is a class C felony if the rental, leased, lease-purchased, or loaned property is valued at two hundred fifty dollars or more but less than one thousand five hundred dollars.

(c) Theft of rental, leased, lease-purchased, or loaned property is a gross misdemeanor if the rental, leased, lease-purchased, or loaned property is valued at less than two hundred fifty dollars.

(6) This section applies to rental agreements that provide that the renter may return the property any time within the rental period and pay only for the time the renter actually retained the property, in addition to any minimum rental fee, to lease agreements, to lease-purchase agreements as defined under RCW 63.19.010, and to vehicles loaned to prospective purchasers borrowing a vehicle by written agreement from a motor vehicle dealer licensed under chapter 46.70 RCW. This section does not apply to rental or leasing of real property under the residential landlord-tenant act, chapter 59.18 RCW. [2007 c 199 § 17; 2003 c 53 § 77; 1997 c 346 § 1.]

Findings—Intent—Short title—2007 c 199: See notes following RCW 9A.56.065.

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

9A.56.150 Possessing stolen property in the first degree—Other than firearm or motor vehicle. (1) A person is guilty of possessing stolen property in the first degree if he or she possesses stolen property, other than a firearm as defined in RCW 9.41.010 or a motor vehicle, which exceeds one thousand five hundred dollars in value.

(2) Possessing stolen property in the first degree is a class B felony. [2007 c 199 § 6; 1995 c 129 § 14 (Initiative Measure No. 159); 1975 1st ex.s. c 260 § 9A.56.150.]

Findings—Intent—Short title—2007 c 199: See notes following RCW 9A.56.065.

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

9A.56.160 Possessing stolen property in the second degree—Other than firearm or motor vehicle. (1) A person is guilty of possessing stolen property in the second degree if:

(a) He or she possesses stolen property, other than a firearm as defined in RCW 9.41.010 or a motor vehicle, which exceeds two hundred fifty dollars in value but does not exceed one thousand five hundred dollars in value; or

(b) He or she possesses a stolen public record, writing or instrument kept, filed, or deposited according to law; or

(c) He or she possesses a stolen access device.

(2) Possessing stolen property in the second degree is a class C felony. [2007 c 199 § 7; 1995 c 129 § 15 (Initiative Measure No. 159); 1994 sp.s. c 7 § 434; 1987 c 140 § 4; 1975 1st ex.s. c 260 § 9A.56.160.]

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Findings—Intent—Short title—2007 c 199: See notes following RCW 9A.56.065.

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

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

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

Chapter 9A.84 RCW PUBLIC DISTURBANCE

Sections

9A.84.030 Disorderly conduct.

9A.84.030 Disorderly conduct. (1) A person is guilty of disorderly conduct if the person:

(a) Uses abusive language and thereby intentionally creates a risk of assault;

(b) Intentionally disrupts any lawful assembly or meeting of persons without lawful authority;

(c) Intentionally obstructs vehicular or pedestrian traffic without lawful authority; or

(d)(i) Intentionally engages in fighting or in tumultuous conduct or makes unreasonable noise, within five hundred feet of:

(A) The location where a funeral or burial is being performed;

(B) A funeral home during the viewing of a deceased person;

(C) A funeral procession, if the person described in this subsection (1)(d) knows that the funeral procession is taking place; or

(D) A building in which a funeral or memorial service is being conducted; and

(ii) Knows that the activity adversely affects the funeral, burial, viewing, funeral procession, or memorial service.

(2) Disorderly conduct is a misdemeanor. [2007 c 2 § 1; 1975 1st ex.s. c 260 § 9A.84.030.]

Effective date—2007 c 2: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately [February 2, 2007]." [2007 c 2 § 2.]

Chapter 9A.88 RCW INDECENT EXPOSURE—PROSTITUTION

Sections

9A.88.070 Promoting prostitution in the first degree.

9A.88.120 Additional fee assessments.

9A.88.140 Vehicle impoundment.

9A.88.070 Promoting prostitution in the first degree.

(1) A person is guilty of promoting prostitution in the first degree if he or she knowingly advances prostitution by compelling a person by threat or force to engage in prostitution or profits from prostitution which results from such threat or force.

(2) Promoting prostitution in the first degree is a class B felony. [2007 c 368 § 13; 1975 1st ex.s. c 260 § 9A.88.070.]

9A.88.120 Additional fee assessments. (1)(a) In addition to penalties set forth in RCW 9A.88.010, 9A.88.030, and 9A.88.090, a person who is either convicted or given a deferred sentence or a deferred prosecution or who has entered into a statutory or nonstatutory diversion agreement as a result of an arrest for violating RCW 9A.88.010, 9A.88.030, 9A.88.090, or comparable county or municipal ordinances shall be assessed a fifty dollar fee.

(b) In addition to penalties set forth in RCW 9A.88.110, a person who is either convicted or given a deferred sentence or a deferred prosecution or who has entered into a statutory or nonstatutory diversion agreement as a result of an arrest for violating RCW 9A.88.110 or a comparable county or municipal ordinance shall be assessed a one hundred fifty dollar fee.

(c) In addition to penalties set forth in RCW 9A.88.070 and 9A.88.080, a person who is either convicted or given a deferred sentence or a deferred prosecution or who has entered into a statutory or nonstatutory diversion agreement as a result of an arrest for violating RCW 9A.88.070, 9A.88.080, or comparable county or municipal ordinances shall be assessed a three hundred dollar fee.

(2) The court may not suspend payment of all or part of the fee unless it finds that the person does not have the ability to pay.

(3) When a minor has been adjudicated a juvenile offender or has entered into a statutory or nonstatutory diversion agreement for an offense which, if committed by an adult, would constitute a violation under this chapter or comparable county or municipal ordinances, the court shall assess the fee as specified under subsection (1) of this section. The court may not suspend payment of all or part of the fee unless it finds that the minor does not have the ability to pay the fee.

(4) Any fee assessed under this section shall be collected by the clerk of the court and distributed each month to the state treasurer for deposit in the prostitution prevention and intervention account under RCW 43.63A.740 for the purpose of funding prostitution prevention and intervention activities.

(5) For the purposes of this section:

(a) "Statutory or nonstatutory diversion agreement" means an agreement under RCW 13.40.080 or any written agreement between a person accused of an offense listed in subsection (1) of this section and a court, county, or city prosecutor, or designee thereof, whereby the person agrees to fulfill certain conditions in lieu of prosecution.

(b) "Deferred sentence" means a sentence that will not be carried out if the defendant meets certain requirements, such as complying with the conditions of probation. [2007 c 368 § 12; 1995 c 353 § 13.]

9A.88.140 Vehicle impoundment. (1) Upon an arrest for a suspected violation of patronizing a prostitute or commercial sexual abuse of a minor, the arresting law enforcement officer may impound the person's vehicle if (a) the motor vehicle was used in the commission of the crime; (b) the person arrested is the owner of the vehicle; and (c) the person arrested has previously been convicted of patronizing a prostitute, under RCW 9A.88.110, or commercial sexual abuse of a minor, under RCW 9.68A.100.

(2) Impoundments performed under this section shall be in accordance with chapter 46.55 RCW. [2007 c 368 § 8; 1999 c 327 § 3.]

Findings—Intent—1999 c 327: See note following RCW 9A.88.130.

Title 10

CRIMINAL PROCEDURE

Chapters

- 10.01** General provisions.
- 10.31** Warrants and arrests.
- 10.58** Evidence.
- 10.77** Criminally insane—Procedures.
- 10.101** Indigent defense services.

Chapter 10.01 RCW

GENERAL PROVISIONS

Sections

- 10.01.160 Costs—What constitutes—Payment by defendant—Procedure—Remission.
- 10.01.220 City attorney, county prosecutor, or other prosecuting authority—Filing a criminal charge—Contribution, donation, payment.

10.01.160 Costs—What constitutes—Payment by defendant—Procedure—Remission. (1) The court may require a defendant to pay costs. Costs may be imposed only upon a convicted defendant, except for costs imposed upon a defendant's entry into a deferred prosecution program, costs imposed upon a defendant for pretrial supervision, or costs imposed upon a defendant for preparing and serving a warrant for failure to appear.

(2) Costs shall be limited to expenses specially incurred by the state in prosecuting the defendant or in administering the deferred prosecution program under chapter 10.05 RCW or pretrial supervision. They cannot include expenses inherent in providing a constitutionally guaranteed jury trial or expenditures in connection with the maintenance and operation of government agencies that must be made by the public irrespective of specific violations of law. Expenses incurred for serving of warrants for failure to appear and jury fees under RCW 10.46.190 may be included in costs the court may require a defendant to pay. Costs for administering a deferred prosecution or pretrial supervision may not exceed one hundred fifty dollars. Costs for preparing and serving a warrant for failure to appear may not exceed one hundred dollars. Costs of incarceration imposed on a defendant convicted of a misdemeanor or a gross misdemeanor may not exceed the actual cost of incarceration. In no case may the court require the offender to pay more than one hundred dollars per day for the cost of incarceration. Payment of other court-ordered financial obligations, including all legal financial obligations and costs of supervision take precedence over the payment of the cost of incarceration ordered by the court. All funds received from defendants for the cost of incarceration in the county or city jail must be remitted for criminal justice purposes to the county or city that is responsible for the defendant's jail costs. Costs imposed constitute a judgment against a defendant and survive a dismissal of the

underlying action against the defendant. However, if the defendant is acquitted on the underlying action, the costs for preparing and serving a warrant for failure to appear do not survive the acquittal, and the judgment that such costs would otherwise constitute shall be vacated.

(3) The court shall not order a defendant to pay costs unless the defendant is or will be able to pay them. In determining the amount and method of payment of costs, the court shall take account of the financial resources of the defendant and the nature of the burden that payment of costs will impose.

(4) A defendant who has been ordered to pay costs and who is not in contumacious default in the payment thereof may at any time petition the sentencing court for remission of the payment of costs or of any unpaid portion thereof. If it appears to the satisfaction of the court that payment of the amount due will impose manifest hardship on the defendant or the defendant's immediate family, the court may remit all or part of the amount due in costs, or modify the method of payment under RCW 10.01.170. [2007 c 367 § 3; 2005 c 263 § 2; 1995 c 221 § 1; 1994 c 192 § 1; 1991 c 247 § 4; 1987 c 363 § 1; 1985 c 389 § 1; 1975-'76 2nd ex.s. c 96 § 1.]

Commitment for failure to pay fine and costs: RCW 10.70.010, 10.82.030.

Defendant liable for costs: RCW 10.64.015.

Fine and costs—Collection and disposition: Chapter 10.82 RCW.

10.01.220 City attorney, county prosecutor, or other prosecuting authority—Filing a criminal charge—Contribution, donation, payment. A city attorney, county prosecutor, or other prosecuting authority may not dismiss, amend, or agree not to file a criminal charge in exchange for a contribution, donation, or payment to any person, corporation, or organization. This does not prohibit:

(1) Contribution, donation, or payment to any specific fund authorized by state statute;

(2) The collection of costs associated with actual supervision, treatment, or collection of restitution under agreements to defer or divert; or

(3) Dismissal following payment that is authorized by any other statute. [2007 c 367 § 1.]

Chapter 10.31 RCW

WARRANTS AND ARRESTS

Sections

10.31.110 Arrest—Individuals with mental disorders.

10.31.110 Arrest—Individuals with mental disorders. (1) When a police officer has reasonable cause to believe that the individual has committed acts constituting a nonfelony crime that is not a serious offense as identified in RCW 10.77.092 and the individual is known by history or consultation with the regional support network to suffer from a mental disorder, the arresting officer may:

(a) Take the individual to a crisis stabilization unit as defined in RCW 71.05.020(6). Individuals delivered to a crisis stabilization unit pursuant to this section may be held by the facility for a period of up to twelve hours: PROVIDED, that they are examined by a mental health professional within three hours of their arrival;

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(b) Refer the individual to a mental health professional for evaluation for initial detention and proceeding under chapter 71.05 RCW; or

(c) Release the individual upon agreement to voluntary participation in outpatient treatment.

(2) In deciding whether to refer the individual to treatment under this section, the police officer shall be guided by standards mutually agreed upon with the prosecuting authority, which address, at a minimum, the length, seriousness, and recency of the known criminal history of the individual, the mental health history of the individual, where available, and the circumstances surrounding the commission of the alleged offense.

(3) Any agreement to participate in treatment shall not require individuals to stipulate to any of the alleged facts regarding the criminal activity as a prerequisite to participation in a mental health treatment alternative. The agreement is inadmissible in any criminal or civil proceeding. The agreement does not create immunity from prosecution for the alleged criminal activity.

(4) If an individual violates such agreement and the mental health treatment alternative is no longer appropriate:

(a) The mental health provider shall inform the referring law enforcement agency of the violation; and

(b) The original charges may be filed or referred to the prosecutor, as appropriate, and the matter may proceed accordingly.

(5) The police officer is immune from liability for any good faith conduct under this section. [2007 c 375 § 2.]

Findings—Purpose—2007 c 375: "The legislature finds that *RCW 10.77.090 contains laws relating to three discrete subjects. Therefore, one purpose of this act is to reorganize some of those laws by creating new sections in the Revised Code of Washington that clarify and identify these discrete subjects.

The legislature further finds that there are disproportionate numbers of individuals with mental illness in jail. The needs of individuals with mental illness and the public safety needs of society at large are better served when individuals with mental illness are provided an opportunity to obtain treatment and support." [2007 c 375 § 1.]

***Reviser's note:** RCW 10.77.090 was repealed by 2007 c 375 § 17. For later enactment, see RCW 10.77.084, 10.77.086, and 10.77.088.

Construction—2007 c 375: "Nothing in this act shall be construed to alter or diminish a prosecutor's inherent authority to divert or pursue the prosecution of criminal offenders." [2007 c 375 § 16.]

Severability—2007 c 375: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [2007 c 375 § 18.]

Chapter 10.58 RCW

EVIDENCE

Sections

10.58.038 Polygraph examinations—Victims of alleged sex offenses.

10.58.038 Polygraph examinations—Victims of alleged sex offenses. A law enforcement officer, prosecuting attorney, or other government official may not ask or require a victim of an alleged sex offense to submit to a polygraph examination or other truth telling device as a condition for proceeding with the investigation of the offense. The refusal of a victim to submit to a polygraph examination or other truth telling device shall not by itself prevent the investiga-

tion, charging, or prosecution of the offense. For the purposes of this section, "sex offense" is any offense under chapter 9A.44 RCW. [2007 c 202 § 1.]

Chapter 10.77 RCW

CRIMINALLY INSANE—PROCEDURES

Sections

10.77.084	Stay of proceedings—Findings—Evaluation, treatment—Restoration of competency—Commitment—Other procedures.
10.77.086	Commitment—Procedure in felony charge.
10.77.088	Placement—Procedure in nonfelony charge.
10.77.090	Repealed.

10.77.084 Stay of proceedings—Findings—Evaluation, treatment—Restoration of competency—Commitment—Other procedures. (1)(a) If at any time during the pendency of an action and prior to judgment the court finds, following a report as provided in RCW 10.77.060, a defendant is incompetent, the court shall order the proceedings against the defendant be stayed except as provided in subsection (4) of this section.

(b) A defendant found incompetent shall be evaluated at the direction of the secretary and a determination made whether the defendant is an individual with a developmental disability. Such evaluation and determination shall be accomplished as soon as possible following the court's placement of the defendant in the custody of the secretary.

(i) When appropriate, and subject to available funds, if the defendant is determined to be an individual with a developmental disability, he or she may be placed in a program specifically reserved for the treatment and training of persons with developmental disabilities where the defendant shall have the right to habilitation according to an individualized service plan specifically developed for the particular needs of the defendant. A copy of the evaluation shall be sent to the program.

(A) The program shall be separate from programs serving persons involved in any other treatment or habilitation program.

(B) The program shall be appropriately secure under the circumstances and shall be administered by developmental disabilities professionals who shall direct the habilitation efforts.

(C) The program shall provide an environment affording security appropriate with the charged criminal behavior and necessary to protect the public safety.

(ii) The department may limit admissions of such persons to this specialized program in order to ensure that expenditures for services do not exceed amounts appropriated by the legislature and allocated by the department for such services.

(iii) The department may establish admission priorities in the event that the number of eligible persons exceeds the limits set by the department.

(c) At the end of the mental health treatment and restoration period, or at any time a professional person determines competency has been, or is unlikely to be, restored, the defendant shall be returned to court for a hearing. If, after notice and hearing, competency has been restored, the stay entered under (a) of this subsection shall be lifted. If competency has

not been restored, the proceedings shall be dismissed. If the court concludes that competency has not been restored, but that further treatment within the time limits established by RCW 10.77.086 or 10.77.088 is likely to restore competency, the court may order that treatment for purposes of competency restoration be continued. Such treatment may not extend beyond the combination of time provided for in RCW 10.77.086 or 10.77.088.

(d) If at any time during the proceeding the court finds, following notice and hearing, a defendant is not likely to regain competency, the proceedings shall be dismissed and the defendant shall be evaluated for civil commitment proceedings.

(2) If the defendant is referred to the designated mental health professional for consideration of initial detention proceedings under chapter 71.05 RCW pursuant to this chapter, the designated mental health professional shall provide prompt written notification of the results of the determination whether to commence initial detention proceedings under chapter 71.05 RCW and whether the person was detained. The notification shall be provided to the court in which the criminal action was pending, the prosecutor, the defense attorney in the criminal action, and the facility that evaluated the defendant for competency.

(3) The fact that the defendant is unfit to proceed does not preclude any pretrial proceedings which do not require the personal participation of the defendant.

(4) A defendant receiving medication for either physical or mental problems shall not be prohibited from standing trial, if the medication either enables the defendant to understand the proceedings against him or her and to assist in his or her own defense, or does not disable him or her from so understanding and assisting in his or her own defense.

(5) At or before the conclusion of any commitment period provided for by this section, the facility providing evaluation and treatment shall provide to the court a written report of examination which meets the requirements of RCW 10.77.060(3). [2007 c 375 § 3.]

Findings—Purpose—Construction—Severability—2007 c 375: See notes following RCW 10.31.110.

Captions not law—2007 c 375: "Captions used in this act are not any part of the law." [2007 c 375 § 19.]

10.77.086 Commitment—Procedure in felony charge. (1) If the defendant is charged with a felony and determined to be incompetent, until he or she has regained the competency necessary to understand the proceedings against him or her and assist in his or her own defense, or has been determined unlikely to regain competency pursuant to RCW 10.77.084(1)(c), but in any event for a period of no longer than ninety days, the court:

(a) Shall commit the defendant to the custody of the secretary who shall place such defendant in an appropriate facility of the department for evaluation and treatment; or

(b) May alternatively order the defendant to undergo evaluation and treatment at some other facility as determined by the department, or under the guidance and control of a professional person.

(2) On or before expiration of the initial ninety-day period of commitment under subsection (1) of this section the

court shall conduct a hearing, at which it shall determine whether or not the defendant is incompetent.

(3) If the court finds by a preponderance of the evidence that a defendant charged with a felony is incompetent, the court shall have the option of extending the order of commitment or alternative treatment for an additional ninety-day period, but the court must at the time of extension set a date for a prompt hearing to determine the defendant's competency before the expiration of the second ninety-day period. The defendant, the defendant's attorney, or the prosecutor has the right to demand that the hearing be before a jury. No extension shall be ordered for a second ninety-day period, nor for any subsequent period as provided in subsection (4) of this section, if the defendant's incompetence has been determined by the secretary to be solely the result of a developmental disability which is such that competence is not reasonably likely to be regained during an extension.

(4) For persons charged with a felony, at the hearing upon the expiration of the second ninety-day period or at the end of the first ninety-day period, in the case of a defendant with a developmental disability, if the jury or court finds that the defendant is incompetent, the charges shall be dismissed without prejudice, and either civil commitment proceedings shall be instituted or the court shall order the release of the defendant. The criminal charges shall not be dismissed if the court or jury finds that: (a) The defendant (i) is a substantial danger to other persons; or (ii) presents a substantial likelihood of committing criminal acts jeopardizing public safety or security; and (b) there is a substantial probability that the defendant will regain competency within a reasonable period of time. In the event that the court or jury makes such a finding, the court may extend the period of commitment for up to an additional six months. [2007 c 375 § 4.]

Findings—Purpose—Construction—Severability—2007 c 375: See notes following RCW 10.31.110.

Captions not law—2007 c 375: See note following RCW 10.77.084.

10.77.088 Placement—Procedure in nonfelony charge. (1)(a) If the defendant is charged with a nonfelony crime which is a serious offense as identified in RCW 10.77.092 and found by the court to be not competent, then the court shall order the secretary to place the defendant:

(i) At a secure mental health facility in the custody of the department or an agency designated by the department for mental health treatment and restoration of competency. The placement shall not exceed fourteen days in addition to any unused time of the evaluation under RCW 10.77.060. The court shall compute this total period and include its computation in the order. The fourteen-day period plus any unused time of the evaluation under RCW 10.77.060 shall be considered to include only the time the defendant is actually at the facility and shall be in addition to reasonable time for transport to or from the facility;

(ii) On conditional release for up to ninety days for mental health treatment and restoration of competency; or

(iii) Any combination of this subsection.

(b)(i) If the proceedings are dismissed under RCW 10.77.084 and the defendant was on conditional release at the time of dismissal, the court shall order the designated mental health professional within that county to evaluate the defen-

dant pursuant to chapter 71.05 RCW. The evaluation may be conducted in any location chosen by the professional.

(ii) If the defendant was in custody and not on conditional release at the time of dismissal, the defendant shall be detained and sent to an evaluation and treatment facility for up to seventy-two hours, excluding Saturdays, Sundays, and holidays, for evaluation for purposes of filing a petition under chapter 71.05 RCW. The seventy-two-hour period shall commence upon the next nonholiday weekday following the court order and shall run to the end of the last nonholiday weekday within the seventy-two-hour period.

(2) If the defendant is charged with a nonfelony crime that is not a serious offense as defined in RCW 10.77.092:

The court may stay or dismiss proceedings and detain the defendant for sufficient time to allow the designated mental health professional to evaluate the defendant and consider initial detention proceedings under chapter 71.05 RCW. The court must give notice to all parties at least twenty-four hours before the dismissal of any proceeding under this subsection, and provide an opportunity for a hearing on whether to dismiss the proceedings. [2007 c 375 § 5.]

Findings—Purpose—Construction—Severability—2007 c 375: See notes following RCW 10.31.110.

Captions not law—2007 c 375: See note following RCW 10.77.084.

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

Chapter 10.101 RCW INDIGENT DEFENSE SERVICES

Sections

10.101.080 City moneys.

10.101.080 City moneys. The moneys under RCW 10.101.050 shall be distributed to each city determined to be eligible under this section by the office of public defense. Ten percent of the funding appropriated shall be designated as "city moneys" and distributed as follows:

(1) The office of public defense shall administer a grant program to select the cities eligible to receive city moneys. Incorporated cities may apply for grants. Applying cities must conform to the requirements of RCW 10.101.050 and 10.101.060.

(2) City moneys shall be distributed in a timely manner to accomplish the goals of the grants.

(3) Criteria for award of grants shall be established by the office of public defense after soliciting input from the association of Washington cities. Award of the grants shall be determined by the office of public defense. [2007 c 59 § 1; 2005 c 157 § 6.]

Title 11

PROBATE AND TRUST LAW

Chapters

11.02 General provisions.

11.04 Descent and distribution.

11.05 Uniform simultaneous death act.

- 11.05A Uniform simultaneous death act.
 11.07 Nonprobate assets on dissolution or invalidation of marriage.
 11.12 Wills.
 11.24 Will contests.
 11.28 Letters testamentary and of administration.
 11.94 Power of attorney.
 11.96A Trust and estate dispute resolution.

**Chapter 11.02 RCW
 GENERAL PROVISIONS**

Sections

- 11.02.005 Definitions and use of terms.

11.02.005 Definitions and use of terms. When used in this title, unless otherwise required from the context:

(1) "Personal representative" includes executor, administrator, special administrator, and guardian or limited guardian and special representative.

(2) "Net estate" refers to the real and personal property of a decedent exclusive of homestead rights, exempt property, the family allowance and enforceable claims against, and debts of, the deceased or the estate.

(3) "Representation" refers to a method of determining distribution in which the takers are in unequal degrees of kinship with respect to a decedent, and is accomplished as follows: After first determining who, of those entitled to share in the estate, are in the nearest degree of kinship, the estate is divided into equal shares, the number of shares being the sum of the number of persons who survive the decedent who are in the nearest degree of kinship and the number of persons in the same degree of kinship who died before the decedent but who left issue surviving the decedent; each share of a deceased person in the nearest degree shall be divided among those of the deceased person's issue who survive the decedent and have no ancestor then living who is in the line of relationship between them and the decedent, those more remote in degree taking together the share which their ancestor would have taken had he or she survived the decedent.

(4) "Issue" means all the lineal descendants of an individual. An adopted individual is a lineal descendant of each of his or her adoptive parents and of all individuals with regard to which each adoptive parent is a lineal descendant. A child conceived prior to the death of a parent but born after the death of the deceased parent is considered to be the surviving issue of the deceased parent for purposes of this title.

(5) "Degree of kinship" means the degree of kinship as computed according to the rules of the civil law; that is, by counting upward from the intestate to the nearest common ancestor and then downward to the relative, the degree of kinship being the sum of these two counts.

(6) "Heirs" denotes those persons, including the surviving spouse, who are entitled under the statutes of intestate succession to the real and personal property of a decedent on the decedent's death intestate.

(7) "Real estate" includes, except as otherwise specifically provided herein, all lands, tenements, and hereditaments, and all rights thereto, and all interest therein possessed and claimed in fee simple, or for the life of a third person.

(8) "Will" means an instrument validly executed as required by RCW 11.12.020.

(9) "Codicil" means a will that modifies or partially revokes an existing earlier will. A codicil need not refer to or be attached to the earlier will.

(10) "Guardian" or "limited guardian" means a personal representative of the person or estate of an incompetent or disabled person as defined in RCW 11.88.010 and the term may be used in lieu of "personal representative" wherever required by context.

(11) "Administrator" means a personal representative of the estate of a decedent and the term may be used in lieu of "personal representative" wherever required by context.

(12) "Executor" means a personal representative of the estate of a decedent appointed by will and the term may be used in lieu of "personal representative" wherever required by context.

(13) "Special administrator" means a personal representative of the estate of a decedent appointed for limited purposes and the term may be used in lieu of "personal representative" wherever required by context.

(14) "Trustee" means an original, added, or successor trustee and includes the state, or any agency thereof, when it is acting as the trustee of a trust to which chapter 11.98 RCW applies.

(15) "Nonprobate asset" means those rights and interests of a person having beneficial ownership of an asset that pass on the person's death under a written instrument or arrangement other than the person's will. "Nonprobate asset" includes, but is not limited to, a right or interest passing under a joint tenancy with right of survivorship, joint bank account with right of survivorship, payable on death or trust bank account, transfer on death security or security account, deed or conveyance if possession has been postponed until the death of the person, trust of which the person is grantor and that becomes effective or irrevocable only upon the person's death, community property agreement, individual retirement account or bond, or note or other contract the payment or performance of which is affected by the death of the person. "Nonprobate asset" does not include: A payable-on-death provision of a life insurance policy, annuity, or other similar contract, or of an employee benefit plan; a right or interest passing by descent and distribution under chapter 11.04 RCW; a right or interest if, before death, the person has irrevocably transferred the right or interest, the person has waived the power to transfer it or, in the case of contractual arrangement, the person has waived the unilateral right to rescind or modify the arrangement; or a right or interest held by the person solely in a fiduciary capacity. For the definition of "nonprobate asset" relating to revocation of a provision for a former spouse upon dissolution of marriage or declaration of invalidity of marriage, RCW 11.07.010(5) applies. For the definition of "nonprobate asset" relating to revocation of a provision for a former spouse upon dissolution of marriage or declaration of invalidity of marriage, see RCW 11.07.010(5). For the definition of "nonprobate asset" relating to testamentary disposition of nonprobate assets, see RCW 11.11.010(7).

(16) "Internal Revenue Code" means the United States Internal Revenue Code of 1986, as amended or renumbered as of January 1, 2001.

(17) References to "section 2033A" of the Internal Revenue Code in wills, trust agreements, powers of appointment, beneficiary designations, and other instruments governed by or subject to this title shall be deemed to refer to the comparable or corresponding provisions of section 2057 of the Internal Revenue Code, as added by section 6006(b) of the Internal Revenue Service Restructuring Act of 1998 (H.R. 2676, P.L. 105-206); and references to the section 2033A "exclusion" shall be deemed to mean the section 2057 deduction.

(18) "Surviving spouse" does not include an individual whose marriage to the decedent has been dissolved or invalidated unless, by virtue of a subsequent marriage, he or she is married to the decedent at the time of death. A decree of separation that does not terminate the status of husband and wife is not a dissolution or invalidation for purposes of this subsection.

Words that import the singular number may also be applied to the plural of persons and things.

Words importing the masculine gender only may be extended to females also. [2007 c 475 § 1; 2005 c 97 § 1; 2001 c 320 § 1; 2000 c 130 § 1; 1999 c 358 § 20; 1998 c 292 § 117; 1997 c 252 § 1; 1994 c 221 § 1; 1993 c 73 § 1; 1985 c 30 § 4. Prior: 1984 c 149 § 4; 1977 ex.s. c 80 § 14; 1975-'76 2nd ex.s. c 42 § 23; 1965 c 145 § 11.02.005. Former RCW sections: Subd. (3), RCW 11.04.110; subd. (4), RCW 11.04.010; subd. (5), RCW 11.04.100; subd. (6), RCW 11.04.280; subd. (7), RCW 11.04.010; subd. (8) and (9), RCW 11.12.240; subd. (14) and (15), RCW 11.02.040.]

Severability—2007 c 475: See RCW 11.05A.903.

Effective date—2001 c 320: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect July 1, 2001." [2001 c 320 § 22.]

Application—2000 c 130: "Section 1 of this act applies to decedents dying after December 31, 1997." [2000 c 130 § 2.]

Effective date—1999 c 358 §§ 1 and 3-21: See note following RCW 82.04.3651.

Part headings and section captions not law—Effective dates—1998 c 292: See RCW 11.11.902 and 11.11.903.

Application—1997 c 252: "Sections 1 through 72, chapter 252, Laws of 1997 apply to estates of decedents dying after December 31, 1997. Sections 81 through 86, chapter 252, Laws of 1997 apply to all estates, trusts, and governing instruments in existence on or at any time after March 7, 1984, and to all proceedings with respect thereto after March 7, 1984, whether the proceedings commenced before or after March 7, 1984, and including distributions made after March 7, 1984. Sections 81 through 86, chapter 252, Laws of 1997 do not apply to any governing instrument, the terms of which expressly or by necessary implication make the application of sections 81 through 86, chapter 252, Laws of 1997 inapplicable. The judicial and nonjudicial dispute resolution procedures of chapter 11.96 RCW apply to sections 81 through 86, chapter 252, Laws of 1997." [1998 c 292 § 205; 1997 c 252 § 89.]

Effective dates—1994 c 221: See note following RCW 11.94.070.

Short title—Application—Purpose—Severability—1985 c 30: See RCW 11.02.900 through 11.02.903.

Severability—1984 c 149: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1984 c 149 § 181.]

Effective dates—1984 c 149: "This act is necessary for the immediate preservation of the public peace, health, and safety, the support of the state government and its existing public institutions, and shall take effect immediately [March 7, 1984], except sections 1 through 98, 100 through 138, and

147 through 178 of this act which shall take effect January 1, 1985." [1984 c 149 § 180.]

Purpose—Intent—Severability—1977 ex.s. c 80: See notes following RCW 4.16.190.

Effect of decree of adoption: RCW 26.33.260.

Kindred of the half blood: RCW 11.04.035.

Chapter 11.04 RCW DESCENT AND DISTRIBUTION

Sections

11.04.015 Descent and distribution of real and personal estate.

11.04.015 Descent and distribution of real and personal estate. The net estate of a person dying intestate, or that portion thereof with respect to which the person shall have died intestate, shall descend subject to the provisions of RCW 11.04.250 and 11.02.070, and shall be distributed as follows:

(1) Share of surviving spouse or state registered domestic partner. The surviving spouse or state registered domestic partner shall receive the following share:

(a) All of the decedent's share of the net community estate; and

(b) One-half of the net separate estate if the intestate is survived by issue; or

(c) Three-quarters of the net separate estate if there is no surviving issue, but the intestate is survived by one or more of his parents, or by one or more of the issue of one or more of his parents; or

(d) All of the net separate estate, if there is no surviving issue nor parent nor issue of parent.

(2) Shares of others than surviving spouse or state registered domestic partner. The share of the net estate not distributable to the surviving spouse or state registered domestic partner, or the entire net estate if there is no surviving spouse or state registered domestic partner, shall descend and be distributed as follows:

(a) To the issue of the intestate; if they are all in the same degree of kinship to the intestate, they shall take equally, or if of unequal degree, then those of more remote degree shall take by representation.

(b) If the intestate not be survived by issue, then to the parent or parents who survive the intestate.

(c) If the intestate not be survived by issue or by either parent, then to those issue of the parent or parents who survive the intestate; if they are all in the same degree of kinship to the intestate, they shall take equally, or, if of unequal degree, then those of more remote degree shall take by representation.

(d) If the intestate not be survived by issue or by either parent, or by any issue of the parent or parents who survive the intestate, then to the grandparent or grandparents who survive the intestate; if both maternal and paternal grandparents survive the intestate, the maternal grandparent or grandparents shall take one-half and the paternal grandparent or grandparents shall take one-half.

(e) If the intestate not be survived by issue or by either parent, or by any issue of the parent or parents or by any grandparent or grandparents, then to those issue of any grandparent or grandparents who survive the intestate; taken as a

group, the issue of the maternal grandparent or grandparents shall share equally with the issue of the paternal grandparent or grandparents, also taken as a group; within each such group, all members share equally if they are all in the same degree of kinship to the intestate, or, if some be of unequal degree, then those of more remote degree shall take by representation. [2007 c 156 § 27; 1974 ex.s. c 117 § 6; 1967 c 168 § 2; 1965 ex.s. c 55 § 1; 1965 c 145 § 11.04.015. Formerly RCW 11.04.020, 11.04.030, 11.04.050.]

Application, construction—Severability—Effective date—1974 ex.s. c 117: See RCW 11.02.080 and notes following.

Appropriation to pay debts and expenses: Chapter 11.10 RCW.

Community property

disposition: RCW 11.02.070.

generally: Chapter 26.16 RCW.

Escheats: Chapter 11.08 RCW.

"Net estate" defined: RCW 11.02.005(2).

Payment of claims where estate insufficient: RCW 11.76.150.

Priority of sale, etc., as between realty and personalty: Chapter 11.10 RCW.

Chapter 11.05 RCW

UNIFORM SIMULTANEOUS DEATH ACT (Later enactment, see chapter 11.05A RCW)

Sections

11.05.010 through 11.05.050 Repealed.
11.05.900 Repealed.
11.05.910 Repealed.

11.05.010 through 11.05.050 Repealed. See Supplementary Table of Disposition of Former RCW Sections, this volume.

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

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

Chapter 11.05A RCW

UNIFORM SIMULTANEOUS DEATH ACT

Sections

11.05A.010 Definitions.
11.05A.020 Minimum survival requirement—Probate code.
11.05A.030 Minimum survival requirement—Governing instruments.
11.05A.040 Minimum survival requirement—Co-owners.
11.05A.050 Evidence of death or status.
11.05A.060 Exceptions.
11.05A.070 Liability.
11.05A.900 Application—Construction.
11.05A.901 Short title.
11.05A.902 Captions not law.
11.05A.903 Severability—2007 c 475.
11.05A.904 Application.

11.05A.010 Definitions. The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

(1) "Co-owners with right of survivorship" includes joint tenants, tenants by the entireties, and other co-owners of property or accounts held under circumstances that entitle

one or more to the whole of the property or account on the death of the other or others.

(2) "Governing instrument" means a deed, will, trust, insurance or annuity policy, account with pay on death designation, pension, profit-sharing, retirement, or similar benefit plan, instrument creating or exercising a power of appointment or a power of attorney, or a dispositive, appointive, or nominative instrument of any similar type.

(3) "Payor" means a trustee, insurer, business entity, employer, government, governmental agency, subdivision, or instrumentality, or any other person authorized or obligated by law or a governing instrument to make payments.

(4) "POD" means pay on death.

(5) "TOD" means transfer on death. [2007 c 475 § 7.]

11.05A.020 Minimum survival requirement—Probate code. Except as provided in RCW 11.05A.060 and except for the purposes of the uniform TOD security registration act, if the title to property, the devolution of property, the right to elect an interest in property, or the right to exempt property, homestead, or family allowance depends upon an individual's survivorship of the death of another individual, an individual who is not established by clear and convincing evidence to have survived the other individual by one hundred twenty hours is deemed to have predeceased the other individual. This section does not apply if its application would result in a taking of intestate estate by the state. [2007 c 475 § 8.]

11.05A.030 Minimum survival requirement—Governing instruments. Except as provided in RCW 11.05A.060 and except for a security registered in beneficiary form (TOD) under the Uniform TOD Security Registration Act, for purposes of a provision of a governing instrument that relates to an individual surviving an event, including the death of another individual, an individual who is not established by clear and convincing evidence to have survived the event by one hundred twenty hours is deemed to have predeceased the event. [2007 c 475 § 9.]

11.05A.040 Minimum survival requirement—Co-owners. Except as provided in RCW 11.05A.060, if (1) it is not established by clear and convincing evidence that one of two co-owners with right of survivorship survived the other co-owner by one hundred twenty hours, one-half of the property passes as if one had survived by one hundred twenty hours and one-half as if the other had survived by one hundred twenty hours, and (2) there are more than two co-owners and it is not established by clear and convincing evidence that at least one of them survived the others by one hundred twenty hours, the property passes in the proportion that one bears to the whole number of co-owners. [2007 c 475 § 10.]

11.05A.050 Evidence of death or status. In addition to the rules of evidence in courts of general jurisdiction, the following rules relating to a determination of death and status apply:

(1) Death occurs when an individual is determined to be dead by the attending physician, county coroner, or county medical officer.

(2) A certified or authenticated copy of a death certificate purporting to be issued by an official or agency of the place where the death purportedly occurred is prima facie evidence of the fact, place, date, and time of death and the identity of the decedent.

(3) A certified or authenticated copy of any record or report of a governmental agency, domestic or foreign, that an individual is missing, detained, dead, or alive is prima facie evidence of the status and of the dates, circumstances, and places disclosed by the record or report.

(4) In the absence of prima facie evidence of death under subsection (2) or (3) of this section, the fact of death may be established by clear and convincing evidence, including circumstantial evidence.

(5) An individual whose death is not established under this section who is absent for a continuous period of seven years, during which he or she has not been heard from, and whose absence is not satisfactorily explained after diligent search or inquiry, is presumed to be dead. His or her death is presumed to have occurred at the end of the period unless there is sufficient evidence for determining that death occurred earlier.

(6) In the absence of evidence disputing the time of death stipulated on a document described in subsection (2) or (3) of this section, a document described in subsection (2) or (3) of this section that stipulates a time of death one hundred twenty hours or more after the time of death of another individual, however the time of death of the other individual is determined, establishes by clear and convincing evidence that the individual survived the other individual by one hundred twenty hours. [2007 c 475 § 11.]

11.05A.060 Exceptions. This chapter does not apply if:

(1) The governing instrument contains language dealing explicitly with simultaneous deaths or deaths in a common disaster and that language is operable under the facts of the case;

(2) The governing instrument expressly indicates that an individual is not required to survive an event, including the death of another individual, by any specified period or expressly requires the individual to survive the event for a stated period;

(3) The imposition of a one hundred twenty-hour requirement of survival would cause a nonvested property interest or a power of appointment to be invalid under RCW 11.98.130 through 11.98.160; or

(4) The application of this chapter to multiple governing instruments would result in an unintended failure or duplication of a disposition. [2007 c 475 § 12.]

11.05A.070 Liability. (1) Protection of Payors and Other Third Parties.

(a) A payor or other third party is not liable for having made a payment or transferred an item of property or any other benefit to a person designated in a governing instrument who, under this chapter, is not entitled to the payment or item of property, or for having taken any other action in good faith reliance on the person's apparent entitlement under the terms of the governing instrument, before the payor or other third party received written notice of a claimed lack of entitle-

ment under this chapter. A payor or other third party is liable for a payment made or other action taken after the payor or other third party received written notice of a claimed lack of entitlement under this chapter.

(b) Written notice of a claimed lack of entitlement under (a) of this subsection must be mailed to the payor's or other third party's main office or home by registered or certified mail, return receipt requested, or served upon the payor or other third party in the same manner as a summons in a civil action. Upon receipt of written notice of a claimed lack of entitlement under this chapter, a payor or other third party may pay any amount owed or transfer or deposit any item of property held by it to or with the court having jurisdiction of the probate proceedings relating to the decedent's estate, or if no proceedings have been commenced, to or with the court having jurisdiction of probate proceedings relating to decedents' estates located in the county of the decedent's residence. The court shall hold the funds or item of property and, upon its determination under this chapter, shall order disbursement in accordance with the determination. Payments, transfers, or deposits made to or with the court discharge the payor or other third party from all claims for the value of amounts paid to or items of property transferred to or deposited with the court.

(2) Protection of Bona Fide Purchasers—Personal Liability of Recipient.

(a) A person who purchases property for value and without notice, or who receives a payment or other item of property in partial or full satisfaction of a legally enforceable obligation, is neither obligated under this chapter to return the payment, item of property, or benefit nor liable under this chapter for the amount of the payment or the value of the item of property or benefit. But a person who, not for value, receives a payment, item of property, or any other benefit to which the person is not entitled under this chapter is obligated to return the payment, item of property, or benefit, or is personally liable for the amount of the payment or the value of the item of property or benefit, to the person who is entitled to it under this chapter.

(b) If this chapter or any part of this chapter is preempted by federal law with respect to a payment, an item of property, or any other benefit covered by this chapter, a person who, not for value, receives the payment, item of property, or any other benefit to which the person is not entitled under this chapter is obligated to return the payment, item of property, or benefit, or is personally liable for the amount of the payment or the value of the item of property or benefit, to the person who would have been entitled to it were this chapter or part of this chapter not preempted. [2007 c 475 § 13.]

11.05A.900 Application—Construction. This chapter shall be applied and construed to effectuate its general purpose to make uniform the law with respect to the subject of this chapter among states enacting it. [2007 c 475 § 14.]

11.05A.901 Short title. This chapter may be cited as the uniform simultaneous death act. [2007 c 475 § 15.]

11.05A.902 Captions not law. Captions used in this chapter are not any part of the law. [2007 c 475 § 16.]

11.05A.903 Severability—2007 c 475. If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected. [2007 c 475 § 17.]

11.05A.904 Application. On July 22, 2007:

(1) An act done before July 22, 2007, in any proceeding and any accrued right is not impaired by this chapter. If a right is acquired, extinguished, or barred upon the expiration of a prescribed period of time that has commenced to run by the provisions of any statute before July 22, 2007, the provisions remain in force with respect to that right; and

(2) Any rule of construction or presumption provided in this chapter applies to instruments executed and multiple-party accounts opened before July 22, 2007, unless there is a clear indication of a contrary intent. [2007 c 475 § 18.]

Chapter 11.07 RCW

NONPROBATE ASSETS ON DISSOLUTION OR INVALIDATION OF MARRIAGE

Sections

11.07.010 Nonprobate assets on dissolution or invalidation of marriage or termination of state registered domestic partnership.

11.07.010 Nonprobate assets on dissolution or invalidation of marriage or termination of state registered domestic partnership. (1) This section applies to all nonprobate assets, wherever situated, held at the time of entry of a decree of dissolution of marriage or a declaration of invalidity or certification of termination of a state registered domestic partnership.

(2)(a) If a marriage is dissolved or invalidated, or a state registered domestic partnership terminated, a provision made prior to that event that relates to the payment or transfer at death of the decedent's interest in a nonprobate asset in favor of or granting an interest or power to the decedent's former spouse or state registered domestic partner, is revoked. A provision affected by this section must be interpreted, and the nonprobate asset affected passes, as if the former spouse or former state registered domestic partner, failed to survive the decedent, having died at the time of entry of the decree of dissolution or declaration of invalidity or termination of state registered domestic partnership.

(b) This subsection does not apply if and to the extent that:

(i) The instrument governing disposition of the nonprobate asset expressly provides otherwise;

(ii) The decree of dissolution, declaration of invalidity, or other court order requires that the decedent maintain a nonprobate asset for the benefit of a former spouse or former state registered domestic partner or children of the marriage, payable on the decedent's death either outright or in trust, and other nonprobate assets of the decedent fulfilling such a requirement for the benefit of the former spouse or former state registered domestic partner or children of the marriage do not exist at the decedent's death;

(iii) A court order requires that the decedent maintain a nonprobate asset for the benefit of another, payable on the decedent's death either outright or in a trust, and other non-

probate assets of the decedent fulfilling such a requirement do not exist at the decedent's death; or

(iv) If not for this subsection, the decedent could not have effected the revocation by unilateral action because of the terms of the decree, declaration, termination of state registered domestic partnership, or for any other reason, immediately after the entry of the decree of dissolution, declaration of invalidity, or termination of state registered domestic partnership.

(3)(a) A payor or other third party in possession or control of a nonprobate asset at the time of the decedent's death is not liable for making a payment or transferring an interest in a nonprobate asset to a decedent's former spouse or state registered domestic partner, whose interest in the nonprobate asset is revoked under this section, or for taking another action in reliance on the validity of the instrument governing disposition of the nonprobate asset, before the payor or other third party has actual knowledge of the dissolution or other invalidation of marriage or termination of the state registered domestic partnership. A payor or other third party is liable for a payment or transfer made or other action taken after the payor or other third party has actual knowledge of a revocation under this section.

(b) This section does not require a payor or other third party to pay or transfer a nonprobate asset to a beneficiary designated in a governing instrument affected by the dissolution or other invalidation of marriage or termination of state registered domestic partnership, or to another person claiming an interest in the nonprobate asset, if the payor or third party has actual knowledge of the existence of a dispute between the former spouse or former state registered domestic partner, and the beneficiaries or other persons concerning rights of ownership of the nonprobate asset as a result of the application of this section among the former spouse or former state registered domestic partner, and the beneficiaries or among other persons, or if the payor or third party is otherwise uncertain as to who is entitled to the nonprobate asset under this section. In such a case, the payor or third party may, without liability, notify in writing all beneficiaries or other persons claiming an interest in the nonprobate asset of either the existence of the dispute or its uncertainty as to who is entitled to payment or transfer of the nonprobate asset. The payor or third party may also, without liability, refuse to pay or transfer a nonprobate asset in such a circumstance to a beneficiary or other person claiming an interest until the time that either:

(i) All beneficiaries and other interested persons claiming an interest have consented in writing to the payment or transfer; or

(ii) The payment or transfer is authorized or directed by a court of proper jurisdiction.

(c) Notwithstanding subsections (1) and (2) of this section and (a) and (b) of this subsection, a payor or other third party having actual knowledge of the existence of a dispute between beneficiaries or other persons concerning rights to a nonprobate asset as a result of the application of this section may condition the payment or transfer of the nonprobate asset on execution, in a form and with security acceptable to the payor or other third party, of a bond in an amount that is double the fair market value of the nonprobate asset at the time of the decedent's death or the amount of an adverse

claim, whichever is the lesser, or of a similar instrument to provide security to the payor or other third party, indemnifying the payor or other third party for any liability, loss, damage, costs, and expenses for and on account of payment or transfer of the nonprobate asset.

(d) As used in this subsection, "actual knowledge" means, for a payor or other third party in possession or control of the nonprobate asset at or following the decedent's death, written notice to the payor or other third party, or to an officer of a payor or third party in the course of his or her employment, received after the decedent's death and within a time that is sufficient to afford the payor or third party a reasonable opportunity to act upon the knowledge. The notice must identify the nonprobate asset with reasonable specificity. The notice also must be sufficient to inform the payor or other third party of the revocation of the provisions in favor of the decedent's spouse or state registered domestic partner, by reason of the dissolution or invalidation of marriage or termination of state registered domestic partnership, or to inform the payor or third party of a dispute concerning rights to a nonprobate asset as a result of the application of this section. Receipt of the notice for a period of more than thirty days is presumed to be received within a time that is sufficient to afford the payor or third party a reasonable opportunity to act upon the knowledge, but receipt of the notice for a period of less than five business days is presumed not to be a sufficient time for these purposes. These presumptions may be rebutted only by clear and convincing evidence to the contrary.

(4)(a) A person who purchases a nonprobate asset from a former spouse, former state registered domestic partner, or other person, for value and without actual knowledge, or who receives from a former spouse, former state registered domestic partner, or other person payment or transfer of a nonprobate asset without actual knowledge and in partial or full satisfaction of a legally enforceable obligation, is neither obligated under this section to return the payment, property, or benefit nor is liable under this section for the amount of the payment or the value of the nonprobate asset. However, a former spouse, former state registered domestic partner, or other person who, with actual knowledge, not for value, or not in satisfaction of a legally enforceable obligation, receives payment or transfer of a nonprobate asset to which that person is not entitled under this section is obligated to return the payment or nonprobate asset, or is personally liable for the amount of the payment or value of the nonprobate asset, to the person who is entitled to it under this section.

(b) As used in this subsection, "actual knowledge" means, for a person described in (a) of this subsection who purchases or receives a nonprobate asset from a former spouse, former state registered domestic partner, or other person, personal knowledge or possession of documents relating to the revocation upon dissolution or invalidation of marriage of provisions relating to the payment or transfer at the decedent's death of the nonprobate asset, received within a time after the decedent's death and before the purchase or receipt that is sufficient to afford the person purchasing or receiving the nonprobate asset reasonable opportunity to act upon the knowledge. Receipt of the personal knowledge or possession of the documents for a period of more than thirty days is presumed to be received within a time that is sufficient to afford

the payor or third party a reasonable opportunity to act upon the knowledge, but receipt of the notice for a period of less than five business days is presumed not to be a sufficient time for these purposes. These presumptions may be rebutted only by clear and convincing evidence to the contrary.

(5) As used in this section, "nonprobate asset" means those rights and interests of a person having beneficial ownership of an asset that pass on the person's death under only the following written instruments or arrangements other than the decedent's will:

(a) A payable-on-death provision of a life insurance policy, employee benefit plan, annuity or similar contract, or individual retirement account, unless provided otherwise by controlling federal law;

(b) A payable-on-death, trust, or joint with right of survivorship bank account;

(c) A trust of which the person is a grantor and that becomes effective or irrevocable only upon the person's death;

(d) Transfer on death beneficiary designations of a transfer on death or pay on death security, or joint tenancy or joint tenancy with right of survivorship designations of a security, if such designations are authorized under Washington law;

(e) A transfer on death, pay on death, joint tenancy, or joint tenancy with right of survivorship brokerage account;

(f) Unless otherwise specifically provided therein, a contract wherein payment or performance under that contract is affected by the death of the person; or

(g) Unless otherwise specifically provided therein, any other written instrument of transfer, within the meaning of RCW 11.02.091(3), containing a provision for the nonprobate transfer of an asset at death.

For the general definition in this title of "nonprobate asset," see RCW 11.02.005(15) and for the definition of "nonprobate asset" relating to testamentary disposition of nonprobate assets, see RCW 11.11.010(7). For the purposes of this chapter, a "bank account" includes an account into or from which cash deposits and withdrawals can be made, and includes demand deposit accounts, time deposit accounts, money market accounts, or certificates of deposit, maintained at a bank, savings and loan association, credit union, brokerage house, or similar financial institution.

(6) This section is remedial in nature and applies as of July 25, 1993, to decrees of dissolution and declarations of invalidity entered after July 24, 1993, and this section applies as of January 1, 1995, to decrees of dissolution and declarations of invalidity entered before July 25, 1993. [2007 c 475 § 2; 2007 c 156 § 13; 2002 c 18 § 1; 1998 c 292 § 118; 1997 c 252 § 2; 1994 c 221 § 2; 1993 c 236 § 1.]

Reviser's note: This section was amended by 2007 c 156 § 13 and by 2007 c 475 § 2, each without reference to the other. Both amendments are incorporated in the publication of this section under RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

Severability—2007 c 475: See RCW 11.05A.903.

Part headings and section captions not law—Effective dates—1998 c 292: See RCW 11.11.902 and 11.11.903.

Application—1997 c 252 §§ 1-73: See note following RCW 11.02.005.

Effective dates—1994 c 221: See note following RCW 11.94.070.

Chapter 11.12 RCW

WILLS

Sections

11.12.260 Separate writing may direct disposition of tangible personal property—Requirements.

11.12.260 Separate writing may direct disposition of tangible personal property—Requirements. (1) A will or a trust of which the decedent is a grantor and which by its terms becomes irrevocable upon or before the grantor's death may refer to a writing that directs disposition of tangible personal property not otherwise specifically disposed of by the will or trust other than property used primarily in trade or business. Such a writing shall not be effective unless: (a) An unrevoked will or trust refers to the writing, (b) the writing is either in the handwriting of, or signed by, the testator or grantor, and (c) the writing describes the items and the recipients of the property with reasonable certainty.

(2) The writing may be written or signed before or after the execution of the will or trust and need not have significance apart from its effect upon the dispositions of property made by the will or trust. A writing that meets the requirements of this section shall be given effect as if it were actually contained in the will or trust itself, except that if any person designated to receive property in the writing dies before the testator or grantor, the property shall pass as further directed in the writing and in the absence of any further directions, the disposition shall lapse and, in the case of a will, RCW 11.12.110 shall not apply to such lapse.

(3) The testator or grantor may make subsequent handwritten or signed changes to any writing. If there is an inconsistent disposition of tangible personal property as between writings, the most recent writing controls.

(4) As used in this section "tangible personal property" means articles of personal or household use or ornament, for example, furniture, furnishings, automobiles, boats, airplanes, and jewelry, as well as precious metals in any tangible form, for example, bullion or coins. The term includes articles even if held for investment purposes and encompasses tangible property that is not real property. The term does not include mobile homes or intangible property, for example, money that is normal currency or normal legal tender, evidences of indebtedness, bank accounts or other monetary deposits, documents of title, or securities. [2007 c 475 § 3; 1985 c 23 § 4. Prior: 1984 c 149 § 7.]

Severability—2007 c 475: See RCW 11.05A.903.

Short title—Application—1985 c 30: See RCW 11.02.900 through 11.02.903.

Purpose—Application—Severability—1985 c 23: See notes following RCW 11.12.250.

Severability—Effective dates—1984 c 149: See notes following RCW 11.02.005.

Chapter 11.24 RCW

WILL CONTESTS

Sections

11.24.010 Contest of probate or rejection—Limitation of action—Issues.

11.24.010 Contest of probate or rejection—Limitation of action—Issues. If any person interested in any will shall appear within four months immediately following the probate or rejection thereof, and by petition to the court having jurisdiction contest the validity of said will, or appear to have the will proven which has been rejected, he or she shall file a petition containing his or her objections and exceptions to said will, or to the rejection thereof. Issues respecting the competency of the deceased to make a last will and testament, or respecting the execution by a deceased of the last will and testament under restraint or undue influence or fraudulent representations, or for any other cause affecting the validity of the will or a part of it, shall be tried and determined by the court.

For the purpose of tolling the four-month limitations period, a contest is deemed commenced when a petition is filed with the court and not when served upon the personal representative. The petitioner shall personally serve the personal representative within ninety days after the date of filing the petition. If, following filing, service is not so made, the action is deemed to not have been commenced for purposes of tolling the statute of limitations.

If no person files and serves a petition within the time under this section, the probate or rejection of such will shall be binding and final. [2007 c 475 § 4; 1994 c 221 § 21; 1971 c 7 § 1; 1967 c 168 § 6; 1965 c 145 § 11.24.010. Prior: 1917 c 156 § 15; RRS § 1385; prior: 1891 p 382 § 8; Code 1881 § 1360; 1863 p 213 § 96; 1860 p 176 § 63.]

Severability—2007 c 475: See RCW 11.05A.903.

Effective dates—1994 c 221: See note following RCW 11.94.070.

Chapter 11.28 RCW

LETTERS TESTAMENTARY AND OF ADMINISTRATION

Sections

11.28.120 Persons entitled to letters.

11.28.120 Persons entitled to letters. Administration of an estate if the decedent died intestate or if the personal representative or representatives named in the will declined or were unable to serve shall be granted to some one or more of the persons hereinafter mentioned, and they shall be respectively entitled in the following order:

(1) The surviving spouse or state registered domestic partner, or such person as he or she may request to have appointed.

(2) The next of kin in the following order: (a) Child or children; (b) father or mother; (c) brothers or sisters; (d) grandchildren; (e) nephews or nieces.

(3) The trustee named by the decedent in an inter vivos trust instrument, testamentary trustee named in the will, guardian of the person or estate of the decedent, or attorney in fact appointed by the decedent, if any such a fiduciary controlled or potentially controlled substantially all of the decedent's probate and nonprobate assets.

(4) One or more of the beneficiaries or transferees of the decedent's probate or nonprobate assets.

(5)(a) The director of revenue, or the director's designee, for those estates having property subject to the provisions of

chapter 11.08 RCW; however, the director may waive this right.

(b) The secretary of the department of social and health services for those estates owing debts for long-term care services as defined in *RCW 74.39A.008; however the secretary may waive this right.

(6) One or more of the principal creditors.

(7) If the persons so entitled shall fail for more than forty days after the death of the decedent to present a petition for letters of administration, or if it appears to the satisfaction of the court that there is no next of kin, as above specified eligible to appointment, or they waive their right, and there are no principal creditor or creditors, or such creditor or creditors waive their right, then the court may appoint any suitable person to administer such estate. [2007 c 156 § 28; 1995 1st sp.s. c 18 § 61; 1994 c 221 § 23; 1985 c 133 § 1; 1965 c 145 § 11.28.120. Prior: 1927 c 76 § 1; 1917 c 156 § 61; RRS § 1431; prior: Code 1881 § 1388; 1863 p 219 § 122; 1860 p 181 § 89.]

*Reviser's note: RCW 74.39A.008 was repealed by 1997 c 392 § 530.

Conflict with federal requirements—Severability—Effective date—1995 1st sp.s. c 18: See notes following RCW 74.39A.030.

Effective dates—1994 c 221: See note following RCW 11.94.070.

Chapter 11.94 RCW POWER OF ATTORNEY

Sections

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|-----------|--|
| 11.94.010 | Designation—Authority—Effect of acts done—Appointment of guardian, effect—Accounting—Reliance on instrument. |
| 11.94.080 | Termination of marriage or state registered domestic partnership. |

11.94.010 Designation—Authority—Effect of acts done—Appointment of guardian, effect—Accounting—Reliance on instrument. (1) Whenever a principal designates another as his or her attorney in fact or agent, by a power of attorney in writing, and the writing contains the words "This power of attorney shall not be affected by disability of the principal," or "This power of attorney shall become effective upon the disability of the principal," or similar words showing the intent of the principal that the authority conferred shall be exercisable notwithstanding the principal's disability, the authority of the attorney in fact or agent is exercisable on behalf of the principal as provided notwithstanding later disability or incapacity of the principal at law or later uncertainty as to whether the principal is dead or alive. All acts done by the attorney in fact or agent pursuant to the power during any period of disability or incompetence or uncertainty as to whether the principal is dead or alive have the same effect and inure to the benefit of and bind the principal or the principal's guardian or heirs, devisees, and personal representative as if the principal were alive, competent, and not disabled. A principal may nominate, by a durable power of attorney, the guardian or limited guardian of his or her estate or person for consideration by the court if protective proceedings for the principal's person or estate are thereafter commenced. The court shall make its appointment in accordance with the principal's most recent nomination in a durable power of attorney except for good cause or disqualification. If a guardian thereafter is appointed for the principal,

the attorney in fact or agent, during the continuance of the appointment, shall account to the guardian rather than the principal. The guardian has the same power the principal would have had if the principal were not disabled or incompetent, to revoke, suspend or terminate all or any part of the power of attorney or agency.

(2) Persons shall place reasonable reliance on any determination of disability or incompetence as provided in the instrument that specifies the time and the circumstances under which the power of attorney document becomes effective.

(3)(a) A principal may authorize his or her attorney-in-fact to provide informed consent for health care decisions on the principal's behalf. If a principal has appointed more than one agent with authority to make mental health treatment decisions in accordance with a directive under chapter 71.32 RCW, to the extent of any conflict, the most recently appointed agent shall be treated as the principal's agent for mental health treatment decisions unless provided otherwise in either appointment.

(b) Unless he or she is the spouse, state registered domestic partner, or adult child or brother or sister of the principal, none of the following persons may act as the attorney-in-fact for the principal: Any of the principal's physicians, the physicians' employees, or the owners, administrators, or employees of the health care facility or long-term care facility as defined in RCW 43.190.020 where the principal resides or receives care. Except when the principal has consented in a mental health advance directive executed under chapter 71.32 RCW to inpatient admission or electroconvulsive therapy, this authorization is subject to the same limitations as those that apply to a guardian under RCW 11.92.043(5) (a) through (c).

(4) A parent or guardian, by a properly executed power of attorney, may authorize an attorney in fact to make health care decisions on behalf of one or more of his or her children, or children for whom he or she is the legal guardian, who are under the age of majority as defined in RCW 26.28.015, to be effective if the child has no other parent or legal representative readily available and authorized to give such consent.

(5) A principal may further nominate a guardian or guardians of the person, or of the estate or both, of a minor child, whether born at the time of making the durable power of attorney or afterwards, to continue during the disability of the principal, during the minority of the child or for any less time by including such a provision in his or her power of attorney.

(6) The authority of any guardian of the person of any minor child shall supersede the authority of a designated attorney in fact to make health care decisions for the minor only after such designated guardian has been appointed by the court.

(7) In the event a conflict between the provisions of a will nominating a testamentary guardian under the authority of RCW 11.88.080 and the nomination of a guardian under the authority of this statute, the most recent designation shall control. [2007 c 156 § 31; 2005 c 97 § 12; 2003 c 283 § 27; 1995 c 297 § 9; 1989 c 211 § 1; 1985 c 30 § 25. Prior: 1984 c 149 § 26; 1974 ex.s. c 117 § 52.]

Severability—Part headings not law—2003 c 283: See RCW 71.32.900 and 71.32.901.

Short title—Application—Purpose—Severability—1985 c 30: See RCW 11.02.900 through 11.02.903.

Severability—Effective dates—1984 c 149: See notes following RCW 11.02.005.

Application, construction—Severability—Effective date—1974 ex.s. c 117: See RCW 11.02.080 and notes following.

11.94.080 Termination of marriage or state registered domestic partnership. (1) An appointment of a principal's spouse or state registered domestic partner, as attorney in fact, including appointment as successor or coattorney in fact, under a power of attorney shall be revoked upon entry of a decree of dissolution or legal separation or declaration of invalidity of the marriage or termination of the state registered domestic partnership of the principal and the attorney in fact, unless the power of attorney or the decree provides otherwise. The effect of this revocation shall be as if the spouse or state registered domestic partner, resigned as attorney in fact, or if named as successor attorney in fact, renounced the appointment, as of the date of entry of the decree or declaration or filing of the certificate of termination of the state registered domestic partnership, and the power of attorney shall otherwise remain in effect with respect to appointments of other persons as attorney in fact for the principal or procedures prescribed in the power of attorney to appoint other persons, and any terms relating to service by persons as attorney in fact.

(2) This section applies to all decrees of dissolution and declarations of invalidity of marriage entered after July 22, 2001. [2007 c 156 § 14; 2001 c 203 § 1.]

Chapter 11.96A RCW

TRUST AND ESTATE DISPUTE RESOLUTION

Sections

11.96A.150 Costs—Attorneys' fees.

11.96A.150 Costs—Attorneys' fees. (1) Either the superior court or any court on an appeal may, in its discretion, order costs, including reasonable attorneys' fees, to be awarded to any party: (a) From any party to the proceedings; (b) from the assets of the estate or trust involved in the proceedings; or (c) from any nonprobate asset that is the subject of the proceedings. The court may order the costs, including reasonable attorneys' fees, to be paid in such amount and in such manner as the court determines to be equitable. In exercising its discretion under this section, the court may consider any and all factors that it deems to be relevant and appropriate, which factors may but need not include whether the litigation benefits the estate or trust involved.

(2) This section applies to all proceedings governed by this title, including but not limited to proceedings involving trusts, decedent's estates and properties, and guardianship matters. This section shall not be construed as being limited by any other specific statutory provision providing for the payment of costs, including RCW 11.68.070 and 11.24.050, unless such statute specifically provides otherwise. This section shall apply to matters involving guardians and guardians ad litem and shall not be limited or controlled by the provi-

sions of RCW 11.88.090(10). [2007 c 475 § 5; 1999 c 42 § 308.]

Severability—2007 c 475: See RCW 11.05A.903.

Title 12

DISTRICT COURTS—CIVIL PROCEDURE

Chapters

12.04 Commencement of actions.

Chapter 12.04 RCW

COMMENCEMENT OF ACTIONS

Sections

12.04.130 Jurisdiction, when acquired.

12.04.130 Jurisdiction, when acquired. The court shall be deemed to have obtained possession of the case from the time the complaint or claim is filed, after completion of service, whether by publication or otherwise, and shall have control of all subsequent proceedings. In the case of proceedings to civilly enforce a money judgment entered in a municipal court or municipal department of a district court organized under the laws of this state, the court shall have jurisdiction over the proceedings from the time of filing an abstract or transcript of judgment; upon which filing the municipal judgment shall be recognized as a judgment of the court, provided that the court shall not have authority to vacate or amend the underlying municipal judgment. [2007 c 46 § 4; Code 1881 § 1723; 1873 p 338 § 30; RRS § 1769.]

Title 13

JUVENILE COURTS AND JUVENILE OFFENDERS

Chapters

13.32A Family reconciliation act.

13.34 Juvenile court act—Dependency and termination of parent-child relationship.

13.40 Juvenile justice act of 1977.

Chapter 13.32A RCW

FAMILY RECONCILIATION ACT

Sections

13.32A.200 Hearings under chapter—Time or place—Public excluded.

13.32A.200 Hearings under chapter—Time or place—Public excluded. (1) All hearings pursuant to this chapter may be conducted at any time or place within the county of the residence of the parent and such cases shall be heard in conjunction with the business of any other division of the superior court, except as provided in subsections (2) and (3) of this section.

(2) The public shall be excluded from a child in need of services hearing if the judicial officer finds that it is in the best interest of the child.

(3) The public shall be excluded from an at-risk youth hearing if:

(a) The judicial officer finds that it is in the best interest of the child; or

(b) Either parent requests that the public be excluded from the hearing.

(4) At the beginning of the at-risk youth hearing, the judicial officer shall notify the parents that either parent has the right to request that the public be excluded from the at-risk youth hearing.

(5) If the public is excluded from hearings under subsection (2) or (3) of this section, only such persons who are found by the court to have a direct interest in the case or the work of the court shall be admitted to the proceedings. [2007 c 213 § 1; 2000 c 123 § 25; 1979 c 155 § 34.]

Effective date—Severability—1979 c 155: See notes following RCW 13.04.011.

Chapter 13.34 RCW

JUVENILE COURT ACT—DEPENDENCY AND TERMINATION OF PARENT-CHILD RELATIONSHIP

Sections

13.34.025	Child dependency cases—Coordination of services—Remedial services.
13.34.060	Shelter care—Placement—Custody—Duties of parties.
13.34.062	Shelter care—Notice of custody and rights.
13.34.065	Shelter care—Hearing—Recommendation as to further need—Release.
13.34.069	Shelter care—Order and authorization of health care and education records.
13.34.096	Right to be heard—Notice.
13.34.110	Hearings—Fact-finding and disposition—Time and place, notice.
13.34.130	Order of disposition for a dependent child, alternatives—Petition seeking termination of parent-child relationship—Contact with siblings—Placement with relatives, foster family home, group care facility, or other suitable persons.
13.34.136	Permanency plan of care.
13.34.138	Review hearings—Findings—Duties of parties involved—In-home placement requirements—Housing assistance.
13.34.145	Permanency planning hearing—Purpose—Time limits—Goals—Review hearing—Petition for termination of parental rights—Guardianship petition—Agency responsibility to provide services to parents—Due process rights.
13.34.200	Order terminating parent and child relationship—Rights of parties when granted.
13.34.215	Petition reinstating terminated parental rights—Notice—Achievement of permanency plan—Effect of granting the petition—Child support liability—Retroactive application.
13.34.400	Child welfare proceedings—Placement—Documentation.
13.34.820	Permanency for dependent children—Annual report.

13.34.025 Child dependency cases—Coordination of services—Remedial services. (1) The department of social and health services shall develop methods for coordination of services to parents and children in child dependency cases. To the maximum extent possible under current funding levels, the department must:

(a) Coordinate and integrate services to children and families, using service plans and activities that address the children's and families' multiple needs, including ensuring that siblings have regular visits with each other, as appropriate. Assessment criteria should screen for multiple needs;

(b) Develop treatment plans for the individual needs of the client in a manner that minimizes the number of contacts the client is required to make; and

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(c) Access training for department staff to increase skills across disciplines to assess needs for mental health, substance abuse, developmental disabilities, and other areas.

(2) The department shall coordinate within the administrations of the department, and with contracted service providers, to ensure that parents in dependency proceedings under this chapter receive priority access to remedial services recommended by the department in its social study or ordered by the court for the purpose of correcting any parental deficiencies identified in the dependency proceeding that are capable of being corrected in the foreseeable future. Services may also be provided to caregivers other than the parents as identified in RCW 13.34.138.

(a) For purposes of this chapter, remedial services are those services defined in the federal adoption and safe families act as time-limited family reunification services. Remedial services include individual, group, and family counseling; substance abuse treatment services; mental health services; assistance to address domestic violence; services designed to provide temporary child care and therapeutic services for families; and transportation to or from any of the above services and activities.

(b) The department shall provide funds for remedial services if the parent is unable to pay to the extent funding is appropriated in the operating budget or otherwise available to the department for such specific services. As a condition for receiving funded remedial services, the court may inquire into the parent's ability to pay for all or part of such services or may require that the parent make appropriate applications for funding to alternative funding sources for such services.

(c) If court-ordered remedial services are unavailable for any reason, including lack of funding, lack of services, or language barriers, the department shall promptly notify the court that the parent is unable to engage in the treatment due to the inability to access such services.

(d) This section does not create an entitlement to services and does not create judicial authority to order the provision of services except for the specific purpose of making reasonable efforts to remedy parental deficiencies identified in a dependency proceeding under this chapter. [2007 c 410 § 2; 2002 c 52 § 2; 2001 c 256 § 2.]

Short title—2007 c 410: See note following RCW 13.34.138.

Intent—2002 c 52: "It is the intent of the legislature to recognize that those sibling relationships a child has are an integral aspect of the family unit, which should be nurtured. The legislature presumes that nurturing the existing sibling relationships is in the best interest of a child, in particular in those situations where a child cannot be with their parents, guardians, or legal custodians as a result of court intervention." [2002 c 52 § 1.]

Finding—2001 c 256: "The department of social and health services serves parents and children with multiple needs, which cannot be resolved in isolation. Further, the complexity of service delivery systems is a barrier for families in crisis when a child is removed or a parent is removed from the home. The department must undertake efforts to streamline the delivery of services." [2001 c 256 § 1.]

13.34.060 Shelter care—Placement—Custody—Duties of parties. (1) A child taken into custody pursuant to RCW 13.34.050 or 26.44.050 shall be immediately placed in shelter care. A child taken by a relative of the child in violation of RCW 9A.40.060 or 9A.40.070 shall be placed in shelter care only when permitted under RCW 13.34.055. No child may be held longer than seventy-two hours, excluding

Saturdays, Sundays, and holidays, after such child is taken into custody unless a court order has been entered for continued shelter care. In no case may a child who is taken into custody pursuant to RCW 13.34.055, 13.34.050, or 26.44.050 be detained in a secure detention facility.

(2) Unless there is reasonable cause to believe that the health, safety, or welfare of the child would be jeopardized or that the efforts to reunite the parent and child will be hindered, priority placement for a child in shelter care, pending a court hearing, shall be with any person described in RCW 74.15.020(2)(a) or 13.34.130(1)(b). The person must be willing and available to care for the child and be able to meet any special needs of the child and the court must find that such placement is in the best interests of the child. The person must be willing to facilitate the child's visitation with siblings, if such visitation is part of the supervising agency's plan or is ordered by the court. If a child is not initially placed with a relative or other suitable person requested by the parent pursuant to this section, the supervising agency shall make an effort within available resources to place the child with a relative or other suitable person requested by the parent on the next business day after the child is taken into custody. The supervising agency shall document its effort to place the child with a relative or other suitable person requested by the parent pursuant to this section. Nothing within this subsection (2) establishes an entitlement to services or a right to a particular placement.

(3) Whenever a child is taken into custody pursuant to this section, the supervising agency may authorize evaluations of the child's physical or emotional condition, routine medical and dental examination and care, and all necessary emergency care. [2007 c 413 § 3; 2002 c 52 § 4; 2000 c 122 § 4; 1999 c 17 § 2; 1998 c 328 § 2; 1990 c 246 § 1; 1987 c 524 § 4. Prior: 1984 c 188 § 3; 1984 c 95 § 5; 1983 c 246 § 1; 1982 c 129 § 5; 1979 c 155 § 39; 1977 ex.s. c 291 § 34.]

Severability—2007 c 413: See note following RCW 13.34.215.

Intent—2002 c 52: See note following RCW 13.34.025.

Finding—1999 c 17: "The legislature has found that any intervention into the life of a child is also an intervention in the life of the parent, guardian, or legal custodian, and that the bond between child and parent is a critical element of child development. The legislature now also finds that children who cannot be with their parents, guardians, or legal custodians are best cared for, whenever possible and appropriate by family members with whom they have a relationship. This is particularly important when a child cannot be in the care of a parent, guardian, or legal custodian as a result of a court intervention." [1999 c 17 § 1.]

Severability—1990 c 246: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1990 c 246 § 11.]

Severability—1984 c 95: See note following RCW 9A.40.060.

Severability—1982 c 129: See note following RCW 9A.04.080.

Effective date—Severability—1979 c 155: See notes following RCW 13.04.011.

Effective dates—Severability—1977 ex.s. c 291: See notes following RCW 13.04.005.

13.34.062 Shelter care—Notice of custody and rights.

(1)(a) Whenever a child is taken into custody by child protective services pursuant to a court order issued under RCW 13.34.050 or when child protective services is notified that a child has been taken into custody pursuant to RCW 26.44.050 or 26.44.056, child protective services shall make

reasonable efforts to inform the parent, guardian, or legal custodian of the fact that the child has been taken into custody, the reasons why the child was taken into custody, and their legal rights under this title, including the right to a shelter care hearing, as soon as possible. Notice must be provided in an understandable manner and take into consideration the parent's, guardian's, or legal custodian's primary language, level of education, and cultural issues.

(b) In no event shall the notice required by this section be provided to the parent, guardian, or legal custodian more than twenty-four hours after the child has been taken into custody or twenty-four hours after child protective services has been notified that the child has been taken into custody.

(2)(a) The notice of custody and rights may be given by any means reasonably certain of notifying the parents including, but not limited to, written, telephone, or in person oral notification. If the initial notification is provided by a means other than writing, child protective services shall make reasonable efforts to also provide written notification.

(b) The written notice of custody and rights required by this section shall be in substantially the following form:

"NOTICE

Your child has been placed in temporary custody under the supervision of Child Protective Services (or other person or agency). You have important legal rights and you must take steps to protect your interests.

1. A court hearing will be held before a judge within 72 hours of the time your child is taken into custody excluding Saturdays, Sundays, and holidays. You should call the court at (insert appropriate phone number here) for specific information about the date, time, and location of the court hearing.

2. You have the right to have a lawyer represent you at the hearing. Your right to representation continues after the shelter care hearing. You have the right to records the department intends to rely upon. A lawyer can look at the files in your case, talk to child protective services and other agencies, tell you about the law, help you understand your rights, and help you at hearings. If you cannot afford a lawyer, the court will appoint one to represent you. To get a court-appointed lawyer you must contact: (explain local procedure).

3. At the hearing, you have the right to speak on your own behalf, to introduce evidence, to examine witnesses, and to receive a decision based solely on the evidence presented to the judge.

4. If your hearing occurs before a court commissioner, you have the right to have the decision of the court commissioner reviewed by a superior court judge. To obtain that review, you must, within ten days after the entry of the decision of the court commissioner, file with the court a motion for revision of the decision, as provided in RCW 2.24.050.

You should be present at any shelter care hearing. If you do not come, the judge will not hear what you have to say.

You may call the Child Protective Services' caseworker for more information about your child. The caseworker's name and telephone number are: (insert name and telephone number).

5. You have a right to a case conference to develop a written service agreement following the shelter care hearing. The service agreement may not conflict with the court's order

of shelter care. You may request that a multidisciplinary team, family group conference, or prognostic staffing be convened for your child's case. You may participate in these processes with your counsel present.

6. If your child is placed in the custody of the department of social and health services or other supervising agency, immediately following the shelter care hearing, the court will enter an order granting the department or other supervising agency the right to inspect and copy all health, medical, mental health, and education records of the child, directing health care providers to release such information without your further consent, and granting the department or supervising agency or its designee the authority and responsibility, where applicable, to:

- (1) Notify the child's school that the child is in out-of-home placement;
- (2) Enroll the child in school;
- (3) Request the school transfer records;
- (4) Request and authorize evaluation of special needs;
- (5) Attend parent or teacher conferences;
- (6) Excuse absences;
- (7) Grant permission for extracurricular activities;
- (8) Authorize medications which need to be administered during school hours and sign for medical needs that arise during school hours; and
- (9) Complete or update school emergency records."

Upon receipt of the written notice, the parent, guardian, or legal custodian shall acknowledge such notice by signing a receipt prepared by child protective services. If the parent, guardian, or legal custodian does not sign the receipt, the reason for lack of a signature shall be written on the receipt. The receipt shall be made a part of the court's file in the dependency action.

If after making reasonable efforts to provide notification, child protective services is unable to determine the whereabouts of the parents, guardian, or legal custodian, the notice shall be delivered or sent to the last known address of the parent, guardian, or legal custodian.

(3) If child protective services is not required to give notice under this section, the juvenile court counselor assigned to the matter shall make all reasonable efforts to advise the parents, guardian, or legal custodian of the time and place of any shelter care hearing, request that they be present, and inform them of their basic rights as provided in RCW 13.34.090.

(4) Reasonable efforts to advise and to give notice, as required in this section, shall include, at a minimum, investigation of the whereabouts of the parent, guardian, or legal custodian. If such reasonable efforts are not successful, or the parent, guardian, or legal custodian does not appear at the shelter care hearing, the petitioner shall testify at the hearing or state in a declaration:

(a) The efforts made to investigate the whereabouts of, and to advise, the parent, guardian, or legal custodian; and

(b) Whether actual advice of rights was made, to whom it was made, and how it was made, including the substance of any oral communication or copies of written materials used. [2007 c 413 § 4; 2007 c 409 § 5; 2004 c 147 § 2; 2001 c 332 § 2; 2000 c 122 § 5.]

Reviser's note: This section was amended by 2007 c 409 § 5 and by 2007 c 413 § 4, each without reference to the other. Both amendments are incorporated in the publication of this section under RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

Severability—2007 c 413: See note following RCW 13.34.215.

Effective date—2007 c 409: See note following RCW 13.34.096.

Effective date—2004 c 147: See note following RCW 13.34.067.

13.34.065 Shelter care—Hearing—Recommendation as to further need—Release. (1)(a) When a child is taken into custody, the court shall hold a shelter care hearing within seventy-two hours, excluding Saturdays, Sundays, and holidays. The primary purpose of the shelter care hearing is to determine whether the child can be immediately and safely returned home while the adjudication of the dependency is pending.

(b) Any parent, guardian, or legal custodian who for good cause is unable to attend the shelter care hearing may request that a subsequent shelter care hearing be scheduled. The request shall be made to the clerk of the court where the petition is filed prior to the initial shelter care hearing. Upon the request of the parent, the court shall schedule the hearing within seventy-two hours of the request, excluding Saturdays, Sundays, and holidays. The clerk shall notify all other parties of the hearing by any reasonable means.

(2)(a) The department of social and health services shall submit a recommendation to the court as to the further need for shelter care in all cases in which it is the petitioner. In all other cases, the recommendation shall be submitted by the juvenile court probation counselor.

(b) All parties have the right to present testimony to the court regarding the need or lack of need for shelter care.

(c) Hearsay evidence before the court regarding the need or lack of need for shelter care must be supported by sworn testimony, affidavit, or declaration of the person offering such evidence.

(3)(a) At the commencement of the hearing, the court shall notify the parent, guardian, or custodian of the following:

(i) The parent, guardian, or custodian has the right to a shelter care hearing;

(ii) The nature of the shelter care hearing, the rights of the parents, and the proceedings that will follow; and

(iii) If the parent, guardian, or custodian is not represented by counsel, the right to be represented. If the parent, guardian, or custodian is indigent, the court shall appoint counsel as provided in RCW 13.34.090; and

(b) If a parent, guardian, or legal custodian desires to waive the shelter care hearing, the court shall determine, on the record and with the parties present, whether such waiver is knowing and voluntary. A parent may not waive his or her right to the shelter care hearing unless he or she appears in court and the court determines that the waiver is knowing and voluntary. Regardless of whether the court accepts the parental waiver of the shelter care hearing, the court must provide notice to the parents of their rights required under (a) of this subsection and make the finding required under subsection (4) of this section.

(4) At the shelter care hearing the court shall examine the need for shelter care and inquire into the status of the case. The paramount consideration for the court shall be the health,

welfare, and safety of the child. At a minimum, the court shall inquire into the following:

(a) Whether the notice required under RCW 13.34.062 was given to all known parents, guardians, or legal custodians of the child. The court shall make an express finding as to whether the notice required under RCW 13.34.062 was given to the parent, guardian, or legal custodian. If actual notice was not given to the parent, guardian, or legal custodian and the whereabouts of such person is known or can be ascertained, the court shall order the supervising agency or the department of social and health services to make reasonable efforts to advise the parent, guardian, or legal custodian of the status of the case, including the date and time of any subsequent hearings, and their rights under RCW 13.34.090;

(b) Whether the child can be safely returned home while the adjudication of the dependency is pending;

(c) What efforts have been made to place the child with a relative;

(d) What services were provided to the family to prevent or eliminate the need for removal of the child from the child's home;

(e) Is the placement proposed by the agency the least disruptive and most family-like setting that meets the needs of the child;

(f) Whether it is in the best interest of the child to remain enrolled in the school, developmental program, or child care the child was in prior to placement and what efforts have been made to maintain the child in the school, program, or child care if it would be in the best interest of the child to remain in the same school, program, or child care;

(g) Appointment of a guardian ad litem or attorney;

(h) Whether the child is or may be an Indian child as defined in 25 U.S.C. Sec. 1903, whether the provisions of the Indian child welfare act apply, and whether there is compliance with the Indian child welfare act, including notice to the child's tribe;

(i) Whether restraining orders, or orders expelling an allegedly abusive parent from the home, will allow the child to safely remain in the home;

(j) Whether any orders for examinations, evaluations, or immediate services are needed. However, the court may not order a parent to undergo examinations, evaluation, or services at the shelter care hearing unless the parent agrees to the examination, evaluation, or service;

(k) The terms and conditions for parental, sibling, and family visitation.

(5)(a) The court shall release a child alleged to be dependent to the care, custody, and control of the child's parent, guardian, or legal custodian unless the court finds there is reasonable cause to believe that:

(i) After consideration of the specific services that have been provided, reasonable efforts have been made to prevent or eliminate the need for removal of the child from the child's home and to make it possible for the child to return home; and

(ii)(A) The child has no parent, guardian, or legal custodian to provide supervision and care for such child; or

(B) The release of such child would present a serious threat of substantial harm to such child; or

(C) The parent, guardian, or custodian to whom the child could be released has been charged with violating RCW 9A.40.060 or 9A.40.070.

(b) If the court does not release the child to his or her parent, guardian, or legal custodian, and the child was initially placed with a relative pursuant to RCW 13.34.060(1), the court shall order continued placement with a relative, unless there is reasonable cause to believe the health, safety, or welfare of the child would be jeopardized or that the efforts to reunite the parent and child will be hindered. The relative must be willing and available to:

(i) Care for the child and be able to meet any special needs of the child;

(ii) Facilitate the child's visitation with siblings, if such visitation is part of the supervising agency's plan or is ordered by the court; and

(iii) Cooperate with the department in providing necessary background checks and home studies.

(c) If the child was not initially placed with a relative, and the court does not release the child to his or her parent, guardian, or legal custodian, the supervising agency shall make reasonable efforts to locate a relative pursuant to RCW 13.34.060(1).

(d) If a relative is not available, the court shall order continued shelter care or order placement with another suitable person, and the court shall set forth its reasons for the order. If the court orders placement of the child with a person not related to the child and not licensed to provide foster care, the placement is subject to all terms and conditions of this section that apply to relative placements.

(e) Any placement with a relative, or other person approved by the court pursuant to this section, shall be contingent upon cooperation with the agency case plan and compliance with court orders related to the care and supervision of the child including, but not limited to, court orders regarding parent-child contacts, sibling contacts, and any other conditions imposed by the court. Noncompliance with the case plan or court order is grounds for removal of the child from the home of the relative or other person, subject to review by the court.

(6)(a) A shelter care order issued pursuant to this section shall include the requirement for a case conference as provided in RCW 13.34.067. However, if the parent is not present at the shelter care hearing, or does not agree to the case conference, the court shall not include the requirement for the case conference in the shelter care order.

(b) If the court orders a case conference, the shelter care order shall include notice to all parties and establish the date, time, and location of the case conference which shall be no later than thirty days before the fact-finding hearing.

(c) The court may order another conference, case staffing, or hearing as an alternative to the case conference required under RCW 13.34.067 so long as the conference, case staffing, or hearing ordered by the court meets all requirements under RCW 13.34.067, including the requirement of a written agreement specifying the services to be provided to the parent.

(7)(a) A shelter care order issued pursuant to this section may be amended at any time with notice and hearing thereon. The shelter care decision of placement shall be modified only upon a showing of change in circumstances. No child may be placed in shelter care for longer than thirty days without an order, signed by the judge, authorizing continued shelter care.

(b)(i) An order releasing the child on any conditions specified in this section may at any time be amended, with notice and hearing thereon, so as to return the child to shelter care for failure of the parties to conform to the conditions originally imposed.

(ii) The court shall consider whether nonconformance with any conditions resulted from circumstances beyond the control of the parent, guardian, or legal custodian and give weight to that fact before ordering return of the child to shelter care.

(8)(a) If a child is returned home from shelter care a second time in the case, or if the supervisor of the caseworker deems it necessary, the multidisciplinary team may be reconvened.

(b) If a child is returned home from shelter care a second time in the case a law enforcement officer must be present and file a report to the department. [2007 c 413 § 5; 2001 c 332 § 3; 2000 c 122 § 7.]

Severability—2007 c 413: See note following RCW 13.34.215.

13.34.069 Shelter care—Order and authorization of health care and education records. If a child is placed in the custody of the department of social and health services or other supervising agency, immediately following the shelter care hearing, an order and authorization regarding health care and education records for the child shall be entered. The order shall:

(1) Provide the department or other supervising agency with the right to inspect and copy all health, medical, mental health, and education records of the child;

(2) Authorize and direct any agency, hospital, doctor, nurse, dentist, orthodontist, or other health care provider, therapist, drug or alcohol treatment provider, psychologist, psychiatrist, or mental health clinic, or health or medical records custodian or document management company, or school or school organization to permit the department or other supervising agency to inspect and to obtain copies of any records relating to the child involved in the case, without the further consent of the parent or guardian of the child; and

(3) Grant the department or other supervising agency or its designee the authority and responsibility, where applicable, to:

(a) Notify the child's school that the child is in out-of-home placement;

(b) Enroll the child in school;

(c) Request the school transfer records;

(d) Request and authorize evaluation of special needs;

(e) Attend parent or teacher conferences;

(f) Excuse absences;

(g) Grant permission for extracurricular activities;

(h) Authorize medications which need to be administered during school hours and sign for medical needs that arise during school hours; and

(i) Complete or update school emergency records.

Access to records under this section is subject to the child's consent where required by other state and federal laws. [2007 c 409 § 2.]

Effective date—2007 c 409: See note following RCW 13.34.096.

13.34.096 Right to be heard—Notice. The department of social and health services or other supervising agency shall provide the child's foster parents, preadoptive parents, or other caregivers with notice of their right to be heard prior to each proceeding held with respect to the child in juvenile court under this chapter. The rights to notice and to be heard apply only to persons with whom a child has been placed by the department or other supervising agency and who are providing care to the child at the time of the proceeding. This section shall not be construed to grant party status to any person solely on the basis of such notice and right to be heard. [2007 c 409 § 1.]

Effective date—2007 c 409: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect July 1, 2007." [2007 c 409 § 8.]

13.34.110 Hearings—Fact-finding and disposition—Time and place, notice. (1) The court shall hold a fact-finding hearing on the petition and, unless the court dismisses the petition, shall make written findings of fact, stating the reasons therefor. The rules of evidence shall apply at the fact-finding hearing and the parent, guardian, or legal custodian of the child shall have all of the rights provided in RCW 13.34.090(1). The petitioner shall have the burden of establishing by a preponderance of the evidence that the child is dependent within the meaning of RCW 13.34.030.

(2) The court in a fact-finding hearing may consider the history of past involvement of child protective services or law enforcement agencies with the family for the purpose of establishing a pattern of conduct, behavior, or inaction with regard to the health, safety, or welfare of the child on the part of the child's parent, guardian, or legal custodian, or for the purpose of establishing that reasonable efforts have been made by the department to prevent or eliminate the need for removal of the child from the child's home. No report of child abuse or neglect that has been destroyed or expunged under RCW 26.44.031 may be used for such purposes.

(3)(a) The parent, guardian, or legal custodian of the child may waive his or her right to a fact-finding hearing by stipulating or agreeing to the entry of an order of dependency establishing that the child is dependent within the meaning of RCW 13.34.030. The parent, guardian, or legal custodian may also stipulate or agree to an order of disposition pursuant to RCW 13.34.130 at the same time. Any stipulated or agreed order of dependency or disposition must be signed by the parent, guardian, or legal custodian and his or her attorney, unless the parent, guardian, or legal custodian has waived his or her right to an attorney in open court, and by the petitioner and the attorney, guardian ad litem, or court-appointed special advocate for the child, if any. If the department of social and health services is not the petitioner and is required by the order to supervise the placement of the child or provide services to any party, the department must also agree to and sign the order.

(b) Entry of any stipulated or agreed order of dependency or disposition is subject to approval by the court. The court shall receive and review a social study before entering a stipulated or agreed order and shall consider whether the order is consistent with the allegations of the dependency petition and the problems that necessitated the child's place-

ment in out-of-home care. No social file or social study may be considered by the court in connection with the fact-finding hearing or prior to factual determination, except as otherwise admissible under the rules of evidence.

(c) Prior to the entry of any stipulated or agreed order of dependency, the parent, guardian, or legal custodian of the child and his or her attorney must appear before the court and the court within available resources must inquire and establish on the record that:

(i) The parent, guardian, or legal custodian understands the terms of the order or orders he or she has signed, including his or her responsibility to participate in remedial services as provided in any disposition order;

(ii) The parent, guardian, or legal custodian understands that entry of the order starts a process that could result in the filing of a petition to terminate his or her relationship with the child within the time frames required by state and federal law if he or she fails to comply with the terms of the dependency or disposition orders or fails to substantially remedy the problems that necessitated the child's placement in out-of-home care;

(iii) The parent, guardian, or legal custodian understands that the entry of the stipulated or agreed order of dependency is an admission that the child is dependent within the meaning of RCW 13.34.030 and shall have the same legal effect as a finding by the court that the child is dependent by at least a preponderance of the evidence, and that the parent, guardian, or legal custodian shall not have the right in any subsequent proceeding for termination of parental rights or dependency guardianship pursuant to this chapter or nonparental custody pursuant to chapter 26.10 RCW to challenge or dispute the fact that the child was found to be dependent; and

(iv) The parent, guardian, or legal custodian knowingly and willingly stipulated and agreed to and signed the order or orders, without duress, and without misrepresentation or fraud by any other party.

If a parent, guardian, or legal custodian fails to appear before the court after stipulating or agreeing to entry of an order of dependency, the court may enter the order upon a finding that the parent, guardian, or legal custodian had actual notice of the right to appear before the court and chose not to do so. The court may require other parties to the order, including the attorney for the parent, guardian, or legal custodian, to appear and advise the court of the parent's, guardian's, or legal custodian's notice of the right to appear and understanding of the factors specified in this subsection. A parent, guardian, or legal custodian may choose to waive his or her presence at the in-court hearing for entry of the stipulated or agreed order of dependency by submitting to the court through counsel a completed stipulated or agreed dependency fact-finding/disposition statement in a form determined by the Washington state supreme court pursuant to General Rule GR 9.

(4) Immediately after the entry of the findings of fact, the court shall hold a disposition hearing, unless there is good cause for continuing the matter for up to fourteen days. If good cause is shown, the case may be continued for longer than fourteen days. Notice of the time and place of the continued hearing may be given in open court. If notice in open court is not given to a party, that party shall be notified by certified mail of the time and place of any continued hearing.

Unless there is reasonable cause to believe the health, safety, or welfare of the child would be jeopardized or efforts to reunite the parent and child would be hindered, the court shall direct the department to notify those adult persons who: (a) Are related by blood or marriage to the child in the following degrees: Parent, grandparent, brother, sister, stepparent, stepbrother, stepsister, uncle, or aunt; (b) are known to the department as having been in contact with the family or child within the past twelve months; and (c) would be an appropriate placement for the child. Reasonable cause to dispense with notification to a parent under this section must be proved by clear, cogent, and convincing evidence.

The parties need not appear at the fact-finding or dispositional hearing if the parties, their attorneys, the guardian ad litem, and court-appointed special advocates, if any, are all in agreement. [2007 c 220 § 9; 2001 c 332 § 7; 2000 c 122 § 11. Prior: 1995 c 313 § 1; 1995 c 311 § 27; 1993 c 412 § 7; 1991 c 340 § 3; 1983 c 311 § 4; 1979 c 155 § 44; 1977 ex.s. c 291 § 39; 1961 c 302 § 5; prior: 1913 c 160 § 10, part; RCW 13.04.090, part. Formerly RCW 13.04.091.]

Legislative finding—1983 c 311: See note following RCW 13.34.030.

Effective date—Severability—1979 c 155: See notes following RCW 13.04.011.

Effective dates—Severability—1977 ex.s. c 291: See notes following RCW 13.04.005.

13.34.130 Order of disposition for a dependent child, alternatives—Petition seeking termination of parent-child relationship—Contact with siblings—Placement with relatives, foster family home, group care facility, or other suitable persons. If, after a fact-finding hearing pursuant to RCW 13.34.110, it has been proven by a preponderance of the evidence that the child is dependent within the meaning of RCW 13.34.030 after consideration of the social study prepared pursuant to RCW 13.34.110 and after a disposition hearing has been held pursuant to RCW 13.34.110, the court shall enter an order of disposition pursuant to this section.

(1) The court shall order one of the following dispositions of the case:

(a) Order a disposition other than removal of the child from his or her home, which shall provide a program designed to alleviate the immediate danger to the child, to mitigate or cure any damage the child has already suffered, and to aid the parents so that the child will not be endangered in the future. In determining the disposition, the court should choose those services, including housing assistance, that least interfere with family autonomy and are adequate to protect the child.

(b) Order the child to be removed from his or her home and into the custody, control, and care of a relative or the department or a licensed child placing agency for supervision of the child's placement. The department or agency supervising the child's placement has the authority to place the child, subject to review and approval by the court (i) with a relative as defined in RCW 74.15.020(2)(a), (ii) in a foster family home or group care facility licensed pursuant to chapter 74.15 RCW, or (iii) in the home of another suitable person if the child or family has a preexisting relationship with that person, and the person has completed all required criminal history background checks and otherwise appears to the

department or supervising agency to be suitable and competent to provide care for the child. Absent good cause, the department or supervising agency shall follow the wishes of the natural parent regarding the placement of the child in accordance with RCW 13.34.260. The department or supervising agency may only place a child with a person not related to the child as defined in RCW 74.15.020(2)(a) when the court finds that such placement is in the best interest of the child. Unless there is reasonable cause to believe that the health, safety, or welfare of the child would be jeopardized or that efforts to reunite the parent and child will be hindered, such child shall be placed with a person who is: (A) Related to the child as defined in RCW 74.15.020(2)(a) with whom the child has a relationship and is comfortable; and (B) willing and available to care for the child.

(2) Placement of the child with a relative under this subsection shall be given preference by the court. An order for out-of-home placement may be made only if the court finds that reasonable efforts have been made to prevent or eliminate the need for removal of the child from the child's home and to make it possible for the child to return home, specifying the services that have been provided to the child and the child's parent, guardian, or legal custodian, and that preventive services have been offered or provided and have failed to prevent the need for out-of-home placement, unless the health, safety, and welfare of the child cannot be protected adequately in the home, and that:

(a) There is no parent or guardian available to care for such child;

(b) The parent, guardian, or legal custodian is not willing to take custody of the child; or

(c) The court finds, by clear, cogent, and convincing evidence, a manifest danger exists that the child will suffer serious abuse or neglect if the child is not removed from the home and an order under RCW 26.44.063 would not protect the child from danger.

(3) If the court has ordered a child removed from his or her home pursuant to subsection (1)(b) of this section, the court shall consider whether it is in a child's best interest to be placed with, have contact with, or have visits with siblings.

(a) There shall be a presumption that such placement, contact, or visits are in the best interests of the child provided that:

(i) The court has jurisdiction over all siblings subject to the order of placement, contact, or visitation pursuant to petitions filed under this chapter or the parents of a child for whom there is no jurisdiction are willing to agree; and

(ii) There is no reasonable cause to believe that the health, safety, or welfare of any child subject to the order of placement, contact, or visitation would be jeopardized or that efforts to reunite the parent and child would be hindered by such placement, contact, or visitation. In no event shall parental visitation time be reduced in order to provide sibling visitation.

(b) The court may also order placement, contact, or visitation of a child with a step-brother or step-sister provided that in addition to the factors in (a) of this subsection, the child has a relationship and is comfortable with the step-sibling.

(4) If the court has ordered a child removed from his or her home pursuant to subsection (1)(b) of this section and placed into nonparental or nonrelative care, the court shall order a placement that allows the child to remain in the same school he or she attended prior to the initiation of the dependency proceeding when such a placement is practical and in the child's best interest.

(5) If the court has ordered a child removed from his or her home pursuant to subsection (1)(b) of this section, the court may order that a petition seeking termination of the parent and child relationship be filed if the requirements of RCW 13.34.132 are met.

(6) If there is insufficient information at the time of the disposition hearing upon which to base a determination regarding the suitability of a proposed placement with a relative, the child shall remain in foster care and the court shall direct the supervising agency to conduct necessary background investigations as provided in chapter 74.15 RCW and report the results of such investigation to the court within thirty days. However, if such relative appears otherwise suitable and competent to provide care and treatment, the criminal history background check need not be completed before placement, but as soon as possible after placement. Any placements with relatives, pursuant to this section, shall be contingent upon cooperation by the relative with the agency case plan and compliance with court orders related to the care and supervision of the child including, but not limited to, court orders regarding parent-child contacts, sibling contacts, and any other conditions imposed by the court. Noncompliance with the case plan or court order shall be grounds for removal of the child from the relative's home, subject to review by the court. [2007 c 413 § 6; 2007 c 412 § 2; 2003 c 227 § 3; 2002 c 52 § 5; 2000 c 122 § 15. Prior: 1999 c 267 § 16; 1999 c 267 § 9; 1999 c 173 § 3; prior: 1998 c 314 § 2; 1998 c 130 § 2; 1997 c 280 § 1; prior: 1995 c 313 § 2; 1995 c 311 § 19; 1995 c 53 § 1; 1994 c 288 § 4; 1992 c 145 § 14; 1991 c 127 § 4; prior: 1990 c 284 § 32; 1990 c 246 § 5; 1989 1st ex.s. c 17 § 17; prior: 1988 c 194 § 1; 1988 c 190 § 2; 1988 c 189 § 2; 1984 c 188 § 4; prior: 1983 c 311 § 5; 1983 c 246 § 2; 1979 c 155 § 46; 1977 ex.s. c 291 § 41.]

Reviser's note: This section was amended by 2007 c 412 § 2 and by 2007 c 413 § 6, each without reference to the other. Both amendments are incorporated in the publication of this section under RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

Severability—2007 c 413: See note following RCW 13.34.215.

Intent—2003 c 227: "It is the intent of the legislature to recognize the importance of emotional ties formed by siblings with each other, especially in those circumstances which warrant court intervention into family relationships. It is the intent of the legislature to encourage the courts and public agencies which deal with families to acknowledge and give thoughtful consideration to the quality and nature of sibling relationships when intervening in family relationships. It is not the intent of the legislature to create legal obligations or responsibilities between siblings and other family members whether by blood or marriage, step families, foster families, or adopted families that do not already exist. Neither is it the intent of the legislature to mandate sibling placement, contact, or visitation if there is reasonable cause to believe that the health, safety, or welfare of a child or siblings would be jeopardized. Finally, it is not the intent of the legislature to manufacture or anticipate family relationships which do not exist at the time of the court intervention, or to disrupt already existing positive family relationships." [2003 c 227 § 1.]

Intent—2002 c 52: See note following RCW 13.34.025.

Findings—Intent—Severability—1999 c 267: See notes following RCW 43.20A.790.

Short title—Purpose—Entitlement not granted—Federal waivers—1999 c 267 §§ 10-26: See RCW 74.15.900 and 74.15.901.

Severability—1999 c 173: See note following RCW 13.34.125.

Finding—Effective date—1990 c 284: See notes following RCW 74.13.250.

Severability—1990 c 246: See note following RCW 13.34.060.

Legislative finding—1983 c 311: See note following RCW 13.34.030.

Effective date—Severability—1979 c 155: See notes following RCW 13.04.011.

Effective dates—Severability—1977 ex.s. c 291: See notes following RCW 13.04.005.

13.34.136 Permanency plan of care. (1) A permanency plan shall be developed no later than sixty days from the time the supervising agency assumes responsibility for providing services, including placing the child, or at the time of a hearing under RCW 13.34.130, whichever occurs first. The permanency planning process continues until a permanency planning goal is achieved or dependency is dismissed. The planning process shall include reasonable efforts to return the child to the parent's home.

(2) The agency supervising the dependency shall submit a written permanency plan to all parties and the court not less than fourteen days prior to the scheduled hearing. Responsive reports of parties not in agreement with the supervising agency's proposed permanency plan must be provided to the supervising agency, all other parties, and the court at least seven days prior to the hearing.

The permanency plan shall include:

(a) A permanency plan of care that shall identify one of the following outcomes as a primary goal and may identify additional outcomes as alternative goals: Return of the child to the home of the child's parent, guardian, or legal custodian; adoption; guardianship; permanent legal custody; long-term relative or foster care, until the child is age eighteen, with a written agreement between the parties and the care provider; successful completion of a responsible living skills program; or independent living, if appropriate and if the child is age sixteen or older. The department shall not discharge a child to an independent living situation before the child is eighteen years of age unless the child becomes emancipated pursuant to chapter 13.64 RCW;

(b) Unless the court has ordered, pursuant to *RCW 13.34.130(4), that a termination petition be filed, a specific plan as to where the child will be placed, what steps will be taken to return the child home, what steps the agency will take to promote existing appropriate sibling relationships and/or facilitate placement together or contact in accordance with the best interests of each child, and what actions the agency will take to maintain parent-child ties. All aspects of the plan shall include the goal of achieving permanence for the child.

(i) The agency plan shall specify what services the parents will be offered to enable them to resume custody, what requirements the parents must meet to resume custody, and a time limit for each service plan and parental requirement.

(ii) Visitation is the right of the family, including the child and the parent, in cases in which visitation is in the best interest of the child. Early, consistent, and frequent visitation is crucial for maintaining parent-child relationships and making it possible for parents and children to safely reunify. The

agency shall encourage the maximum parent and child and sibling contact possible, when it is in the best interest of the child, including regular visitation and participation by the parents in the care of the child while the child is in placement. Visitation shall not be limited as a sanction for a parent's failure to comply with court orders or services where the health, safety, or welfare of the child is not at risk as a result of the visitation. Visitation may be limited or denied only if the court determines that such limitation or denial is necessary to protect the child's health, safety, or welfare. The court and the agency should rely upon community resources, relatives, foster parents, and other appropriate persons to provide transportation and supervision for visitation to the extent that such resources are available, and appropriate, and the child's safety would not be compromised.

(iii) A child shall be placed as close to the child's home as possible, preferably in the child's own neighborhood, unless the court finds that placement at a greater distance is necessary to promote the child's or parents' well-being.

(iv) The plan shall state whether both in-state and, where appropriate, out-of-state placement options have been considered by the department.

(v) Unless it is not in the best interests of the child, whenever practical, the plan should ensure the child remains enrolled in the school the child was attending at the time the child entered foster care.

(vi) The agency charged with supervising a child in placement shall provide all reasonable services that are available within the agency, or within the community, or those services which the department has existing contracts to purchase. It shall report to the court if it is unable to provide such services; and

(c) If the court has ordered, pursuant to *RCW 13.34.130(4), that a termination petition be filed, a specific plan as to where the child will be placed, what steps will be taken to achieve permanency for the child, services to be offered or provided to the child, and, if visitation would be in the best interests of the child, a recommendation to the court regarding visitation between parent and child pending a fact-finding hearing on the termination petition. The agency shall not be required to develop a plan of services for the parents or provide services to the parents if the court orders a termination petition be filed. However, reasonable efforts to ensure visitation and contact between siblings shall be made unless there is reasonable cause to believe the best interests of the child or siblings would be jeopardized.

(3) Permanency planning goals should be achieved at the earliest possible date, preferably before the child has been in out-of-home care for fifteen months. In cases where parental rights have been terminated, the child is legally free for adoption, and adoption has been identified as the primary permanency planning goal, it shall be a goal to complete the adoption within six months following entry of the termination order.

(4) If the court determines that the continuation of reasonable efforts to prevent or eliminate the need to remove the child from his or her home or to safely return the child home should not be part of the permanency plan of care for the child, reasonable efforts shall be made to place the child in a timely manner and to complete whatever steps are necessary to finalize the permanent placement of the child.

(5) The identified outcomes and goals of the permanency plan may change over time based upon the circumstances of the particular case.

(6) The court shall consider the child's relationships with the child's siblings in accordance with RCW 13.34.130(3).

(7) For purposes related to permanency planning:

(a) "Guardianship" means a dependency guardianship or a legal guardianship pursuant to chapter 11.88 RCW or equivalent laws of another state or a federally recognized Indian tribe.

(b) "Permanent custody order" means a custody order entered pursuant to chapter 26.10 RCW.

(c) "Permanent legal custody" means legal custody pursuant to chapter 26.10 RCW or equivalent laws of another state or a federally recognized Indian tribe. [2007 c 413 § 7; 2004 c 146 § 1; 2003 c 227 § 4; 2002 c 52 § 6; 2000 c 122 § 18.]

*Reviser's note: RCW 13.34.130 was amended by 2007 c 413 § 6, changing subsection (4) to subsection (5).

Severability—2007 c 413: See note following RCW 13.34.215.

Intent—2003 c 227: See note following RCW 13.34.130.

Intent—2002 c 52: See note following RCW 13.34.025.

13.34.138 Review hearings—Findings—Duties of parties involved—In-home placement requirements—Housing assistance. (1) Except for children whose cases are reviewed by a citizen review board under chapter 13.70 RCW, the status of all children found to be dependent shall be reviewed by the court at least every six months from the beginning date of the placement episode or the date dependency is established, whichever is first. The purpose of the hearing shall be to review the progress of the parties and determine whether court supervision should continue.

(a) The initial review hearing shall be an in-court review and shall be set six months from the beginning date of the placement episode or no more than ninety days from the entry of the disposition order, whichever comes first. The requirements for the initial review hearing, including the in-court review requirement, shall be accomplished within existing resources.

(b) The initial review hearing may be a permanency planning hearing when necessary to meet the time frames set forth in RCW 13.34.145 (1)(a) or 13.34.134.

(2)(a) A child shall not be returned home at the review hearing unless the court finds that a reason for removal as set forth in RCW 13.34.130 no longer exists. The parents, guardian, or legal custodian shall report to the court the efforts they have made to correct the conditions which led to removal. If a child is returned, casework supervision shall continue for a period of six months, at which time there shall be a hearing on the need for continued intervention.

(b) Prior to the child returning home, the department must complete the following:

(i) Identify all adults residing in the home and conduct background checks on those persons;

(ii) Identify any persons who may act as a caregiver for the child in addition to the parent with whom the child is being placed and determine whether such persons are in need of any services in order to ensure the safety of the child, regardless of whether such persons are a party to the depen-

gency. The department or supervising agency may recommend to the court and the court may order that placement of the child in the parent's home be contingent on or delayed based on the need for such persons to engage in or complete services to ensure the safety of the child prior to placement. If services are recommended for the caregiver, and the caregiver fails to engage in or follow through with the recommended services, the department or supervising agency must promptly notify the court; and

(iii) Notify the parent with whom the child is being placed that he or she has an ongoing duty to notify the department or supervising agency of all persons who reside in the home or who may act as a caregiver for the child both prior to the placement of the child in the home and subsequent to the placement of the child in the home as long as the court retains jurisdiction of the dependency proceeding or the department is providing or monitoring either remedial services to the parent or services to ensure the safety of the child to any caregivers.

Caregivers may be required to engage in services under this subsection solely for the purpose of ensuring the present and future safety of a child who is a ward of the court. This subsection does not grant party status to any individual not already a party to the dependency proceeding, create an entitlement to services or a duty on the part of the department or supervising agency to provide services, or create judicial authority to order the provision of services to any person other than for the express purposes of this section or RCW 13.34.025 or if the services are unavailable or unsuitable or the person is not eligible for such services.

(c) If the child is not returned home, the court shall establish in writing:

(i) Whether the agency is making reasonable efforts to provide services to the family and eliminate the need for placement of the child. If additional services, including housing assistance, are needed to facilitate the return of the child to the child's parents, the court shall order that reasonable services be offered specifying such services;

(ii) Whether there has been compliance with the case plan by the child, the child's parents, and the agency supervising the placement;

(iii) Whether progress has been made toward correcting the problems that necessitated the child's placement in out-of-home care;

(iv) Whether the services set forth in the case plan and the responsibilities of the parties need to be clarified or modified due to the availability of additional information or changed circumstances;

(v) Whether there is a continuing need for placement;

(vi) Whether the child is in an appropriate placement which adequately meets all physical, emotional, and educational needs;

(vii) Whether preference has been given to placement with the child's relatives;

(viii) Whether both in-state and, where appropriate, out-of-state placements have been considered;

(ix) Whether the parents have visited the child and any reasons why visitation has not occurred or has been infrequent;

(x) Whether terms of visitation need to be modified;

(xi) Whether the court-approved long-term permanent plan for the child remains the best plan for the child;

(xii) Whether any additional court orders need to be made to move the case toward permanency; and

(xiii) The projected date by which the child will be returned home or other permanent plan of care will be implemented.

(d) The court at the review hearing may order that a petition seeking termination of the parent and child relationship be filed.

(3)(a) In any case in which the court orders that a dependent child may be returned to or remain in the child's home, the in-home placement shall be contingent upon the following:

(i) The compliance of the parents with court orders related to the care and supervision of the child, including compliance with an agency case plan; and

(ii) The continued participation of the parents, if applicable, in available substance abuse or mental health treatment if substance abuse or mental illness was a contributing factor to the removal of the child.

(b) The following may be grounds for removal of the child from the home, subject to review by the court:

(i) Noncompliance by the parents with the agency case plan or court order;

(ii) The parent's inability, unwillingness, or failure to participate in available services or treatment for themselves or the child, including substance abuse treatment if a parent's substance abuse was a contributing factor to the abuse or neglect; or

(iii) The failure of the parents to successfully and substantially complete available services or treatment for themselves or the child, including substance abuse treatment if a parent's substance abuse was a contributing factor to the abuse or neglect.

(c) In a pending dependency case in which the court orders that a dependent child may be returned home and that child is later removed from the home, the court shall hold a review hearing within thirty days from the date of removal to determine whether the permanency plan should be changed, a termination petition should be filed, or other action is warranted. The best interests of the child shall be the court's primary consideration in the review hearing.

(4) The court's ability to order housing assistance under RCW 13.34.130 and this section is: (a) Limited to cases in which homelessness or the lack of adequate and safe housing is the primary reason for an out-of-home placement; and (b) subject to the availability of funds appropriated for this specific purpose.

(5) The court shall consider the child's relationship with siblings in accordance with RCW 13.34.130(3). [2007 c 413 § 8; 2007 c 410 § 1; 2005 c 512 § 3; 2003 c 227 § 5; 2001 c 332 § 5; 2000 c 122 § 19.]

Reviser's note: This section was amended by 2007 c 410 § 1 and by 2007 c 413 § 8, each without reference to the other. Both amendments are incorporated in the publication of this section under RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

Severability—2007 c 413: See note following RCW 13.34.215.

Short title—2007 c 410: "This act may be known and cited as *Sirita's law*." [2007 c 410 § 9.]

Finding—Intent—Effective date—Short title—2005 c 512: See notes following RCW 26.44.100.

Intent—2003 c 227: See note following RCW 13.34.130.

13.34.145 Permanency planning hearing—Purpose—Time limits—Goals—Review hearing—Petition for termination of parental rights—Guardianship petition—Agency responsibility to provide services to parents—Due process rights. (1) The purpose of a permanency planning hearing is to review the permanency plan for the child, inquire into the welfare of the child and progress of the case, and reach decisions regarding the permanent placement of the child.

(a) A permanency planning hearing shall be held in all cases where the child has remained in out-of-home care for at least nine months and an adoption decree, guardianship order, or permanent custody order has not previously been entered. The hearing shall take place no later than twelve months following commencement of the current placement episode.

(b) Whenever a child is removed from the home of a dependency guardian or long-term relative or foster care provider, and the child is not returned to the home of the parent, guardian, or legal custodian but is placed in out-of-home care, a permanency planning hearing shall take place no later than twelve months, as provided in this section, following the date of removal unless, prior to the hearing, the child returns to the home of the dependency guardian or long-term care provider, the child is placed in the home of the parent, guardian, or legal custodian, an adoption decree, guardianship order, or a permanent custody order is entered, or the dependency is dismissed.

(c) Permanency planning goals should be achieved at the earliest possible date, preferably before the child has been in out-of-home care for fifteen months. In cases where parental rights have been terminated, the child is legally free for adoption, and adoption has been identified as the primary permanency planning goal, it shall be a goal to complete the adoption within six months following entry of the termination order.

(2) No later than ten working days prior to the permanency planning hearing, the agency having custody of the child shall submit a written permanency plan to the court and shall mail a copy of the plan to all parties and their legal counsel, if any.

(3) At the permanency planning hearing, the court shall conduct the following inquiry:

(a) If a goal of long-term foster or relative care has been achieved prior to the permanency planning hearing, the court shall review the child's status to determine whether the placement and the plan for the child's care remain appropriate.

(b) In cases where the primary permanency planning goal has not been achieved, the court shall inquire regarding the reasons why the primary goal has not been achieved and determine what needs to be done to make it possible to achieve the primary goal. The court shall review the permanency plan prepared by the agency and make explicit findings regarding each of the following:

(i) The continuing necessity for, and the safety and appropriateness of, the placement;

(ii) The extent of compliance with the permanency plan by the agency and any other service providers, the child's parents, the child, and the child's guardian, if any;

(iii) The extent of any efforts to involve appropriate service providers in addition to agency staff in planning to meet the special needs of the child and the child's parents;

(iv) The progress toward eliminating the causes for the child's placement outside of his or her home and toward returning the child safely to his or her home or obtaining a permanent placement for the child;

(v) The date by which it is likely that the child will be returned to his or her home or placed for adoption, with a guardian or in some other alternative permanent placement; and

(vi) If the child has been placed outside of his or her home for fifteen of the most recent twenty-two months, not including any period during which the child was a runaway from the out-of-home placement or the first six months of any period during which the child was returned to his or her home for a trial home visit, the appropriateness of the permanency plan, whether reasonable efforts were made by the agency to achieve the goal of the permanency plan, and the circumstances which prevent the child from any of the following:

(A) Being returned safely to his or her home;

(B) Having a petition for the involuntary termination of parental rights filed on behalf of the child;

(C) Being placed for adoption;

(D) Being placed with a guardian;

(E) Being placed in the home of a fit and willing relative of the child; or

(F) Being placed in some other alternative permanent placement, including independent living or long-term foster care.

(c)(i) If the permanency plan identifies independent living as a goal, the court shall make a finding that the provision of services to assist the child in making a transition from foster care to independent living will allow the child to manage his or her financial, personal, social, educational, and nonfinancial affairs prior to approving independent living as a permanency plan of care.

(ii) The permanency plan shall also specifically identify the services that will be provided to assist the child to make a successful transition from foster care to independent living.

(iii) The department shall not discharge a child to an independent living situation before the child is eighteen years of age unless the child becomes emancipated pursuant to chapter 13.64 RCW.

(d) If the child has resided in the home of a foster parent or relative for more than six months prior to the permanency planning hearing, the court shall also enter a finding regarding whether the foster parent or relative was informed of the hearing as required in RCW 74.13.280 and *13.34.138.

(4) In all cases, at the permanency planning hearing, the court shall:

(a)(i) Order the permanency plan prepared by the agency to be implemented; or

(ii) Modify the permanency plan, and order implementation of the modified plan; and

(b)(i) Order the child returned home only if the court finds that a reason for removal as set forth in RCW 13.34.130 no longer exists; or

(ii) Order the child to remain in out-of-home care for a limited specified time period while efforts are made to implement the permanency plan.

(5) Following the first permanency planning hearing, the court shall hold a further permanency planning hearing in accordance with this section at least once every twelve months until a permanency planning goal is achieved or the dependency is dismissed, whichever occurs first.

(6) Prior to the second permanency planning hearing, the agency that has custody of the child shall consider whether to file a petition for termination of parental rights.

(7) If the court orders the child returned home, casework supervision shall continue for at least six months, at which time a review hearing shall be held pursuant to RCW 13.34.138, and the court shall determine the need for continued intervention.

(8) The juvenile court may hear a petition for permanent legal custody when: (a) The court has ordered implementation of a permanency plan that includes permanent legal custody; and (b) the party pursuing the permanent legal custody is the party identified in the permanency plan as the prospective legal custodian. During the pendency of such proceeding, the court shall conduct review hearings and further permanency planning hearings as provided in this chapter. At the conclusion of the legal guardianship or permanent legal custody proceeding, a juvenile court hearing shall be held for the purpose of determining whether dependency should be dismissed. If a guardianship or permanent custody order has been entered, the dependency shall be dismissed.

(9) Continued juvenile court jurisdiction under this chapter shall not be a barrier to the entry of an order establishing a legal guardianship or permanent legal custody when the requirements of subsection (8) of this section are met.

(10) Nothing in this chapter may be construed to limit the ability of the agency that has custody of the child to file a petition for termination of parental rights or a guardianship petition at any time following the establishment of dependency. Upon the filing of such a petition, a fact-finding hearing shall be scheduled and held in accordance with this chapter unless the agency requests dismissal of the petition prior to the hearing or unless the parties enter an agreed order terminating parental rights, establishing guardianship, or otherwise resolving the matter.

(11) The approval of a permanency plan that does not contemplate return of the child to the parent does not relieve the supervising agency of its obligation to provide reasonable services, under this chapter, intended to effectuate the return of the child to the parent, including but not limited to, visitation rights. The court shall consider the child's relationships with siblings in accordance with RCW 13.34.130.

(12) Nothing in this chapter may be construed to limit the procedural due process rights of any party in a termination or guardianship proceeding filed under this chapter. [2007 c 413 § 9; 2003 c 227 § 6. Prior: 2000 c 135 § 4; 2000 c 122 § 20; 1999 c 267 § 17; prior: 1998 c 314 § 3; 1998 c 130 § 3; prior: 1995 c 311 § 20; 1995 c 53 § 2; 1994 c 288 § 5; 1993 c 412 § 1; 1989 1st ex.s. c 17 § 18; 1988 c 194 § 3.]

*Reviser's note: RCW 13.34.138 was amended twice in 2007. The requirement to give notice of the hearing to a foster parent or relative is now found in RCW 13.34.215(5).

Severability—2007 c 413: See note following RCW 13.34.215.

Intent—2003 c 227: See note following RCW 13.34.130.

Findings—Intent—Severability—1999 c 267: See notes following RCW 43.20A.790.

Short title—Purpose—Entitlement not granted—Federal waivers—1999 c 267 §§ 10-26: See RCW 74.15.900 and 74.15.901.

13.34.200 Order terminating parent and child relationship—Rights of parties when granted. (1) Upon the termination of parental rights pursuant to RCW 13.34.180, all rights, powers, privileges, immunities, duties, and obligations, including any rights to custody, control, visitation, or support existing between the child and parent shall be severed and terminated and the parent shall have no standing to appear at any further legal proceedings concerning the child, except as provided in RCW 13.34.215: PROVIDED, That any support obligation existing prior to the effective date of the order terminating parental rights shall not be severed or terminated. The rights of one parent may be terminated without affecting the rights of the other parent and the order shall so state.

(2) An order terminating the parent and child relationship shall not disentitle a child to any benefit due the child from any third person, agency, state, or the United States, nor shall any action under this chapter be deemed to affect any rights and benefits that an Indian child derives from the child's descent from a member of a federally recognized Indian tribe.

(3) An order terminating the parent-child relationship shall include a statement addressing the status of the child's sibling relationships and the nature and extent of sibling placement, contact, or visits. [2007 c 413 § 2; 2003 c 227 § 7; 2000 c 122 § 27; 1977 ex.s. c 291 § 48.]

Severability—2007 c 413: See note following RCW 13.34.215.

Intent—2003 c 227: See note following RCW 13.34.130.

Effective dates—Severability—1977 ex.s. c 291: See notes following RCW 13.04.005.

13.34.215 Petition reinstating terminated parental rights—Notice—Achievement of permanency plan—Effect of granting the petition—Child support liability—Retroactive application. (1) A child may petition the juvenile court to reinstate the previously terminated parental rights of his or her parent under the following circumstances:

(a) The child was previously found to be a dependent child under this chapter;

(b) The child's parent's rights were terminated in a proceeding under this chapter;

(c) The child has not achieved his or her permanency plan within three years of a final order of termination, or if the final order was appealed, within three years of exhaustion of any right to appeal the order terminating parental rights; and

(d) Absent good cause, the child must be at least twelve years old at the time the petition is filed.

(2) A child seeking to petition under this section shall be provided counsel at no cost to the child.

(3) The petition must be signed by the child in the absence of a showing of good cause as to why the child could not do so.

(4) If, after a threshold hearing to consider the parent's apparent fitness and interest in reinstatement of parental

rights, it appears that the best interests of the child may be served by reinstatement of parental rights, the juvenile court shall order that a hearing on the merits of the petition be held.

(5) The court shall give prior notice for any proceeding under this section, or cause prior notice to be given, to the department, the child's attorney, and the child. The court shall also order the department to give prior notice of any hearing to the child's former parent whose parental rights are the subject of the petition, any parent whose rights have not been terminated, the child's current foster parent, relative caregiver, guardian or custodian, and the child's tribe, if applicable.

(6) The juvenile court shall conditionally grant the petition if it finds by clear and convincing evidence that the child has not achieved his or her permanency plan and is not likely to imminently achieve his or her permanency plan and that reinstatement of parental rights is in the child's best interest. In determining whether reinstatement is in the child's best interest the court shall consider, but is not limited to, the following:

(a) Whether the parent whose rights are to be reinstated is a fit parent and has remedied his or her deficits as provided in the record of the prior termination proceedings and prior termination order;

(b) The age and maturity of the child, and the ability of the child to express his or her preference;

(c) Whether the reinstatement of parental rights will present a risk to the child's health, welfare, or safety; and

(d) Other material changes in circumstances, if any, that may have occurred which warrant the granting of the petition.

(7) In determining whether the child has or has not achieved his or her permanency plan or whether the child is likely to achieve his or her permanency plan, the department shall provide the court, and the court shall review, information related to any efforts to achieve the permanency plan including efforts to achieve adoption or a permanent guardianship.

(8)(a) If the court conditionally grants the petition under subsection (6) of this section, the case will be continued for six months. During this period, the child shall be placed in the custody of the parent. The department shall develop a permanency plan for the child reflecting the plan to be reunification and shall provide transition services to the family as appropriate.

(b) If the child must be removed from the parent due to abuse or neglect allegations prior to the expiration of the conditional six-month period, the court shall dismiss the petition for reinstatement of parental rights if the court finds the allegations have been proven by a preponderance of the evidence.

(c) If the child has been successfully placed with the parent for six months, the court order reinstating parental rights remains in effect and the court shall dismiss the dependency.

(9) The granting of the petition under this section does not vacate or otherwise affect the validity of the original termination order.

(10) Any parent whose rights are reinstated under this section shall not be liable for any child support owed to the department pursuant to RCW 13.34.160 for the time period from the date of termination of parental rights to the date parental rights are reinstated.

(11) A proceeding to reinstate parental rights is a separate action from the termination of parental rights proceeding and does not vacate the original termination of parental rights. An order granted under this section reinstates the parental rights to the child. This reinstatement is a recognition that the situation of the parent and child have changed since the time of the termination of parental rights and reunification is now appropriate.

(12) This section is retroactive and applies to any child who is under the jurisdiction of the juvenile court at the time of the hearing regardless of the date parental rights were terminated. [2007 c 413 § 1.]

Severability—2007 c 413: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [2007 c 413 § 13.]

13.34.400 Child welfare proceedings—Placement—Documentation. In any proceeding under this chapter, if the department submits a report to the court in which the department is recommending a new placement or a change in placement, the department shall include the documents relevant to persons in the home in which a child will be placed and listed in subsections (1) through (5) of this section to the report. The department shall include only these relevant documents and shall not attach the entire history of the subject of the report.

(1) If the report contains a recommendation, opinion, or assertion by the department relating to substance abuse treatment, mental health treatment, anger management classes, or domestic violence classes, the department shall attach the document upon which the recommendation, opinion, or assertion was based. The documentation may include the progress report or evaluation submitted by the provider, but may not include the entire history with the provider.

(2) If the report contains a recommendation, opinion, or assertion by the department relating to visitation with a child, the department shall attach the document upon which the recommendation, opinion, or assertion was based. The documentation may include the most recent visitation report, a visitation report referencing a specific incident alleged in the report, or summary of the visitation prepared by the person who supervised the visitation. The documentation attached to the report shall not include the entire visitation history.

(3) If the report contains a recommendation, opinion, or assertion by the department relating to the psychological status of a person, the department shall attach the document upon which the recommendation, opinion, or assertion was based. The documentation may include the progress report, evaluation, or summary submitted by the provider, but shall not include the entire history of the person.

(4) If the report contains a recommendation, opinion, or assertion by the department relating to injuries to a child, the department shall attach a summary of the physician's report, prepared by the physician or the physician's designee, relating to the recommendation, opinion, or assertion by the department.

(5) If the report contains a recommendation, opinion, or assertion by the department relating to a home study, licensing action, or background check information, the department shall attach the document or documents upon which that rec-

ommendation, opinion, or assertion is based. [2007 c 411 § 2.]

Finding—2007 c 411: "The legislature finds that in order to allow courts to make well-informed placement decisions for children in the care of the state, the courts must have accurate information, including documentation supporting assertions or recommendations made by social workers, when appropriate." [2007 c 411 § 1.]

Short title—2007 c 411: "This act shall be known and cited as the Rafael Gomez act." [2007 c 411 § 3.]

13.34.820 Permanency for dependent children—Annual report. (1) The administrative office of the courts, in consultation with the attorney general's office and the department of social and health services, shall compile an annual report, providing information about cases that fail to meet statutory guidelines to achieve permanency for dependent children.

(2) The administrative office of the courts shall submit the annual report required by this section to appropriate committees of the legislature by December 1st of each year, beginning on December 1, 2007. [2007 c 410 § 6.]

Short title—2007 c 410: See note following RCW 13.34.138.

Chapter 13.40 RCW

JUVENILE JUSTICE ACT OF 1977

Sections

- 13.40.0357 Juvenile offender sentencing standards.
- 13.40.160 Disposition order—Court's action prescribed—Disposition outside standard range—Right of appeal—Special sex offender disposition alternative.
- 13.40.210 Setting of release date—Administrative release authorized, when—Parole program, revocation or modification of, scope—Intensive supervision program—Parole officer's right of arrest. (*Effective until October 1, 2007.*)
- 13.40.210 Setting of release date—Administrative release authorized, when—Parole program, revocation or modification of, scope—Intensive supervision program—Parole officer's right of arrest. (*Effective October 1, 2007.*)
- 13.40.305 Juvenile offender adjudicated of theft of motor vehicle, possession of stolen vehicle, taking motor vehicle without permission in the first degree, taking motor vehicle without permission in the second degree—Local sanctions—Evaluation.
- 13.40.308 Juvenile offender adjudicated of taking motor vehicle without permission in the first degree, theft of motor vehicle, possession of a stolen vehicle, taking motor vehicle without permission in the second degree—Minimum sentences.

13.40.0357 Juvenile offender sentencing standards.

DESCRIPTION AND OFFENSE CATEGORY

JUVENILE DISPOSITION OFFENSE CATEGORY	DESCRIPTION (RCW CITATION)	JUVENILE DISPOSITION CATEGORY FOR ATTEMPT, BAILJUMP, CONSPIRACY, OR SOLICITATION
Arson and Malicious Mischief		
A	Arson 1 (9A.48.020)	B+
B	Arson 2 (9A.48.030)	C
C	Reckless Burning 1 (9A.48.040)	D
D	Reckless Burning 2 (9A.48.050)	E
B	Malicious Mischief 1 (9A.48.070)	C
C	Malicious Mischief 2 (9A.48.080)	D
D	Malicious Mischief 3 (9A.48.090(2) (a) and (c))	E
E	Malicious Mischief 3 (9A.48.090(2)(b))	E

E	Tampering with Fire Alarm Apparatus (9.40.100)	E
E	Tampering with Fire Alarm Apparatus with Intent to Commit Arson (9.40.105)	E
A	Possession of Incendiary Device (9.40.120)	B+
Assault and Other Crimes Involving Physical Harm		
A	Assault 1 (9A.36.011)	B+
B+	Assault 2 (9A.36.021)	C+
C+	Assault 3 (9A.36.031)	D+
D+	Assault 4 (9A.36.041)	E
B+	Drive-By Shooting (9A.36.045)	C+
D+	Reckless Endangerment (9A.36.050)	E
C+	Promoting Suicide Attempt (9A.36.060)	D+
D+	Coercion (9A.36.070)	E
C+	Custodial Assault (9A.36.100)	D+
Burglary and Trespass		
B+	Burglary 1 (9A.52.020)	C+
B	Residential Burglary (9A.52.025)	C
B	Burglary 2 (9A.52.030)	C
D	Burglary Tools (Possession of) (9A.52.060)	E
D	Criminal Trespass 1 (9A.52.070)	E
E	Criminal Trespass 2 (9A.52.080)	E
C	Mineral Trespass (78.44.330)	C
C	Vehicle Prowling 1 (9A.52.095)	D
D	Vehicle Prowling 2 (9A.52.100)	E
Drugs		
E	Possession/Consumption of Alcohol (66.44.270)	E
C	Illegally Obtaining Legend Drug (69.41.020)	D
C+	Sale, Delivery, Possession of Legend Drug with Intent to Sell (69.41.030(2)(a))	D+
E	Possession of Legend Drug (69.41.030(2)(b))	E
B+	Violation of Uniform Controlled Substances Act - Narcotic, Methamphetamine, or Flunitrazepam Sale (69.50.401(2) (a) or (b))	B+
C	Violation of Uniform Controlled Substances Act - Nonnarcotic Sale (69.50.401(2)(c))	C
E	Possession of Marihuana <40 grams (69.50.4014)	E
C	Fraudulently Obtaining Controlled Substance (69.50.403)	C
C+	Sale of Controlled Substance for Profit (69.50.410)	C+
E	Unlawful Inhalation (9.47A.020)	E
B	Violation of Uniform Controlled Substances Act - Narcotic, Methamphetamine, or Flunitrazepam Counterfeit Substances (69.50.4011(2) (a) or (b))	B
C	Violation of Uniform Controlled Substances Act - Nonnarcotic Counterfeit Substances (69.50.4011(2) (c), (d), or (e))	C
C	Violation of Uniform Controlled Substances Act - Possession of a Controlled Substance (69.50.4013)	C

C	Violation of Uniform Controlled Substances Act - Possession of a Controlled Substance (69.50.4012)	C
Firearms and Weapons		
B	Theft of Firearm (9A.56.300)	C
B	Possession of Stolen Firearm (9A.56.310)	C
E	Carrying Loaded Pistol Without Permit (9.41.050)	E
C	Possession of Firearms by Minor (<18) (9.41.040(2)(a)(iii))	C
D+	Possession of Dangerous Weapon (9.41.250)	E
D	Intimidating Another Person by use of Weapon (9.41.270)	E
Homicide		
A+	Murder 1 (9A.32.030)	A
A+	Murder 2 (9A.32.050)	B+
B+	Manslaughter 1 (9A.32.060)	C+
C+	Manslaughter 2 (9A.32.070)	D+
B+	Vehicular Homicide (46.61.520)	C+
Kidnapping		
A	Kidnap 1 (9A.40.020)	B+
B+	Kidnap 2 (9A.40.030)	C+
C+	Unlawful Imprisonment (9A.40.040)	D+
Obstructing Governmental Operation		
D	Obstructing a Law Enforcement Officer (9A.76.020)	E
E	Resisting Arrest (9A.76.040)	E
B	Introducing Contraband 1 (9A.76.140)	C
C	Introducing Contraband 2 (9A.76.150)	D
E	Introducing Contraband 3 (9A.76.160)	E
B+	Intimidating a Public Servant (9A.76.180)	C+
B+	Intimidating a Witness (9A.72.110)	C+
Public Disturbance		
C+	Riot with Weapon (9A.84.010(2)(b))	D+
D+	Riot Without Weapon (9A.84.010(2)(a))	E
E	Failure to Disperse (9A.84.020)	E
E	Disorderly Conduct (9A.84.030)	E
Sex Crimes		
A	Rape 1 (9A.44.040)	B+
A-	Rape 2 (9A.44.050)	B+
C+	Rape 3 (9A.44.060)	D+
A-	Rape of a Child 1 (9A.44.073)	B+
B+	Rape of a Child 2 (9A.44.076)	C+
B	Incest 1 (9A.64.020(1))	C
C	Incest 2 (9A.64.020(2))	D
D+	Indecent Exposure (Victim <14) (9A.88.010)	E
E	Indecent Exposure (Victim 14 or over) (9A.88.010)	E
B+	Promoting Prostitution 1 (9A.88.070)	C+
C+	Promoting Prostitution 2 (9A.88.080)	D+
E	O & A (Prostitution) (9A.88.030)	E
B+	Indecent Liberties (9A.44.100)	C+
A-	Child Molestation 1 (9A.44.083)	B+
B	Child Molestation 2 (9A.44.086)	C+
Theft, Robbery, Extortion, and Forgery		
B	Theft 1 (9A.56.030)	C

C	Theft 2 (9A.56.040)	D
D	Theft 3 (9A.56.050)	E
B	Theft of Livestock 1 and 2 (9A.56.080 and 9A.56.083)	C
C	Forgery (9A.60.020)	D
A	Robbery 1 (9A.56.200)	B+
B+	Robbery 2 (9A.56.210)	C+
B+	Extortion 1 (9A.56.120)	C+
C+	Extortion 2 (9A.56.130)	D+
C	Identity Theft 1 (9.35.020(2))	D
D	Identity Theft 2 (9.35.020(3))	E
D	Improperly Obtaining Financial Information (9.35.010)	E
B	Possession of a Stolen Vehicle (9A.56.068)	C
B	Possession of Stolen Property 1 (9A.56.150)	C
C	Possession of Stolen Property 2 (9A.56.160)	D
D	Possession of Stolen Property 3 (9A.56.170)	E
B	Taking Motor Vehicle Without Permission 1 (9A.56.070)	C
C	Taking Motor Vehicle Without Permission 2 (9A.56.075)	D
B	Theft of a Motor Vehicle (9A.56.065)	C
Motor Vehicle Related Crimes		
E	Driving Without a License (46.20.005)	E
B+	Hit and Run - Death (46.52.020(4)(a))	C+
C	Hit and Run - Injury (46.52.020(4)(b))	D
D	Hit and Run-Attended (46.52.020(5))	E
E	Hit and Run-Unattended (46.52.010)	E
C	Vehicular Assault (46.61.522)	D
C	Attempting to Elude Pursuing Police Vehicle (46.61.024)	D
E	Reckless Driving (46.61.500)	E
D	Driving While Under the Influence (46.61.502 and 46.61.504)	E
B+	Felony Driving While Under the Influence (46.61.502(6))	B
B+	Felony Physical Control of a Vehicle While Under the Influence (46.61.504(6))	B
Other		
B	Animal Cruelty 1 (16.52.205)	C
B	Bomb Threat (9.61.160)	C
C	Escape 1 ¹ (9A.76.110)	C
C	Escape 2 ¹ (9A.76.120)	C
D	Escape 3 (9A.76.130)	E
E	Obscene, Harassing, Etc., Phone Calls (9.61.230)	E
A	Other Offense Equivalent to an Adult Class A Felony	B+
B	Other Offense Equivalent to an Adult Class B Felony	C
C	Other Offense Equivalent to an Adult Class C Felony	D
D	Other Offense Equivalent to an Adult Gross Misdemeanor	E
E	Other Offense Equivalent to an Adult Misdemeanor	E
V	Violation of Order of Restitution, Community Supervision, or Confinement (13.40.200) ²	V

¹Escape 1 and 2 and Attempted Escape 1 and 2 are classed as C offenses and the standard range is established as follows:

1st escape or attempted escape during 12-month period - 4 weeks confinement

2nd escape or attempted escape during 12-month period - 8 weeks confinement

3rd and subsequent escape or attempted escape during 12-month period - 12 weeks confinement

²If the court finds that a respondent has violated terms of an order, it may impose a penalty of up to 30 days of confinement.

JUVENILE SENTENCING STANDARDS

This schedule must be used for juvenile offenders. The court may select sentencing option A, B, C, D, or RCW 13.40.167.

**OPTION A
JUVENILE OFFENDER SENTENCING GRID
STANDARD RANGE**

A+	180 WEEKS TO AGE 21 YEARS					
A	103 WEEKS TO 129 WEEKS					
A-	15-36 WEEKS EXCEPT 30-40 WEEKS FOR 15-17 YEAR OLDS	52-65 WEEKS	80-100 WEEKS	103-129 WEEKS		
Current Offense Category	B+	15-36 WEEKS	52-65 WEEKS	80-100 WEEKS	103-129 WEEKS	
	B	LOCAL SANCTIONS (LS)		15-36 WEEKS	52-65 WEEKS	
	C+	LS		15-36 WEEKS		
	C	LS		15-36 WEEKS		
	D+	LS		Local Sanctions: 0 to 30 Days 0 to 12 Months Community Supervision 0 to 150 Hours Community Restitution \$0 to \$500 Fine		
	D	LS		Local Sanctions: 0 to 30 Days 0 to 12 Months Community Supervision 0 to 150 Hours Community Restitution \$0 to \$500 Fine		
	E	LS		Local Sanctions: 0 to 30 Days 0 to 12 Months Community Supervision 0 to 150 Hours Community Restitution \$0 to \$500 Fine		
		0	1	2	3	4 or more
		PRIOR ADJUDICATIONS				

NOTE: References in the grid to days or weeks mean periods of confinement.

(1) The vertical axis of the grid is the current offense category. The current offense category is determined by the offense of adjudication.

(2) The horizontal axis of the grid is the number of prior adjudications included in the juvenile's criminal history. Each prior felony adjudication shall count as one point. Each prior violation, misdemeanor, and gross misdemeanor adjudication shall count as 1/4 point. Fractional points shall be rounded down.

(3) The standard range disposition for each offense is determined by the intersection of the column defined by the prior adjudications and the row defined by the current offense category.

(4) RCW 13.40.180 applies if the offender is being sentenced for more than one offense.

(5) A current offense that is a violation is equivalent to an offense category of E. However, a disposition for a violation shall not include confinement.

OR

**OPTION B
SUSPENDED DISPOSITION ALTERNATIVE**

(1) If the offender is subject to a standard range disposition involving confinement by the department, the court may impose the standard range and suspend the disposition on condition that the offender comply with one or more local sanctions and any educational or treatment requirement. The treatment programs provided to the offender must be research-based best practice programs as identified by the Washington state institute for public policy or the joint legislative audit and review committee.

(2) If the offender fails to comply with the suspended disposition, the court may impose sanctions pursuant to RCW 13.40.200 or may revoke the suspended disposition and order the disposition's execution.

(3) An offender is ineligible for the suspended disposition option under this section if the offender is:

- (a) Adjudicated of an A+ offense;
- (b) Fourteen years of age or older and is adjudicated of one or more of the following offenses:
 - (i) A class A offense, or an attempt, conspiracy, or solicitation to commit a class A offense;
 - (ii) Manslaughter in the first degree (RCW 9A.32.060); or
 - (iii) Assault in the second degree (RCW 9A.36.021), extortion in the first degree (RCW 9A.56.120), kidnapping in the second degree (RCW 9A.40.030), robbery in the second degree (RCW 9A.56.210), residential burglary (RCW 9A.52.025), burglary in the second degree (RCW 9A.52.030), drive-by shooting (RCW 9A.36.045), vehicular homicide (RCW 46.61.520), hit and run death (RCW 46.52.020(4)(a)), intimidating a witness (RCW 9A.72.110), violation of the uniform controlled substances act (RCW 69.50.401 (2)(a) and (b)), or manslaughter 2 (RCW 9A.32.070), when the offense includes infliction of bodily harm upon another or when during the commission or immediate withdrawal from the offense the respondent was armed with a deadly weapon;
- (c) Ordered to serve a disposition for a firearm violation under RCW 13.40.193; or
- (d) Adjudicated of a sex offense as defined in RCW 9.94A.030.

OR

**OPTION C
CHEMICAL DEPENDENCY
DISPOSITION ALTERNATIVE**

If the juvenile offender is subject to a standard range disposition of local sanctions or 15 to 36 weeks of confinement and has not committed an A- or B+ offense, the court may impose a disposition under RCW 13.40.160(4) and 13.40.165.

OR

**OPTION D
MANIFEST INJUSTICE**

If the court determines that a disposition under option A, B, or C would effectuate a manifest injustice, the court shall impose a disposition outside the standard range under RCW 13.40.160(2). [2007 c 199 § 11; 2006 c 73 § 14; 2004 c 117 § 1. Prior: 2003 c 378 § 2; 2003 c 335 § 6; 2003 c 53 § 97; prior: 2002 c 324 § 3; 2002 c 175 § 20; 2001 c 217 § 13; 2000 c 66 § 3; 1998 c 290 § 5; prior: 1997 c 338 § 12; (1997 c 338 § 11 expired July 1, 1998); 1997 c 66 § 6; 1996 c 205 § 6; 1995 c 395 § 3; 1994 sp.s. c 7 § 522; 1989 c 407 § 7.]

Findings—Intent—Short title—2007 c 199: See notes following RCW 9A.56.065.

Effective date—2006 c 73: See note following RCW 46.61.502.

Effective date—2004 c 117: "This act takes effect July 1, 2004." [2004 c 117 § 3.]

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

Study and report—2002 c 324: See note following RCW 9A.56.070.

Effective date—2002 c 175: See note following RCW 7.80.130.

Captions not law—2001 c 217: See note following RCW 9.35.005.

Application—Effective date—Severability—1998 c 290: See notes following RCW 69.50.401.

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

Finding—Evaluation—Report—1997 c 338: "The legislature finds it critical to evaluate the effectiveness of the revisions made in this act to juvenile sentencing for purposes of measuring improvements in public safety and reduction of recidivism.

To accomplish this evaluation, the Washington state institute for public policy shall conduct a study of the sentencing revisions. The study shall: (1) Be conducted starting January 1, 2001; (2) examine whether the revisions have affected the rate of initial offense commission and recidivism; (3) determine the impacts of the revisions by age, race, and gender impacts of the revisions; (4) compare the utilization and effectiveness of sentencing alternatives and manifest injustice determinations before and after the revisions; and (5) examine the impact and effectiveness of changes made in the exclusive original jurisdiction of juvenile court over juvenile offenders.

The institute shall report the results of the study to the governor and legislature not later than July 1, 2002." [1997 c 338 § 59.]

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

13.40.160 Disposition order—Court's action prescribed—Disposition outside standard range—Right of appeal—Special sex offender disposition alternative. (1) The standard range disposition for a juvenile adjudicated of an offense is determined according to RCW 13.40.0357.

(a) When the court sentences an offender to a local sanction as provided in RCW 13.40.0357 option A, the court shall impose a determinate disposition within the standard ranges, except as provided in subsection (2), (3), (4), (5), or (6) of this section. The disposition may be comprised of one or more local sanctions.

(b) When the court sentences an offender to a standard range as provided in RCW 13.40.0357 option A that includes a term of confinement exceeding thirty days, commitment shall be to the department for the standard range of confinement, except as provided in subsection (2), (3), (4), (5), or (6) of this section.

(2) If the court concludes, and enters reasons for its conclusion, that disposition within the standard range would

effectuate a manifest injustice the court shall impose a disposition outside the standard range, as indicated in option D of RCW 13.40.0357. The court's finding of manifest injustice shall be supported by clear and convincing evidence.

A disposition outside the standard range shall be determinate and shall be comprised of confinement or community supervision, or a combination thereof. When a judge finds a manifest injustice and imposes a sentence of confinement exceeding thirty days, the court shall sentence the juvenile to a maximum term, and the provisions of RCW 13.40.030(2) shall be used to determine the range. A disposition outside the standard range is appealable under RCW 13.40.230 by the state or the respondent. A disposition within the standard range is not appealable under RCW 13.40.230.

(3) When a juvenile offender is found to have committed a sex offense, other than a sex offense that is also a serious violent offense as defined by RCW 9.94A.030, and has no history of a prior sex offense, the court, on its own motion or the motion of the state or the respondent, may order an examination to determine whether the respondent is amenable to treatment.

The report of the examination shall include at a minimum the following: The respondent's version of the facts and the official version of the facts, the respondent's offense history, an assessment of problems in addition to alleged deviant behaviors, the respondent's social, educational, and employment situation, and other evaluation measures used. The report shall set forth the sources of the evaluator's information.

The examiner shall assess and report regarding the respondent's amenability to treatment and relative risk to the community. A proposed treatment plan shall be provided and shall include, at a minimum:

- (a)(i) Frequency and type of contact between the offender and therapist;
- (ii) Specific issues to be addressed in the treatment and description of planned treatment modalities;
- (iii) Monitoring plans, including any requirements regarding living conditions, lifestyle requirements, and monitoring by family members, legal guardians, or others;
- (iv) Anticipated length of treatment; and
- (v) Recommended crime-related prohibitions.

The court on its own motion may order, or on a motion by the state shall order, a second examination regarding the offender's amenability to treatment. The evaluator shall be selected by the party making the motion. The defendant shall pay the cost of any second examination ordered unless the court finds the defendant to be indigent in which case the state shall pay the cost.

After receipt of reports of the examination, the court shall then consider whether the offender and the community will benefit from use of this special sex offender disposition alternative and consider the victim's opinion whether the offender should receive a treatment disposition under this section. If the court determines that this special sex offender disposition alternative is appropriate, then the court shall impose a determinate disposition within the standard range for the offense, or if the court concludes, and enters reasons for its conclusions, that such disposition would cause a manifest injustice, the court shall impose a disposition under option D, and the court may suspend the execution of the dis-

position and place the offender on community supervision for at least two years. As a condition of the suspended disposition, the court may impose the conditions of community supervision and other conditions, including up to thirty days of confinement and requirements that the offender do any one or more of the following:

- (b)(i) Devote time to a specific education, employment, or occupation;
- (ii) Undergo available outpatient sex offender treatment for up to two years, or inpatient sex offender treatment not to exceed the standard range of confinement for that offense. A community mental health center may not be used for such treatment unless it has an appropriate program designed for sex offender treatment. The respondent shall not change sex offender treatment providers or treatment conditions without first notifying the prosecutor, the probation counselor, and the court, and shall not change providers without court approval after a hearing if the prosecutor or probation counselor object to the change;
- (iii) Remain within prescribed geographical boundaries and notify the court or the probation counselor prior to any change in the offender's address, educational program, or employment;
- (iv) Report to the prosecutor and the probation counselor prior to any change in a sex offender treatment provider. This change shall have prior approval by the court;
- (v) Report as directed to the court and a probation counselor;

(vi) Pay all court-ordered legal financial obligations, perform community restitution, or any combination thereof;

(vii) Make restitution to the victim for the cost of any counseling reasonably related to the offense;

(viii) Comply with the conditions of any court-ordered probation bond; or

(ix) The court shall order that the offender shall not attend the public or approved private elementary, middle, or high school attended by the victim or the victim's siblings. The parents or legal guardians of the offender are responsible for transportation or other costs associated with the offender's change of school that would otherwise be paid by the school district. The court shall send notice of the disposition and restriction on attending the same school as the victim or victim's siblings to the public or approved private school the juvenile will attend, if known, or if unknown, to the approved private schools and the public school district board of directors of the district in which the juvenile resides or intends to reside. This notice must be sent at the earliest possible date but not later than ten calendar days after entry of the disposition.

The sex offender treatment provider shall submit quarterly reports on the respondent's progress in treatment to the court and the parties. The reports shall reference the treatment plan and include at a minimum the following: Dates of attendance, respondent's compliance with requirements, treatment activities, the respondent's relative progress in treatment, and any other material specified by the court at the time of the disposition.

At the time of the disposition, the court may set treatment review hearings as the court considers appropriate.

Except as provided in this subsection (3), after July 1, 1991, examinations and treatment ordered pursuant to this

subsection shall only be conducted by certified sex offender treatment providers or certified affiliate sex offender treatment providers under chapter 18.155 RCW. A sex offender therapist who examines or treats a juvenile sex offender pursuant to this subsection does not have to be certified by the department of health pursuant to chapter 18.155 RCW if the court finds that: (A) The offender has already moved to another state or plans to move to another state for reasons other than circumventing the certification requirements; (B) no certified sex offender treatment providers or certified affiliate sex offender treatment providers are available for treatment within a reasonable geographical distance of the offender's home; and (C) the evaluation and treatment plan comply with this subsection (3) and the rules adopted by the department of health.

If the offender violates any condition of the disposition or the court finds that the respondent is failing to make satisfactory progress in treatment, the court may revoke the suspension and order execution of the disposition or the court may impose a penalty of up to thirty days' confinement for violating conditions of the disposition. The court may order both execution of the disposition and up to thirty days' confinement for the violation of the conditions of the disposition. The court shall give credit for any confinement time previously served if that confinement was for the offense for which the suspension is being revoked.

For purposes of this section, "victim" means any person who has sustained emotional, psychological, physical, or financial injury to person or property as a direct result of the crime charged. "Victim" may also include a known parent or guardian of a victim who is a minor child unless the parent or guardian is the perpetrator of the offense.

A disposition entered under this subsection (3) is not appealable under RCW 13.40.230.

(4) If the juvenile offender is subject to a standard range disposition of local sanctions or 15 to 36 weeks of confinement and has not committed an A- or B+ offense, the court may impose the disposition alternative under RCW 13.40.165.

(5) If a juvenile is subject to a commitment of 15 to 65 weeks of confinement, the court may impose the disposition alternative under RCW 13.40.167.

(6) When the offender is subject to a standard range commitment of 15 to 36 weeks and is ineligible for a suspended disposition alternative, a manifest injustice disposition below the standard range, special sex offender disposition alternative, chemical dependency disposition alternative, or mental health disposition alternative, the court in a county with a pilot program under *RCW 13.40.169 may impose the disposition alternative under *RCW 13.40.169.

(7) RCW 13.40.193 shall govern the disposition of any juvenile adjudicated of possessing a firearm in violation of RCW 9A.1.040(2)(a)(iii) or any crime in which a special finding is entered that the juvenile was armed with a firearm.

(8) RCW 13.40.308 shall govern the disposition of any juvenile adjudicated of theft of a motor vehicle as defined under RCW 9A.56.065, possession of a stolen motor vehicle as defined under RCW 9A.56.068, taking a motor vehicle without permission in the first degree under RCW 9A.56.070, and taking a motor vehicle without permission in the second degree under RCW 9A.56.075.

(9) Whenever a juvenile offender is entitled to credit for time spent in detention prior to a dispositional order, the dispositional order shall specifically state the number of days of credit for time served.

(10) Except as provided under subsection (3), (4), (5), or (6) of this section, or option B of RCW 13.40.0357, or RCW 13.40.127, the court shall not suspend or defer the imposition or the execution of the disposition.

(11) In no case shall the term of confinement imposed by the court at disposition exceed that to which an adult could be subjected for the same offense. [2007 c 199 § 14. Prior: 2004 c 120 § 4; 2004 c 38 § 11; prior: 2003 c 378 § 3; 2003 c 53 § 99; 2002 c 175 § 22; 1999 c 91 § 2; prior: 1997 c 338 § 25; 1997 c 265 § 1; 1995 c 395 § 7; 1994 sp.s. c 7 § 523; 1992 c 45 § 6; 1990 c 3 § 302; 1989 c 407 § 4; 1983 c 191 § 8; 1981 c 299 § 13; 1979 c 155 § 68; 1977 ex.s. c 291 § 70.]

*Reviser's note: RCW 13.40.169 expired July 1, 2005.

Findings—Intent—Short title—2007 c 199: See notes following RCW 9A.56.065.

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

Effective date—2004 c 38: See note following RCW 18.155.075.

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

Effective date—2002 c 175: See note following RCW 7.80.130.

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

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

Severability—1997 c 265: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1997 c 265 § 9.]

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

Severability—Application—1992 c 45: See notes following RCW 9.94A.840.

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

Effective date—Severability—1979 c 155: See notes following RCW 13.04.011.

Effective dates—Severability—1977 ex.s. c 291: See notes following RCW 13.04.005.

13.40.210 Setting of release date—Administrative release authorized, when—Parole program, revocation or modification of, scope—Intensive supervision program—Parole officer's right of arrest. (Effective until October 1, 2007.) (1) The secretary shall set a release date for each juvenile committed to its custody. The release date shall be within the prescribed range to which a juvenile has been committed under RCW 13.40.0357 or 13.40.030 except as provided in RCW 13.40.320 concerning offenders the department determines are eligible for the juvenile offender basic training camp program. Such dates shall be determined prior to the expiration of sixty percent of a juvenile's minimum term of confinement included within the prescribed range to which the juvenile has been committed. The secretary shall release any juvenile committed to the custody of the department within four calendar days prior to the juvenile's release date or on the release date set under this chapter. Days spent in the custody of the department shall be tolled by any period of time during which a juvenile has absented himself or her-

self from the department's supervision without the prior approval of the secretary or the secretary's designee.

(2) The secretary shall monitor the average daily population of the state's juvenile residential facilities. When the secretary concludes that in-residence population of residential facilities exceeds one hundred five percent of the rated bed capacity specified in statute, or in absence of such specification, as specified by the department in rule, the secretary may recommend reductions to the governor. On certification by the governor that the recommended reductions are necessary, the secretary has authority to administratively release a sufficient number of offenders to reduce in-residence population to one hundred percent of rated bed capacity. The secretary shall release those offenders who have served the greatest proportion of their sentence. However, the secretary may deny release in a particular case at the request of an offender, or if the secretary finds that there is no responsible custodian, as determined by the department, to whom to release the offender, or if the release of the offender would pose a clear danger to society. The department shall notify the committing court of the release at the time of release if any such early releases have occurred as a result of excessive in-residence population. In no event shall an offender adjudicated of a violent offense be granted release under the provisions of this subsection.

(3)(a) Following the release of any juvenile under subsection (1) of this section, the secretary may require the juvenile to comply with a program of parole to be administered by the department in his or her community which shall last no longer than eighteen months, except that in the case of a juvenile sentenced for rape in the first or second degree, rape of a child in the first or second degree, child molestation in the first degree, or indecent liberties with forcible compulsion, the period of parole shall be twenty-four months and, in the discretion of the secretary, may be up to thirty-six months when the secretary finds that an additional period of parole is necessary and appropriate in the interests of public safety or to meet the ongoing needs of the juvenile. A parole program is mandatory for offenders released under subsection (2) of this section and for offenders who receive a juvenile residential commitment sentence of theft of a motor vehicle 1, possession of a stolen motor vehicle, or taking a motor vehicle without permission 1. The decision to place an offender on parole shall be based on an assessment by the department of the offender's risk for reoffending upon release. The department shall prioritize available parole resources to provide supervision and services to offenders at moderate to high risk for reoffending.

(b) The secretary shall, for the period of parole, facilitate the juvenile's reintegration into his or her community and to further this goal shall require the juvenile to refrain from possessing a firearm or using a deadly weapon and refrain from committing new offenses and may require the juvenile to: (i) Undergo available medical, psychiatric, drug and alcohol, sex offender, mental health, and other offense-related treatment services; (ii) report as directed to a parole officer and/or designee; (iii) pursue a course of study, vocational training, or employment; (iv) notify the parole officer of the current address where he or she resides; (v) be present at a particular address during specified hours; (vi) remain within prescribed geographical boundaries; (vii) submit to electronic monitor-

ing; (viii) refrain from using illegal drugs and alcohol, and submit to random urinalysis when requested by the assigned parole officer; (ix) refrain from contact with specific individuals or a specified class of individuals; (x) meet other conditions determined by the parole officer to further enhance the juvenile's reintegration into the community; (xi) pay any court-ordered fines or restitution; and (xii) perform community restitution. Community restitution for the purpose of this section means compulsory service, without compensation, performed for the benefit of the community by the offender. Community restitution may be performed through public or private organizations or through work crews.

(c) The secretary may further require up to twenty-five percent of the highest risk juvenile offenders who are placed on parole to participate in an intensive supervision program. Offenders participating in an intensive supervision program shall be required to comply with all terms and conditions listed in (b) of this subsection and shall also be required to comply with the following additional terms and conditions: (i) Obey all laws and refrain from any conduct that threatens public safety; (ii) report at least once a week to an assigned community case manager; and (iii) meet all other requirements imposed by the community case manager related to participating in the intensive supervision program. As a part of the intensive supervision program, the secretary may require day reporting.

(d) After termination of the parole period, the juvenile shall be discharged from the department's supervision.

(4)(a) The department may also modify parole for violation thereof. If, after affording a juvenile all of the due process rights to which he or she would be entitled if the juvenile were an adult, the secretary finds that a juvenile has violated a condition of his or her parole, the secretary shall order one of the following which is reasonably likely to effectuate the purpose of the parole and to protect the public: (i) Continued supervision under the same conditions previously imposed; (ii) intensified supervision with increased reporting requirements; (iii) additional conditions of supervision authorized by this chapter; (iv) except as provided in (a)(v) and (vi) of this subsection, imposition of a period of confinement not to exceed thirty days in a facility operated by or pursuant to a contract with the state of Washington or any city or county for a portion of each day or for a certain number of days each week with the balance of the days or weeks spent under supervision; (v) the secretary may order any of the conditions or may return the offender to confinement for the remainder of the sentence range if the offense for which the offender was sentenced is rape in the first or second degree, rape of a child in the first or second degree, child molestation in the first degree, indecent liberties with forcible compulsion, or a sex offense that is also a serious violent offense as defined by RCW 9.94A.030; and (vi) the secretary may order any of the conditions or may return the offender to confinement for the remainder of the sentence range if the youth has completed the basic training camp program as described in RCW 13.40.320.

(b) If the department finds that any juvenile in a program of parole has possessed a firearm or used a deadly weapon during the program of parole, the department shall modify the parole under (a) of this subsection and confine the juvenile for at least thirty days. Confinement shall be in a facility

operated by or pursuant to a contract with the state or any county.

(5) A parole officer of the department of social and health services shall have the power to arrest a juvenile under his or her supervision on the same grounds as a law enforcement officer would be authorized to arrest the person.

(6) If so requested and approved under chapter 13.06 RCW, the secretary shall permit a county or group of counties to perform functions under subsections (3) through (5) of this section. [2007 c 199 § 13; 2002 c 175 § 27. Prior: 2001 c 137 § 2; 2001 c 51 § 1; 1997 c 338 § 32; 1994 sp.s. c 7 § 527; 1990 c 3 § 304; 1987 c 505 § 4; 1985 c 287 § 1; 1985 c 257 § 4; 1983 c 191 § 11; 1979 c 155 § 71; 1977 ex.s. c 291 § 75.]

Findings—Intent—Short title—2007 c 199: See notes following RCW 9A.56.065.

Effective date—2002 c 175: See note following RCW 7.80.130.

Effective date—2001 c 51: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately [April 17, 2001]." [2001 c 51 § 2.]

Findings—Intent—1997 c 338 §§ 32 and 34: See note following RCW 13.40.212.

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

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

Finding—Intent—Severability—Effective dates—Contingent expiration date—1994 sp.s. c 7: See notes following RCW 43.70.540.

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

Intent—1985 c 257 § 4: "To promote both public safety and the welfare of juvenile offenders, it is the intent of the legislature that services to juvenile offenders be delivered in the most effective and efficient means possible. Section 4 of this act facilitates those objectives by permitting counties to supervise parole of juvenile offenders. This is consistent with the philosophy of chapter 13.06 RCW to deliver community services to juvenile offenders comprehensively at the county level." [1985 c 257 § 3.]

Severability—1985 c 257: See note following RCW 13.34.165.

Effective date—Severability—1979 c 155: See notes following RCW 13.04.011.

Effective dates—Severability—1977 ex.s. c 291: See notes following RCW 13.04.005.

13.40.210 Setting of release date—Administrative release authorized, when—Parole program, revocation or modification of, scope—Intensive supervision program—Parole officer's right of arrest. (Effective October 1, 2007.) (1) The secretary shall set a release date for each juvenile committed to its custody. The release date shall be within the prescribed range to which a juvenile has been committed under RCW 13.40.0357 or 13.40.030 except as provided in RCW 13.40.320 concerning offenders the department determines are eligible for the juvenile offender basic training camp program. Such dates shall be determined prior to the expiration of sixty percent of a juvenile's minimum term of confinement included within the prescribed range to which the juvenile has been committed. The secretary shall release any juvenile committed to the custody of the department within four calendar days prior to the juvenile's release date or on the release date set under this chapter. Days spent in the custody of the department shall be tolled by any period of time during which a juvenile has absented himself or her-

self from the department's supervision without the prior approval of the secretary or the secretary's designee.

(2) The secretary shall monitor the average daily population of the state's juvenile residential facilities. When the secretary concludes that in-residence population of residential facilities exceeds one hundred five percent of the rated bed capacity specified in statute, or in absence of such specification, as specified by the department in rule, the secretary may recommend reductions to the governor. On certification by the governor that the recommended reductions are necessary, the secretary has authority to administratively release a sufficient number of offenders to reduce in-residence population to one hundred percent of rated bed capacity. The secretary shall release those offenders who have served the greatest proportion of their sentence. However, the secretary may deny release in a particular case at the request of an offender, or if the secretary finds that there is no responsible custodian, as determined by the department, to whom to release the offender, or if the release of the offender would pose a clear danger to society. The department shall notify the committing court of the release at the time of release if any such early releases have occurred as a result of excessive in-residence population. In no event shall an offender adjudicated of a violent offense be granted release under the provisions of this subsection.

(3)(a) Following the release of any juvenile under subsection (1) of this section, the secretary may require the juvenile to comply with a program of parole to be administered by the department in his or her community which shall last no longer than eighteen months, except that in the case of a juvenile sentenced for rape in the first or second degree, rape of a child in the first or second degree, child molestation in the first degree, or indecent liberties with forcible compulsion, the period of parole shall be twenty-four months and, in the discretion of the secretary, may be up to thirty-six months when the secretary finds that an additional period of parole is necessary and appropriate in the interests of public safety or to meet the ongoing needs of the juvenile. A parole program is mandatory for offenders released under subsection (2) of this section and for offenders who receive a juvenile residential commitment sentence of theft of a motor vehicle 1, possession of a stolen motor vehicle, or taking a motor vehicle without permission 1. The decision to place an offender on parole shall be based on an assessment by the department of the offender's risk for reoffending upon release. The department shall prioritize available parole resources to provide supervision and services to offenders at moderate to high risk for reoffending.

(b) The secretary shall, for the period of parole, facilitate the juvenile's reintegration into his or her community and to further this goal shall require the juvenile to refrain from possessing a firearm or using a deadly weapon and refrain from committing new offenses and may require the juvenile to: (i) Undergo available medical, psychiatric, drug and alcohol, sex offender, mental health, and other offense-related treatment services; (ii) report as directed to a parole officer and/or designee; (iii) pursue a course of study, vocational training, or employment; (iv) notify the parole officer of the current address where he or she resides; (v) be present at a particular address during specified hours; (vi) remain within prescribed geographical boundaries; (vii) submit to electronic monitor-

ing; (viii) refrain from using illegal drugs and alcohol, and submit to random urinalysis when requested by the assigned parole officer; (ix) refrain from contact with specific individuals or a specified class of individuals; (x) meet other conditions determined by the parole officer to further enhance the juvenile's reintegration into the community; (xi) pay any court-ordered fines or restitution; and (xii) perform community restitution. Community restitution for the purpose of this section means compulsory service, without compensation, performed for the benefit of the community by the offender. Community restitution may be performed through public or private organizations or through work crews.

(c) The secretary may further require up to twenty-five percent of the highest risk juvenile offenders who are placed on parole to participate in an intensive supervision program. Offenders participating in an intensive supervision program shall be required to comply with all terms and conditions listed in (b) of this subsection and shall also be required to comply with the following additional terms and conditions: (i) Obey all laws and refrain from any conduct that threatens public safety; (ii) report at least once a week to an assigned community case manager; and (iii) meet all other requirements imposed by the community case manager related to participating in the intensive supervision program. As a part of the intensive supervision program, the secretary may require day reporting.

(d) After termination of the parole period, the juvenile shall be discharged from the department's supervision.

(4)(a) The department may also modify parole for violation thereof. If, after affording a juvenile all of the due process rights to which he or she would be entitled if the juvenile were an adult, the secretary finds that a juvenile has violated a condition of his or her parole, the secretary shall order one of the following which is reasonably likely to effectuate the purpose of the parole and to protect the public: (i) Continued supervision under the same conditions previously imposed; (ii) intensified supervision with increased reporting requirements; (iii) additional conditions of supervision authorized by this chapter; (iv) except as provided in (a)(v) and (vi) of this subsection, imposition of a period of confinement not to exceed thirty days in a facility operated by or pursuant to a contract with the state of Washington or any city or county for a portion of each day or for a certain number of days each week with the balance of the days or weeks spent under supervision; (v) the secretary may order any of the conditions or may return the offender to confinement for the remainder of the sentence range if the offense for which the offender was sentenced is rape in the first or second degree, rape of a child in the first or second degree, child molestation in the first degree, indecent liberties with forcible compulsion, or a sex offense that is also a serious violent offense as defined by RCW 9.94A.030; and (vi) the secretary may order any of the conditions or may return the offender to confinement for the remainder of the sentence range if the youth has completed the basic training camp program as described in RCW 13.40.320.

(b) The secretary may modify parole and order any of the conditions or may return the offender to confinement for up to twenty-four weeks if the offender was sentenced for a sex offense as defined under RCW 9A.44.130 and is known to have violated the terms of parole. Confinement beyond thirty

days is intended to only be used for a small and limited number of sex offenders. It shall only be used when other graduated sanctions or interventions have not been effective or the behavior is so egregious it warrants the use of the higher level intervention and the violation: (i) Is a known pattern of behavior consistent with a previous sex offense that puts the youth at high risk for reoffending sexually; (ii) consists of sexual behavior that is determined to be predatory as defined in RCW 71.09.020; or (iii) requires a review under chapter 71.09 RCW, due to a recent overt act. The total number of days of confinement for violations of parole conditions during the parole period shall not exceed the number of days provided by the maximum sentence imposed by the disposition for the underlying offense pursuant to RCW 13.40.0357. The department shall not aggregate multiple parole violations that occur prior to the parole revocation hearing and impose consecutive twenty-four week periods of confinement for each parole violation. The department is authorized to engage in rule making pursuant to chapter 34.05 RCW, to implement this subsection, including narrowly defining the behaviors that could lead to this higher level intervention.

(c) If the department finds that any juvenile in a program of parole has possessed a firearm or used a deadly weapon during the program of parole, the department shall modify the parole under (a) of this subsection and confine the juvenile for at least thirty days. Confinement shall be in a facility operated by or pursuant to a contract with the state or any county.

(5) A parole officer of the department of social and health services shall have the power to arrest a juvenile under his or her supervision on the same grounds as a law enforcement officer would be authorized to arrest the person.

(6) If so requested and approved under chapter 13.06 RCW, the secretary shall permit a county or group of counties to perform functions under subsections (3) through (5) of this section. [2007 c 203 § 1; 2007 c 199 § 13; 2002 c 175 § 27. Prior: 2001 c 137 § 2; 2001 c 51 § 1; 1997 c 338 § 32; 1994 sp.s. c 7 § 527; 1990 c 3 § 304; 1987 c 505 § 4; 1985 c 287 § 1; 1985 c 257 § 4; 1983 c 191 § 11; 1979 c 155 § 71; 1977 ex.s. c 291 § 75.]

Reviser's note: This section was amended by 2007 c 199 § 13 and by 2007 c 203 § 1, each without reference to the other. Both amendments are incorporated in the publication of this section under RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

Applicability—2007 c 203: "This act applies prospectively only and not retroactively. It applies only to juvenile offenders who have been adjudicated for an offense that occurred on or after October 1, 2007." [2007 c 203 § 2.]

Effective date—2007 c 203: "This act takes effect October 1, 2007." [2007 c 203 § 3.]

Findings—Intent—Short title—2007 c 199: See notes following RCW 9A.56.065.

Effective date—2002 c 175: See note following RCW 7.80.130.

Effective date—2001 c 51: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately [April 17, 2001]." [2001 c 51 § 2.]

Findings—Intent—1997 c 338 §§ 32 and 34: See note following RCW 13.40.212.

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

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

Finding—Intent—Severability—Effective dates—Contingent expiration date—1994 sp.s. c 7: See notes following RCW 43.70.540.

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

Intent—1985 c 257 § 4: "To promote both public safety and the welfare of juvenile offenders, it is the intent of the legislature that services to juvenile offenders be delivered in the most effective and efficient means possible. Section 4 of this act facilitates those objectives by permitting counties to supervise parole of juvenile offenders. This is consistent with the philosophy of chapter 13.06 RCW to deliver community services to juvenile offenders comprehensively at the county level." [1985 c 257 § 3.]

Severability—1985 c 257: See note following RCW 13.34.165.

Effective date—Severability—1979 c 155: See notes following RCW 13.04.011.

Effective dates—Severability—1977 ex.s. c 291: See notes following RCW 13.04.005.

13.40.305 Juvenile offender adjudicated of theft of motor vehicle, possession of stolen vehicle, taking motor vehicle without permission in the first degree, taking motor vehicle without permission in the second degree—Local sanctions—Evaluation. If a juvenile is adjudicated of theft of a motor vehicle under RCW 9A.56.065, possession of a stolen vehicle under RCW 9A.56.068, taking a motor vehicle without permission in the first degree as defined in RCW 9A.56.070(1), or taking a motor vehicle without permission in the second degree as defined in RCW 9A.56.075(1) and is sentenced to local sanctions, the juvenile's disposition shall include an evaluation to determine whether the juvenile is in need of community-based rehabilitation services and to complete any treatment recommended by the evaluation. [2007 c 199 § 12.]

Findings—Intent—Short title—2007 c 199: See notes following RCW 9A.56.065.

13.40.308 Juvenile offender adjudicated of taking motor vehicle without permission in the first degree, theft of motor vehicle, possession of a stolen vehicle, taking motor vehicle without permission in the second degree—Minimum sentences. (1) If a respondent is adjudicated of taking a motor vehicle without permission in the first degree as defined in RCW 9A.56.070, the court shall impose the following minimum sentence, in addition to any restitution the court may order payable to the victim:

(a) Juveniles with a prior criminal history score of zero to one-half points shall be sentenced to a standard range sentence that includes no less than five days of home detention, forty-five hours of community restitution, and a two hundred dollar fine;

(b) Juveniles with a prior criminal history score of three-quarters to one and one-half points shall be sentenced to [a] standard range sentence that includes no less than ten days of detention, ninety hours of community restitution, and a four hundred dollar fine; and

(c) Juveniles with a prior criminal history score of two or more points shall be sentenced to no less than fifteen to thirty-six weeks of confinement, seven days of home detention, four months of supervision, ninety hours of community restitution, and a four hundred dollar fine.

(2) If a respondent is adjudicated of theft of a motor vehicle as defined under RCW 9A.56.065, or possession of a stolen vehicle as defined under RCW 9A.56.068, the court shall

impose the following minimum sentence, in addition to any restitution the court may order payable to the victim:

(a) Juveniles with a prior criminal history score of zero to one-half points shall be sentenced to a standard range sentence that includes either: (i) No less than five days of home detention and forty-five hours of community restitution; or (ii) no home detention and ninety hours of community restitution;

(b) Juveniles with a prior criminal history score of three-quarters to one and one-half points shall be sentenced to [a] standard range sentence that includes no less than ten days of detention, ninety hours of community restitution, and a four hundred dollar fine; and

(c) Juveniles with a prior criminal history score of two or more points shall be sentenced to no less than fifteen to thirty-six weeks of confinement, seven days of home detention, four months of supervision, ninety hours of community restitution, and a four hundred dollar fine.

(3) If a respondent is adjudicated of taking a motor vehicle without permission in the second degree as defined in RCW 9A.56.075, the court shall impose a standard range as follows:

(a) Juveniles with a prior criminal history score of zero to one-half points shall be sentenced to a standard range sentence that includes either: (i) No less than one day of home detention, one month of supervision, and fifteen hours of community restitution; or (ii) no home detention, one month of supervision, and thirty hours of community restitution;

(b) Juveniles with a prior criminal history score of three-quarters to one and one-half points shall be sentenced to a standard range sentence that includes no less than one day of detention, two days of home detention, two months of supervision, thirty hours of community restitution, and a one hundred fifty dollar fine; and

(c) Juveniles with a prior criminal history score of two or more points shall be sentenced to no less than three days of detention, seven days of home detention, three months of supervision, forty-five hours of community restitution, and a one hundred fifty dollar fine. [2007 c 199 § 15.]

Findings—Intent—Short title—2007 c 199: See notes following RCW 9A.56.065.

Title 15

AGRICULTURE AND MARKETING

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Chapter 15.13 RCW

HORTICULTURAL PLANTS, CHRISTMAS TREES, AND FACILITIES—INSPECTION AND LICENSING

Sections

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- 15.13.260 Enforcement—Rules—Scope. *(2007 c 335 § 2 expires July 1, 2014.)*
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- 15.13.470 Disposition of moneys collected under chapter—Expenditure. *(2007 c 335 § 17 expires July 1, 2014.)*
- 15.13.490 Compliance with chapter—Violation—Penalties. *(2007 c 335 § 18 expires July 1, 2014.)*
- 15.13.500 Suspension of license—Reissuance. *(Expires July 1, 2014.)*

15.13.250 Definitions. *(2007 c 335 § 1 expires July 1, 2014.)* For the purpose of this chapter:

(1) "Department" means the department of agriculture of the state of Washington.

(2) "Director" means the director of the department or the director's duly authorized representative.

(3) "Person" means any individual, firm, partnership, corporation, company, society and association, and every officer, agent or employee thereof.

(4) "Horticultural plant" includes, but is not limited to, any horticultural, floricultural, or viticultural plant, or turf, for planting, propagation or ornamentation growing or otherwise. The term does not apply to potato, garlic, or onion planting stock or to cut plant material, except plant parts used for propagative purposes.

(5) "Horticultural facilities" means, but is not limited to, the premises where horticultural plants or Christmas trees are grown, stored, handled or delivered for sale or transportation, or where records required under this chapter are stored or kept, and all vehicles and equipment used to transport horticultural plants or Christmas trees.

(6) "Plant pests" means, but is not limited to, a living stage of insect, mite, or other arthropod; nematode; slug, snail, or other mollusk; protozoa or other invertebrate ani-

mals; bacteria; fungus; virus; viroid; phytoplasma; weed or parasitic plant; or any organisms similar to or allied with any of the plant pests listed in this section; or any infectious substance; which can directly or indirectly injure or cause disease or damage to any plant or plant product or that threatens the diversity or abundance of native species.

(7) "Inspection and/or certification" means, but is not limited to, the inspection by the director of horticultural plants or Christmas trees at any time prior to, during, or subsequent to harvest or sale and the issuance by the director of a written certificate stating if the horticultural plants or Christmas trees are in compliance with the provisions of this chapter and rules adopted under this chapter. Inspection may include, but is not limited to, examination of horticultural plants or Christmas trees, taking samples, destructive testing, conducting interviews, taking photographs, and examining records.

(8) "Nursery dealer" means any person who sells horticultural plants or plants, grows, receives, or handles horticultural plants for the purpose of selling or planting for another person.

(9) "Sell" means to sell, hold for sale, offer for sale, handle, or to use as an inducement for the sale of another article or product.

(10) "Master license system" means the mechanism established by chapter 19.02 RCW by which master licenses, endorsed for individual state-issued licenses, are issued and renewed utilizing a master application and a master license expiration date common to each renewable license endorsement.

(11) "Certificate" or "certificate of inspection" means an official document certifying compliance with the requirements of this chapter. The term "certificate" includes labels, rubber stamp imprints, tags, permits, written statements, or any other form of certification document that accompanies the movement of inspected and certified plant material, including Christmas trees.

(12) "Turf" means field-cultivated turf grass sod consisting of grass varieties, or blends of grass varieties, and dichondra for use in residential and commercial landscapes.

(13) "This chapter" means this chapter and the rules adopted under this chapter.

(14) "Compliance agreement" means a written agreement between the department and a person engaged in growing, handling, or moving articles, plants, or plant products regulated under this chapter or title, in which the person agrees to comply with stipulated requirements.

(15) "Consignor" means the person named in the invoice, bill, or other shipping document accompanying a horticultural plant as the person from whom the horticultural plant has been received for shipment.

(16) "Christmas tree" means a cut evergreen tree:

(a) Of a marketable species;

(b) Managed to produce trees meeting United States number 2 or better standards for Christmas trees as specified by the United States department of agriculture; and

(c) Evidencing periodic maintenance practices of shearing or culturing, or both; weed and brush control; and one or more of the following practices: Basal pruning, fertilization, insect and disease control, stump culture, soil cultivation, and irrigation.

(17) "Christmas tree grower" means any person who grows Christmas trees for sale. [2007 c 335 § 1; 2000 c 144 § 1; 1993 c 120 § 1; 1990 c 261 § 1; 1985 c 36 § 1; 1982 c 182 § 19; 1971 ex.s. c 33 § 1.]

Expiration date—2007 c 335: "This act expires July 1, 2014." [2007 c 335 § 19.]

Severability—1982 c 182: See RCW 19.02.901.

15.13.260 Enforcement—Rules—Scope. (2007 c 335 § 2 expires July 1, 2014.) The director shall enforce the provisions of this chapter and may adopt any rule necessary to carry out its purpose and provisions including but not limited to the following:

(1) The director may adopt rules establishing standards for grades and/or classifications for any horticultural plant.

(2) The director shall adopt rules for labeling or tagging horticultural plants.

(3) The director may adopt rules for the inspection and/or certification of any horticultural plant as to variety, quality, size and freedom from infestation by plant pests.

(4) The director may adopt rules for the inspection and/or certification of any Christmas tree as to freedom from infestation by plant pests.

(5) The director shall adopt rules establishing fees for nursery dealer licenses and for inspection of horticultural plants and methods of fee collection.

(6) The director may adopt rules prescribing minimum informational requirements for advertising for the sale of horticultural plants within the state.

(7) The director may adopt rules establishing categories of sales and fees for permits established in RCW 15.13.270.

(8) The director may adopt rules establishing fees for Christmas tree grower licenses and for inspection of Christmas trees and methods of fee collection. [2007 c 335 § 2; 2000 c 144 § 2; 1993 c 120 § 2; 1990 c 261 § 2; 1985 c 36 § 2; 1971 ex.s. c 33 § 2.]

Expiration date—2007 c 335: See note following RCW 15.13.250.

15.13.265 Enforcement—Access to nursery dealer premises—Inspection. (2007 c 335 § 3 expires July 1, 2014.) (1) The director may enter and inspect the horticultural facilities of a nursery dealer at reasonable times for the purpose of carrying out the provisions of this chapter.

(2) If the director is denied access, the director may apply to a court of competent jurisdiction for a search warrant authorizing access to the premises. The court may upon such application issue the search warrant for the purposes requested. The warrant shall be issued on probable cause. It is sufficient probable cause to show (a) the inspection is pursuant to a general administrative practice to determine compliance with this chapter or (b) the director has reason to believe that a violation of this chapter has occurred, is occurring, or may occur.

(3) Denial of access to the director to perform inspections may subject a nursery dealer or Christmas tree grower to license revocation. [2007 c 335 § 3; 2000 c 144 § 4; 1993 c 120 § 7.]

Expiration date—2007 c 335: See note following RCW 15.13.250.

15.13.270 Nursery dealer licensing exemptions—Permits for clubs, conservation districts, nonprofit associations, educational organizations. (2007 c 335 § 4 expires July 1, 2014.) The provisions of this chapter relating to nursery dealer licensing do not apply to: (1) Persons making casual or isolated sales that do not exceed one hundred dollars annually; (2) any garden club, conservation district, or charitable nonprofit association conducting not more than three sales per year for not more than four consecutive days each of horticultural plants which are grown by or donated to its members; (3) educational organizations associated with private or public secondary schools. However, such a club, conservation district, association, or organization shall apply to the director for a permit to conduct such sales.

All horticultural plants sold under such a permit shall be in compliance with the provisions of this chapter. [2007 c 335 § 4; 2000 c 144 § 5; 1993 c 120 § 3; 1990 c 261 § 3; 1985 c 36 § 3; 1983 1st ex.s. c 73 § 2; 1971 ex.s. c 33 § 3.]

Expiration date—2007 c 335: See note following RCW 15.13.250.

15.13.311 Christmas tree grower exemptions—License—Fees. (Expires July 1, 2014.) (1) Any Christmas tree grower owning Christmas trees, whose business consists solely of retail sales to the ultimate consumer, is exempt from the requirements of this section if:

(a) The grower has less than one acre of Christmas trees; or

(b) The grower harvests, by u-cut or otherwise, fewer than four hundred Christmas trees per year.

(2) Licensed nursery dealers who furnish live plants for planting to Christmas tree growers are exempt from the requirements of this section.

(3) No person may operate as a Christmas tree grower without first obtaining a license from the department.

(a) The application must be accompanied by an annual fee, as established by the director in rule. The annual fee must not exceed forty dollars as a basic charge and a maximum of four dollars per acre as an acreage assessment. The annual Christmas tree grower license fee for any person may not exceed five thousand dollars.

(b) The department may audit licensees during normal business hours to determine that appropriate fees have been paid. [2007 c 335 § 5.]

Expiration date—2007 c 335: See note following RCW 15.13.250.

15.13.312 Christmas tree grower license—Application. (Expires July 1, 2014.) Application for a Christmas tree grower license shall include:

(1) The full name of the person applying for the license, whether the applicant is an individual, receiver, trustee, firm, partnership, association, or corporation, and if the applicant is a firm or partnership the full name of each member of the firm or partnership, and if the applicant is an association or corporation the names of the officers of the association or corporation;

(2) The principal business address of the applicant in the state and elsewhere;

(3) The address and acreage of Christmas trees for each location included in the application;

(4) The names of the persons authorized to receive and accept service of summons and legal notices of all kinds for the applicant; and

(5) Any other information prescribed by the director. [2007 c 335 § 6.]

Expiration date—2007 c 335: See note following RCW 15.13.250.

15.13.314 Christmas tree program—Advisory committee. (Expires July 1, 2014.) (1) An advisory committee is established to advise the director in the administration of the Christmas tree program.

(2) When appointing this committee, the director shall consider names submitted by Christmas tree growers and by established Christmas tree grower associations having members in the state.

(3) The committee consists of no fewer than five members, representing the interests of licensed Christmas tree growers and the Christmas tree industry, and the director or the director's designee.

(4) The terms of the members of the committee shall be staggered and the members shall serve a term of three years or until their successor has been appointed.

(5) In the event a committee member resigns, is disqualified, or vacates a position on the committee for any other reason, the vacancy shall be filled by the director under the provisions of this section governing appointments. [2007 c 335 § 8.]

Expiration date—2007 c 335: See note following RCW 15.13.250.

15.13.340 Late fee on delinquent assessments. (2007 c 335 § 9 expires July 1, 2014.) (1) A late fee of twenty percent of the amount due shall be levied on all delinquent assessments for each license period the assessment is delinquent.

(2) The director shall not issue a nursery dealer license or Christmas tree grower license to any applicant who has failed to pay any assessment due under the provisions of this chapter. [2007 c 335 § 9; 2000 c 144 § 13; 1971 ex.s. c 33 § 10.]

Expiration date—2007 c 335: See note following RCW 15.13.250.

15.13.370 Request by licensee for inspector's services during shipping season—Certificate of inspection—Other requests for inspection and/or certification services—Fees. (2007 c 335 § 10 expires July 1, 2014.) (1) Any person licensed under the provisions of this chapter may request the services of a department inspector at the licensee's place of business or point of shipment during the shipping season. Subsequent to inspection the inspector shall issue to the licensee a certificate of inspection signed by the inspector covering any horticultural plants or Christmas trees which the inspector finds to be in compliance with the provisions of this chapter.

(2) Any person financially interested in any horticultural plants or Christmas trees may request inspection and/or certification services provided for horticultural plants or Christmas trees under this chapter.

(3) To facilitate the marketing of agricultural commodities and other plant products, the director may provide, if requested, special inspections or certifications not otherwise authorized under this chapter and shall prescribe a fee for that

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service. [2007 c 335 § 10; 2002 c 215 § 3; 2000 c 144 § 15; 1993 c 120 § 8; 1990 c 261 § 8; 1971 ex.s. c 33 § 13.]

Expiration date—2007 c 335: See note following RCW 15.13.250.

15.13.390 Unlawful selling, shipment, or transport of horticultural plants or Christmas trees within state, when. (2007 c 335 § 11 expires July 1, 2014.) It is unlawful for any person to sell, ship, or transport any horticultural plant or Christmas tree in this state unless it meets standards established in rule for freedom from infestation by plant pests and the other requirements of this chapter. [2007 c 335 § 11; 2000 c 144 § 17; 1993 c 120 § 9; 1971 ex.s. c 33 § 15.]

Expiration date—2007 c 335: See note following RCW 15.13.250.

15.13.400 Unlawful shipment or delivery of horticultural plants into state, when—Certificate and inspection requirements—Christmas trees—Rules—Hearing. (2007 c 335 § 12 expires July 1, 2014.) (1) It is unlawful for any person to ship or deliver any horticultural plant into this state unless it is accompanied by an inspection certificate from the state or country of origin stating that the horticultural plant meets the requirements of this chapter. The director may require the shipper or receiver to file a copy of the manifest of nursery cargo or shipment of horticultural plants into this state with the director on or before the date the horticultural plants enter into the state.

(2) The director may by rule require that any or all horticultural plants or Christmas trees delivered or shipped into the state be inspected for conformance with the requirements of this chapter prior to release by the person delivering or transporting such horticultural plants or Christmas trees even though accompanied by acceptable inspection certificates issued by the state or country of origin.

(3) Any shipment found not to be in compliance with the requirements of this chapter may be returned to the consignor at the consignor's expense. The consignor may subsequently request a hearing which shall be held in conformance with RCW 34.05.479 or other applicable provision of chapter 34.05 RCW. [2007 c 335 § 12; 2000 c 144 § 18; 1993 c 120 § 10; 1971 ex.s. c 33 § 16.]

Expiration date—2007 c 335: See note following RCW 15.13.250.

15.13.420 Unlawful acts enumerated. (2007 c 335 § 13 expires July 1, 2014.) It is unlawful for any person:

(1) To falsely claim to be an agent or representative of any nursery dealer in horticultural plants or Christmas tree grower;

(2) To sell or distribute horticultural plants by any method which has the capacity and tendency or effect of deceiving any purchaser or prospective purchaser as to the quantity, size, grade, kind, species, age, method of propagation, maturity, condition, vigor, hardiness, number of times transplanted, growth ability, growth characteristics, rate of growth or time required before flowering or fruiting, price, origin or place where grown, or in any other material respect;

(3) To alter an official certificate or other official inspection document for plant materials, including Christmas trees, covered by this chapter or to falsely represent a document as an official certificate;

(4) To substitute any horticultural plant, Christmas tree, or agricultural commodity for a horticultural plant, Christmas tree, or agricultural commodity covered by an inspection certificate. [2007 c 335 § 13; 2000 c 144 § 20; 1993 c 120 § 12; 1990 c 261 § 11; 1971 ex.s. c 33 § 18.]

Expiration date—2007 c 335: See note following RCW 15.13.250.

15.13.430 Hold order on damaged, infested, or infected horticultural plants or Christmas trees—Selling or moving unlawful. (2007 c 335 § 14 expires July 1, 2014.) When the director has cause to believe that any horticultural plants or Christmas trees are damaged or are infested or infected by any plant pest, the director may issue a hold order on such horticultural plants or Christmas trees. A hold order may prescribe conditions under which the damaged, infested, or infected material must be held to prevent spread of the infestation or infection. Treatment or other corrective measures shall be the sole responsibility of the persons holding the material for sale. It is unlawful to sell or move such plants until released in writing by the director. [2007 c 335 § 14; 2000 c 144 § 22; 1993 c 120 § 14; 1971 ex.s. c 33 § 19.]

Expiration date—2007 c 335: See note following RCW 15.13.250.

15.13.440 Order of condemnation—Grounds for issuance. (2007 c 335 § 15 expires July 1, 2014.) The director shall condemn any horticultural plants shipped or sold when such horticultural plants are found to be dead, in a dying condition, seriously broken, diseased or infested to the extent that treatment is not practical, damaged, frozen, or abnormally potbound. The director shall condemn any Christmas trees shipped or sold if they are found to be diseased, infected, or infested to the extent that treatment is not practical. The director shall order such horticultural plants or Christmas trees to be destroyed or returned at shipper's option. [2007 c 335 § 15; 2000 c 144 § 23; 1993 c 120 § 15; 1990 c 261 § 12; 1971 ex.s. c 33 § 20.]

Expiration date—2007 c 335: See note following RCW 15.13.250.

15.13.455 Injunction to restrain operation as nursery dealer or Christmas tree grower without valid license—Costs, attorneys' fees, and expenses. (2007 c 335 § 16 expires July 1, 2014.) (1) The director may apply to the superior court of Thurston county for a prompt hearing on, and the court shall have jurisdiction upon, and for cause shown the court shall, without proof that an adequate remedy at law does not exist, grant an injunction restraining any person from operating as a nursery dealer or Christmas tree grower without a valid license.

(2) An order restraining any person from operating as a nursery dealer or Christmas tree grower without a valid license shall contain such provision for the payment of pertinent court costs and reasonable attorneys' fees and administrative expenses as is equitable and the court deems appropriate in the circumstances. [2007 c 335 § 16; 2000 c 144 § 27; 1983 1st ex.s. c 73 § 7.]

Expiration date—2007 c 335: See note following RCW 15.13.250.

15.13.470 Disposition of moneys collected under chapter—Expenditure. (2007 c 335 § 17 expires July 1, 2014.) (1) Except as provided in RCW 15.13.285 and in sub-

sections (2), (3), and (4) of this section, all moneys collected under this chapter shall be paid to the director, deposited in an account within the agricultural local fund, and used solely for carrying out this chapter. No appropriation is required for the disbursement of moneys from the account by the director.

(2) All fees collected under RCW 15.13.310 shall be deposited in the planting stock certification account within the agricultural local fund to be used only for the Washington grapevine and fruit tree certification and nursery improvement programs as set forth in this chapter and chapter 15.14 RCW.

(3) All fees collected under RCW 15.13.311 shall be deposited in the Christmas tree account within the agricultural local fund to be used only for the Washington Christmas tree program as established under this chapter, which may include market surveys and research related to Christmas trees.

(4) All moneys collected for civil penalties under this chapter shall be deposited in the nursery research account within the agricultural local fund. [2007 c 335 § 17; 2002 c 215 § 4; 2000 c 144 § 28; 1999 c 144 § 16; 1993 c 120 § 17; 1990 c 261 § 13; 1987 c 35 § 3; 1985 c 36 § 5; 1975 1st ex.s. c 257 § 1; 1971 ex.s. c 33 § 25.]

Expiration date—2007 c 335: See note following RCW 15.13.250.

Effective date—1975 1st ex.s. c 257: "This act is necessary for the immediate preservation of the public peace, health, and safety, the support of the state government and its existing public institutions and shall take effect on July 1, 1975." [1975 1st ex.s. c 257 § 13.]

15.13.490 Compliance with chapter—Violation—Penalties. (2007 c 335 § 18 expires July 1, 2014.) Any person who fails to comply with this chapter may be subject to:

(1) Denial, revocation, or suspension of the person's nursery dealer license or Christmas tree grower license; and/or

(2) A civil penalty in an amount of not more than one thousand dollars for each violation. Each violation shall be a separate and distinct offense. Every person who, through an act of commission or omission, procures, aids, or abets in the violation shall be considered to have violated this section and may be subject to the civil penalty provided in this section. [2007 c 335 § 18; 2000 c 144 § 31; 1990 c 261 § 14; 1985 c 36 § 6; 1971 ex.s. c 33 § 27.]

Expiration date—2007 c 335: See note following RCW 15.13.250.

15.13.500 Suspension of license—Reissuance. (Expires July 1, 2014.) The department shall immediately suspend any license issued under this chapter if the holder of the license has been certified pursuant to RCW 74.20A.320 by the department of social and health services as a person who is not in compliance with a support order. If the person has continued to meet all other requirements for licensure during the suspension, reissuance of the license shall be automatic upon the department's receipt of a release issued by the department of social and health services stating that the person is in compliance with the order. [2007 c 335 § 7.]

Expiration date—2007 c 335: See note following RCW 15.13.250.

Chapter 15.17 RCW

STANDARDS OF GRADES AND PACKS

Sections

15.17.050 Rules—Authority of director.

15.17.050 Rules—Authority of director.

Expiration date—2004 c 211 § 1: "Section 1 of this act expires December 31, 2009." [2007 c 237 § 1; 2005 c 234 § 1; 2004 c 211 § 2.]

Chapter 15.51 RCW

BRASSICA SEED PRODUCTION

Sections

15.51.010 Findings—Purpose.
 15.51.020 Definitions.
 15.51.030 Brassica seed production districts—Grower's petition—Rules.
 15.51.040 Brassica production agreements.
 15.51.050 Rules.
 15.51.060 Violation or threatened violation of chapter—Action to enjoin.
 15.51.070 Application of chapter 34.05 RCW.
 15.51.900 Effective date—2007 c 181.
 15.51.901 Captions not law—2007 c 181.

15.51.010 Findings—Purpose. The legislature finds that the growing, production, or formation of seed from plants of the genus *Brassica* for the purpose of producing seed, oil, biofuel or associated byproducts, commercial vegetables, forage, or cover crops is in the interest of the public welfare. The legislature finds that species, hybrids, varieties, and variations of plants of the genus *Brassica* have potential to form genetic crosses, particularly when they are grown in geographic proximity, and will, if not properly regulated, result in significant loss of quality, purity, and value in the seed produced.

The legislature finds that production of biofuel using *Brassica* seed crops, generally known as canola or rapeseed, can help citizens and businesses conserve energy and reduce the use of petroleum-based fuels, improve air and water quality, and create new industries and jobs for Washington citizens. The legislature also finds that Washington state offers conditions uniquely suited to the production of high quality, high value *Brassica* vegetable seed, and that the vegetable seed industry is a significant contributor to the diversity and economic viability of the agricultural community.

The purpose of chapter 181, Laws of 2007 is to provide for the orderly production of potentially incompatible varieties of *Brassica* seed crops. [2007 c 181 § 1.]

15.51.020 Definitions. The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

(1) "*Brassica*" means any plants in the genus *Brassica*.

(2) "*Brassica* seed crop" means any commercial production of any species, hybrid, or variety of the genus *Brassica* that results in pollen or seed formation. *Brassica* seed crop includes, but is not limited to, *Brassica* seeds grown for planting, and species generally known as rapeseed or canola, including *Brassica napus*, *Brassica rapa*, and *Brassica juncea*, grown for oil or biofuel and associated byproducts. For purposes of this chapter, forage and cover crops from the genus *Brassica* are considered *Brassica* seed crops. Plants from the genus *Brassica* grown as vegetables for human or

animal consumption such as cabbage, broccoli, rutabaga, and kohlrabi are not *Brassica* seed crops as long as they are not allowed to produce pollen or seed.

(3) "Department" means the state department of agriculture.

(4) "Director" means the director of the department or the director's authorized representative.

(5) "Grower" means a person who grows a *Brassica* seed crop within a *Brassica* seed production district or, for purposes of RCW 15.51.030, within a proposed *Brassica* seed production district.

(6) "Processor" means a person who commercially uses, sells, or processes a *Brassica* seed crop grown within a *Brassica* seed production district or, for purposes of RCW 15.51.030, within a proposed *Brassica* seed production district.

(7) "Volunteer and weed *Brassica* plants" means plants of the genus *Brassica* that arise from accidental or unintentional scattering or occurrence of seed. [2007 c 181 § 2.]

15.51.030 Brassica seed production districts—Grower's petition—Rules. Any grower or processor of a *Brassica* seed crop may submit a petition to the director requesting establishment of a *Brassica* seed production district. The petition must include proposed geographic boundaries of the district and the proposed types of regulations for designated *Brassica* seed crop species within the district. The petition must contain the signatures of at least ten growers or processors of affected *Brassica* seed crops grown within the boundaries of the proposed *Brassica* seed production district. If there are fewer than ten growers or processors of affected *Brassica* seed crops grown within the boundaries of the proposed district, then the applicant may submit a list of names and contact information for all *Brassica* seed crop growers and processors within the proposed district and a petition signed by at least fifty percent of these persons. In response to the petition, the director may adopt rules to establish *Brassica* seed production districts. [2007 c 181 § 3.]

15.51.040 Brassica production agreements. (1) Any person who wishes to conduct an activity otherwise prohibited within a *Brassica* seed production district must first enter into a *Brassica* production agreement with the director. Each *Brassica* production agreement shall be developed by the applicant and the director in consultation with an advisory committee comprised of at least three individuals appointed by the director, none of whom shall have a financial interest in the request for agreement or its outcome and at least one of whom shall be a grower in or processor of *Brassica* seed crops grown within the *Brassica* seed production district. The director shall not enter into any *Brassica* production agreement unless the director, in the exercise of his or her discretion, is satisfied that the agreement contains terms and conditions that are necessary and sufficient to mitigate reasonably possible risks to the economic well-being of growers within the *Brassica* seed production district from the proposed activity.

(2) The applicant or any grower or processor of a *Brassica* seed crop grown within the *Brassica* seed production district that would be affected by the *Brassica* production

agreement may appeal, under RCW 34.05.570(4), the director's decision whether or not to enter into a *Brassica* production agreement. Any such appeal must be filed in the superior court of Thurston county or the county in which the activity to be allowed under the *Brassica* production agreement would occur. [2007 c 181 § 4.]

15.51.050 Rules. The director may adopt rules necessary to carry out the purpose and provisions of this chapter concerning, but not limited to:

- (1) *Brassica* seed production districts;
- (2) Notification of a designated central clearinghouse for growers to report their intention to plant a *Brassica* seed crop within a *Brassica* seed production district;
- (3) Isolation distances between *Brassica* seed crops within a *Brassica* seed production district;
- (4) Exclusion of designated *Brassica* seed crops within a *Brassica* seed production district, except under terms of a *Brassica* production agreement;
- (5) Control of volunteer and weed *Brassica* plants within a *Brassica* seed production district; and
- (6) *Brassica* production agreements. [2007 c 181 § 5.]

15.51.060 Violation or threatened violation of chapter—Action to enjoin. The director or any grower or processor of a *Brassica* seed crop grown within a *Brassica* seed production district may bring an action to enjoin the violation or threatened violation of any provision of this chapter or its rules, or any *Brassica* production agreement entered into by an applicant and the director, in the superior court of Thurston county or the county in which the violation or threatened violation occurs or is about to occur. [2007 c 181 § 6.]

15.51.070 Application of chapter 34.05 RCW. Chapter 34.05 RCW governs the rights, remedies, and procedures respecting the administration of this chapter, including rule making. [2007 c 181 § 7.]

15.51.900 Effective date—2007 c 181. This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately [April 21, 2007]. [2007 c 181 § 11.]

15.51.901 Captions not law—2007 c 181. Captions used in this act are not any part of the law. [2007 c 181 § 8.]

Chapter 15.64 RCW FARM MARKETING

Sections

15.64.050 Small farm direct marketing assistance program—Created—Duties.

15.64.050 Small farm direct marketing assistance program—Created—Duties. (1) The small farm direct marketing assistance program is created.

(2) The director shall employ a small farm direct marketing assistant.

(3) The small farm direct marketing assistance program shall assist small farms in their direct marketing efforts. In carrying out this duty the program shall:

- (a) Assist small farms in complying with federal, state, and local rules and regulations as they apply to direct marketing of agricultural products;
- (b) Assist in developing infrastructure to increase direct marketing opportunities for small farms;
- (c) Provide information on direct marketing opportunities for small farms;
- (d) Promote localized food production systems;
- (e) Increase access to information for farmers wishing to sell farm products directly to consumers;
- (f) Identify and help reduce market barriers facing small farms in direct marketing;
- (g) Assist in developing and submitting proposals to grant programs to assist small farm direct marketing efforts; and
- (h) Perform other functions that will assist small farms in directly marketing their products. [2007 c 522 § 947; 2007 c 122 § 1; 2001 2nd sp.s. c 3 § 2.]

Severability—2007 c 522: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [2007 c 522 § 1801.]

Effective date—2007 c 522: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately [May 15, 2007]." [2007 c 522 § 1802.]

Findings—2001 2nd sp.s. c 3: "The legislature finds that:

- (1) Many consumers in this state appreciate and seek out the opportunity to purchase local farm products.
- (2) Consumers and small-scale farmers would both benefit from increased opportunities to market farm products locally. Direct marketing provides farmers with the opportunity to realize an increased share of consumers' food dollars and provides consumers with a greater opportunity to support local agriculture and understand farm operations, farm culture, and the role farms play in meeting our food needs.
- (3) The state would greatly benefit from a focused effort to increase the economic viability and profitability of small farms through increasing their ability to market their products directly to consumers.
- (4) Direct marketing opportunities are often not feasible for farmers to undertake because of market barriers and the difficulty of obtaining information related to marketing.
- (5) A direct marketing assistance program for small farmers could provide the needed information, technical assistance, and barrier clearing work that is a key to increasing direct marketing of farm products." [2001 2nd sp.s. c 3 § 1.]

Chapter 15.65 RCW

WASHINGTON STATE AGRICULTURAL COMMODITY BOARDS

Sections

15.65.055 Repealed.
15.65.610 Repealed.

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

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

Chapter 15.66 RCW

WASHINGTON STATE AGRICULTURAL
COMMODITY COMMISSIONS

Sections

- 15.66.025 Repealed.
15.66.270 Exempt commissions—Marketing agreements and orders.

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

15.66.270 Exempt commissions—Marketing agreements and orders. This chapter does not apply to any provision of the statutes of the state of Washington relating to the Washington apple commission (chapter 15.24 RCW), to the soft tree fruits commission (chapter 15.28 RCW), or to the dairy products commission (chapter 15.44 RCW). Marketing agreements or orders shall not be issued with respect to apples, soft tree fruits, or dairy products for the purposes specified in RCW 15.66.030 (1) or (2). [2007 c 234 § 100; 1961 c 11 § 15.66.270. Prior: 1955 c 191 § 27.]

Chapter 15.89 RCW

WASHINGTON BEER COMMISSION

Sections

- 15.89.070 Commission powers and duties.

15.89.070 Commission powers and duties. The commission shall:

(1) Elect a chair and officers. The officers must include a treasurer who is responsible for all receipts and disbursements by the commission and the faithful discharge of whose duties shall be guaranteed by a bond at the sole expense of the commission. The commission must adopt rules for its own governance that provide for the holding of an annual meeting for the election of officers and the transaction of other business and for other meetings the commission may direct;

(2) Do all things reasonably necessary to effect the purposes of this chapter. However, the commission has no rule-making power except as provided in this chapter;

(3) Employ and discharge managers, secretaries, agents, attorneys, and employees and engage the services of independent contractors;

(4) Retain, as necessary, the services of private legal counsel to conduct legal actions on behalf of the commission. The retention of a private attorney is subject to review by the office of the attorney general;

(5) Receive donations of beer from producers for promotional purposes under subsections (6) and (7) of this section and for fund-raising purposes under subsection (8) of this section. Donations of beer for promotional purposes may only be disseminated without charge;

(6) Engage directly or indirectly in the promotion of Washington beer, including, without limitation, the acquisition in any lawful manner and the dissemination without charge of beer. This dissemination is not deemed a sale for any purpose and the commission is not deemed a producer, supplier, or manufacturer, or the clerk, servant, or agent of a producer, supplier, distributor, or manufacturer. This dissemination without charge shall be for agricultural develop-

ment or trade promotion, and not for fund-raising purposes under subsection (8) of this section. Dissemination for promotional purposes may include promotional hosting and must in the good faith judgment of the commission be in the aid of the marketing, advertising, sale of beer, or of research related to such marketing, advertising, or sale;

(7) Promote Washington beer by conducting unique beer tastings without charge;

(8) Beginning July 1, 2007, fund the Washington beer commission through sponsorship of up to twelve beer festivals annually at which beer may be sold to festival participants. For this purpose, the commission would qualify for issue of a special occasion license as an exception to WAC 314-05-020 but must comply with laws under Title 66 RCW and rules adopted by the liquor control board under which such events may be conducted;

(9) Participate in international, federal, state, and local hearings, meetings, and other proceedings relating to the production, regulation, distribution, sale, or use of beer including activities authorized under RCW 42.17.190, including the reporting of those activities to the public disclosure commission;

(10) Acquire and transfer personal and real property, establish offices, incur expenses, and enter into contracts, including contracts for the creation and printing of promotional literature. The contracts are not subject to chapter 43.78 RCW, and are cancelable by the commission unless performed under conditions of employment that substantially conform to the laws of this state and the rules of the department of labor and industries. The commission may create debt and other liabilities that are reasonable for proper discharge of its duties under this chapter;

(11) Maintain accounts with one or more qualified public depositories as the commission may direct, for the deposit of money, and expend money for purposes authorized by this chapter by drafts made by the commission upon such institutions or by other means;

(12) Cause to be kept and annually closed, in accordance with generally accepted accounting principles, accurate records of all receipts, disbursements, and other financial transactions, available for audit by the state auditor;

(13) Create and maintain a list of producers and disseminate information among and solicit the opinions of producers with respect to the discharge of the duties of the commission, directly or by arrangement with trade associations or other instrumentalities;

(14) Employ, designate as an agent, act in concert with, and enter into contracts with any person, council, commission, or other entity to promote the general welfare of the beer industry and particularly to assist in the sale and distribution of Washington beer in domestic and foreign commerce. The commission shall expend money necessary or advisable for this purpose and to pay its proportionate share of the cost of any program providing direct or indirect assistance to the sale and distribution of Washington beer in domestic or foreign commerce, employing and paying for vendors of professional services of all kinds;

(15) Sue and be sued as a commission, without individual liability for acts of the commission within the scope of the powers conferred upon it by this chapter;

(16) Serve as liaison with the liquor control board on behalf of the commission and not for any individual producer;

(17) Until July 1, 2009, receive such gifts, grants, and endowments from public or private sources as may be made from time to time, in trust or otherwise, for the use and benefit of the purposes of the commission and expend the same or any income therefrom according to the terms of the gifts, grants, or endowments. [2007 c 211 § 1; 2006 c 330 § 8.]

Chapter 15.110 RCW
ENERGY FREEDOM PROGRAM

Sections

15.110.005	Recodified as RCW 43.325.001.
15.110.010	Recodified as RCW 43.325.010.
15.110.020	Recodified as RCW 43.325.020.
15.110.030	Recodified as RCW 43.325.060.
15.110.040	Recodified as RCW 43.325.070.
15.110.050	Recodified as RCW 43.325.040.
15.110.060	Recodified as RCW 43.325.050.
15.110.900	Recodified as RCW 43.325.900.
15.110.901	Recodified as RCW 43.325.901.

15.110.005 Recodified as RCW 43.325.001. See Supplementary Table of Disposition of Former RCW Sections, this volume.

15.110.010 Recodified as RCW 43.325.010. See Supplementary Table of Disposition of Former RCW Sections, this volume.

15.110.020 Recodified as RCW 43.325.020. See Supplementary Table of Disposition of Former RCW Sections, this volume.

15.110.030 Recodified as RCW 43.325.060. See Supplementary Table of Disposition of Former RCW Sections, this volume.

15.110.040 Recodified as RCW 43.325.070. See Supplementary Table of Disposition of Former RCW Sections, this volume.

15.110.050 Recodified as RCW 43.325.040. See Supplementary Table of Disposition of Former RCW Sections, this volume.

15.110.060 Recodified as RCW 43.325.050. See Supplementary Table of Disposition of Former RCW Sections, this volume.

15.110.900 Recodified as RCW 43.325.900. See Supplementary Table of Disposition of Former RCW Sections, this volume.

15.110.901 Recodified as RCW 43.325.901. See Supplementary Table of Disposition of Former RCW Sections, this volume.

Title 16

ANIMALS AND LIVESTOCK
(Formerly: Animals, estrays, brands, and fences)

Chapters

16.30 Dangerous wild animals.

16.36 Animal health.

16.52 Prevention of cruelty to animals.

Chapter 16.30 RCW
DANGEROUS WILD ANIMALS

Sections

16.30.005	Intent.
16.30.010	Definitions.
16.30.020	Exceptions.
16.30.030	Prohibited behavior.
16.30.040	Confiscation—Duties of animal control authority or law enforcement officer.
16.30.050	City or county ordinances.
16.30.060	Violations—Civil penalty.
16.30.070	Enforcement of provisions.
16.30.900	Severability—2007 c 238.

16.30.005 Intent. It is the intent of the state of Washington to protect the public against the serious health and safety risks that dangerous wild animals pose to the community. [2007 c 238 § 1.]

16.30.010 Definitions. (1) "Animal control authority" means an entity acting alone or in concert with other local governmental units for enforcement of the animal control laws of the city, county, and state and the shelter and welfare of animals.

(2) "Potentially dangerous wild animal" means one of the following types of animals, whether bred in the wild or in captivity, and any or all hybrids thereof:

(a) Class mammalia

(i) Order carnivora

(A) Family felidae, only lions, tigers, captive-bred cougars, jaguars, cheetahs, leopards, snow leopards, and clouded leopards;

(B) Family canidae, wolves, excluding wolf-hybrids;

(C) Family ursidae, all bears;

(D) Family hyaenidae, such as hyenas;

(ii) Order perissodactyla, only rhinoceroses;

(iii) Order primates, all nonhuman primate species;

(iv) Order proboscidae, all elephants [elephant] species;

(b) Class reptilia

(i) Order squamata

(A) Family atractaspidae, all species;

(B) Family colubridae, only dispholidus typus;

(C) Family elapidae, all species, such as cobras, mambas, kraits, coral snakes, and Australian tiger snakes;

(D) Family hydrophiidae, all species, such as sea snakes;

(E) Family varanidae, only water monitors and crocodile monitors;

(F) Family viperidae, all species, such as rattlesnakes, cottonmouths, bushmasters, puff adders, and gaboon vipers;

(ii) Order crocodilia, all species, such as crocodiles, alligators, caimans, and gavials.

(3) "Person" means any individual, partnership, corporation, organization, trade or professional association, firm, limited liability company, joint venture, association, trust, estate, or any other legal entity, and any officer, member, shareholder, director, employee, agent, or representative thereof.

(4) "Possessor" means any person who owns, possesses, keeps, harbors, brings into the state, or has custody or control of a potentially dangerous wild animal.

(5) "Wildlife sanctuary" means a nonprofit organization, as described in RCW 84.36.800, that cares for animals defined as potentially dangerous and:

(a) No activity that is not inherent to the animal's nature, natural conduct, or the animal in its natural habitat is conducted;

(b) No commercial activity involving an animal occurs including, but not limited to, the sale of or trade in animals, animal parts, animal byproducts, or animal offspring, or the sale of photographic opportunities involving an animal, or the use of an animal for any type of entertainment purpose;

(c) No unescorted public visitations or direct contact between the public and an animal; or

(d) No breeding of animals occurs in the facility. [2007 c 238 § 2.]

16.30.020 Exceptions. (1) The provisions of this chapter do not apply to:

(a) Institutions authorized by the Washington department of fish and wildlife to hold, possess, and propagate deleterious exotic wildlife pursuant to RCW 77.12.047;

(b) Institutions accredited or certified by the American zoo and aquarium association or a facility with a current signed memorandum of participation with an association of zoos and aquariums species survival plan;

(c) Duly incorporated nonprofit animal protection organizations, such as humane societies and shelters, housing an animal at the written request of the animal control authority or acting under the authority of this chapter;

(d) Animal control authority, law enforcement officers, or county sheriffs acting under the authority of this chapter;

(e) Veterinary hospitals or clinics;

(f) A holder of a valid wildlife rehabilitation permit issued by the Washington department of fish and wildlife;

(g) Any wildlife sanctuary as defined under RCW 16.30.010(5);

(h) A research facility as defined by the animal welfare act, 7 U.S.C.A. 2131, as amended, for the species of animals for which they are registered. This includes but is not limited to universities, colleges, and laboratories holding a valid class R license under the animal welfare act;

(i) Circuses, defined as incorporated, class C licensees under the animal welfare act, 7 U.S.C.A. 2131, as amended, that are temporarily in this state, and that offer performances by live animals, clowns, and acrobats for public entertainment;

(j) A person temporarily transporting and displaying a potentially dangerous wild animal through the state if the transit time is not more than twenty-one days and the animal is at all times maintained within a confinement sufficient to prevent the animal from escaping;

(k) Domesticated animals subject to this title or native wildlife subject to Title 77 RCW;

(l) A person displaying animals at a fair approved by the Washington department of agriculture pursuant to chapter 15.76 or 36.37 RCW; and

(m) A game farm meeting the requirements of WAC 232-12-027(1).

(2) This chapter does not require a city or county that does not have an animal control authority to create that office. [2007 c 238 § 3.]

16.30.030 Prohibited behavior. (1) A person shall not own, possess, keep, harbor, bring into the state, or have custody or control of a potentially dangerous wild animal, except as provided in subsection (3) of this section.

(2) A person shall not breed a potentially dangerous wild animal.

(3) A person in legal possession of a potentially dangerous wild animal prior to July 22, 2007, and who is the legal possessor of the animal may keep possession of the animal for the remainder of the animal's life. The person must maintain veterinary records, acquisition papers for the animal, if available, or other documents or records that establish that the person possessed the animal prior to July 22, 2007, and present the paperwork to an animal control or law enforcement authority upon request. The person shall have the burden of proving that he or she possessed the animal prior to July 22, 2007. [2007 c 238 § 4.]

16.30.040 Confiscation—Duties of animal control authority or law enforcement officer. (1) The animal control authority or a law enforcement officer may immediately confiscate a potentially dangerous wild animal if:

(a) The animal control authority or law enforcement officer has probable cause to believe that the animal was acquired after July 22, 2007, in violation of RCW 16.30.030;

(b) The animal poses a public safety or health risk;

(c) The animal is in poor health and condition as a result of the possessor; or

(d) The animal is being held in contravention of the [this] act.

(2) A potentially dangerous wild animal that is confiscated under this section may be returned to the possessor only if the animal control authority or law enforcement officer establishes that the possessor had possession of the animal prior to July 22, 2007, and the return does not pose a public safety or health risk.

(3) The animal control authority or law enforcement officer shall serve notice upon the possessor in person or by regular and certified mail, return receipt requested, notifying the possessor of the confiscation, that the possessor is responsible for payment of reasonable costs for caring and providing for the animal during the confiscation, and that the possessor must meet the requirements of subsection (2) of this section in order for the animal to be returned to the possessor.

(4) If a potentially dangerous wild animal confiscated under this section is not returned to the possessor, the animal control authority or law enforcement officer may release the animal to a facility such as a wildlife sanctuary or a facility exempted pursuant to RCW 16.30.020. If the animal control

authority or law enforcement officer is unable to relocate the animal within a reasonable period of time, it may euthanize the animal.

(5) An animal control authority or law enforcement officer may euthanize a potentially dangerous wild animal under this section only if all known reasonable placement options, including relocation to a wildlife sanctuary, are unavailable.

(6) This section applies to animal confiscations on or after July 22, 2007. [2007 c 238 § 5.]

16.30.050 City or county ordinances. A city or county may adopt an ordinance governing potentially dangerous wild animals that is more restrictive than this chapter. However, nothing in this chapter requires a city or county to adopt an ordinance to be in compliance with this chapter. [2007 c 238 § 6.]

16.30.060 Violations—Civil penalty. A person who violates RCW 16.30.030 is liable for a civil penalty of not less than two hundred dollars and not more than two thousand dollars for each animal with respect to which there is a violation and for each day the violation continues. [2007 c 238 § 7.]

16.30.070 Enforcement of provisions. (1) The animal control authority and its staff and agents, local law enforcement agents, and county sheriffs are authorized and empowered to enforce the provisions of this chapter.

(2) If a locality does not have a local animal control authority, the department of fish and wildlife shall enforce the provisions of this chapter. [2007 c 238 § 8.]

16.30.900 Severability—2007 c 238. If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected. [2007 c 238 § 9.]

**Chapter 16.36 RCW
ANIMAL HEALTH**

Sections

16.36.010	Quarantine—Hold order.
16.36.045	Transporting of animals—Requirements—Vehicle inspection—Authorization by director or appointed officers.
16.36.050	Unlawful actions—Importation—Required certificates—Intentional or willful misconduct.
16.36.092	Recodified as RCW 16.36.102.
16.36.102	Duty to bury carcass of diseased livestock—Dead livestock presumed diseased.
16.36.113	Violations of chapter or rules—Civil penalty—Moneys collected.
16.36.116	Civil infraction—Authorization by director—Issuance of notices—Enforcement.

16.36.010 Quarantine—Hold order. (1) The director shall supervise the prevention of the spread and the suppression of infectious, contagious, communicable, and dangerous diseases affecting animals within, in transit through, and imported into the state.

(2) The director may issue a quarantine order and enforce the quarantine of any animal or its reproductive prod-

ucts when any animal or its reproductive products are affected with or have been exposed to disease or when there is reasonable cause to investigate whether any animal or its reproductive products are affected with or have been exposed to disease, either within or outside the state. Overt disease or exposure to disease in any animal or its reproductive products need not be immediately obvious for a quarantine order to be issued or enforced. The quarantine shall remain in effect as long as the director deems necessary.

(3) The director may issue a hold order when:

(a) Overt disease or exposure to disease in an animal is not immediately obvious but there is reasonable cause to investigate whether an animal is diseased or has been exposed to disease;

(b) Import health papers, permits, or other transportation documents required by law or rule are not complete or are suspected to be fraudulent; or

(c) Further transport of an animal would jeopardize the well-being of the animal or other animals in Washington state.

A hold order is in effect for fourteen days and expires when released by the director or no later than midnight on the fourteenth day from the date of the hold order. A hold order may be replaced with a quarantine order for the purpose of animal disease control.

(4) Any animal or animal reproductive product placed under a quarantine or hold order shall be kept separate and apart from other animals designated in the instructions of the quarantine or hold order, and shall not be allowed to have anything in common with other animals.

(5) The expenses of handling and caring for any animal or animal reproductive product placed under a quarantine or hold order are the responsibility of the owner.

(6) The director has authority over the quarantine or hold area until the quarantine or hold order is released or the hold order expires.

(7) Any animal or animal reproductive product placed under a quarantine or hold order may not be moved, transported, or sold without written approval from the director or until the quarantine or hold order is released, or the hold order expires.

(8) The director may administer oaths and examine witnesses and records in the performance of his or her duties to control diseases affecting animals. [2007 c 71 § 5; 2004 c 251 § 1; 1998 c 8 § 2; 1927 c 165 § 2; RRS § 3111. Prior: 1915 c 100 § 6, part; 1903 c 26 § 2, part.]

16.36.045 Transporting of animals—Requirements—Vehicle inspection—Authorization by director or appointed officers. The director may establish points of inspection for vehicles transporting animals on the public roads of this state to determine if the animals being transported are accompanied by valid health certificates, permits, or other documents as required by this chapter or its rules. Vehicles transporting animals on the public roads of this state are subject to inspection and must stop at any posted inspection point established by the director, with emphasis on livestock being brought in from outside the state. The director or appointed officers are authorized to stop a vehicle transporting animals upon the public roads of this state at a place other than an inspection point if there is reasonable cause to believe

the animals are being transported in violation of this chapter or its rules. [2007 c 71 § 1.]

16.36.050 Unlawful actions—Importation—Required certificates—Intentional or willful misconduct.

It is unlawful for any person to:

(1) Bring into this state for any purpose any animals without first having secured an official health certificate or certificate of veterinary inspection, reviewed by the state veterinarian of the state of origin that the animals meet the health requirements of the state of Washington. This subsection does not apply to livestock destined for immediate slaughter at a federally inspected slaughter facility where federal disease control standards are applied, or other animals exempted by rule;

(2)(a) Divert en route to other than an approved, inspected feedlot for subsequent slaughter or (b) sell for other than immediate slaughter or (c) fail to slaughter or deliver to a slaughter establishment within three calendar days after entry, any animal imported into this state for immediate slaughter;

(3) Intentionally falsely make, complete, alter, use, or sign an animal health certificate, certificate of veterinary inspection, or official written animal health document of the department;

(4) Intentionally falsely apply, alter, or remove an official animal health or official animal identification tag, permanent mark, or other device;

(5) Willfully hinder, obstruct, or resist the director, or any peace officer or deputized state veterinarian acting under him or her, when engaged in the performance of their duties; or

(6) Willfully fail to comply with or to violate any rule or order adopted by the director under this chapter. [2007 c 71 § 2; 1998 c 8 § 5; 1979 c 154 § 11; 1947 c 172 § 4; 1927 c 165 § 5; Rem. Supp. 1947 § 3114. Prior: 1915 c 100 § 7; 1905 c 169 § 1; 1903 c 125 § 1.]

Severability—1979 c 154: See note following RCW 15.49.330.

16.36.092 Recodified as RCW 16.36.102. See Supplementary Table of Disposition of Former RCW Sections, this volume.

16.36.102 Duty to bury carcass of diseased livestock—Dead livestock presumed diseased. Every person owning or having in charge any livestock that has died because of disease shall dispose of the carcass within a time frame and in a manner prescribed in rule by the director, which may include, but is not limited to, burial, composting, incinerating, landfilling, natural decomposition, or rendering. Any livestock found dead from an unknown cause is presumed to have died because of disease. [2006 c 155 § 1; 1949 c 100 § 2; Rem. Supp. 1949 § 3142-2. Formerly RCW 16.36.092, 16.68.020.]

16.36.113 Violations of chapter or rules—Civil penalty—Moneys collected. Any person in violation of this chapter or its rules may be subject to a civil penalty in an amount of not more than one thousand dollars for each violation. Each violation is a separate and distinct offense. Every

person who, through an act of commission or omission, procures, aids, or abets in the violation is in violation of this chapter or its rules and may be subject to the civil penalty provided in this section. Moneys collected under this section must be deposited in the state general fund. [2007 c 71 § 4.]

16.36.116 Civil infraction—Authorization by director—Issuance of notices—Enforcement. Any person found transporting animals on the public roads of this state that are not accompanied by valid health certificates, permits, or other documents as required by this chapter or its rules has committed a class 1 civil infraction. The director is authorized to issue notices of and enforce civil infractions in the manner prescribed under chapter 7.80 RCW. [2007 c 71 § 3.]

Chapter 16.52 RCW

PREVENTION OF CRUELTY TO ANIMALS

Sections

16.52.011 Definitions—Principles of liability.

16.52.207 Animal cruelty in the second degree.

16.52.011 Definitions—Principles of liability. (1) Principles of liability as defined in chapter 9A.08 RCW apply to this chapter.

(2) Unless the context clearly requires otherwise, the definitions in this section apply throughout this chapter.

(a) "Abandons" means the knowing or reckless desertion of an animal by its owner or the causing of the animal to be deserted by its owner, in any place, without making provisions for the animal's adequate care.

(b) "Animal" means any nonhuman mammal, bird, reptile, or amphibian.

(c) "Animal care and control agency" means any city or county animal control agency or authority authorized to enforce city or county municipal ordinances regulating the care, control, licensing, or treatment of animals within the city or county, and any corporation organized under RCW 16.52.020 that contracts with a city or county to enforce the city or county ordinances governing animal care and control.

(d) "Animal control officer" means any individual employed, contracted, or appointed pursuant to RCW 16.52.025 by an animal care and control agency or humane society to aid in the enforcement of ordinances or laws regulating the care and control of animals. For purposes of this chapter, the term "animal control officer" shall be interpreted to include "humane officer" as defined in (f) of this subsection and RCW 16.52.025.

(e) "Euthanasia" means the humane destruction of an animal accomplished by a method that involves instantaneous unconsciousness and immediate death, or by a method that causes painless loss of consciousness, and death during the loss of consciousness.

(f) "Humane officer" means any individual employed, contracted, or appointed by an animal care and control agency or humane society as authorized under RCW 16.52.025.

(g) "Law enforcement agency" means a general authority Washington law enforcement agency as defined in RCW 10.93.020.

(h) "Necessary food" means the provision at suitable intervals of wholesome foodstuff suitable for the animal's age and species and sufficient to provide a reasonable level of nutrition for the animal.

(i) "Owner" means a person who has a right, claim, title, legal share, or right of possession to an animal or a person having lawful control, custody, or possession of an animal.

(j) "Person" means individuals, corporations, partnerships, associations, or other legal entities, and agents of those entities.

(k) "Substantial bodily harm" means substantial bodily harm as defined in RCW 9A.04.110. [2007 c 376 § 2; 1994 c 261 § 2.]

Finding—Intent—1994 c 261: "The legislature finds there is a need to modernize the law on animal cruelty to more appropriately address the nature of the offense. It is not the intent of this act to remove or decrease any of the exemptions from the statutes on animal cruelty that now apply to customary animal husbandry practices, state game or fish laws, rodeos, fairs under chapter 15.76 RCW, or medical research otherwise authorized under federal or state law. It is the intent of this act to require the enforcement of chapter 16.52 RCW by persons who are accountable to elected officials at the local and state level." [1994 c 261 § 1.]

16.52.207 Animal cruelty in the second degree. (1) A person is guilty of animal cruelty in the second degree if, under circumstances not amounting to first degree animal cruelty, the person knowingly, recklessly, or with criminal negligence inflicts unnecessary suffering or pain upon an animal.

(2) An owner of an animal is guilty of animal cruelty in the second degree if, under circumstances not amounting to first degree animal cruelty, the owner knowingly, recklessly, or with criminal negligence:

(a) Fails to provide the animal with necessary shelter, rest, sanitation, space, or medical attention and the animal suffers unnecessary or unjustifiable physical pain as a result of the failure;

(b) Under circumstances not amounting to animal cruelty in the second degree under (c) of this subsection, abandons the animal; or

(c) Abandons the animal and (i) as a result of being abandoned, the animal suffers bodily harm; or (ii) abandoning the animal creates an imminent and substantial risk that the animal will suffer substantial bodily harm.

(3)(a) Animal cruelty in the second degree under subsection (1), (2)(a), or (2)(b) of this section is a misdemeanor.

(b) Animal cruelty in the second degree under subsection (2)(c) of this section is a gross misdemeanor.

(4) In any prosecution of animal cruelty in the second degree under subsection (1) or (2)(a) of this section, it shall be an affirmative defense, if established by the defendant by a preponderance of the evidence, that the defendant's failure was due to economic distress beyond the defendant's control. [2007 c 376 § 1; 2005 c 481 § 2; 1994 c 261 § 9.]

Finding—Intent—1994 c 261: See note following RCW 16.52.011.

Title 18

BUSINESSES AND PROFESSIONS

Chapters

- 18.20 Boarding homes.
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- 18.27 Registration of contractors.
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Chapter 18.20 RCW BOARDING HOMES

Sections

- 18.20.420 Temporary management.
- 18.20.430 Boarding home temporary management account.

18.20.420 Temporary management. (1) If the department determines that the health, safety, or welfare of residents is immediately jeopardized by a boarding home's failure or refusal to comply with the requirements of this chapter or the rules adopted under this chapter, and the department summarily suspends the boarding home license, the department may appoint a temporary manager of the boarding home, or the licensee may, subject to the department's approval, voluntarily participate in the temporary management program.

The purposes of the temporary management program are as follows:

- (a) To mitigate dislocation and transfer trauma of residents while the department and licensee may pursue dispute resolution or appeal of a summary suspension of license;
- (b) To facilitate the continuity of safe and appropriate resident care and services;

(c) To protect the health, safety, and welfare of residents, by providing time for an orderly closure of the boarding home, or for the deficiencies that necessitated temporary management to be corrected; and

(d) To preserve a residential option that meets a specialized service need or is in a geographical area that has a lack of available providers.

(2) The department may recruit, approve, and appoint qualified individuals, partnerships, corporations, and other entities interested in serving as a temporary manager of a boarding home. These individuals and entities shall satisfy the criteria established under this chapter or by the department for approving licensees. The department shall not approve or appoint any person, including partnerships and other entities, if that person is affiliated with the boarding home subject to the temporary management, or has owned or operated a boarding home ordered into temporary management or receivership in any state. When approving or appointing a temporary manager, the department shall consider the temporary manager's past experience in long-term care, the quality of care provided, the temporary manager's availability, and the person's familiarity with applicable state and federal laws. Subject to the provisions of this section and RCW 18.20.430, the department's authority to approve or appoint a temporary manager is discretionary and not subject to the administrative procedure act, chapter 34.05 RCW.

(3) When the department appoints a temporary manager, the department shall enter into a contract with the temporary manager and shall order the licensee to cease operating the boarding home and immediately turn over to the temporary manager possession and control of the boarding home, including but not limited to all resident care records, financial records, and other records necessary for operation of the facility while temporary management is in effect. If the department has not appointed a temporary manager and the licensee elects to participate in the temporary management program, the licensee shall select the temporary manager, subject to the department's approval, and enter into a contract with the temporary manager, consistent with this section. The department has the discretion to approve or revoke any temporary management arrangements made by the licensee.

(4) When the department appoints a temporary manager, the costs associated with the temporary management may be paid for through the boarding home temporary management account established by RCW 18.20.430, or from other departmental funds, or a combination thereof. All funds must be administered according to department procedures. The department may enter into an agreement with the licensee allowing the licensee to pay for some of the costs associated with a temporary manager appointed by the department. If the department has not appointed a temporary manager and the licensee elects to participate in the temporary management program, the licensee is responsible for all costs related to administering the temporary management program at the boarding home and contracting with the temporary manager.

(5) The temporary manager shall assume full responsibility for the daily operations of the boarding home and is responsible for correcting cited deficiencies and ensuring that all minimum licensing requirements are met. The temporary manager must comply with all state and federal laws and regulations applicable to boarding homes. The temporary man-

ager shall protect the health, safety, and welfare of the residents for the duration of the temporary management and shall perform all acts reasonably necessary to ensure residents' needs are met. The temporary management contract shall address the responsibility of the temporary manager to pay past due debts. The temporary manager's specific responsibilities may include, but are not limited to:

(a) Receiving and expending in a prudent and business-like manner all current revenues of the boarding home, provided that priority is given to debts and expenditures directly related to providing care and meeting residents' needs;

(b) Hiring and managing all consultants and employees and firing them for good cause;

(c) Making necessary purchases, repairs, and replacements, provided that such expenditures in excess of five thousand dollars by a temporary manager appointed by the department must be approved by the department;

(d) Entering into contracts necessary for the operation of the boarding home;

(e) Preserving resident trust funds and resident records; and

(f) Preparing all department-required reports, including a detailed monthly accounting of all expenditures and liabilities, which shall be sent to the department and the licensee.

(6) The licensee and department shall provide written notification immediately to all residents, resident representatives, interested family members, and the state long-term care ombudsman program of the temporary management and the reasons for it. This notification shall include notice that residents may move from the boarding home without notifying the licensee or temporary manager in advance, and without incurring any charges, fees, or costs otherwise available for insufficient advance notice, during the temporary management period. The notification shall also inform residents and their families or representatives that the temporary management team will provide residents help with relocation and appropriate discharge planning and coordination if desired. The department shall provide assistance with relocation to residents who are department clients and may provide such assistance to other residents. The temporary manager shall meet regularly with staff, residents, residents' representatives, and families to inform them of the plans for and progress achieved in the correction of deficiencies, and of the plans for facility closure or continued operation.

(7) The department shall terminate temporary management:

(a) After sixty days unless good cause is shown to continue the temporary management. Good cause for continuing the temporary management exists when returning the boarding home to its former licensee would subject residents to a threat to health, safety, or welfare;

(b) When all residents are transferred and the boarding home is closed;

(c) When deficiencies threatening residents' health, safety, or welfare are eliminated and the former licensee agrees to department-specified conditions regarding the continued facility operation; or

(d) When a new licensee assumes control of the boarding home.

Nothing in this section precludes the department from revoking its approval of the temporary management or exercising its licensing enforcement authority under this chapter. The department's decision whether to approve or to revoke a temporary management arrangement is not subject to the administrative procedure act, chapter 34.05 RCW.

(8) The department shall indemnify, defend, and hold harmless any temporary manager appointed or approved under this section against claims made against the temporary manager for any actions by the temporary manager or its agents that do not amount to intentional torts or criminal behavior.

(9) The department may adopt rules implementing this section. In the development of rules or policies implementing this section, the department shall consult with residents and their representatives, resident advocates, financial professionals, boarding home providers, and organizations representing boarding homes. [2007 c 162 § 1.]

18.20.430 Boarding home temporary management account. The boarding home temporary management account is created in the custody of the state treasurer. All receipts from civil penalties imposed under this chapter must be deposited into the account. Only the director or the director's designee may authorize expenditures from the account. The account is subject to allotment procedures under chapter 43.88 RCW, but an appropriation is not required for expenditures. Expenditures from the account may be used only for the protection of the health, safety, welfare, or property of residents of boarding homes found to be deficient. Uses of the account include, but are not limited to:

(1) Payment for the costs of relocation of residents to other facilities;

(2) Payment to maintain operation of a boarding home pending correction of deficiencies or closure, including payment of costs associated with temporary management authorized under this chapter; and

(3) Reimbursement of residents for personal funds or property lost or stolen when the resident's personal funds or property cannot be recovered from the boarding home or third-party insurer. [2007 c 162 § 2.]

Chapter 18.22 RCW

PODIATRIC MEDICINE AND SURGERY

Sections

18.22.015 Board—Duties—Rules. (Effective July 1, 2009.)

18.22.015 Board—Duties—Rules. (Effective July 1, 2009.) The board shall:

(1) Administer all laws placed under its jurisdiction;

(2) Prepare, grade, and administer or determine the nature, grading, and administration of examinations for applicants for podiatric physician and surgeon licenses;

(3) Examine and investigate all applicants for podiatric physician and surgeon licenses and certify to the secretary all applicants it judges to be properly qualified;

(4) Adopt any rules which it considers necessary or proper to carry out the purposes of this chapter;

(5) Adopt rules governing the administration of sedation and anesthesia in the offices of persons licensed under this chapter, including necessary training and equipment;

(6) Determine which schools of podiatric medicine and surgery will be approved. [2007 c 273 § 28; 1990 c 147 § 5; 1986 c 259 § 18; 1982 c 21 § 10.]

Effective date—Implementation—2007 c 273: See RCW 70.230.900 and 70.230.901.

Severability—1986 c 259: See note following RCW 18.130.010.

Director of licensing or director's designee ex officio member of health professional licensure and disciplinary boards: RCW 43.70.300.

Chapter 18.27 RCW

REGISTRATION OF CONTRACTORS

Sections

18.27.010	Definitions.
18.27.020	Registration required—Prohibited acts—Criminal penalty—Monitoring program.
18.27.030	Application for registration—Grounds for denial and suspension.
18.27.040	Bond or other security required—Actions against—Suspension of registration upon impairment.
18.27.080	Registration prerequisite to suit.
18.27.090	Exemptions.
18.27.104	Unlawful advertising—Citations.
18.27.114	Disclosure statement required—Prerequisite to lien claim.
18.27.200	Violation—Infraction.
18.27.210	Violations—Investigations—Evidence.
18.27.215	Authority of director—Evidence.
18.27.230	Notice of infraction—Service.
18.27.240	Notice—Contents.
18.27.250	Notice—Filing—Administrative hearing—Appeal.
18.27.270	Notice—Response—Failure to respond, appear, pay penalties, or register.
18.27.290	Notice—Penalty for contractor failing to respond.
18.27.310	Infraction—Administrative hearing—Procedure—Burden of proof—Order—Appeal.

18.27.010 Definitions. The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

(1) "Contractor" includes any person, firm, corporation, or other entity who or which, in the pursuit of an independent business undertakes to, or offers to undertake, or submits a bid to, construct, alter, repair, add to, subtract from, improve, develop, move, wreck, or demolish any building, highway, road, railroad, excavation or other structure, project, development, or improvement attached to real estate or to do any part thereof including the installation of carpeting or other floor covering, the erection of scaffolding or other structures or works in connection therewith, the installation or repair of roofing or siding, performing tree removal services, or cabinet or similar installation; or, who, to do similar work upon his or her own property, employs members of more than one trade upon a single job or project or under a single building permit except as otherwise provided in this chapter. "Contractor" also includes a consultant acting as a general contractor. "Contractor" also includes any person, firm, corporation, or other entity covered by this subsection, whether or not registered as required under this chapter or who are otherwise required to be registered or licensed by law, who offer to sell their property without occupying or using the structures, projects, developments, or improvements for more than one year from the date the structure, project, development, or improvement was substantially completed or abandoned.

(2) "Department" means the department of labor and industries.

(3) "Director" means the director of the department of labor and industries or designated representative employed by the department.

(4) "Filing" means delivery of a document that is required to be filed with an agency to a place designated by the agency.

(5) "General contractor" means a contractor whose business operations require the use of more than one building trade or craft upon a single job or project or under a single building permit. A general contractor also includes one who superintends, or consults on, in whole or in part, work falling within the definition of a contractor.

(6) "Notice of infraction" means a form used by the department to notify contractors that an infraction under this chapter has been filed against them.

(7) "Partnership" means a business formed under Title 25 RCW.

(8) "Registration cancellation" means a written notice from the department that a contractor's action is in violation of this chapter and that the contractor's registration has been revoked.

(9) "Registration suspension" means either an automatic suspension as provided in this chapter, or a written notice from the department that a contractor's action is a violation of this chapter and that the contractor's registration has been suspended for a specified time, or until the contractor shows evidence of compliance with this chapter.

(10) "Residential homeowner" means an individual person or persons owning or leasing real property:

(a) Upon which one single-family residence is to be built and in which the owner or lessee intends to reside upon completion of any construction; or

(b) Upon which there is a single-family residence to which improvements are to be made and in which the owner or lessee intends to reside upon completion of any construction.

(11) "Service," except as otherwise provided in RCW 18.27.225 and 18.27.370, means posting in the United States mail, properly addressed, postage prepaid, return receipt requested, or personal service. Service by mail is complete upon deposit in the United States mail to the last known address provided to the department.

(12) "Specialty contractor" means a contractor whose operations do not fall within the definition of "general contractor". A specialty contractor may only subcontract work that is incidental to the specialty contractor's work.

(13) "Substantial completion" means the same as "substantial completion of construction" in RCW 4.16.310.

(14) "Unregistered contractor" means a person, firm, corporation, or other entity doing work as a contractor without being registered in compliance with this chapter. "Unregistered contractor" includes contractors whose registration is expired, revoked, or suspended. "Unregistered contractor" does not include a contractor who has maintained a valid bond and the insurance or assigned account required by RCW 18.27.050, and whose registration has lapsed for thirty or fewer days.

(15) "Unsatisfied final judgment" means a judgment or final tax warrant that has not been satisfied either through

payment, court approved settlement, discharge in bankruptcy, or assignment under RCW 19.72.070.

(16) "Verification" means the receipt and duplication by the city, town, or county of a contractor registration card that is current on its face, checking the department's contractor registration data base, or calling the department to confirm that the contractor is registered. [2007 c 436 § 1; 2001 c 159 § 1; 1997 c 314 § 2; 1993 c 454 § 2; 1973 1st ex.s. c 153 § 1; 1972 ex.s. c 118 § 1; 1967 c 126 § 5; 1963 c 77 § 1.]

Finding—1993 c 454: "The legislature finds that unregistered contractors are a serious threat to the general public and are costing the state millions of dollars each year in lost revenue. To assist in solving this problem, the department of labor and industries and the department of revenue should coordinate and communicate with each other to identify unregistered contractors." [1993 c 454 § 1.]

Effective date—1963 c 77: "This act shall take effect August 1, 1963." [1963 c 77 § 12.]

18.27.020 Registration required—Prohibited acts—Criminal penalty—Monitoring program. (1) Every contractor shall register with the department.

(2) It is a gross misdemeanor for any contractor to:

(a) Advertise, offer to do work, submit a bid, or perform any work as a contractor without being registered as required by this chapter;

(b) Advertise, offer to do work, submit a bid, or perform any work as a contractor when the contractor's registration is suspended or revoked;

(c) Use a false or expired registration number in purchasing or offering to purchase an advertisement for which a contractor registration number is required;

(d) Transfer a valid registration to an unregistered contractor or allow an unregistered contractor to work under a registration issued to another contractor; or

(e) Subcontract to or use an unregistered contractor.

(3) It is not unlawful for a registered contractor to employ an unregistered contractor who was registered at the time he or she entered into a contract with the registered contractor, unless the registered contractor or his or her representative has been notified in writing by the department of labor and industries that the contractor has become unregistered.

(4) All gross misdemeanor actions under this chapter shall be prosecuted in the county where the infraction occurs.

(5) A person is guilty of a separate gross misdemeanor for each day worked if, after the person receives a citation from the department, the person works while unregistered, or while his or her registration is suspended or revoked, or works under a registration issued to another contractor. A person is guilty of a separate gross misdemeanor for each worksite on which he or she violates subsection (2) of this section. Nothing in this subsection applies to a registered contractor.

(6) The director by rule shall establish a two-year audit and monitoring program for a contractor not registered under this chapter who becomes registered after receiving an infraction or conviction under this chapter as an unregistered contractor. The director shall notify the departments of revenue and employment security of the infractions or convictions and shall cooperate with these departments to determine whether any taxes or registration, license, or other fees or penalties are owed the state. [2007 c 436 § 2; 1997 c 314 § 3;

1993 c 454 § 6; 1987 c 362 § 1; 1986 c 197 § 1; 1983 1st ex.s. c 2 § 17; 1973 1st ex.s. c 153 § 2; 1963 c 77 § 2.]

Finding—1993 c 454: See note following RCW 18.27.010.

Effective date—1983 1st ex.s. c 2: See note following RCW 18.27.200.

Violations as infractions: RCW 18.27.200.

18.27.030 Application for registration—Grounds for denial and suspension. (1) An applicant for registration as a contractor shall submit an application under oath upon a form to be prescribed by the director and which shall include the following information pertaining to the applicant:

(a) Employer social security number.

(b) Unified business identifier number, if required by the department of revenue.

(c) Evidence of workers' compensation coverage for the applicant's employees working in Washington, as follows:

(i) The applicant's industrial insurance account number issued by the department;

(ii) The applicant's self-insurer number issued by the department; or

(iii) For applicants domiciled in a state or province of Canada subject to an agreement entered into under RCW 51.12.120(7), as permitted by the agreement, filing a certificate of coverage issued by the agency that administers the workers' compensation law in the applicant's state or province of domicile certifying that the applicant has secured the payment of compensation under the other state's or province's workers' compensation law.

(d) Employment security department number.

(e) State excise tax registration number.

(f) Unified business identifier (UBI) account number may be substituted for the information required by (c) of this subsection if the applicant will not employ employees in Washington, and by (d) and (e) of this subsection.

(g) Type of contracting activity, whether a general or a specialty contractor and if the latter, the type of specialty.

(h) The name and address of each partner if the applicant is a firm or partnership, or the name and address of the owner if the applicant is an individual proprietorship, or the name and address of the corporate officers and statutory agent, if any, if the applicant is a corporation or the name and address of all members of other business entities. The information contained in such application is a matter of public record and open to public inspection.

(2) The department may verify the workers' compensation coverage information provided by the applicant under subsection (1)(c) of this section, including but not limited to information regarding the coverage of an individual employee of the applicant. If coverage is provided under the laws of another state, the department may notify the other state that the applicant is employing employees in Washington.

(3)(a) The department shall deny an application for registration if: (i) The applicant has been previously performing work subject to this chapter as a sole proprietor, partnership, corporation, or other entity and the department has notice that the applicant has an unsatisfied final judgment against him or her in an action based on work performed subject to this chapter or the applicant owes the department money for penalties assessed or fees due under this chapter as a result of a

final judgment; (ii) the applicant was an owner, principal, or officer of a partnership, corporation, or other entity that either has an unsatisfied final judgment against it in an action that was incurred for work performed subject to this chapter or owes the department money for penalties assessed or fees due under this chapter as a result of a final judgment; or (iii) the applicant does not have a valid unified business identifier number, if required by the department of revenue.

(b) The department shall suspend an active registration if (i) the department has determined that the registrant has an unsatisfied final judgment against it for work within the scope of this chapter; (ii) the department has determined that the registrant is a sole proprietor or an owner, principal, or officer of a registered contractor that has an unsatisfied final judgment against it for work within the scope of this chapter; or (iii) the registrant does not maintain a valid unified business identifier number, if required by the department of revenue.

(c) The department may suspend an active registration if the department has determined that an owner, principal, partner, or officer of the registrant was an owner, principal, or officer of a previous partnership, corporation, or other entity that has an unsatisfied final judgment against it.

(4) The department shall not deny an application or suspend a registration because of an unsatisfied final judgment if the applicant's or registrant's unsatisfied final judgment was determined by the director to be the result of the fraud or negligence of another party. [2007 c 436 § 3; 2001 c 159 § 2; 1998 c 279 § 3; 1997 c 314 § 4; 1996 c 147 § 1; 1992 c 217 § 1; 1988 c 285 § 1. Prior: 1987 c 362 § 2; 1987 c 111 § 9; 1973 1st ex.s. c 153 § 3; 1963 c 77 § 3.]

Finding—Intent—1998 c 279: See note following RCW 51.12.120.

Conflict with federal requirements—Severability—Effective date—1987 c 111: See notes following RCW 50.12.220.

18.27.040 Bond or other security required—Actions against—Suspension of registration upon impairment.

(1) Each applicant shall file with the department a surety bond issued by a surety insurer who meets the requirements of chapter 48.28 RCW in the sum of twelve thousand dollars if the applicant is a general contractor and six thousand dollars if the applicant is a specialty contractor. If no valid bond is already on file with the department at the time the application is filed, a bond must accompany the registration application. The bond shall have the state of Washington named as obligee with good and sufficient surety in a form to be approved by the department. The bond shall be continuous and may be canceled by the surety upon the surety giving written notice to the director. A cancellation or revocation of the bond or withdrawal of the surety from the bond automatically suspends the registration issued to the contractor until a new bond or reinstatement notice has been filed and approved as provided in this section. The bond shall be conditioned that the applicant will pay all persons performing labor, including employee benefits, for the contractor, will pay all taxes and contributions due to the state of Washington, and will pay all persons furnishing material or renting or supplying equipment to the contractor and will pay all amounts that may be adjudged against the contractor by reason of breach of contract including improper work in the conduct of the contracting business. A change in the name of a

business or a change in the type of business entity shall not impair a bond for the purposes of this section so long as one of the original applicants for such bond maintains partial ownership in the business covered by the bond.

(2) At the time of initial registration or renewal, the contractor shall provide a bond or other security deposit as required by this chapter and comply with all of the other provisions of this chapter before the department shall issue or renew the contractor's certificate of registration. Any contractor registered as of July 1, 2001, who maintains that registration in accordance with this chapter is in compliance with this chapter until the next renewal of the contractor's certificate of registration.

(3) Any person, firm, or corporation having a claim against the contractor for any of the items referred to in this section may bring suit against the contractor and the bond or deposit in the superior court of the county in which the work was done or of any county in which jurisdiction of the contractor may be had. The surety issuing the bond shall be named as a party to any suit upon the bond. Action upon the bond or deposit brought by a residential homeowner for breach of contract by a party to the construction contract shall be commenced by filing the summons and complaint with the clerk of the appropriate superior court within two years from the date the claimed contract work was substantially completed or abandoned, whichever occurred first. Action upon the bond or deposit brought by any other authorized party shall be commenced by filing the summons and complaint with the clerk of the appropriate superior court within one year from the date the claimed labor was performed and benefits accrued, taxes and contributions owing the state of Washington became due, materials and equipment were furnished, or the claimed contract work was substantially completed or abandoned, whichever occurred first. Service of process in an action filed under this chapter against the contractor and the contractor's bond or the deposit shall be exclusively by service upon the department. Three copies of the summons and complaint and a fee adopted by rule of not less than fifty dollars to cover the costs shall be served by registered or certified mail, or other delivery service requiring notice of receipt, upon the department at the time suit is started and the department shall maintain a record, available for public inspection, of all suits so commenced. Service is not complete until the department receives the fee and three copies of the summons and complaint. The service shall constitute service and confer personal jurisdiction on the contractor and the surety for suit on claimant's claim against the contractor and the bond or deposit and the department shall transmit the summons and complaint or a copy thereof to the contractor at the address listed in the contractor's application and to the surety within two days after it shall have been received.

(4) The surety upon the bond shall not be liable in an aggregate amount in excess of the amount named in the bond nor for any monetary penalty assessed pursuant to this chapter for an infraction. The liability of the surety shall not cumulate where the bond has been renewed, continued, reinstated, reissued or otherwise extended. The surety upon the bond may, upon notice to the department and the parties, tender to the clerk of the court having jurisdiction of the action an amount equal to the claims thereunder or the amount of the

bond less the amount of judgments, if any, previously satisfied therefrom and to the extent of such tender the surety upon the bond shall be exonerated but if the actions commenced and pending and provided to the department as required in subsection (3) of this section, at any one time exceed the amount of the bond then unimpaired, claims shall be satisfied from the bond in the following order:

- (a) Employee labor and claims of laborers, including employee benefits;
- (b) Claims for breach of contract by a party to the construction contract;
- (c) Registered or licensed subcontractors, material, and equipment;
- (d) Taxes and contributions due the state of Washington;
- (e) Any court costs, interest, and attorneys' fees plaintiff may be entitled to recover. The surety is not liable for any amount in excess of the penal limit of its bond.

A payment made by the surety in good faith exonerates the bond to the extent of any payment made by the surety.

(5) The total amount paid from a bond or deposit required of a general contractor by this section to claimants other than residential homeowners must not exceed one-half of the bond amount. The total amount paid from a bond or deposit required of a specialty contractor by this section to claimants other than residential homeowners must not exceed one-half of the bond amount or four thousand dollars, whichever is greater.

(6) The prevailing party in an action filed under this section against the contractor and contractor's bond or deposit, for breach of contract by a party to the construction contract involving a residential homeowner, is entitled to costs, interest, and reasonable attorneys' fees. The surety upon the bond or deposit is not liable in an aggregate amount in excess of the amount named in the bond or deposit nor for any monetary penalty assessed pursuant to this chapter for an infraction.

(7) If a final judgment impairs the liability of the surety upon the bond or deposit so furnished that there is not in effect a bond or deposit in the full amount prescribed in this section, the registration of the contractor is automatically suspended until the bond or deposit liability in the required amount unimpaired by unsatisfied judgment claims is furnished.

(8) In lieu of the surety bond required by this section the contractor may file with the department an assigned savings account, upon forms provided by the department.

(9) Any person having filed and served a summons and complaint as required by this section having an unsatisfied final judgment against the registrant for any items referred to in this section may execute upon the security held by the department by serving a certified copy of the unsatisfied final judgment by registered or certified mail upon the department within one year of the date of entry of such judgment. Upon the receipt of service of such certified copy the department shall pay or order paid from the deposit, through the registry of the superior court which rendered judgment, towards the amount of the unsatisfied judgment. The priority of payment by the department shall be the order of receipt by the department, but the department shall have no liability for payment in excess of the amount of the deposit.

(10) Within ten days after resolution of the case, a certified copy of the final judgment and order, or any settlement

documents where a case is not disposed of by a court trial, a certified copy of the dispositive settlement documents must be provided to the department by the prevailing party. Failure to provide a copy of the final judgment and order or the dispositive settlement documents to the department within ten days of entry of such an order constitutes a violation of this chapter and a penalty adopted by rule of not less than two hundred fifty dollars may be assessed against the prevailing party.

(11) The director may require an applicant applying to renew or reinstate a registration or applying for a new registration to file a bond of up to three times the normally required amount, if the director determines that an applicant, or a previous registration of a corporate officer, owner, or partner of a current applicant, has had in the past five years a total of three final judgments in actions under this chapter involving a residential single-family dwelling on two or more different structures.

(12) The director may adopt rules necessary for the proper administration of the security. [2007 c 436 § 4; 2001 c 159 § 3; 1997 c 314 § 5; 1988 c 139 § 1; 1987 c 362 § 6; 1983 1st ex.s. c 2 § 18; 1977 ex.s. c 11 § 1; 1973 1st ex.s. c 153 § 4; 1972 ex.s. c 118 § 2; 1967 c 126 § 1; 1963 c 77 § 4.]

*Unpaid wages by public works contractor constitute lien against bond.
RCW 39.12.050.*

18.27.080 Registration prerequisite to suit. No person engaged in the business or acting in the capacity of a contractor may bring or maintain any action in any court of this state for the collection of compensation for the performance of any work or for breach of any contract for which registration is required under this chapter without alleging and proving that he was a duly registered contractor and held a current and valid certificate of registration at the time he contracted for the performance of such work or entered into such contract. For the purposes of this section, the court shall not find a contractor in substantial compliance with the registration requirements of this chapter unless: (1) The department has on file the information required by RCW 18.27.030; (2) the contractor has at all times had in force a current bond or other security as required by RCW 18.27.040; and (3) the contractor has at all times had in force current insurance as required by RCW 18.27.050. In determining under this section whether a contractor is in substantial compliance with the registration requirements of this chapter, the court shall take into consideration the length of time during which the contractor did not hold a valid certificate of registration. [2007 c 436 § 5; 1988 c 285 § 2; 1972 ex.s. c 118 § 3; 1963 c 77 § 8.]

18.27.090 Exemptions. The registration provisions of this chapter do not apply to:

(1) An authorized representative of the United States government, the state of Washington, or any incorporated city, town, county, township, irrigation district, reclamation district, or other municipal or political corporation or subdivision of this state;

(2) Officers of a court when they are acting within the scope of their office;

(3) Public utilities operating under the regulations of the utilities and transportation commission in construction, maintenance, or development work incidental to their own business;

(4) Any construction, repair, or operation incidental to the discovering or producing of petroleum or gas, or the drilling, testing, abandoning, or other operation of any petroleum or gas well or any surface or underground mine or mineral deposit when performed by an owner or lessee;

(5) The sale of any finished products, materials, or articles of merchandise that are not fabricated into and do not become a part of a structure under the common law of fixtures;

(6) Any construction, alteration, improvement, or repair of personal property performed by the registered or legal owner, or by a mobile/manufactured home retail dealer or manufacturer licensed under chapter 46.70 RCW who shall warranty service and repairs under chapter 46.70 RCW;

(7) Any construction, alteration, improvement, or repair carried on within the limits and boundaries of any site or reservation under the legal jurisdiction of the federal government;

(8) Any person who only furnished materials, supplies, or equipment without fabricating them into, or consuming them in the performance of, the work of the contractor;

(9) Any work or operation on one undertaking or project by one or more contracts, the aggregate contract price of which for labor and materials and all other items is less than five hundred dollars, such work or operations being considered as of a casual, minor, or inconsequential nature. The exemption prescribed in this subsection does not apply in any instance wherein the work or construction is only a part of a larger or major operation, whether undertaken by the same or a different contractor, or in which a division of the operation is made into contracts of amounts less than five hundred dollars for the purpose of evasion of this chapter or otherwise. The exemption prescribed in this subsection does not apply to a person who advertises or puts out any sign or card or other device which might indicate to the public that he or she is a contractor, or that he or she is qualified to engage in the business of contractor;

(10) Any construction or operation incidental to the construction and repair of irrigation and drainage ditches of regularly constituted irrigation districts or reclamation districts; or to farming, dairying, agriculture, viticulture, horticulture, or stock or poultry raising; or to clearing or other work upon land in rural districts for fire prevention purposes; except when any of the above work is performed by a registered contractor;

(11) An owner who contracts for a project with a registered contractor, except that this exemption shall not deprive the owner of the protections of this chapter against registered and unregistered contractors. The exemption prescribed in this subsection does not apply to a person who performs the activities of a contractor for the purpose of leasing or selling improved property he or she has owned for less than twelve months;

(12) Any person working on his or her own property, whether occupied by him or her or not, and any person working on his or her personal residence, whether owned by him or her or not but this exemption shall not apply to any person

who performs the activities of a contractor on his or her own property for the purpose of selling, demolishing, or leasing the property;

(13) An owner who performs maintenance, repair, and alteration work in or upon his or her own properties, or who uses his or her own employees to do such work;

(14) A licensed architect or civil or professional engineer acting solely in his or her professional capacity, an electrician certified under the laws of the state of Washington, or a plumber certified under the laws of the state of Washington or licensed by a political subdivision of the state of Washington while operating within the boundaries of such political subdivision. The exemption provided in this subsection is applicable only when the person certified is operating within the scope of his or her certification;

(15) Any person who engages in the activities herein regulated as an employee of a registered contractor with wages as his or her sole compensation or as an employee with wages as his or her sole compensation;

(16) Contractors on highway projects who have been prequalified as required by RCW 47.28.070, with the department of transportation to perform highway construction, reconstruction, or maintenance work;

(17) A mobile/manufactured home dealer or manufacturer who subcontracts the installation, set-up, or repair work to actively registered contractors. This exemption only applies to the installation, set-up, or repair of the mobile/manufactured homes that were manufactured or sold by the mobile/manufactured home dealer or manufacturer;

(18) An entity who holds a valid electrical contractor's license under chapter 19.28 RCW that employs a certified journeyman electrician, a certified residential specialty electrician, or an electrical trainee meeting the requirements of chapter 19.28 RCW to perform plumbing work that is incidentally, directly, and immediately appropriate to the like-in-kind replacement of a household appliance or other small household utilization equipment that requires limited electric power and limited waste and/or water connections. An electrical trainee must be supervised by a certified electrician while performing plumbing work. [2007 c 436 § 6; 2003 c 399 § 401; 2001 c 159 § 7; 1997 c 314 § 8; 1987 c 313 § 1; 1983 c 4 § 1; 1980 c 68 § 2; 1974 ex.s. c 25 § 2. Prior: 1973 1st ex.s. c 161 § 1; 1973 1st ex.s. c 153 § 6; 1967 c 126 § 3; 1965 ex.s. c 170 § 50; 1963 c 77 § 9.]

Part headings not law—2003 c 399: See note following RCW 19.28.006.

18.27.104 Unlawful advertising—Citations. (1) If, upon investigation, the director or the director's designee has probable cause to believe that a person holding a registration, an applicant for registration, or a person acting in the capacity of a contractor who is not otherwise exempted from this chapter, has violated RCW 18.27.100 by unlawfully advertising for work covered by this chapter, the department may issue a citation containing an order of correction. Such order shall require the violator to cease the unlawful advertising.

(2) If the person to whom a citation is issued under subsection (1) of this section notifies the department in writing that he or she contests the citation, the department shall afford an opportunity for an adjudicative proceeding under

chapter 34.05 RCW. [2007 c 436 § 7; 1997 c 314 § 10; 1989 c 175 § 61; 1987 c 362 § 5.]

Effective date—1989 c 175: See note following RCW 34.05.010.

18.27.114 Disclosure statement required—Prerequisite to lien claim. (1) Any contractor agreeing to perform any contracting project: (a) For the repair, alteration, or construction of four or fewer residential units or accessory structures on such residential property when the bid or contract price totals one thousand dollars or more; or (b) for the repair, alteration, or construction of a commercial building when the bid or contract price totals one thousand dollars or more but less than sixty thousand dollars, must provide the customer with the following disclosure statement in substantially the following form using lower case and upper case twelve-point and bold type where appropriate, prior to starting work on the project:

"NOTICE TO CUSTOMER

This contractor is registered with the state of Washington, registration no. . . . , and has posted with the state a bond or deposit of for the purpose of satisfying claims against the contractor for breach of contract including negligent or improper work in the conduct of the contractor's business. The expiration date of this contractor's registration is

THIS BOND OR DEPOSIT MIGHT NOT BE SUFFICIENT TO COVER A CLAIM THAT MIGHT ARISE FROM THE WORK DONE UNDER YOUR CONTRACT.

This bond or deposit is not for your exclusive use because it covers all work performed by this contractor. The bond or deposit is intended to pay valid claims up to that you and other customers, suppliers, subcontractors, or taxing authorities may have.

FOR GREATER PROTECTION YOU MAY WITHHOLD A PERCENTAGE OF YOUR CONTRACT.

You may withhold a contractually defined percentage of your construction contract as retainage for a stated period of time to provide protection to you and help insure that your project will be completed as required by your contract.

YOUR PROPERTY MAY BE LIENED.

If a supplier of materials used in your construction project or an employee or subcontractor of your contractor or subcontractors is not paid, your property may be liened to force payment and you could pay twice for the same work.

FOR ADDITIONAL PROTECTION, YOU MAY REQUEST THE CONTRACTOR TO PROVIDE YOU WITH ORIGINAL "LIEN RELEASE" DOCUMENTS FROM EACH SUPPLIER OR SUBCONTRACTOR ON YOUR PROJECT.

The contractor is required to provide you with further information about lien release documents if you request it. General information is also available from the state Department of Labor and Industries.

I have received a copy of this disclosure statement.

.....
(Signature of customer)"

(2) The contractor must retain a signed copy of the disclosure statement in his or her files for a minimum of three years, and produce a signed or electronic signature copy of the disclosure statement to the department upon request.

(3) A contractor subject to this section shall notify any consumer to whom notice is required under subsection (1) of this section if the contractor's registration has expired or is revoked or suspended by the department prior to completion or other termination of the contract with the consumer.

(4) No contractor subject to this section may bring or maintain any lien claim under chapter 60.04 RCW based on any contract to which this section applies without alleging and proving that the contractor has provided the customer with a copy of the disclosure statement as required in subsection (1) of this section.

(5) This section does not apply to contracts authorized under chapter 39.04 RCW or to contractors contracting with other contractors.

(6) Failure to comply with this section shall constitute an infraction under the provisions of this chapter.

(7) The department shall produce model disclosure statements, and public service announcements detailing the information needed to assist contractors and contractors' customers to comply under this section. As necessary, the department shall periodically update these education materials. [2007 c 436 § 8; 2001 c 159 § 9; 1997 c 314 § 12; 1988 c 182 § 1; 1987 c 419 § 1.]

Voluntary compliance with notification requirements: "Nothing in RCW 18.27.114 shall be construed to prohibit a contractor from voluntarily complying with the notification requirements of that section which take effect July 1, 1989, prior to that date." [1988 c 182 § 2.]

18.27.200 Violation—Infraction. (1) It is a violation of this chapter and an infraction for any contractor to:

(a) Advertise, offer to do work, submit a bid, or perform any work as a contractor without being registered as required by this chapter;

(b) Advertise, offer to do work, submit a bid, or perform any work as a contractor when the contractor's registration is suspended or revoked;

(c) Transfer a valid registration to an unregistered contractor or allow an unregistered contractor to work under a registration issued to another contractor;

(d) If the contractor is a contractor as defined in RCW 18.106.010, violate RCW 18.106.320; or

(e) Subcontract to, or use, an unregistered contractor.

(2) Each day that a contractor works without being registered as required by this chapter, works while the contractor's registration is suspended or revoked, or works under a registration issued to another contractor is a separate infraction. Each worksite at which a contractor works without being registered as required by this chapter, works while the contractor's registration is suspended or revoked, or works under a

registration issued to another contractor is a separate infraction. [2007 c 436 § 9; 2002 c 82 § 6; 1997 c 314 § 14; 1993 c 454 § 7; 1983 1st ex.s. c 2 § 1.]

Finding—1993 c 454: See note following RCW 18.27.010.

Effective date—1983 1st ex.s. c 2: "Sections 1 through 17 of this act shall take effect January 1, 1984." [1983 1st ex.s. c 2 § 24.]

Prohibited acts—Criminal penalties: RCW 18.27.020.

18.27.210 Violations—Investigations—Evidence. (1)

The director shall appoint compliance inspectors to investigate alleged or apparent violations of this chapter.

(a) The director, or authorized compliance inspector, upon presentation of appropriate credentials, may inspect and investigate job sites at which a contractor had bid or presently is working to determine whether the contractor is registered in accordance with this chapter or the rules adopted under this chapter or whether there is a violation of this chapter.

(b) Upon request of the compliance inspector of the department, a contractor or an employee of the contractor shall provide information identifying the contractor.

(c) The director or the director's authorized representative may apply to a court of competent jurisdiction for a search warrant authorizing access to any job site at which a contractor is presently working. The court may, upon such an application, issue a search warrant for the purpose requested. The costs for obtaining the search warrant must be added to the penalty for a violation of this chapter if such a violation becomes final.

(2) If the employee of an unregistered contractor is cited by a compliance inspector, that employee is cited as the agent of the employer-contractor, and issuance of the infraction to the employee is notice to the employer-contractor that the contractor is in violation of this chapter. An employee who is cited by a compliance inspector shall not be liable for any of the alleged violations contained in the citation unless the employee is also the contractor. [2007 c 436 § 10; 1993 c 454 § 8; 1987 c 419 § 2; 1986 c 197 § 2; 1983 1st ex.s. c 2 § 2.]

Finding—1993 c 454: See note following RCW 18.27.010.

Effective date—1983 1st ex.s. c 2: See note following RCW 18.27.200.

18.27.215 Authority of director—Evidence. If he or she has reason to believe there has been a violation of this chapter, the director and the director's authorized representatives may issue subpoenas to enforce the production and examination of any of the following, whether written or electronic: A listing of the contractors working on the property; contracts between the contractor and any suppliers or subcontractors; and any other information necessary to enforce this chapter. The subpoena may be issued only if a contractor fails to provide the above information when requested by the department. The superior court has the power to enforce such a subpoena by proper proceedings. This section applies to registered and unregistered contractors. [2007 c 436 § 11.]

18.27.230 Notice of infraction—Service. The department may issue a notice of infraction if the department reasonably believes that the contractor has committed an infraction under this chapter. A notice of infraction issued under this section shall be personally served on the contractor

named in the notice by the department's compliance inspectors or service can be made by certified mail directed to the contractor named in the notice of infraction at the contractor's last known address of record. If the contractor named in the notice of infraction is a firm or corporation, the notice may be personally served on any employee of the firm or corporation. If a notice of infraction is personally served upon an employee of a firm or corporation, the department shall send a copy of the notice by mail, return receipt requested, to the contractor if the department is able to obtain the contractor's address. [2007 c 436 § 12; 1997 c 314 § 15; 1993 c 454 § 9; 1986 c 197 § 3; 1983 1st ex.s. c 2 § 3.]

Finding—1993 c 454: See note following RCW 18.27.010.

Effective date—1983 1st ex.s. c 2: See note following RCW 18.27.200.

18.27.240 Notice—Contents. The form of the notice of infraction issued under this chapter shall include the following:

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

(2) A statement that the infraction is a noncriminal offense for which imprisonment shall not be imposed as a sanction;

(3) A statement of the violation which necessitated issuance of the infraction;

(4) A statement of penalty involved if the infraction is established;

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

(6) A statement that at any hearing to contest the notice of infraction the state has the burden of proving, by a preponderance of the evidence, that the infraction was committed; and that the contractor may subpoena witnesses, including the compliance inspector of the department who issued and served the notice of infraction;

(7) A statement that at any hearing to contest the notice of infraction against an unregistered contractor, the unregistered contractor has the burden of proving that the infraction did not occur;

(8) A statement that the contractor must respond to the notice of infraction in one of the ways provided in this chapter; and

(9) A statement that a contractor's failure to timely select one of the options for responding to the notice of infraction after receiving a statement of the options provided in this chapter for responding to the notice of infraction and the procedures necessary to exercise these options is guilty of a gross misdemeanor and may be punished by a fine or imprisonment in jail. [2007 c 436 § 13; 2006 c 270 § 8; 1986 c 197 § 4; 1983 1st ex.s. c 2 § 5.]

Effective date—1983 1st ex.s. c 2: See note following RCW 18.27.200.

18.27.250 Notice—Filing—Administrative hearing—Appeal. A violation designated as an infraction under this chapter shall be heard and determined by an administrative law judge of the office of administrative hearings. If a party

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desires to contest the notice of infraction, the party shall file a notice of appeal with the department specifying the grounds of the appeal within twenty days of service of the infraction in a manner provided by this chapter. The appeal must be accompanied by a certified check for two hundred dollars, which shall be returned to the assessed party if the decision of the department is not sustained following the final decision in the appeal. If the final decision sustains the decision of the department, the department must apply the two hundred dollars to the payment of the expenses of the appeal, including costs charged by the office of administrative hearings. The administrative law judge shall conduct hearings in these cases at locations in the county where the infraction occurred. [2007 c 436 § 14; 1986 c 197 § 5; 1983 1st ex.s. c 2 § 4.]

Effective date—1983 1st ex.s. c 2: See note following RCW 18.27.200.

18.27.270 Notice—Response—Failure to respond, appear, pay penalties, or register.

(1) A contractor who is issued a notice of infraction shall respond within twenty days of the date of issuance of the notice of infraction.

(2) If the contractor named in the notice of infraction does not elect to contest the notice of infraction, then the contractor shall pay to the department, by check or money order, the amount of the penalty prescribed for the infraction. When a response which does not contest the notice of infraction is received by the department with the appropriate penalty, the department shall make the appropriate entry in its records.

(3) If the contractor named in the notice of infraction elects to contest the notice of infraction, the contractor shall respond by filing an appeal to the department in the manner specified in RCW 18.27.250.

(4) If any contractor issued a notice of infraction fails to respond within the prescribed response period, the contractor shall be guilty of a misdemeanor and prosecuted in the county where the infraction occurred.

(5) After final determination by an administrative law judge that an infraction has been committed, a contractor who fails to pay a monetary penalty within thirty days, that is not waived pursuant to RCW 18.27.340(2), and who fails to file an appeal pursuant to RCW 18.27.310(4), shall be guilty of a misdemeanor and be prosecuted in the county where the infraction occurred.

(6) A contractor who fails to pay a monetary penalty within thirty days after exhausting appellate remedies pursuant to RCW 18.27.310(4), shall be guilty of a misdemeanor and be prosecuted in the county where the infraction occurred.

(7) If a contractor who is issued a notice of infraction is a contractor who has failed to register as a contractor under this chapter, the contractor is subject to a monetary penalty per infraction as provided in the schedule of penalties established by the department, and each day the person works without becoming registered is a separate infraction. [2007 c 436 § 15; 2000 c 171 § 9; 1997 c 314 § 16; 1986 c 197 § 6; 1983 1st ex.s. c 2 § 7.]

Effective date—1983 1st ex.s. c 2: See note following RCW 18.27.200.

18.27.290 Notice—Penalty for contractor failing to respond. It is a gross misdemeanor for a contractor who has

been personally served with a notice of infraction to willfully fail to respond to a notice of infraction as provided in this chapter, regardless of the ultimate disposition of the infraction. [2007 c 436 § 16; 1983 1st ex.s. c 2 § 11.]

Effective date—1983 1st ex.s. c 2: See note following RCW 18.27.200.

18.27.310 Infraction—Administrative hearing—Procedure—Burden of proof—Order—Appeal. (1) The administrative law judge shall conduct contractors' notice of infraction cases pursuant to chapter 34.05 RCW.

(2) The burden of proof is on the department to establish the commission of the infraction by a preponderance of the evidence, unless the infraction is issued against an unregistered contractor in which case the burden of proof is on the contractor. The notice of infraction shall be dismissed if the appellant establishes that, at the time the advertising occurred, offer or bid was made, or work was performed, the appellant was registered by the department, without suspension, or was exempt from registration.

(3) After consideration of the evidence and argument, the administrative law judge shall determine whether the infraction was committed. If it has not been established that the infraction was committed, an order dismissing the notice shall be entered in the record of the proceedings. If it has been established that the infraction was committed, the administrative law judge shall issue findings of fact and conclusions of law in its decision and order determining whether the infraction was committed.

(4) An appeal from the administrative law judge's determination or order shall be to the superior court. The decision of the superior court is subject only to discretionary review pursuant to Rule 2.3 of the Rules of Appellate Procedure. [2007 c 436 § 17; 2001 c 159 § 10; 1993 c 454 § 10; 1986 c 197 § 8; 1983 1st ex.s. c 2 § 9.]

Finding—1993 c 454: See note following RCW 18.27.010.

Effective date—1983 1st ex.s. c 2: See note following RCW 18.27.200.

Chapter 18.29 RCW DENTAL HYGIENISTS

Sections

18.29.053	Expanded function dental auxiliary services—Supervision.
18.29.056	Employment by health care facilities authorized—Limitations—Requirements for services performed in senior centers.
18.29.220	Community-based sealant programs in schools—Data collection.
18.29.230	Services at senior centers and community-based sealant programs—Dental hygienist duties.

18.29.053 Expanded function dental auxiliary services—Supervision. A person who holds a license under this chapter and who has met the requirements under RCW 18.260.050 and has been issued a license to practice as an expanded function dental auxiliary may perform those expanded function dental auxiliary services identified in RCW 18.260.070 under the specified supervision of a supervising dentist. [2007 c 269 § 14.]

Application—Implementation—2007 c 269: See RCW 18.260.900 and 18.260.901.

18.29.056 Employment by health care facilities authorized—Limitations—Requirements for services performed in senior centers. (1)(a) Subject to RCW 18.29.230 and (c) of this subsection, dental hygienists licensed under this chapter with two years' practical clinical experience with a licensed dentist within the preceding five years may be employed or retained by health care facilities to perform authorized dental hygiene operations and services without dental supervision, limited to removal of deposits and stains from the surfaces of the teeth, application of topical preventive or prophylactic agents, polishing and smoothing restorations, and performance of root planing and soft-tissue curettage, but shall not perform injections of anesthetic agents, administration of nitrous oxide, or diagnosis for dental treatment.

(b) The performance of dental hygiene operations and services in health care facilities shall be limited to patients, students, and residents of the facilities.

(c) A dental hygienist employed or retained to perform services under this section in a senior center must, before providing services:

(i) Enter into a written practice arrangement plan, approved by the department, with a dentist licensed in this state, under which the dentist will provide off-site supervision of the dental services provided. This agreement does not create an obligation for the dentist to accept referrals of patients receiving services under the program;

(ii) Collect data on the patients treated by dental hygienists under the program, including age, treatments rendered, insurance coverage, if any, and patient referral to dentists. This data must be submitted to the department of health at the end of each annual quarter, commencing October 1, 2007; and

(iii) Obtain information from the patient's primary health care provider about any health conditions of the patient that would be relevant to the provision of preventive dental care. The information may be obtained by the dental hygienist's direct contact with the provider or through a written document from the provider that the patient presents to the dental hygienist.

(d) For dental planning and dental treatment, dental hygienists shall refer patients to licensed dentists.

(2) For the purposes of this section:

(a) "Health care facilities" are limited to hospitals; nursing homes; home health agencies; group homes serving the elderly, individuals with disabilities, and juveniles; state-operated institutions under the jurisdiction of the department of social and health services or the department of corrections; and federal, state, and local public health facilities, state or federally funded community and migrant health centers, and tribal clinics. Until July 1, 2009, "health care facilities" also include senior centers.

(b) "Senior center" means a multipurpose community facility operated and maintained by a nonprofit organization or local government for the organization and provision of a broad spectrum of health, social, nutritional, and educational services and recreational activities for persons sixty years of age or older. [2007 c 270 § 1; 1997 c 37 § 2; 1984 c 279 § 63.]

Report—2007 c 270: "The secretary of health, in consultation with representatives of dental hygienists and dentists, shall provide a report to the

appropriate committees of the legislature by December 1, 2008, that:

(1) Provides a summary of the information about patients receiving dental services in senior centers that is collected under RCW 18.29.056(1)(c)(ii), and in community-based sealant programs carried out in schools under RCW 18.29.220, and describing the dental health outcomes, including both effects on dental health and adverse incidents, if any, related to the services these patients receive under the programs; and

(2) Makes recommendations, as appropriate, with regard to the services that could be appropriately provided by dental hygienists in senior centers and community-based sealant programs carried out in schools, and the effects on dental health of patients treated." [2007 c 270 § 4.]

Severability—1984 c 279: See RCW 18.130.901.

18.29.220 Community-based sealant programs in schools—Data collection. For low-income, rural, and other at-risk populations and in coordination with local public health jurisdictions and local oral health coalitions, a dental hygienist licensed in this state may assess for and apply sealants and apply fluoride varnishes, and may remove deposits and stains from the surfaces of teeth until July 1, 2009, in community-based sealant programs carried out in schools:

(1) Without attending the department's school sealant endorsement program if the dental hygienist was licensed as of April 19, 2001; or

(2) If the dental hygienist is school sealant endorsed under RCW 43.70.650.

A hygienist providing services under this section must collect data on patients treated, including age, treatment rendered, methods of reimbursement for treatment, evidence of coordination with local public health jurisdictions and local oral health coalitions, and patient referrals to dentists. These [This] data must be submitted to the department of health at the end of each annual quarter, commencing October 1, 2007. [2007 c 270 § 2; 2001 c 93 § 3.]

Report—2007 c 270: See note following RCW 18.29.056.

Findings—Intent—Effective date—2001 c 93: See notes following RCW 43.70.650.

18.29.230 Services at senior centers and community-based sealant programs—Dental hygienist duties. A dental hygienist participating in a program under RCW 18.29.056 that involves providing services at senior centers, as defined in RCW 18.29.056, or under RCW 18.29.220 that involves removing deposits and stains from the surfaces of teeth in a community-based sealant program must:

(1) Provide the patient or, if the patient is a minor, the parent or legal guardian of the patient, if reasonably available, with written information that includes at least the following:

(a) A notice that the treatment being given under the program is not a comprehensive oral health care service, but is provided as a preventive service only; and

(b) A recommendation that the patient should be examined by a licensed dentist for comprehensive oral health care services; and

(2) Assist the patient in obtaining a referral for further dental planning and treatment, including providing a written description of methods and sources by which a patient may obtain a referral, if needed, to a dentist, and a list of licensed dentists in the community. Written information should be provided to the parent on the potential needs of the patient. [2007 c 270 § 3.]

Report—2007 c 270: See note following RCW 18.29.056.

Chapter 18.32 RCW

DENTISTRY

Sections

18.32.030 Exemptions from chapter.
18.32.0351 Commission established—Membership. (*Effective July 1, 2009.*)

18.32.030 Exemptions from chapter. The following practices, acts, and operations are excepted from the operation of the provisions of this chapter:

(1) The rendering of dental relief in emergency cases in the practice of his or her profession by a physician or surgeon, licensed as such and registered under the laws of this state, unless the physician or surgeon undertakes to or does reproduce lost parts of the human teeth in the mouth or to restore or to replace in the human mouth lost or missing teeth;

(2) The practice of dentistry in the discharge of official duties by dentists in the United States federal services on federal reservations, including but not limited to the armed services, coast guard, public health service, veterans' bureau, or bureau of Indian affairs;

(3) Dental schools or colleges approved under RCW 18.32.040, and the practice of dentistry by students in accredited dental schools or colleges approved by the commission, when acting under the direction and supervision of Washington state-licensed dental school faculty;

(4) The practice of dentistry by licensed dentists of other states or countries while appearing as clinicians at meetings of the Washington state dental association, or component parts thereof, or at meetings sanctioned by them, or other groups approved by the commission;

(5) The use of roentgen and other rays for making radiographs or similar records of dental or oral tissues, under the supervision of a licensed dentist or physician;

(6) The making, repairing, altering, or supplying of artificial restorations, substitutions, appliances, or materials for the correction of disease, loss, deformity, malposition, dislocation, fracture, injury to the jaws, teeth, lips, gums, cheeks, palate, or associated tissues or parts; providing the same are made, repaired, altered, or supplied pursuant to the written instructions and order of a licensed dentist which may be accompanied by casts, models, or impressions furnished by the dentist, and the prescriptions shall be retained and filed for a period of not less than three years and shall be available to and subject to the examination of the secretary or the secretary's authorized representatives;

(7) The removal of deposits and stains from the surfaces of the teeth, the application of topical preventative or prophylactic agents, and the polishing and smoothing of restorations, when performed or prescribed by a dental hygienist licensed under the laws of this state;

(8) A qualified and licensed physician and surgeon or osteopathic physician and surgeon extracting teeth or performing oral surgery pursuant to the scope of practice under chapter 18.71 or 18.57 RCW;

(9) The performing of dental operations or services by registered dental assistants and licensed expanded function dental auxiliaries holding a credential issued under chapter 18.260 RCW when performed under the supervision of a licensed dentist, or by other persons not licensed under this chapter if the person is licensed pursuant to chapter 18.29,

18.57, 18.71, or 18.79 RCW as it applies to registered nurses and advanced registered nurse practitioners, each while acting within the scope of the person's permitted practice under the person's license: PROVIDED HOWEVER, That such persons shall in no event perform the following dental operations or services unless permitted to be performed by the person under this chapter or chapters 18.29, 18.57, 18.71, 18.79 as it applies to registered nurses and advanced registered nurse practitioners, and 18.260 RCW:

(a) Any removal of or addition to the hard or soft tissue of the oral cavity;

(b) Any diagnosis of or prescription for treatment of disease, pain, deformity, deficiency, injury, or physical condition of the human teeth or jaws, or adjacent structure;

(c) Any administration of general or injected local anesthetic of any nature in connection with a dental operation, including intravenous sedation;

(d) Any oral prophylaxis;

(e) The taking of any impressions of the teeth or jaw or the relationships of the teeth or jaws, for the purpose of fabricating any intra-oral restoration, appliance, or prosthesis. [2007 c 269 § 15; 2003 c 282 § 1; 1994 sp.s. c 9 § 203; 1991 c 3 § 59; 1989 c 202 § 13; 1979 c 158 § 35; 1971 ex.s. c 236 § 1; 1969 c 47 § 7; 1957 c 52 § 21; 1953 c 93 § 1; 1951 c 130 § 1. Prior: (i) 1941 c 92 § 3; 1935 c 112 § 25; Rem. Supp. 1941 § 10031-25; prior: 1923 c 16 § 23. (ii) 1935 c 112 § 6; RRS § 10031-6; prior: 1923 c 16 § 1; 1901 c 152 § 5; 1893 c 55 § 11.]

Application—Implementation—2007 c 269: See RCW 18.260.900 and 18.260.901.

18.32.0351 Commission established—Membership. (*Effective July 1, 2009.*) The Washington state dental quality assurance commission is established, consisting of sixteen members each appointed by the governor to a four-year term. No member may serve more than two consecutive full terms. In appointing the initial members of the commission, it is the intent of the legislature that, to the extent possible, members of the previous boards and committees regulating these professions be appointed to the commission. Members of the commission hold office until their successors are appointed. The governor may appoint members of the initial commission to staggered terms of from one to four years. Thereafter, all members shall be appointed to full four-year terms. Twelve members of the commission must be dentists, two members must be expanded function dental auxiliaries licensed under chapter 18.260 RCW, and two members must be public members. [2007 c 269 § 16; 1994 sp.s. c 9 § 204.]

Effective date—2007 c 269 § 16: "Section 16 of this act takes effect July 1, 2009." [2007 c 269 § 20.]

Application—Implementation—2007 c 269: See RCW 18.260.900 and 18.260.901.

Chapter 18.35 RCW

HEARING AND SPEECH SERVICES

Sections

18.35.040 Applicants—Generally.

18.35.040 Applicants—Generally. (1) An applicant for licensure as a hearing instrument fitter/dispenser must

have the following minimum qualifications and shall pay a fee determined by the secretary as provided in RCW 43.70.250. An applicant shall be issued a license under the provisions of this chapter if the applicant has not committed unprofessional conduct as specified by chapter 18.130 RCW, and:

(a)(i) Satisfactorily completes the hearing instrument fitter/dispenser examination required by this chapter; and

(ii) Satisfactorily completes a minimum of a two-year degree program in hearing instrument fitter/dispenser instruction. The program must be approved by the board; or

(b) Holds a current, unsuspended, unrevoked license from another jurisdiction if the standards for licensing in such other jurisdiction are substantially equivalent to those prevailing in this state as provided in (a) of this subsection; or

(c)(i) Holds a current, unsuspended, unrevoked license from another jurisdiction, has been actively practicing as a licensed hearing aid fitter/dispenser in another jurisdiction for at least forty-eight of the last sixty months, and submits proof of completion of advance certification from either the international hearing society or the national board for certification in hearing instrument sciences; and

(ii) Satisfactorily completes the hearing instrument fitter/dispenser examination required by this chapter or a substantially equivalent examination approved by the board.

The applicant must present proof of qualifications to the board in the manner and on forms prescribed by the secretary and proof of completion of a minimum of four clock hours of AIDS education and training pursuant to rules adopted by the board.

(2) An applicant for licensure as a speech-language pathologist or audiologist must have the following minimum qualifications:

(a) Has not committed unprofessional conduct as specified by the uniform disciplinary act;

(b) Has a master's degree or the equivalent, or a doctorate degree or the equivalent, from a program at a board-approved institution of higher learning, which includes completion of a supervised clinical practicum experience as defined by rules adopted by the board; and

(c) Has completed postgraduate professional work experience approved by the board.

All qualified applicants must satisfactorily complete the speech-language pathology or audiology examinations required by this chapter.

The applicant must present proof of qualifications to the board in the manner and on forms prescribed by the secretary and proof of completion of a minimum of four clock hours of AIDS education and training pursuant to rules adopted by the board. [2007 c 271 § 1; 2002 c 310 § 4; 1998 c 142 § 3; 1996 c 200 § 5; 1991 c 3 § 81; 1989 c 198 § 2; 1985 c 7 § 30; 1983 c 39 § 4; 1975 1st ex.s. c 30 § 36; 1973 1st ex.s. c 106 § 4.]

Effective date—2002 c 310: See note following RCW 18.35.010.

Effective date—1998 c 142 §§ 1-14 and 16-20: See note following RCW 18.35.010.

Chapter 18.43 RCW

ENGINEERS AND LAND SURVEYORS

Sections

- 18.43.020 Definitions. (*Effective July 1, 2008.*)
 18.43.040 Registration requirements. (*Effective July 1, 2008.*)

18.43.020 Definitions. (*Effective July 1, 2008.*) The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

(1) "Engineer" means a professional engineer as defined in this section.

(2) "Professional engineer" means a person who, by reason of his or her special knowledge of the mathematical and physical sciences and the principles and methods of engineering analysis and design, acquired by professional education and practical experience, is qualified to practice engineering as defined in this section, as attested by his or her legal registration as a professional engineer.

(3) "Engineer-in-training" means a candidate who: (a) Has satisfied the experience requirements in RCW 18.43.040 for registration; (b) has successfully passed the examination in the fundamental engineering subjects; and (c) is enrolled by the board as an engineer-in-training.

(4) "Engineering" means the "practice of engineering" as defined in this section.

(5)(a) "Practice of engineering" means any professional service or creative work requiring engineering education, training, and experience and the application of special knowledge of the mathematical, physical, and engineering sciences to such professional services or creative work as consultation, investigation, evaluation, planning, design, and supervision of construction for the purpose of assuring compliance with specifications and design, in connection with any public or private utilities, structures, buildings, machines, equipment, processes, works, or projects.

(b) A person shall be construed to practice or offer to practice engineering, within the meaning and intent of this chapter, who practices any branch of the profession of engineering; or who, by verbal claim, sign, advertisement, letterhead, card, or in any other way represents himself or herself to be a professional engineer, or through the use of some other title implies that he or she is a professional engineer; or who holds himself or herself out as able to perform, or who does perform, any engineering service or work or any other professional service designated by the practitioner or recognized by educational authorities as engineering.

(c) The practice of engineering does not include the work ordinarily performed by persons who operate or maintain machinery or equipment.

(6) "Land surveyor" means a professional land surveyor.

(7) "Professional land surveyor" means a person who, by reason of his or her special knowledge of the mathematical and physical sciences and principles and practices of land surveying, which is acquired by professional education and practical experience, is qualified to practice land surveying and as attested to by his or her legal registration as a professional land surveyor.

(8) "Land-surveyor-in-training" means a candidate who: (a) Has satisfied the experience requirements in RCW 18.43.040 for registration; (b) successfully passes the exami-

nation in the fundamental land surveying subjects; and (c) is enrolled by the board as a land-surveyor-in-training.

(9) "Practice of land surveying" means assuming responsible charge of the surveying of land for the establishment of corners, lines, boundaries, and monuments, the laying out and subdivision of land, the defining and locating of corners, lines, boundaries, and monuments of land after they have been established, the survey of land areas for the purpose of determining the topography thereof, the making of topographical delineations and the preparing of maps and accurate records thereof, when the proper performance of such services requires technical knowledge and skill.

(10) "Board" means the state board of registration for professional engineers and land surveyors, provided for by this chapter.

(11) "Significant structures" include:

(a) Hazardous facilities, defined as: Structures housing, supporting, or containing sufficient quantities of explosive substances to be of danger to the safety of the public if released;

(b) Essential facilities that have a ground area of more than five thousand square feet and are more than twenty feet in mean roof height above average ground level. Essential facilities are defined as:

(i) Hospitals and other medical facilities having surgery and emergency treatment areas;

(ii) Fire and police stations;

(iii) Tanks or other structures containing, housing, or supporting water or fire suppression material or equipment required for the protection of essential or hazardous facilities or special occupancy structures;

(iv) Emergency vehicle shelters and garages;

(v) Structures and equipment in emergency preparedness centers;

(vi) Standby power-generating equipment for essential facilities;

(vii) Structures and equipment in government communication centers and other facilities requiring emergency response;

(viii) Aviation control towers, air traffic control centers, and emergency aircraft hangars; and

(ix) Buildings and other structures having critical national defense functions;

(c) Structures exceeding one hundred feet in height above average ground level;

(d) Buildings that are customarily occupied by human beings and are five stories or more above average ground level;

(e) Bridges having a total span of more than two hundred feet and piers having a surface area greater than ten thousand square feet; and

(f) Buildings and other structures where more than three hundred people congregate in one area. [2007 c 193 § 2; 1995 c 356 § 1; 1991 c 19 § 1; 1947 c 283 § 2; Rem. Supp. 1947 § 8306-22. Prior: 1935 c 167 § 1; RRS § 8306-1.]

Effective date—2007 c 193: See note following RCW 18.43.040.

Effective date—1995 c 356: "This act shall take effect July 1, 1996." [1995 c 356 § 6.]

18.43.040 Registration requirements. (*Effective July 1, 2008.*) (1) The following will be considered as minimum

evidence satisfactory to the board that the applicant is qualified for registration as a professional engineer, engineer-in-training, professional land surveyor, or land-surveyor-in-training, respectively:

(a)(i) As a professional engineer: A specific record of eight years or more of experience in engineering work of a character satisfactory to the board and indicating that the applicant is competent to practice engineering; and successfully passing a written or oral examination, or both, in engineering as prescribed by the board.

(ii) Graduation in an approved engineering curriculum of four years or more from a school or college approved by the board as of satisfactory standing shall be considered equivalent to four years of such required experience. The satisfactory completion of each year of such an approved engineering course without graduation shall be considered as equivalent to a year of such required experience. Graduation in a curriculum other than engineering from a school or college approved by the board shall be considered as equivalent to two years of such required experience. However, no applicant shall receive credit for more than four years of experience because of undergraduate educational qualifications. The board may, at its discretion, give credit as experience not in excess of one year, for satisfactory postgraduate study in engineering.

(iii) Structural engineering is recognized as a specialized branch of professional engineering. To receive a certificate of registration in structural engineering, an applicant must hold a current registration in this state in engineering and have at least two years of structural engineering experience, of a character satisfactory to the board, in addition to the eight years' experience required for registration as a professional engineer. An applicant for registration as a structural engineer must also pass an additional examination as prescribed by the board.

(iv) An engineer must be registered as a structural engineer in order to provide structural engineering services for significant structures. The board may waive the requirements of this subsection (1)(a)(iv) until December 31, 2010, if:

(A) On January 1, 2007, the engineer is registered with the board as a professional engineer; and

(B) Within two years of January 1, 2007, the engineer demonstrates to the satisfaction of the board that the engineer has sufficient experience in the duties typically provided by a professional structural engineer regarding significant structures.

(b)(i) As an engineer-in-training: An applicant for registration as a professional engineer shall take the prescribed examination in two stages. The first stage of the examination may be taken upon submission of his or her application for registration as an engineer-in-training and payment of the application fee prescribed in RCW 18.43.050 at any time after the applicant has completed four years of the required engineering experience, as defined in this section, or has achieved senior standing in a school or college approved by the board. The first stage of the examination shall test the applicant's knowledge of appropriate fundamentals of engineering subjects, including mathematics and the basic sciences.

(ii) At any time after the completion of the required eight years of engineering experience, as defined in this section,

the applicant may take the second stage of the examination upon submission of an application for registration and payment of the application fee prescribed in RCW 18.43.050. This stage of the examination shall test the applicant's ability, upon the basis of his or her greater experience, to apply his or her knowledge and experience in the field of his or her specific training and qualifications.

(c)(i) As a professional land surveyor: A specific record of eight years or more of experience in land surveying work of a character satisfactory to the board and indicating that the applicant is competent to practice land surveying, and successfully passing a written or oral examination, or both, in surveying as prescribed by the board.

(ii) Graduation from a school or college approved by the board as of satisfactory standing, including the completion of an approved course in surveying, shall be considered equivalent to four years of the required experience. Postgraduate college courses approved by the board shall be considered for up to one additional year of the required experience.

(d)(i) As a land-surveyor-in-training: An applicant for registration as a professional land surveyor shall take the prescribed examination in two stages. The first stage of the examination may be taken upon submission of his or her application for registration as a land-surveyor-in-training and payment of the application fee prescribed in RCW 18.43.050 at any time after the applicant has completed four years of the required land surveying experience, as defined in this section, or has achieved senior standing in a school or college approved by the board. The first stage of the examination shall test the applicant's knowledge of appropriate fundamentals of land surveying subjects, including mathematics and the basic sciences.

(ii) At any time after the completion of the required eight years of land surveying experience, as defined in this section, the applicant may take the second stage of the examination upon submission of an application for registration and payment of the application fee prescribed in RCW 18.43.050. This stage of the examination shall test the applicant's ability, upon the basis of greater experience, to apply knowledge and experience in the field of land surveying.

(iii) The first stage shall be successfully completed before the second stage may be attempted. Applicants who have been approved by the board to take the examination based on the requirement for six years of experience under this section before July 1, 1996, are eligible to sit for the examination.

(2) No person shall be eligible for registration as a professional engineer, engineer-in-training, professional land surveyor, or land-surveyor-in-training, who is not of good character and reputation.

(3) Teaching, of a character satisfactory to the board shall be considered as experience not in excess of two years for the appropriate profession.

(4) The mere execution, as a contractor, of work designed by a professional engineer, or the supervision of the construction of such work as a foreman or superintendent shall not be deemed to be practice of engineering.

(5) Any person having the necessary qualifications prescribed in this chapter to entitle him or her to registration shall be eligible for such registration although the person may not be practicing his or her profession at the time of making

his or her application. [2007 c 193 § 1; 2000 c 172 § 1; 1995 c 356 § 2; 1991 c 19 § 2; 1947 c 283 § 7; Rem. Supp. 1947 § 8306-24. Prior: 1935 c 167 § 2; RRS § 8306-2.]

Effective date—2007 c 193: "This act takes effect July 1, 2008." [2007 c 193 § 3.]

Effective date—1995 c 356: See note following RCW 18.43.020.

Chapter 18.57 RCW

OSTEOPATHY—OSTEOPATHIC MEDICINE AND SURGERY

Sections

18.57.005 Powers and duties of board. (*Effective July 1, 2009.*)

18.57.005 Powers and duties of board. (*Effective July 1, 2009.*) The board shall have the following powers and duties:

(1) To administer examinations to applicants for licensure under this chapter;

(2) To make such rules and regulations as are not inconsistent with the laws of this state as may be deemed necessary or proper to carry out the purposes of this chapter;

(3) To establish and administer requirements for continuing professional education as may be necessary or proper to insure the public health and safety as a prerequisite to granting and renewing licenses under this chapter: PROVIDED, That such rules shall not require a licensee under this chapter to engage in continuing education related to or provided by any specific branch, school, or philosophy of medical practice or its political and/or professional organizations, associations, or societies;

(4) To adopt rules governing the administration of sedation and anesthesia in the offices of persons licensed under this chapter, including necessary training and equipment;

(5) To keep an official record of all its proceedings, which record shall be evidence of all proceedings of the board which are set forth therein. [2007 c 273 § 27; 1986 c 259 § 94; 1979 c 117 § 3.]

Effective date—Implementation—2007 c 273: See RCW 70.230.900 and 70.230.901.

Severability—1986 c 259: See note following RCW 18.130.010.

Chapter 18.57A RCW

OSTEOPATHIC PHYSICIANS' ASSISTANTS

Sections

18.57A.080 Signing and attesting to required documentation.

18.57A.080 Signing and attesting to required documentation. An osteopathic physician's assistant may sign and attest to any certificates, cards, forms, or other required documentation that the osteopathic physician's assistant's supervising osteopathic physician or osteopathic physician group may sign, provided that it is within the osteopathic physician's assistant's scope of practice and is consistent with the terms of the osteopathic physician's assistant's practice arrangement plan as required by this chapter. [2007 c 264 § 2.]

Finding—Intent—2007 c 264: See note following RCW 18.71A.090.

Chapter 18.71 RCW

PHYSICIANS

Sections

18.71.017 Rules by commission—Successor to other boards. (*Effective July 1, 2009.*)

18.71.0195 Disciplinary reports—Confidentiality—Immunity. (*Effective July 1, 2009.*)

18.71.017 Rules by commission—Successor to other boards. (*Effective July 1, 2009.*) (1) The commission may adopt such rules as are not inconsistent with the laws of this state as may be determined necessary or proper to carry out the purposes of this chapter. The commission is the successor in interest of the board of medical examiners and the medical disciplinary board. All contracts, undertakings, agreements, rules, regulations, and policies continue in full force and effect on July 1, 1994, unless otherwise repealed or rejected by this chapter or by the commission.

(2) The commission may adopt rules governing the administration of sedation and anesthesia in the offices of persons licensed under this chapter, including necessary training and equipment. [2007 c 273 § 26; 2000 c 171 § 23; 1994 sp.s. c 9 § 304; 1961 c 284 § 11.]

Effective date—Implementation—2007 c 273: See RCW 70.230.900 and 70.230.901.

Severability—Headings and captions not law—Effective date—1994 sp.s. c 9: See RCW 18.79.900 through 18.79.902.

18.71.0195 Disciplinary reports—Confidentiality—Immunity. (*Effective July 1, 2009.*) (1) The contents of any report filed under RCW 18.130.070 shall be confidential and exempt from public disclosure pursuant to chapter 42.56 RCW, except that it may be reviewed (a) by the licensee involved or his or her counsel or authorized representative who may submit any additional exculpatory or explanatory statements or other information, which statements or other information shall be included in the file, or (b) by a representative of the commission, or investigator thereof, who has been assigned to review the activities of a licensed physician.

Upon a determination that a report is without merit, the commission's records may be purged of information relating to the report.

(2) Every individual, medical association, medical society, hospital, ambulatory surgical facility, medical service bureau, health insurance carrier or agent, professional liability insurance carrier, professional standards review organization, agency of the federal, state, or local government, or the entity established by RCW 18.71.300 and its officers, agents, and employees are immune from civil liability, whether direct or derivative, for providing information to the commission under RCW 18.130.070, or for which an individual health care provider has immunity under the provisions of RCW 4.24.240, 4.24.250, or 4.24.260. [2007 c 273 § 24; 2005 c 274 § 227; 1998 c 132 § 2; 1994 sp.s. c 9 § 328; 1986 c 259 § 117; 1979 ex.s. c 111 § 15. Formerly RCW 18.72.265.]

Effective date—Implementation—2007 c 273: See RCW 70.230.900 and 70.230.901.

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

Finding—Intent—1998 c 132: "The legislature finds that the self-imposed license surcharge on physician licenses to fund a program to help physicians with chemical dependency or mental illness is not being fully spent on that program. It is the intent of the legislature that the program be fully funded and that funds collected into the impaired physician account be spent only on the program." [1998 c 132 § 1.]

Severability—1998 c 132: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1998 c 132 § 15.]

Severability—Headings and captions not law—Effective date—1994 sp.s. c 9: See RCW 18.79.900 through 18.79.902.

Severability—1986 c 259: See note following RCW 18.130.010.

Severability—1979 ex.s. c 111: See note following RCW 18.71.0191.

Chapter 18.71A RCW PHYSICIAN ASSISTANTS

Sections

18.71A.090 Signing and attesting to required documentation.

18.71A.090 Signing and attesting to required documentation. A physician assistant may sign and attest to any certificates, cards, forms, or other required documentation that the physician assistant's supervising physician or physician group may sign, provided that it is within the physician assistant's scope of practice and is consistent with the terms of the physician assistant's practice arrangement plan as required by this chapter. [2007 c 264 § 3.]

Finding—Intent—2007 c 264: "The legislature finds that some state agencies and departments do not accept the signature of physician assistants on certain certificates, reports, and other documents that their supervising physician is permitted to sign, notwithstanding the fact that the signing of such documents is within the physician assistant's scope of practice, covered under their practice arrangement plan, and permitted pursuant to WAC 246-918-140.

It is therefore the intent of the legislature to clarify in statute what was adopted by rule in WAC 246-918-140, that a physician assistant may sign and attest to any document that might ordinarily be signed by the supervising physician and that is consistent with the terms of the practice arrangement plan." [2007 c 264 § 1.]

Chapter 18.73 RCW EMERGENCY MEDICAL CARE AND TRANSPORTATION SERVICES

Sections

18.73.180 Other transportation vehicles.
18.73.260 Guidelines.

18.73.180 Other transportation vehicles. Other vehicles not herein defined by this chapter shall not be used for transportation of patients who must be carried on a stretcher or who may require medical attention en route, except that such transportation may be used when:

(1) A disaster creates a situation that cannot be served by licensed ambulances; or

(2) The use of a stretcher is necessary because an individual's personal mobility aid cannot be adequately secured in the nonambulance vehicle and the individual has written authorization from his or her physician that it is safe to transfer the individual from a personal mobility aid to a stretcher.

[2007 c 305 § 1; 1987 c 214 § 14; 1979 ex.s. c 261 § 18; 1973 1st ex.s. c 208 § 18.]

Effective date—1973 1st ex.s. c 208: See RCW 18.73.910.

18.73.260 Guidelines. (1) The department of health shall convene a stakeholder group including the department of social and health services, the department of transportation, and local special needs transportation providers who shall assist in the development of guidelines for the safe transport of individuals who rely on stretchers and personal mobility devices.

(2) The department of health shall prepare guidelines for the public and vehicle operators relating to:

(a) Appropriate situations in which vehicles other than ambulances may be used to transport individuals who rely upon personal mobility aids in the normal course of their lives; and

(b) Methods for properly securing personal mobility aids on vehicles other than ambulances and determining if they are adequately secured. [2007 c 305 § 2.]

Chapter 18.74 RCW PHYSICAL THERAPY

Sections

18.74.010 Definitions. (*Effective July 1, 2008.*)
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18.74.160 Authorization to practice—Referral to appropriate practitioner—Standards of ethics—Electroneuromyographic examinations—Authorization to purchase, store, and administer certain drugs or medication. (*Effective July 1, 2008.*)
18.74.170 Delegation. (*Effective July 1, 2008.*)
18.74.180 Professional and legal responsibility—Supervision of assistive personnel. (*Effective July 1, 2008.*)
18.74.912 Effective dates—2007 c 98.

18.74.010 Definitions. (*Effective July 1, 2008.*) The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

(1) "Board" means the board of physical therapy created by RCW 18.74.020.

(2) "Department" means the department of health.

(3) "Physical therapy" means the care and services provided by or under the direction and supervision of a physical therapist licensed by the state. The use of Roentgen rays and radium for diagnostic and therapeutic purposes, the use of electricity for surgical purposes, including cauterization, and the use of spinal manipulation, or manipulative mobilization

of the spine and its immediate articulations, are not included under the term "physical therapy" as used in this chapter.

(4) "Physical therapist" means a person who meets all the requirements of this chapter and is licensed in this state to practice physical therapy.

(5) "Secretary" means the secretary of health.

(6) Words importing the masculine gender may be applied to females.

(7) "Authorized health care practitioner" means and includes licensed physicians, osteopathic physicians, chiropractors, naturopaths, podiatric physicians and surgeons, dentists, and advanced registered nurse practitioners: PROVIDED, HOWEVER, That nothing herein shall be construed as altering the scope of practice of such practitioners as defined in their respective licensure laws.

(8) "Practice of physical therapy" is based on movement science and means:

(a) Examining, evaluating, and testing individuals with mechanical, physiological, and developmental impairments, functional limitations in movement, and disability or other health and movement-related conditions in order to determine a diagnosis, prognosis, plan of therapeutic intervention, and to assess and document the ongoing effects of intervention;

(b) Alleviating impairments and functional limitations in movement by designing, implementing, and modifying therapeutic interventions that include therapeutic exercise; functional training related to balance, posture, and movement to facilitate self-care and reintegration into home, community, or work; manual therapy including soft tissue and joint mobilization and manipulation; therapeutic massage; assistive, adaptive, protective, and devices related to postural control and mobility except as restricted by (c) of this subsection; airway clearance techniques; physical agents or modalities; mechanical and electrotherapeutic modalities; and patient-related instruction;

(c) Training for, and the evaluation of, the function of a patient wearing an orthosis or prosthesis as defined in RCW 18.200.010. Physical therapists may provide those direct-formed and prefabricated upper limb, knee, and ankle-foot orthoses, but not fracture orthoses except those for hand, wrist, ankle, and foot fractures, and assistive technology devices specified in RCW 18.200.010 as exemptions from the defined scope of licensed orthotic and prosthetic services. It is the intent of the legislature that the unregulated devices specified in RCW 18.200.010 are in the public domain to the extent that they may be provided in common with individuals or other health providers, whether unregulated or regulated under Title 18 RCW, without regard to any scope of practice;

(d) Performing wound care services that are limited to sharp debridement, debridement with other agents, dry dressings, wet dressings, topical agents including enzymes, hydrotherapy, electrical stimulation, ultrasound, and other similar treatments. Physical therapists may not delegate sharp debridement. A physical therapist may perform wound care services only by referral from or after consultation with an authorized health care practitioner;

(e) Reducing the risk of injury, impairment, functional limitation, and disability related to movement, including the promotion and maintenance of fitness, health, and quality of life in all age populations; and

(f) Engaging in administration, consultation, education, and research.

(9)(a) "Physical therapist assistant" means a person who meets all the requirements of this chapter and is licensed as a physical therapist assistant and who performs physical therapy procedures and related tasks that have been selected and delegated only by the supervising physical therapist. However, a physical therapist may not delegate sharp debridement to a physical therapist assistant.

(b) "Physical therapy aide" means a person who is involved in direct physical therapy patient care who does not meet the definition of a physical therapist or physical therapist assistant and receives ongoing on-the-job training.

(c) "Other assistive personnel" means other trained or educated health care personnel, not defined in (a) or (b) of this subsection, who perform specific designated tasks related to physical therapy under the supervision of a physical therapist, including but not limited to licensed massage practitioners, athletic trainers, and exercise physiologists. At the direction of the supervising physical therapist, and if properly credentialed and not prohibited by any other law, other assistive personnel may be identified by the title specific to their training or education.

(10) "Direct supervision" means the supervising physical therapist must (a) be continuously on-site and present in the department or facility where assistive personnel or holders of interim permits are performing services; (b) be immediately available to assist the person being supervised in the services being performed; and (c) maintain continued involvement in appropriate aspects of each treatment session in which a component of treatment is delegated to assistive personnel.

(11) "Indirect supervision" means the supervisor is not on the premises, but has given either written or oral instructions for treatment of the patient and the patient has been examined by the physical therapist at such time as acceptable health care practice requires and consistent with the particular delegated health care task.

(12) "Sharp debridement" means the removal of devitalized tissue from a wound with scissors, scalpel, and tweezers without anesthesia. "Sharp debridement" does not mean surgical debridement. A physical therapist may perform sharp debridement, to include the use of a scalpel, only upon showing evidence of adequate education and training as established by rule. Until the rules are established, but no later than July 1, 2006, physical therapists licensed under this chapter who perform sharp debridement as of July 24, 2005, shall submit to the secretary an affidavit that includes evidence of adequate education and training in sharp debridement, including the use of a scalpel. [2007 c 98 § 1; 2005 c 501 § 2; 1997 c 275 § 8; 1991 c 12 § 1; (1991 c 3 §§ 172, 173 repealed by 1991 sp.s. c 11 § 2); (1990 c 297 § 17 repealed by 1991 c 12 § 6); 1988 c 185 § 1; 1983 c 116 § 2; 1961 c 64 § 1; 1949 c 239 § 1; Rem. Supp. 1949 § 10163-1.]

Effective dates—1991 c 12 §§ 1, 2, 3, 6: "(1) Sections 1, 2, and 6 of this act are necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and shall take effect June 30, 1991.

(2) Section 3 of this act shall take effect January 1, 1992." [1991 c 12 § 7.]

Number and gender: RCW 1.12.050.

18.74.020 Board created—Members—Staff assistance—Compensation and travel expenses. (Effective December 1, 2008.) The state board of physical therapy is hereby created. The board shall consist of six members who shall be appointed by the governor. Of the initial appointments, two shall be appointed for a term of two years, two for a term of three years, and one for a term of four years. Thereafter, all appointments shall be for terms of four years. Four members of the board shall be physical therapists licensed under this chapter and residing in this state, shall have not less than five years' experience in the practice of physical therapy, and shall be actively engaged in practice within two years of appointment. One member shall be a physical therapist assistant licensed under this chapter and residing in this state, shall not have less than five years' experience in the practice of physical therapy, and shall be actively engaged in practice within two years of appointment. The sixth member shall be appointed from the public at large, shall have an interest in the rights of consumers of health services, and shall not be or have been a member of any other licensing board, a licensee of any health occupation board, an employee of any health facility nor derive his or her primary livelihood from the provision of health services at any level of responsibility. In the event that a member of the board for any reason cannot complete his or her term of office, another appointment shall be made by the governor in accordance with the procedure stated in this section to fill the remainder of the term. No member may serve for more than two successive four-year terms.

The secretary of health shall furnish such secretarial, clerical, and other assistance as the board may require. Each member of the board shall, in addition to travel expenses in accordance with RCW 43.03.050 and 43.03.060, be compensated in accordance with RCW 43.03.240. [2007 c 98 § 2; 1991 c 3 § 174; 1984 c 287 § 46; 1983 c 116 § 3; 1979 c 158 § 62; 1975-'76 2nd ex.s. c 34 § 44; 1949 c 239 § 2; Rem. Supp. 1949 § 10163-2.]

Legislative findings—Severability—Effective date—1984 c 287: See notes following RCW 43.03.220.

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

Secretary of health or designee ex officio member of health professional licensure and disciplinary boards: RCW 43.70.300.

18.74.030 Qualifications of applicants. (Effective July 1, 2008.) (1) An applicant for a license as a physical therapist shall have the following minimum qualifications:

- (a) Be of good moral character; and
- (b) Have obtained either (i) a baccalaureate degree in physical therapy from an institution of higher learning approved by the board or (ii) a baccalaureate degree from an institution of higher learning and a certificate or advanced degree from a school of physical therapy approved by the board.

(2) An applicant for a license as a physical therapist assistant must have the following minimum qualifications:

- (a) Be of good moral character; and
- (b) Have successfully completed a board-approved physical therapist assistant program.

(3) The applicant shall present proof of qualification to the board in the manner and on the forms prescribed by the

board. [2007 c 98 § 3; 1983 c 116 § 6; 1961 c 64 § 2; 1949 c 239 § 3; Rem. Supp. 1949 § 10163-3.]

18.74.035 Examinations—Scope—Time and place. (Effective July 1, 2008.) (1) All qualified applicants for a license as a physical therapist shall be examined by the board at such time and place as the board may determine. The board may approve an examination prepared or administered by a private testing agency or association of licensing authorities. The examination shall embrace the following subjects: The applied sciences of anatomy, neuroanatomy, kinesiology, physiology, pathology, psychology, physics; physical therapy, as defined in this chapter, applied to medicine, neurology, orthopedics, pediatrics, psychiatry, surgery; medical ethics; technical procedures in the practice of physical therapy as defined in this chapter; and such other subjects as the board may deem useful to test the applicant's fitness to practice physical therapy, but not including the adjustment or manipulation of the spine or use of a thrusting force as mobilization. Examinations shall be held within the state at least once a year, at such time and place as the board shall determine. An applicant who fails an examination may apply for reexamination upon payment of a reexamination fee determined by the secretary.

(2) All qualified applicants for a license as a physical therapist assistant must be examined by the board at such a time and place as the board may determine. The board may approve an examination prepared or administered by a private testing agency or association of licensing authorities. [2007 c 98 § 4; 1995 c 198 § 10; 1991 c 3 § 176; 1983 c 116 § 7; 1961 c 64 § 3.]

18.74.038 Physical therapist assistants—Waiver of examination. (Effective July 1, 2008.) The board shall waive the examination and grant a license to a person who meets the commonly accepted standards for practicing as a physical therapist assistant, as adopted by rule. Persons eligible for licensure as a physical therapist assistant under this section must apply for a license within one year of July 1, 2008. [2007 c 98 § 7.]

18.74.040 Licenses. (Effective July 1, 2008.) (1) The secretary shall license as a physical therapist, and shall furnish a license to, each applicant who successfully passes the examination for licensure as a physical therapist.

(2) The secretary shall license as a physical therapist assistant, and shall furnish a license to, each applicant who successfully passes the examination for licensure as a physical therapist assistant. [2007 c 98 § 5; 1991 c 3 § 177; 1983 c 116 § 8; 1949 c 239 § 4; Rem. Supp. 1949 § 10163-4.]

18.74.060 Licensure by endorsement. (Effective July 1, 2008.) Upon the recommendation of the board, the secretary shall license as a physical therapist or physical therapist assistant and shall furnish a license to any person who is a physical therapist or physical therapist assistant registered, certified, or licensed under the laws of another state or territory, or the District of Columbia, if the qualifications for such registration, certification, or license required of the applicant were substantially equal to the requirements under this chap-

ter. At the time of making application, the applicant shall comply with administrative procedures, administrative requirements, and fees established pursuant to RCW 43.70.250 and 43.70.280. [2007 c 98 § 6; 1996 c 191 § 60; 1991 c 3 § 179; 1985 c 7 § 64; 1983 c 116 § 10; 1975 1st ex.s. c 30 § 66; 1961 c 64 § 5; 1949 c 239 § 6; Rem. Supp. 1949 § 10163-6.]

18.74.070 Renewal of license. (Effective July 1, 2008.)

Every licensed physical therapist and physical therapist assistant shall apply to the secretary for a renewal of the license and pay to the state treasurer a fee determined by the secretary as provided in RCW 43.70.250 and 43.70.280. [2007 c 98 § 8; 1996 c 191 § 61; 1991 c 3 § 180; 1983 c 116 § 12; 1975 1st ex.s. c 30 § 67; 1971 ex.s. c 266 § 13; 1961 c 64 § 6; 1949 c 239 § 7; Rem. Supp. 1949 § 10163-7.]

18.74.073 Licenses—Inactive status—Fees. (Effective July 1, 2008.) Any physical therapist or physical therapist assistant licensed under this chapter not practicing physical therapy or providing services may place his or her license in an inactive status. The board shall prescribe requirements for maintaining an inactive status and converting from an inactive or active status. The secretary may establish fees for alterations in license status. [2007 c 98 § 9; 1998 c 143 § 1.]

18.74.090 False advertising—Use of name and words—License required—Prosecutions of violations. (Effective July 1, 2008.) (1) A person who is not licensed with the secretary of health as a physical therapist under the requirements of this chapter shall not represent him or herself as being so licensed and shall not use in connection with his or her name the words or letters "P.T.", "R.P.T.", "L.P.T.", "physical therapy", "physiotherapy", "physical therapist" or "physiotherapist", or any other letters, words, signs, numbers, or insignia indicating or implying that he or she is a physical therapist. No person may practice physical therapy without first having a valid license. Nothing in this chapter prohibits any person licensed in this state under any other act from engaging in the practice for which he or she is licensed. It shall be the duty of the prosecuting attorney of each county to prosecute all cases involving a violation of this chapter arising within his or her county. The attorney general may assist in such prosecution and shall appear at all hearings when requested to do so by the board.

(2) No person assisting in the practice of physical therapy may use the title "physical therapist assistant," the letters "PTA," or any other words, abbreviations, or insignia in connection with his or her name to indicate or imply, directly or indirectly, that he or she is a physical therapist assistant without being licensed in accordance with this chapter as a physical therapist assistant. [2007 c 98 § 10; 1991 c 3 § 181; 1987 c 150 § 48; 1986 c 259 § 125; 1983 c 116 § 18; 1961 c 64 § 8; 1949 c 239 § 9; Rem. Supp. 1949 § 10163-9.]

Severability—1987 c 150: See RCW 18.122.901.

Severability—1986 c 259: See note following RCW 18.130.010.

False advertising: Chapter 9.04 RCW.

18.74.120 Record of proceedings—Register. (Effective July 1, 2008.) The secretary of health shall keep a record

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of proceedings under this chapter and a register of all persons licensed under it. The register shall show the name of every living licensed physical therapist and physical therapist assistant, his or her last known place of residence, and the date and number of his or her license as a physical therapist or physical therapist assistant. [2007 c 98 § 11; 1991 c 3 § 183; 1983 c 116 § 21; 1979 c 158 § 63; 1977 c 75 § 11; 1949 c 239 § 12; Rem. Supp. 1949 § 10163-12.]

18.74.128 Construction of chapter—Health carrier contracts with physical therapist assistants. (Effective July 1, 2008.) Nothing in this chapter may be construed to require that a health carrier defined in RCW 48.43.005 contract with a person licensed as a physical therapist assistant under this chapter. [2007 c 98 § 17.]

18.74.130 Exemptions. (Effective July 1, 2008.) This chapter does not prohibit or regulate:

(1) The practice of physical therapy by students enrolled in approved schools as may be incidental to their course of study so long as such activities do not go beyond the scope of practice defined by this chapter.

(2) Auxiliary services provided by physical therapy aides carrying out duties necessary for the support of physical therapy including those duties which involve minor physical therapy services when performed under the direct supervision of licensed physical therapists so long as such activities do not go beyond the scope of practice defined by this chapter.

(3) The practice of physical therapy by licensed or registered physical therapists of other states or countries while appearing as clinicians of bona fide educational seminars sponsored by physical therapy, medical, or other healing art professional associations so long as such activities do not go beyond the scope of practice defined by this chapter.

(4) The practice of physical therapists and physical therapist assistants in the armed services or employed by any other branch of the federal government. [2007 c 98 § 12; 1983 c 116 § 22.]

18.74.150 Unlawful activities—Persons exempt from licensure under chapter. (Effective July 1, 2008.) (1) It is unlawful for any person to practice or in any manner hold himself or herself out to practice physical therapy or designate himself or herself as a physical therapist or physical therapist assistant, unless he or she is licensed in accordance with this chapter.

(2) This chapter does not restrict persons licensed under any other law of this state from engaging in the profession or practice for which they are licensed, if they are not representing themselves to be physical therapists, physical therapist assistants, or providers of physical therapy.

(3) The following persons are exempt from licensure as physical therapists under this chapter when engaged in the following activities:

(a) A person who is pursuing a course of study leading to a degree as a physical therapist in an approved professional education program and is satisfying supervised clinical education requirements related to his or her physical therapy education while under direct supervision of a licensed physical therapist;

(b) A physical therapist while practicing in the United States armed services, United States public health service, or veterans administration as based on requirements under federal regulations for state licensure of health care providers; and

(c) A physical therapist licensed in another United States jurisdiction, or a foreign-educated physical therapist credentialed in another country, performing physical therapy as part of teaching or participating in an educational seminar of no more than sixty days in a calendar year.

(4) The following persons are exempt from licensure as physical therapist assistants under this chapter when engaged in the following activities:

(a) A person who is pursuing a course of study leading to a degree as a physical therapist assistant in an approved professional education program and is satisfying supervised clinical education requirements related to his or her physical therapist assistant education while under direct supervision of a licensed physical therapist;

(b) A physical therapist assistant while practicing in the United States armed services, United States public health service, or veterans administration as based on requirements under federal regulations for state licensure of health care providers; and

(c) A physical therapist assistant licensed in another United States jurisdiction, or a foreign-educated physical therapist assistant credentialed in another country, or a physical therapist assistant who is teaching or participating in an educational seminar of no more than sixty days in a calendar year. [2007 c 98 § 13; 2005 c 501 § 4.]

18.74.160 Authorization to practice—Referral to appropriate practitioner—Standards of ethics—Electro-neuromyographic examinations—Authorization to purchase, store, and administer certain drugs or medication. (Effective July 1, 2008.) (1) A physical therapist licensed under this chapter is fully authorized to practice physical therapy as defined in this chapter.

(2) A physical therapist shall refer persons under his or her care to appropriate health care practitioners if the physical therapist has reasonable cause to believe symptoms or conditions are present that require services beyond the scope of practice under this chapter or when physical therapy is contraindicated.

(3) Physical therapists and physical therapist assistants shall adhere to the recognized standards of ethics of the physical therapy profession and as further established by rule.

(4) A physical therapist may perform electro-neuromyographic examinations for the purpose of testing neuromuscular function only by referral from an authorized health care practitioner identified in RCW 18.74.010(7) and only upon demonstration of further education and training in electro-neuromyographic examinations as established by rule. Within two years after July 1, 2005, the secretary shall waive the requirement for further education and training for those physical therapists licensed under this chapter who perform electro-neuromyographic examinations.

(5) A physical therapist licensed under this chapter may purchase, store, and administer medications such as hydrocortisone, flucinonide, topical anesthetics, silver sulfadiazine, lidocaine, magnesium sulfate, zinc oxide, and other sim-

ilar medications, and may administer such other drugs or medications as prescribed by an authorized health care practitioner for the practice of physical therapy. A pharmacist who dispenses such drugs to a licensed physical therapist is not liable for any adverse reactions caused by any method of use by the physical therapist. [2007 c 98 § 14; 2005 c 501 § 5.]

18.74.170 Delegation. (Effective July 1, 2008.) (1) Physical therapists are responsible for patient care given by assistive personnel under their supervision. A physical therapist may delegate to assistive personnel and supervise selected acts, tasks, or procedures that fall within the scope of physical therapy practice but do not exceed the education or training of the assistive personnel.

(2) Nothing in this chapter may be construed to prohibit other licensed health care providers from using the services of physical therapist assistants, as long as the title "physical therapist assistant" is not used in violation of RCW 18.74.090, physical therapist aides, or other assistive personnel as long as the licensed health care provider is responsible for the activities of such assistants, aides, and other personnel and provides appropriate supervision. [2007 c 98 § 15; 2005 c 501 § 6.]

18.74.180 Professional and legal responsibility—Supervision of assistive personnel. (Effective July 1, 2008.) A physical therapist is professionally and legally responsible for patient care given by assistive personnel under his or her supervision. If a physical therapist fails to adequately supervise patient care given by assistive personnel, the board may take disciplinary action against the physical therapist.

(1) Regardless of the setting in which physical therapy services are provided, only the licensed physical therapist may perform the following responsibilities:

(a) Interpretation of referrals;

(b) Initial examination, problem identification, and diagnosis for physical therapy;

(c) Development or modification of a plan of care that is based on the initial examination and includes the goals for physical therapy intervention;

(d) Determination of which tasks require the expertise and decision-making capacity of the physical therapist and must be personally rendered by the physical therapist, and which tasks may be delegated;

(e) Assurance of the qualifications of all assistive personnel to perform assigned tasks through written documentation of their education or training that is maintained and available at all times;

(f) Delegation and instruction of the services to be rendered by the physical therapist, physical therapist assistant, or physical therapy aide including, but not limited to, specific tasks or procedures, precautions, special problems, and contraindicated procedures;

(g) Timely review of documentation, reexamination of the patient, and revision of the plan of care when indicated;

(h) Establishment of a discharge plan.

(2) Supervision requires that the patient reevaluation is performed:

(a) Every fifth visit, or if treatment is performed more than five times per week, reevaluation must be performed at least once a week;

(b) When there is any change in the patient's condition not consistent with planned progress or treatment goals.

(3) Supervision of assistive personnel means:

(a) Physical therapist assistants may function under direct or indirect supervision;

(b) Physical therapy aides must function under direct supervision;

(c) The physical therapist may supervise a total of two assistive personnel at any one time. [2007 c 98 § 16.]

18.74.912 Effective dates—2007 c 98. (1) Sections 1 and 3 through 18 of this act take effect July 1, 2008.

(2) Section 2 of this act takes effect December 1, 2008. [2007 c 98 § 19.]

Chapter 18.85 RCW

REAL ESTATE BROKERS AND SALESPERSONS

Sections

18.85.343 Repealed.

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

Chapter 18.88A RCW

NURSING ASSISTANTS

Sections

18.88A.085 Certification of requirements.

18.88A.085 Certification of requirements. (1) After January 1, 1990, the secretary shall issue a certificate to any applicant who demonstrates to the secretary's satisfaction that the following requirements have been met:

(a) Completion of an approved training program or successful completion of alternate training meeting established criteria approved by the commission; and

(b) Successful completion of a competency evaluation.

(2) The secretary may permit all or a portion of the training hours earned under chapter 74.39A RCW to be applied toward certification under this section.

(3) In addition, applicants shall be subject to the grounds for denial of certification under chapter 18.130 RCW. [2007 c 361 § 9; 1994 sp.s. c 9 § 712; 1991 c 16 § 11.]

Construction—Severability—Captions not law—Short title—2007 c 361: See notes following RCW 74.39A.009.

Severability—Headings and captions not law—Effective date—1994 sp.s. c 9: See RCW 18.79.900 through 18.79.902.

Chapter 18.92 RCW

VETERINARY MEDICINE, SURGERY, AND DENTISTRY

Sections

18.92.013 Dispensing of drugs by registered or licensed personnel.

18.92.015 Definitions.

18.92.021 Veterinary board of governors—Appointment, qualifications, terms, officers—Quorum.

18.92.030 General duties of board.

18.92.128 Veterinary technician license—Rules.

18.92.140 License—Procedures, requirements, fees.

18.92.145 License, certificates of registration, permit, examination, and renewal fees.

18.92.013 Dispensing of drugs by registered or licensed personnel.

(1) A veterinarian legally prescribing drugs may delegate to a registered veterinary medication clerk or a licensed veterinary technician, while under the veterinarian's direct supervision, certain nondiscretionary functions defined by the board and used in the dispensing of legend and nonlegend drugs (except controlled substances as defined in or under chapter 69.50 RCW) associated with the practice of veterinary medicine. Upon final approval of the packaged prescription following a direct physical inspection of the packaged prescription for proper formulation, packaging, and labeling by the veterinarian, the veterinarian may delegate the delivery of the prescription to a registered veterinary medication clerk or licensed veterinary technician, while under the veterinarian's indirect supervision. Dispensing of drugs by veterinarians, licensed veterinary technicians, and registered veterinary medication clerks shall meet the applicable requirements of chapters 18.64, 69.40, 69.41, and 69.50 RCW and is subject to inspection by the board of pharmacy investigators.

(2) For the purposes of this section:

(a) "Direct supervision" means the veterinarian is on the premises and is quickly and easily available; and

(b) "Indirect supervision" means the veterinarian is not on the premises but has given written or oral instructions for the delegated task. [2007 c 235 § 5; 2000 c 93 § 8; 1993 c 78 § 2.]

18.92.015 Definitions. The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

(1) "Board" means the Washington state veterinary board of governors.

(2) "Department" means the department of health.

(3) "Secretary" means the secretary of the department of health.

(4) "Veterinary medication clerk" means a person who has satisfactorily completed a board-approved training program developed in consultation with the board of pharmacy and designed to prepare persons to perform certain nondiscretionary functions defined by the board and used in the dispensing of legend and nonlegend drugs (except controlled substances as defined in or under chapter 69.50 RCW) associated with the practice of veterinary medicine.

(5) "Veterinary technician" means a person who is licensed by the board upon meeting the requirements of RCW 18.92.128. [2007 c 235 § 1; 2000 c 93 § 9; 1993 c 78 § 1; 1991 c 332 § 40; 1991 c 3 § 238; 1983 c 102 § 1; 1979 c 158 § 71; 1974 ex.s. c 44 § 1; 1967 ex.s. c 50 § 1; 1959 c 92 § 2; 1941 c 71 § 21; Rem. Supp. 1941 § 10040-21. Formerly RCW 18.92.010, part.]

Captions not law—1991 c 332: See note following RCW 18.130.010.

18.92.021 Veterinary board of governors—Appointment, qualifications, terms, officers—Quorum. (1) There is created a Washington state veterinary board of governors

consisting of seven members, five of whom shall be licensed veterinarians, one of whom shall be a licensed veterinary technician trained in both large and small animal medicine, and one of whom shall be a lay member.

(2)(a) The licensed members shall be appointed by the governor. At the time of their appointment the licensed members of the board must be actual residents of the state in active practice as licensed practitioners of veterinary medicine, surgery, and dentistry, or employed as a licensed veterinary technician, as applicable, and must be citizens of the United States. Not more than one licensed veterinary member shall be from the same congressional district. The board shall not be deemed to be unlawfully constituted and a member of the board shall not be deemed ineligible to serve the remainder of the member's unexpired term on the board solely by reason of the establishment of new or revised boundaries for congressional districts.

(b) The terms of the first licensed members of the board shall be as follows: One member for five, four, three, two, and one years respectively. Thereafter the terms shall be for five years and until their successors are appointed and qualified.

(c) The lay member shall be appointed by the governor for a five year term and until the lay member's successor is appointed.

(d) A member may be appointed to serve a second term, if that term does not run consecutively.

(e) Vacancies in the board shall be filled by the governor, the appointee to hold office for the remainder of the unexpired term.

(3) The licensed veterinary technician member is a non-voting member with respect to board decisions related to the discipline of a veterinarian involving standard of care.

(4) Officers of the board shall be a chair and a secretary-treasurer to be chosen by the members of the board from among its members.

(5) Four members of the board shall constitute a quorum at meetings of the board. [2007 c 235 § 3; 1983 c 2 § 2. Prior: 1982 1st ex.s. c 30 § 5; 1982 c 134 § 1; 1979 ex.s. c 31 § 1; 1967 ex.s. c 50 § 2; 1959 c 92 § 3.]

Severability—1983 c 2: See note following RCW 18.71.030.

18.92.030 General duties of board. (1) The board shall develop and administer, or approve, or both, a licensure examination in the subjects determined by the board to be essential to the practice of veterinary medicine, surgery, and dentistry. The board may approve an examination prepared or administered by a private testing agency or association of licensing authorities.

(2) The board, under chapter 34.05 RCW, may adopt rules necessary to carry out the purposes of this chapter, including:

(a) Standards for the performance of the duties and responsibilities of veterinary technicians and veterinary medication clerks and fixing minimum standards of continuing education for veterinary technicians. The rules shall be adopted in the interest of good veterinary health care delivery to the consuming public and shall not prevent veterinary technicians from inoculating an animal; and

(b) Standards prescribing requirements for veterinary medical facilities and fixing minimum standards of continuing veterinary medical education.

(3) The department is the board's official office of record. [2007 c 235 § 4; 2000 c 93 § 10; 1995 c 198 § 13; 1993 c 78 § 3; 1986 c 259 § 140; 1983 c 102 § 2; 1982 c 134 § 2; 1981 c 67 § 23; 1974 ex.s. c 44 § 2; 1967 ex.s. c 50 § 3; 1961 c 157 § 2; 1959 c 92 § 4; 1941 c 71 § 4; Rem. Supp. 1941 § 10040-4. FORMER PART OF SECTION: 1941 c 71 § 9; Rem. Supp. 1941 § 10040-9 now codified as RCW 18.92.035.]

Severability—1986 c 259: See note following RCW 18.130.010.

Effective dates—Severability—1981 c 67: See notes following RCW 34.12.010.

18.92.128 Veterinary technician license—Rules. (1) The board shall issue a veterinary technician license to an individual who has:

(a) Successfully passed an examination administered by the board; and

(b)(i) Successfully completed a posthigh school course approved by the board in the care and treatment of animals; or

(ii) Had five years' practical experience, acceptable to the board, with a licensed veterinarian.

(2) The board shall adopt rules under chapter 34.05 RCW identifying standard tasks and procedures that must be included in the experience of a person who qualifies to take the veterinarian technician examination through the period of practical experience required in subsection (1)(b)(ii) of this section, and requirements for the supervising veterinarian's attestation to completion of the practical experience and that training included the required tasks and procedures. [2007 c 235 § 2.]

18.92.140 License—Procedures, requirements, fees. Each person now qualified to practice veterinary medicine, surgery, and dentistry, licensed as a veterinary technician, or registered as a veterinary medication clerk in this state or who becomes licensed or registered to engage in practice shall comply with administrative procedures, administrative requirements, and fees determined as provided in RCW 43.70.250 and 43.70.280. [2007 c 235 § 6; 2000 c 93 § 13; 1996 c 191 § 79; 1993 c 78 § 6; 1991 c 3 § 247; 1985 c 7 § 72; 1983 c 102 § 6; 1941 c 71 § 16; Rem. Supp. 1941 § 10040-16. FORMER PARTS OF SECTION: (i) 1941 c 71 § 17; Rem. Supp. 1941 § 10040-17, now codified as RCW 18.92.142. (ii) 1941 c 71 § 19, part; Rem. Supp. 1941 § 10040-19, part, now codified as RCW 18.92.145.]

18.92.145 License, certificates of registration, permit, examination, and renewal fees. Administrative procedures, administrative requirements, and fees shall be established as provided in RCW 43.70.250 and 43.70.280 for the issuance, renewal, or administration of the following licenses, certificates of registration, permits, duplicate licenses, renewals, or examination:

(1) For a license to practice veterinary medicine, surgery, and dentistry issued upon an examination given by the examining board;

(2) For a license to practice veterinary medicine, surgery, and dentistry issued upon the basis of a license issued in another state;

(3) For a license as a veterinary technician;

(4) For a certificate of registration as a veterinary medication clerk;

(5) For a temporary permit to practice veterinary medicine, surgery, and dentistry. The temporary permit fee shall be accompanied by the full amount of the examination fee; and

(6) For a license to practice specialized veterinary medicine. [2007 c 235 § 7; 2000 c 93 § 14; 1996 c 191 § 80; 1993 c 78 § 7; 1991 c 332 § 42; 1991 c 3 § 248; 1985 c 7 § 73; 1983 c 102 § 7; 1975 1st ex.s. c 30 § 84; 1971 ex.s. c 266 § 20; 1967 ex.s. c 50 § 9; 1959 c 92 § 12; 1941 c 71 § 19; Rem. Supp. 1941 § 10040-19. Prior: 1907 c 124 §§ 9, 10. Formerly RCW 18.92.090 and 18.92.140.]

Captions not law—1991 c 332: See note following RCW 18.130.010.

Chapter 18.108 RCW MESSAGE PRACTITIONERS

Sections

18.108.010	Definitions.
18.108.100	Repealed.
18.108.210	Authority of local political subdivisions.
18.108.250	Intraoral massage—Endorsement.

18.108.010 Definitions. In this chapter, unless the context otherwise requires, the following meanings shall apply:

(1) "Board" means the Washington state board of massage.

(2) "Massage" and "massage therapy" mean a health care service involving the external manipulation or pressure of soft tissue for therapeutic purposes. Massage therapy includes techniques such as tapping, compressions, friction, Swedish gymnastics or movements, gliding, kneading, shaking, and fascial or connective tissue stretching, with or without the aids of superficial heat, cold, water, lubricants, or salts. Massage therapy does not include diagnosis or attempts to adjust or manipulate any articulations of the body or spine or mobilization of these articulations by the use of a thrusting force, nor does it include genital manipulation.

(3) "Massage practitioner" means an individual licensed under this chapter.

(4) "Secretary" means the secretary of health or the secretary's designee.

(5) "Massage business" means the operation of a business where massages are given.

(6) "Animal massage practitioner" means an individual with a license to practice massage therapy in this state with additional training in animal therapy.

(7) "Intraoral massage" means the manipulation or pressure of soft tissue inside the mouth or oral cavity for therapeutic purposes. [2007 c 272 § 1; 2002 c 277 § 1; 2001 c 297 § 2; 1997 c 297 § 2; 1991 c 3 § 252; 1987 c 443 § 2; 1979 c 158 § 74; 1975 1st ex.s. c 280 § 1.]

Findings—Intent—2001 c 297: "The legislature finds that massage therapists have contributed significantly to the welfare of humans. The legislature also finds that massage therapists can have a significant positive impact on the well-being of animals, especially in the equine industry.

It is the legislature's intent to have the Washington state board of mas-

sage adopt rules under their current authority providing for an endorsement for currently licensed massage practitioners to perform animal massage upon completion of certain training courses." [2001 c 297 § 1.]

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

18.108.210 Authority of local political subdivisions. Nothing in this chapter limits or abridges the authority of any political subdivision to levy and collect a general and nondiscriminatory license fee levied upon all businesses, or to levy a tax based upon gross business conducted by any firm within said political subdivision. [2007 c 165 § 2; 1975 1st ex.s. c 280 § 22.]

Finding—2007 c 165: "The legislature finds that licensed massage practitioners should be treated the same as other health professionals under Title 18 RCW and that additional registrations or licenses regulating massage or massage practitioners are not authorized." [2007 c 165 § 1.]

18.108.250 Intraoral massage—Endorsement. (1) A massage practitioner licensed under this chapter may apply for an endorsement to perform intraoral massage upon completion of training determined by the board and specified in rules. Training must include intraoral massage techniques, cranial anatomy, physiology, and kinesiology, hygienic practices, safety and sanitation, pathology, and contraindications.

(2) A massage practitioner who has obtained an intraoral massage endorsement to his or her massage practitioner license may practice intraoral massage. [2007 c 272 § 2.]

Chapter 18.130 RCW REGULATION OF HEALTH PROFESSIONS— UNIFORM DISCIPLINARY ACT

Sections

18.130.040	Application to certain professions—Authority of secretary—Grant or denial of licenses—Procedural rules. (<i>Effective until July 1, 2008.</i>)
18.130.040	Application to certain professions—Authority of secretary—Grant or denial of licenses—Procedural rules. (<i>Effective July 1, 2008.</i>)
18.130.070	Rules requiring reports—Court orders—Immunity from liability—Licensees required to report. (<i>Effective July 1, 2009.</i>)

18.130.040 Application to certain professions—Authority of secretary—Grant or denial of licenses—Procedural rules. (*Effective until July 1, 2008.*) (1) This chapter applies only to the secretary and the boards and commissions having jurisdiction in relation to the professions licensed under the chapters specified in this section. This chapter does not apply to any business or profession not licensed under the chapters specified in this section.

(2)(a) The secretary has authority under this chapter in relation to the following professions:

(i) Dispensing opticians licensed and designated apprentices under chapter 18.34 RCW;

(ii) Naturopaths licensed under chapter 18.36A RCW;

(iii) Midwives licensed under chapter 18.50 RCW;

(iv) Ocularists licensed under chapter 18.55 RCW;

(v) Massage operators and businesses licensed under chapter 18.108 RCW;

(vi) Dental hygienists licensed under chapter 18.29 RCW;

- (vii) Acupuncturists licensed under chapter 18.06 RCW;
 - (viii) Radiologic technologists certified and X-ray technicians registered under chapter 18.84 RCW;
 - (ix) Respiratory care practitioners licensed under chapter 18.89 RCW;
 - (x) Persons registered under chapter 18.19 RCW;
 - (xi) Persons licensed as mental health counselors, marriage and family therapists, and social workers under chapter 18.225 RCW;
 - (xii) Persons registered as nursing pool operators under chapter 18.52C RCW;
 - (xiii) Nursing assistants registered or certified under chapter 18.88A RCW;
 - (xiv) Health care assistants certified under chapter 18.135 RCW;
 - (xv) Dietitians and nutritionists certified under chapter 18.138 RCW;
 - (xvi) Chemical dependency professionals certified under chapter 18.205 RCW;
 - (xvii) Sex offender treatment providers and certified affiliate sex offender treatment providers certified under chapter 18.155 RCW;
 - (xviii) Persons licensed and certified under chapter 18.73 RCW or RCW 18.71.205;
 - (xix) Denturists licensed under chapter 18.30 RCW;
 - (xx) Orthotists and prosthetists licensed under chapter 18.200 RCW;
 - (xxi) Surgical technologists registered under chapter 18.215 RCW;
 - (xxii) Recreational therapists; and
 - (xxiii) Animal massage practitioners certified under chapter 18.240 RCW.
- (b) The boards and commissions having authority under this chapter are as follows:
- (i) The podiatric medical board as established in chapter 18.22 RCW;
 - (ii) The chiropractic quality assurance commission as established in chapter 18.25 RCW;
 - (iii) The dental quality assurance commission as established in chapter 18.32 RCW governing licenses issued under chapter 18.32 RCW and licenses and registrations issued under chapter 18.260 RCW;
 - (iv) The board of hearing and speech as established in chapter 18.35 RCW;
 - (v) The board of examiners for nursing home administrators as established in chapter 18.52 RCW;
 - (vi) The optometry board as established in chapter 18.54 RCW governing licenses issued under chapter 18.53 RCW;
 - (vii) The board of osteopathic medicine and surgery as established in chapter 18.57 RCW governing licenses issued under chapters 18.57 and 18.57A RCW;
 - (viii) The board of pharmacy as established in chapter 18.64 RCW governing licenses issued under chapters 18.64 and 18.64A RCW;
 - (ix) The medical quality assurance commission as established in chapter 18.71 RCW governing licenses and registrations issued under chapters 18.71 and 18.71A RCW;
 - (x) The board of physical therapy as established in chapter 18.74 RCW;
 - (xi) The board of occupational therapy practice as established in chapter 18.59 RCW;

(xii) The nursing care quality assurance commission as established in chapter 18.79 RCW governing licenses and registrations issued under that chapter;

(xiii) The examining board of psychology and its disciplinary committee as established in chapter 18.83 RCW; and

(xiv) The veterinary board of governors as established in chapter 18.92 RCW.

(3) In addition to the authority to discipline license holders, the disciplining authority has the authority to grant or deny licenses based on the conditions and criteria established in this chapter and the chapters specified in subsection (2) of this section. This chapter also governs any investigation, hearing, or proceeding relating to denial of licensure or issuance of a license conditioned on the applicant's compliance with an order entered pursuant to RCW 18.130.160 by the disciplining authority.

(4) All disciplining authorities shall adopt procedures to ensure substantially consistent application of this chapter, the Uniform Disciplinary Act, among the disciplining authorities listed in subsection (2) of this section. [2007 c 269 § 17; 2007 c 70 § 11; 2004 c 38 § 2. Prior: 2003 c 275 § 2; 2003 c 258 § 7; prior: 2002 c 223 § 6; 2002 c 216 § 11; 2001 c 251 § 27; 1999 c 335 § 10; 1998 c 243 § 16; prior: 1997 c 392 § 516; 1997 c 334 § 14; 1997 c 285 § 13; 1997 c 275 § 2; prior: 1996 c 200 § 32; 1996 c 81 § 5; prior: 1995 c 336 § 2; 1995 c 323 § 16; 1995 c 260 § 11; 1995 c 1 § 19 (Initiative Measure No. 607, approved November 8, 1994); prior: 1994 sp.s. c 9 § 603; 1994 c 17 § 19; 1993 c 367 § 4; 1992 c 128 § 6; 1990 c 3 § 810; prior: 1988 c 277 § 13; 1988 c 267 § 22; 1988 c 243 § 7; prior: 1987 c 512 § 22; 1987 c 447 § 18; 1987 c 415 § 17; 1987 c 412 § 15; 1987 c 150 § 1; prior: 1986 c 259 § 3; 1985 c 326 § 29; 1984 c 279 § 4.]

Reviser's note: This section was amended by 2007 c 70 § 11 and by 2007 c 269 § 17, each without reference to the other. Both amendments are incorporated in the publication of this section under RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

Application—Implementation—2007 c 269: See RCW 18.260.900 and 18.260.901.

Effective date—2004 c 38: See note following RCW 18.155.075.

Effective date—2003 c 275 § 2: "Section 2 of this act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect July 1, 2003." [2003 c 275 § 4.]

Severability—Effective date—2003 c 258: See notes following RCW 18.79.330.

Severability—Effective date—2002 c 216: See RCW 18.230.900 and 18.230.901.

Severability—2001 c 251: See RCW 18.225.900.

Effective dates—1998 c 243: See RCW 18.205.900.

Short title—Findings—Construction—Conflict with federal requirements—Part headings and captions not law—1997 c 392: See notes following RCW 74.39A.009.

Effective dates—1997 c 334: See note following RCW 18.89.010.

Intent—Purpose—1997 c 285: See RCW 18.200.005.

Severability—1997 c 285: See RCW 18.200.901.

Severability—1996 c 200: See RCW 18.35.902.

Effective date—1996 c 81: See note following RCW 70.128.120.

Effective date—1995 c 336 §§ 2 and 3: "Sections 2 and 3 of this act are necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and shall take effect immediately [May 11, 1995]." [1995 c 336 § 11.]

Effective date—1995 c 260 §§ 7-11: "Sections 7 through 11 of this act shall take effect July 1, 1996." [1995 1st sp.s. c 18 § 116; 1995 c 260 § 12.]

Short title—Severability—1995 c 1 (Initiative Measure No. 607): See RCW 18.30.900 and 18.30.901.

Severability—Headings and captions not law—Effective date—1994 sp.s. c 9: See RCW 18.79.900 through 18.79.902.

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

Severability—1987 c 512: See RCW 18.19.901.

Severability—1987 c 447: See RCW 18.36A.901.

Severability—1987 c 415: See RCW 18.89.901.

Effective date—Severability—1987 c 412: See RCW 18.84.901 and 18.84.902.

Severability—1987 c 150: See RCW 18.122.901.

Severability—1986 c 259: See note following RCW 18.130.010.

18.130.040 Application to certain professions—Authority of secretary—Grant or denial of licenses—Procedural rules. (Effective July 1, 2008.) (1) This chapter applies only to the secretary and the boards and commissions having jurisdiction in relation to the professions licensed under the chapters specified in this section. This chapter does not apply to any business or profession not licensed under the chapters specified in this section.

(2)(a) The secretary has authority under this chapter in relation to the following professions:

(i) Dispensing opticians licensed and designated apprentices under chapter 18.34 RCW;

(ii) Naturopaths licensed under chapter 18.36A RCW;

(iii) Midwives licensed under chapter 18.50 RCW;

(iv) Ocularists licensed under chapter 18.55 RCW;

(v) Massage operators and businesses licensed under chapter 18.108 RCW;

(vi) Dental hygienists licensed under chapter 18.29 RCW;

(vii) Acupuncturists licensed under chapter 18.06 RCW;

(viii) Radiologic technologists certified and X-ray technicians registered under chapter 18.84 RCW;

(ix) Respiratory care practitioners licensed under chapter 18.89 RCW;

(x) Persons registered under chapter 18.19 RCW;

(xi) Persons licensed as mental health counselors, marriage and family therapists, and social workers under chapter 18.225 RCW;

(xii) Persons registered as nursing pool operators under chapter 18.52C RCW;

(xiii) Nursing assistants registered or certified under chapter 18.88A RCW;

(xiv) Health care assistants certified under chapter 18.135 RCW;

(xv) Dietitians and nutritionists certified under chapter 18.138 RCW;

(xvi) Chemical dependency professionals certified under chapter 18.205 RCW;

(xvii) Sex offender treatment providers and certified affiliate sex offender treatment providers certified under chapter 18.155 RCW;

(xviii) Persons licensed and certified under chapter 18.73 RCW or RCW 18.71.205;

(xix) Denturists licensed under chapter 18.30 RCW;

(xx) Orthotists and prosthetists licensed under chapter 18.200 RCW;

(xxi) Surgical technologists registered under chapter 18.215 RCW;

(xxii) Recreational therapists;

(xxiii) Animal massage practitioners certified under chapter 18.240 RCW; and

(xxiv) Athletic trainers licensed under chapter 18.250 RCW.

(b) The boards and commissions having authority under this chapter are as follows:

(i) The podiatric medical board as established in chapter 18.22 RCW;

(ii) The chiropractic quality assurance commission as established in chapter 18.25 RCW;

(iii) The dental quality assurance commission as established in chapter 18.32 RCW governing licenses issued under chapter 18.32 RCW and licenses and registrations issued under chapter 18.260 RCW;

(iv) The board of hearing and speech as established in chapter 18.35 RCW;

(v) The board of examiners for nursing home administrators as established in chapter 18.52 RCW;

(vi) The optometry board as established in chapter 18.54 RCW governing licenses issued under chapter 18.53 RCW;

(vii) The board of osteopathic medicine and surgery as established in chapter 18.57 RCW governing licenses issued under chapters 18.57 and 18.57A RCW;

(viii) The board of pharmacy as established in chapter 18.64 RCW governing licenses issued under chapters 18.64 and 18.64A RCW;

(ix) The medical quality assurance commission as established in chapter 18.71 RCW governing licenses and registrations issued under chapters 18.71 and 18.71A RCW;

(x) The board of physical therapy as established in chapter 18.74 RCW;

(xi) The board of occupational therapy practice as established in chapter 18.59 RCW;

(xii) The nursing care quality assurance commission as established in chapter 18.79 RCW governing licenses and registrations issued under that chapter;

(xiii) The examining board of psychology and its disciplinary committee as established in chapter 18.83 RCW; and

(xiv) The veterinary board of governors as established in chapter 18.92 RCW.

(3) In addition to the authority to discipline license holders, the disciplining authority has the authority to grant or deny licenses based on the conditions and criteria established in this chapter and the chapters specified in subsection (2) of this section. This chapter also governs any investigation, hearing, or proceeding relating to denial of licensure or issuance of a license conditioned on the applicant's compliance with an order entered pursuant to RCW 18.130.160 by the disciplining authority.

(4) All disciplining authorities shall adopt procedures to ensure substantially consistent application of this chapter, the Uniform Disciplinary Act, among the disciplining authorities listed in subsection (2) of this section. [2007 c 269 § 17; 2007 c 253 § 13; 2007 c 70 § 11; 2004 c 38 § 2. Prior: 2003 c 275 § 2; 2003 c 258 § 7; prior: 2002 c 223 § 6; 2002 c 216 § 11; 2001 c 251 § 27; 1999 c 335 § 10; 1998 c 243 § 16; prior: 1997 c 392 § 516; 1997 c 334 § 14; 1997 c 285 § 13; 1997 c 275 § 2; prior: 1996 c 200 § 32; 1996 c 81 § 5; prior: 1995 c

336 § 2; 1995 c 323 § 16; 1995 c 260 § 11; 1995 c 1 § 19 (Initiative Measure No. 607, approved November 8, 1994); prior: 1994 sp.s. c 9 § 603; 1994 c 17 § 19; 1993 c 367 § 4; 1992 c 128 § 6; 1990 c 3 § 810; prior: 1988 c 277 § 13; 1988 c 267 § 22; 1988 c 243 § 7; prior: 1987 c 512 § 22; 1987 c 447 § 18; 1987 c 415 § 17; 1987 c 412 § 15; 1987 c 150 § 1; prior: 1986 c 259 § 3; 1985 c 326 § 29; 1984 c 279 § 4.]

Reviser's note: This section was amended by 2007 c 70 § 11, 2007 c 253 § 13, and by 2007 c 269 § 17, each without reference to the other. All amendments are incorporated in the publication of this section under RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

Application—Implementation—2007 c 269: See RCW 18.260.900 and 18.260.901.

Severability—Effective date—Implementation—2007 c 253: See RCW 18.250.900 through 18.250.902.

Effective date—2004 c 38: See note following RCW 18.155.075.

Effective date—2003 c 275 § 2: "Section 2 of this act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect July 1, 2003." [2003 c 275 § 4.]

Severability—Effective date—2003 c 258: See notes following RCW 18.79.330.

Severability—Effective date—2002 c 216: See RCW 18.230.900 and 18.230.901.

Severability—2001 c 251: See RCW 18.225.900.

Effective dates—1998 c 243: See RCW 18.205.900.

Short title—Findings—Construction—Conflict with federal requirements—Part headings and captions not law—1997 c 392: See notes following RCW 74.39A.009.

Effective dates—1997 c 334: See note following RCW 18.89.010.

Intent—Purpose—1997 c 285: See RCW 18.200.005.

Severability—1997 c 285: See RCW 18.200.901.

Severability—1996 c 200: See RCW 18.35.902.

Effective date—1996 c 81: See note following RCW 70.128.120.

Effective date—1995 c 336 §§ 2 and 3: "Sections 2 and 3 of this act are necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and shall take effect immediately [May 11, 1995]." [1995 c 336 § 11.]

Effective date—1995 c 260 §§ 7-11: "Sections 7 through 11 of this act shall take effect July 1, 1996." [1995 1st sp.s. c 18 § 116; 1995 c 260 § 12.]

Short title—Severability—1995 c 1 (Initiative Measure No. 607): See RCW 18.30.900 and 18.30.901.

Severability—Headings and captions not law—Effective date—1994 sp.s. c 9: See RCW 18.79.900 through 18.79.902.

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

Severability—1987 c 512: See RCW 18.19.901.

Severability—1987 c 447: See RCW 18.36A.901.

Severability—1987 c 415: See RCW 18.89.901.

Effective date—Severability—1987 c 412: See RCW 18.84.901 and 18.84.902.

Severability—1987 c 150: See RCW 18.122.901.

Severability—1986 c 259: See note following RCW 18.130.010.

18.130.070 Rules requiring reports—Court orders—Immunity from liability—Licensees required to report. (Effective July 1, 2009.) (1)(a) The secretary shall adopt rules requiring every license holder to report to the appropriate disciplining authority any conviction, determination, or finding that another license holder has committed an act which constitutes unprofessional conduct, or to report information to the disciplining authority, an impaired practitioner program, or voluntary substance abuse monitoring program

approved by the disciplining authority, which indicates that the other license holder may not be able to practice his or her profession with reasonable skill and safety to consumers as a result of a mental or physical condition.

(b) The secretary may adopt rules to require other persons, including corporations, organizations, health care facilities, impaired practitioner programs, or voluntary substance abuse monitoring programs approved by a disciplining authority, and state or local government agencies to report:

(i) Any conviction, determination, or finding that a license holder has committed an act which constitutes unprofessional conduct; or

(ii) Information to the disciplining authority, an impaired practitioner program, or voluntary substance abuse monitoring program approved by the disciplining authority, which indicates that the license holder may not be able to practice his or her profession with reasonable skill and safety to consumers as a result of a mental or physical condition.

(c) If a report has been made by a hospital to the department pursuant to RCW 70.41.210 or by an ambulatory surgical facility pursuant to RCW 70.230.110, a report to the disciplining authority is not required. To facilitate meeting the intent of this section, the cooperation of agencies of the federal government is requested by reporting any conviction, determination, or finding that a federal employee or contractor regulated by the disciplining authorities enumerated in this chapter has committed an act which constituted unprofessional conduct and reporting any information which indicates that a federal employee or contractor regulated by the disciplining authorities enumerated in this chapter may not be able to practice his or her profession with reasonable skill and safety as a result of a mental or physical condition.

(d) Reporting under this section is not required by:

(i) Any entity with a peer review committee, quality improvement committee or other similarly designated professional review committee, or by a license holder who is a member of such committee, during the investigative phase of the respective committee's operations if the investigation is completed in a timely manner; or

(ii) An impaired practitioner program or voluntary substance abuse monitoring program approved by a disciplining authority under RCW 18.130.175 if the license holder is currently enrolled in the treatment program, so long as the license holder actively participates in the treatment program and the license holder's impairment does not constitute a clear and present danger to the public health, safety, or welfare.

(2) If a person fails to furnish a required report, the disciplining authority may petition the superior court of the county in which the person resides or is found, and the court shall issue to the person an order to furnish the required report. A failure to obey the order is a contempt of court as provided in chapter 7.21 RCW.

(3) A person is immune from civil liability, whether direct or derivative, for providing information to the disciplining authority pursuant to the rules adopted under subsection (1) of this section.

(4)(a) The holder of a license subject to the jurisdiction of this chapter shall report to the disciplining authority:

(i) Any conviction, determination, or finding that he or she has committed unprofessional conduct or is unable to practice with reasonable skill or safety; and

(ii) Any disqualification from participation in the federal medicare program, under Title XVIII of the federal social security act or the federal medicaid program, under Title XIX of the federal social security act.

(b) Failure to report within thirty days of notice of the conviction, determination, finding, or disqualification constitutes grounds for disciplinary action. [2007 c 273 § 23; 2006 c 99 § 2; 2005 c 470 § 2; 1998 c 132 § 8; 1989 c 373 § 19; 1986 c 259 § 4; 1984 c 279 § 7.]

Effective date—Implementation—2007 c 273: See RCW 70.230.900 and 70.230.901.

Finding—Intent—Severability—1998 c 132: See notes following RCW 18.71.0195.

Severability—1989 c 373: See RCW 7.21.900.

Severability—1986 c 259: See note following RCW 18.130.010.

Chapter 18.140 RCW

CERTIFIED REAL ESTATE APPRAISER ACT

Sections

18.140.160 Disciplinary actions—Grounds.
18.140.175 Repealed.

18.140.160 Disciplinary actions—Grounds. In addition to the unprofessional conduct described in RCW 18.235.130, the director may take disciplinary action for the following conduct, acts, or conditions:

(1) Failing to meet the minimum qualifications for state certification, licensure, or registration established by or pursuant to this chapter;

(2) Paying money other than the fees provided for by this chapter to any employee of the director or the commission to procure state certification, licensure, or registration under this chapter;

(3) Continuing to act as a state-certified real estate appraiser, state-licensed real estate appraiser, or state-registered appraiser trainee when his or her certificate, license, or registration is on an expired status;

(4) Violating any provision of this chapter or any lawful rule made by the director pursuant thereto;

(5) Issuing an appraisal report on any real property in which the appraiser has an interest unless his or her interest is clearly stated in the appraisal report;

(6) Being affiliated as an employer, independent contractor, or supervisory appraiser of a state-certified real estate appraiser, state-licensed real estate appraiser, or state-registered appraiser trainee whose certification, license, or registration is currently in a suspended or revoked status;

(7) Failure or refusal without good cause to exercise reasonable diligence in performing an appraisal practice under this chapter, including preparing an oral or written report to communicate information concerning an appraisal practice; and

(8) Negligence or incompetence in performing an appraisal practice under this chapter, including preparing an oral or written report to communicate information concerning an appraisal practice. [2007 c 256 § 1; 2005 c 339 § 14; 2002

c 86 § 239; 2000 c 35 § 1; 1996 c 182 § 9; 1993 c 30 § 17; 1989 c 414 § 20.]

Effective dates—2005 c 339: See note following RCW 18.140.005.

Effective dates—2002 c 86: See note following RCW 18.08.340.

Part headings not law—Severability—2002 c 86: See RCW 18.235.902 and 18.235.903.

Effective dates—1996 c 182: See note following RCW 18.140.005.

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

Chapter 18.165 RCW

PRIVATE INVESTIGATORS

Sections

18.165.170 Authority of director.

18.165.170 Authority of director. The director or the director's designee has the following authority in administering this chapter:

(1) To adopt, amend, and rescind rules as deemed necessary to carry out this chapter;

(2) To enter into contracts for professional services determined to be necessary for adequate enforcement of this chapter; and

(3) To adopt standards of professional conduct or practice. [2007 c 256 § 8; 2002 c 86 § 246; 1995 c 277 § 35; 1991 c 328 § 17.]

Effective dates—2002 c 86: See note following RCW 18.08.340.

Part headings not law—Severability—2002 c 86: See RCW 18.235.902 and 18.235.903.

Chapter 18.170 RCW

SECURITY GUARDS

Sections

18.170.010 Definitions.
18.170.020 Exemptions.
18.170.100 Repealed.
18.170.105 Training requirements.
18.170.180 Authority of director.

18.170.010 Definitions. The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

(1) "Armed private security guard" means a private security guard who has a current firearms certificate issued by the commission and is licensed as an armed private security guard under this chapter.

(2) "Armored vehicle guard" means a person who transports in an armored vehicle under armed guard, from one place to another place, valuables, jewelry, currency, documents, or any other item that requires secure delivery.

(3) "Burglar alarm response runner" means a person employed by a private security company to respond to burglar alarm system signals.

(4) "Burglar alarm system" means a device or an assembly of equipment and devices used to detect or signal unauthorized intrusion, movement, or exit at a protected premises, other than in a vehicle, to which police or private security guards are expected to respond.

(5) "Chief law enforcement officer" means the elected or appointed police administrator of a municipal, county, or state police or sheriff's department that has full law enforcement powers in its jurisdiction.

(6) "Classroom instruction" means training that takes place in a setting where individuals receiving training are assembled together and learn through lectures, study papers, class discussion, textbook study, or other means of organized formal education techniques, such as video, closed circuit, or other forms of electronic means, and as distinguished from individual instruction.

(7) "Commission" means the criminal justice training commission established in chapter 43.101 RCW.

(8) "Department" means the department of licensing.

(9) "Department-certified trainer" means any person who has been approved by the department by receiving a passing score on a department-administered examination, to administer department-provided examinations and attest that training or testing requirements have been met.

(10) "Director" means the director of the department of licensing.

(11) "Employer" includes any individual, firm, corporation, partnership, association, company, society, manager, contractor, subcontractor, bureau, agency, service, office, or an agent of any of the foregoing that employs or seeks to enter into an arrangement to employ any person as a private security guard.

(12) "Firearms certificate" means the certificate issued by the commission.

(13) "Individual instruction" means training that takes place either on-the-job or through formal education techniques, such as video, closed circuit, internet, or other forms of electronic means, and as distinguished from classroom instruction.

(14) "Licensee" means a person granted a license required by this chapter.

(15) "Person" includes any individual, firm, corporation, partnership, association, company, society, manager, contractor, subcontractor, bureau, agency, service, office, or an agent or employee of any of the foregoing.

(16) "Primary responsibility" means activity that is fundamental to, and required or expected in, the regular course of employment and is not merely incidental to employment.

(17) "Principal corporate officer" means the president, vice president, treasurer, secretary, comptroller, or any other person who performs the same functions for the corporation as performed by these officers.

(18) "Private security company" means a person or entity licensed under this chapter and engaged in the business of providing the services of private security guards on a contractual basis.

(19) "Private security guard" means an individual who is licensed under this chapter and principally employed as or typically referred to as one of the following:

- (a) Security officer or guard;
- (b) Patrol or merchant patrol service officer or guard;
- (c) Armed escort or bodyguard;
- (d) Armored vehicle guard;
- (e) Burglar alarm response runner; or
- (f) Crowd control officer or guard.

(20) "Qualifying agent" means an officer or manager of a corporation who meets the requirements set forth in this chapter for obtaining a license to own or operate a private security company.

(21) "Sworn peace officer" means a person who is an employee of the federal government, the state, a political subdivision, agency, or department branch of a municipality, or other unit of local government, and has law enforcement powers. [2007 c 306 § 1; 2007 c 154 § 1; 2004 c 50 § 1; 1991 c 334 § 1.]

Reviser's note: This section was amended by 2007 c 154 § 1 and by 2007 c 306 § 1, each without reference to the other. Both amendments are incorporated in the publication of this section under RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

18.170.020 Exemptions. The requirements of this chapter do not apply to:

(1) A person who is employed exclusively or regularly by one employer and performs the functions of a private security guard solely in connection with the affairs of that employer, if the employer is not a private security company;

(2) A sworn peace officer while engaged in the performance of the officer's official duties;

(3) A sworn peace officer while employed by any person to engage in off-duty employment as a private security guard, but only if the employment is approved by the chief law enforcement officer of the jurisdiction where the employment takes place and the sworn peace officer does not employ, contract with, or broker for profit other persons to assist him or her in performing the duties related to his or her private employer; or

(4) A person performing crowd management or guest services including, but not limited to, a person described as a ticket taker, usher, door attendant, parking attendant, crowd monitor, or event staff who:

(a) Does not carry a firearm or other dangerous weapon including, but not limited to, a stun gun, taser, pepper mace, or nightstick;

(b) Does not wear a uniform or clothing readily identifiable by a member of the public as that worn by a private security officer or law enforcement officer; and

(c) Does not have as his or her primary responsibility the detention of persons or placement of persons under arrest.

The exemption provided in this subsection applies only when a crowd has assembled for the purpose of attending or taking part in an organized event, including preevent assembly, event operation hours, and postevent departure activities. [2007 c 154 § 2; 2006 c 173 § 1; 1991 c 334 § 2.]

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

18.170.105 Training requirements. (1) To promote the safety of persons and the security of property, the director shall meet with interested parties to develop lists of suggested preassignment, postassignment, and postassignment refresher training by rule.

(2) All security guards licensed on or after July 1, 2005, must complete at least eight hours of preassignment training, comprised of at least four hours of classroom instruction and an additional four hours of classroom instruction or individ-

ual instruction, or both. The preassignment training may be waived for any individual who was most recently employed full time as a sworn peace officer not more than five years prior to applying to become licensed as a private security guard and who passes the examination typically administered to applicants at the conclusion of the preassignment training.

(3)(a) All security guards licensed on or after July 1, 2005, must complete at least eight hours of initial postassignment training that shall be administered to each security guard. The initial postassignment training must be in the topic areas established by the director and may be classroom instruction or individual instruction, or both. A company may waive the initial postassignment training for security guards already licensed who transfer from another company, if the security guard presents appropriate training records signed by a department-certified trainer from the previous company, or a signed affidavit that the individual has already completed the required initial postassignment training provided by his or her previous company.

(b) Security guards who received their temporary security guard registration card on or before July 22, 2007, must receive their initial postassignment training before June 30, 2008. Security guards who received their temporary security guard registration card after July 22, 2007, must receive their initial postassignment training as specified in (c) and (d) of this subsection.

(c) Security guards licensed between January 1st and June 30th of any calendar year may receive eight hours of initial postassignment training any time between the day following the issuance of a temporary security guard registration card with their company and June 30th of the year following initial issuance of their license by the department.

(d) Security guards initially licensed between July 1st and December 31st of any calendar year may receive eight hours of initial postassignment training at any time between the day following the issuance of a temporary security guard registration card with their company and December 31st of the year following initial issuance of their license by the department.

(4) Following completion of the preassignment and postassignment training, at least four total hours of annual refresher training shall be administered to security guards each subsequent year. The subsequent year begins, for refresher training purposes, the day following the last date the security guard is required to receive the eight hours of initial postassignment training. No more than one hour per year of annual refresher training may focus directly on customer service-related skills or topics and the remaining three hours per year of annual refresher training must focus on emergency response concepts, skills, or topics including but not limited to knowledge of site post orders or life safety.

(5) Companies must maintain records regarding the training hours completed by each employee. All such records are subject to inspection by the department. The training requirements and test results must be recorded and attested to by a department-certified trainer. Training records must contain a description of the topics covered, the name and signature of the trainer, and the name and signature of the security guard. [2007 c 306 § 2.]

18.170.180 Authority of director. The director or the director's designee has the following authority in administering this chapter:

(1) To adopt, amend, and rescind rules as deemed necessary to carry out this chapter;

(2) To adopt standards of professional conduct or practice; and

(3) To employ such administrative and clerical staff as necessary for the enforcement of this chapter. [2007 c 256 § 9; 2002 c 86 § 249; 1991 c 334 § 18.]

Effective dates—2002 c 86: See note following RCW 18.08.340.

Part headings not law—Severability—2002 c 86: See RCW 18.235.902 and 18.235.903.

Chapter 18.180 RCW PROCESS SERVERS

Sections

18.180.035 Fees—Limitations.

18.180.035 Fees—Limitations. (1) A process server required to register under RCW 18.180.010(1) or exempt from registration under RCW 18.180.010(2) (a), (c), or (d) shall be allowed to charge and collect the following fees in civil actions, suits, and proceedings for each service assignment delivered to the process server for service:

(a) If the fee is not greater than one hundred dollars, then the actual amount charged to a party for service;

(b) If the fee is greater than one hundred dollars, then a reasonable amount charged to a party for service.

(2) Any fees allowable under this section, and actually charged by a process server, shall be a reasonable cost awarded to, and recoverable by, the party incurring same if that party prevails in an action. [2007 c 121 § 2.]

Chapter 18.185 RCW BAIL BOND AGENTS

Sections

18.185.110 Unprofessional conduct.

18.185.120 Director's powers.

18.185.110 Unprofessional conduct. In addition to the unprofessional conduct described in RCW 18.235.130, the following conduct, acts, or conditions constitute unprofessional conduct:

(1) Violating any of the provisions of this chapter or the rules adopted under this chapter;

(2) Failing to meet the qualifications set forth in RCW 18.185.020, 18.185.030, and 18.185.250;

(3) Knowingly committing, or being a party to, any material fraud, misrepresentation, concealment, conspiracy, collusion, trick, scheme, or device whereby any other person lawfully relies upon the word, representation, or conduct of the licensee. However, this subsection (3) does not prevent a bail bond recovery agent from using any pretext to locate or apprehend a fugitive criminal defendant or gain any information regarding the fugitive;

(4) Assigning or transferring any license issued pursuant to the provisions of this chapter, except as provided in RCW 18.185.030 or 18.185.250;

(5) Conversion of any money or contract, deed, note, mortgage, or other evidence of title, to his or her own use or to the use of his or her principal or of any other person, when delivered to him or her in trust or on condition, in violation of the trust or before the happening of the condition; and failure to return any money or contract, deed, note, mortgage, or other evidence of title within thirty days after the owner is entitled to possession, and makes demand for possession, shall be prima facie evidence of conversion;

(6) Failing to keep records, maintain a trust account, or return collateral or security, as required by RCW 18.185.100;

(7) Any conduct in a bail bond transaction which demonstrates bad faith, dishonesty, or untrustworthiness;

(8) Violation of an order to cease and desist that is issued by the director under chapter 18.235 RCW;

(9) Wearing, displaying, holding, or using badges not approved by the department;

(10) Making any statement that would reasonably cause another person to believe that the bail bond recovery agent is a sworn peace officer;

(11) Failing to carry a copy of the contract or to present a copy of the contract as required under RCW 18.185.270(1);

(12) Using the services of an unlicensed bail bond recovery agent or using the services of a bail bond recovery agent without issuing the proper contract;

(13) Misrepresenting or knowingly making a material misstatement or omission in the application for a license;

(14) Using the services of a person performing the functions of a bail bond recovery agent who has not been licensed by the department as required by this chapter; or

(15) Performing the functions of a bail bond recovery agent without being both (a) licensed under this chapter or supervised by a licensed bail bond recovery agent under RCW 18.185.290; and (b) under contract with a bail bond agent. [2007 c 256 § 2; 2004 c 186 § 9; 2002 c 86 § 251; 1993 c 260 § 12.]

Legislative recognition—2004 c 186: See note following RCW 18.185.010.

Effective dates—2002 c 86: See note following RCW 18.08.340.

Part headings not law—Severability—2002 c 86: See RCW 18.235.902 and 18.235.903.

18.185.120 Director's powers. In addition to those powers set forth in RCW 18.235.030, the director or the director's designee has the authority to order restitution to the person harmed by the licensee. [2007 c 256 § 3; 2002 c 86 § 252; 1993 c 260 § 13.]

Effective dates—2002 c 86: See note following RCW 18.08.340.

Part headings not law—Severability—2002 c 86: See RCW 18.235.902 and 18.235.903.

Chapter 18.220 RCW GEOLOGISTS

Sections

18.220.040 Director's authority.
18.220.050 Board's authority.
18.220.130 Unprofessional conduct.

18.220.140 Repealed.

18.220.150 Repealed.

18.220.170 Repealed.

18.220.180 Repealed.

18.220.040 Director's authority. The director has the following authority in administering this chapter:

(1) To adopt fees as provided in RCW 43.24.086; and

(2) To administer licensing examinations approved by the board. [2007 c 256 § 5; 2002 c 86 § 261; 2000 c 253 § 5.]

Effective dates—2002 c 86: See note following RCW 18.08.340.

Part headings not law—Severability—2002 c 86: See RCW 18.235.902 and 18.235.903.

Referral to electorate—2000 c 253 § 5: "The secretary of state shall submit section 5 of this act to the people for their adoption and ratification, or rejection, at the next general election to be held in this state, in accordance with RCW 43.135.090 (section 2, chapter 1, Laws of 2000, Initiative Measure No. 695). The suggested ballot title for this act is: "Shall the state department of licensing be authorized to levy fees on geologists sufficient to pay for their licensure?" [2000 c 253 § 24.]

Reviser's note: Chapter 1, Laws of 2000 (Initiative Measure No. 695) was declared unconstitutional in its entirety by *Amalgamated Transit Union Local 587 et al v. The State of Washington*, 142 Wash.2d 183 (2000). Therefore 2000 c 253 § 5 was not referred to the electorate.

18.220.050 Board's authority. The board has the following authority in administering this chapter:

(1) To adopt, amend, and rescind rules as deemed necessary to carry out this chapter;

(2) To establish the minimum qualifications for applicants for licensure as provided by this chapter;

(3) To approve the method of administration for examinations required by this chapter or by rule. To adopt or recognize examinations prepared by other organizations. To set the time and place of examinations with the approval of the director;

(4) To adopt standards of professional conduct and practice. Rules of professional conduct will be consistent with those outlined for engineers and land surveyors; and

(5) To designate specialties of geology to be licensed under this chapter. [2007 c 256 § 7; 2002 c 86 § 262; 2000 c 253 § 6.]

Effective dates—2002 c 86: See note following RCW 18.08.340.

Part headings not law—Severability—2002 c 86: See RCW 18.235.902 and 18.235.903.

18.220.130 Unprofessional conduct. In addition to the unprofessional conduct described in RCW 18.235.130, the following conduct, acts, and conditions constitute unprofessional conduct:

(1) Violating any of the provisions of this chapter or the rules adopted under this chapter;

(2) Not meeting the qualifications for licensing set forth by this chapter; or

(3) Committing any other act, or failing to act, which act or failure are customarily regarded as being contrary to the accepted professional conduct or standard generally expected of those practicing geology. [2007 c 256 § 6; 2002 c 86 § 263; 2000 c 253 § 14.]

Effective dates—2002 c 86: See note following RCW 18.08.340.

Part headings not law—Severability—2002 c 86: See RCW 18.235.902 and 18.235.903.

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

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

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

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

Chapter 18.235 RCW

UNIFORM REGULATION OF BUSINESS AND PROFESSIONS ACT

Sections

18.235.005	Intent.
18.235.010	Definitions.
18.235.020	Application of chapter—Director's authority—Disciplinary authority.
18.235.040	Director's authority.
18.235.050	Statement of charges—Hearing.
18.235.080	Orders.
18.235.090	Appeal.
18.235.100	Reinstatement.
18.235.110	Unprofessional conduct—Finding.
18.235.130	Unprofessional conduct—Acts or conditions that constitute.
18.235.150	Investigation of complaint—Cease and desist order/notice of intent to issue—Final determination—Fine—Temporary cease and desist order—Action/who may maintain—Remedies not limited.
18.235.210	Application of chapter—January 1, 2003.

18.235.005 Intent. It is the intent of the legislature to consolidate disciplinary procedures for the licensed businesses and professions under the department of licensing by providing a uniform disciplinary act with standardized procedures for the regulation of businesses and professions and the enforcement of laws, the purpose of which is to assure the public of the adequacy of business and professional competence and conduct.

It is also the intent of the legislature that all businesses and professions newly credentialed by the state and regulated by the department of licensing come under this chapter. [2007 c 256 § 10; 2002 c 86 § 101.]

18.235.010 Definitions. The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

(1) "Board" means those boards specified in RCW 18.235.020(2)(b).

(2) "Department" means the department of licensing.

(3) "Director" means the director of the department or director's designee.

(4) "Disciplinary action" means sanctions identified in RCW 18.235.110.

(5) "Disciplinary authority" means the director, board, or commission having the authority to take disciplinary action against a holder of, or applicant for, a professional or business license upon a finding of a violation of this chapter or a chapter specified under RCW 18.235.020.

(6) "License," "licensing," and "licensure" are deemed equivalent to the terms "license," "licensing," "licensure,"

"certificate," "certification," and "registration" as those terms are defined in RCW 18.118.020. Each of these terms, and the term "appointment" under chapter 42.44 RCW, are interchangeable under the provisions of this chapter.

(7) "Unlicensed practice" means:

(a) Practicing a profession or operating a business identified in RCW 18.235.020 without holding a valid, unexpired, unrevoked, and unsuspended license to do so; or

(b) Representing to a person, through offerings, advertisements, or use of a professional title or designation, that the individual or business is qualified to practice a profession or operate a business identified in RCW 18.235.020 without holding a valid, unexpired, unrevoked, and unsuspended license to do so. [2007 c 256 § 11; 2002 c 86 § 102.]

18.235.020 Application of chapter—Director's authority—Disciplinary authority. (1) This chapter applies only to the director and the boards and commissions having jurisdiction in relation to the businesses and professions licensed under the chapters specified in this section. This chapter does not apply to any business or profession not licensed under the chapters specified in this section.

(2)(a) The director has authority under this chapter in relation to the following businesses and professions:

(i) Auctioneers under chapter 18.11 RCW;

(ii) Bail bond agents and bail bond recovery agents under chapter 18.185 RCW;

(iii) Camping resorts' operators and salespersons under chapter 19.105 RCW;

(iv) Commercial telephone solicitors under chapter 19.158 RCW;

(v) Cosmetologists, barbers, manicurists, and estheticians under chapter 18.16 RCW;

(vi) Court reporters under chapter 18.145 RCW;

(vii) Driver training schools and instructors under chapter 46.82 RCW;

(viii) Employment agencies under chapter 19.31 RCW;

(ix) For hire vehicle operators under chapter 46.72 RCW;

(x) Limousines under chapter 46.72A RCW;

(xi) Notaries public under chapter 42.44 RCW;

(xii) Private investigators under chapter 18.165 RCW;

(xiii) Professional boxing, martial arts, and wrestling under chapter 67.08 RCW;

(xiv) Real estate appraisers under chapter 18.140 RCW;

(xv) Real estate brokers and salespersons under chapters 18.85 and 18.86 RCW;

(xvi) Security guards under chapter 18.170 RCW;

(xvii) Sellers of travel under chapter 19.138 RCW;

(xviii) Timeshares and timeshare salespersons under chapter 64.36 RCW; and

(xix) Whitewater river outfitters under chapter 79A.60 RCW.

(b) The boards and commissions having authority under this chapter are as follows:

(i) The state board of registration for architects established in chapter 18.08 RCW;

(ii) The cemetery board established in chapter 68.05 RCW;

(iii) The Washington state collection agency board established in chapter 19.16 RCW;

(iv) The state board of registration for professional engineers and land surveyors established in chapter 18.43 RCW governing licenses issued under chapters 18.43 and 18.210 RCW;

(v) The state board of funeral directors and embalmers established in chapter 18.39 RCW;

(vi) The state board of registration for landscape architects established in chapter 18.96 RCW; and

(vii) The state geologist licensing board established in chapter 18.220 RCW.

(3) In addition to the authority to discipline license holders, the disciplinary authority may grant or deny licenses based on the conditions and criteria established in this chapter and the chapters specified in subsection (2) of this section. This chapter also governs any investigation, hearing, or proceeding relating to denial of licensure or issuance of a license conditioned on the applicant's compliance with an order entered under RCW 18.235.110 by the disciplinary authority. [2007 c 256 § 12; 2006 c 219 § 13; 2002 c 86 § 103.]

Effective date—2006 c 219: See note following RCW 46.82.285.

18.235.040 Director's authority. The director has the following additional authority:

(1) To employ investigative, administrative, and clerical staff as necessary for the enforcement of this chapter, except as provided otherwise by statute;

(2) Upon request of a board or commission, to appoint not more than three pro tem members as provided in this subsection. Individuals appointed as pro tem members of a board or commission must meet the same minimum qualifications as regular members of the board or commission. While serving as a pro tem board or commission member, a person so appointed has all the powers, duties, and immunities, and is entitled to the entitlements, including travel expenses in accordance with RCW 43.03.050 and 43.03.060, of a regular member of the board or commission; and

(3) To establish fees to be paid for witnesses, expert witnesses, and consultants used in any investigation or adjudicative proceedings as authorized by RCW 34.05.446. [2007 c 256 § 13; 2002 c 86 § 105.]

18.235.050 Statement of charges—Hearing. (1) If the disciplinary authority determines, upon investigation, that there is reason to believe that a license holder or applicant for a license has violated RCW 18.235.130 or has not met a minimum eligibility criteria for licensure, the disciplinary authority may prepare and serve the license holder or applicant a statement of charge, charges, or intent to deny. A notice that the license holder or applicant may request a hearing to contest the charge, charges, or intent to deny must accompany the statement. The license holder or applicant must file a request for a hearing with the disciplinary authority within twenty days after being served the statement of charges or statement of intent to deny. The failure to request a hearing constitutes a default, whereupon the disciplinary authority may enter a decision on the facts available to it.

(2) If a license holder or applicant for a license requests a hearing, the disciplinary authority must fix the time of the hearing as soon as convenient, but not earlier than thirty days after the service of charge, charges, or intent to deny. The

disciplinary authority may hold a hearing sooner than thirty days only if the disciplinary authority has issued a summary suspension or summary restriction. [2007 c 256 § 14; 2002 c 86 § 106.]

18.235.080 Orders. An order pursuant to proceedings authorized by this chapter, after due notice and findings in accordance with this chapter and chapter 34.05 RCW, or an order of summary suspension entered under this chapter, takes effect immediately upon its being served. The final order, if appealed to the court, may not be stayed pending the appeal unless the disciplinary authority or court to which the appeal is taken enters an order staying the order of the disciplinary authority, which stay shall provide for terms necessary to protect the public. [2007 c 256 § 15; 2002 c 86 § 109.]

18.235.090 Appeal. A person who has been disciplined or has been denied a license by a disciplinary authority may appeal the decision as provided in chapter 34.05 RCW. [2007 c 256 § 16; 2002 c 86 § 110.]

18.235.100 Reinstatement. A person whose license has been suspended or revoked under this chapter may petition the disciplinary authority for reinstatement after an interval of time and upon conditions determined by the disciplinary authority in the order suspending or revoking the license. The disciplinary authority shall act on the petition in accordance with the adjudicative proceedings provided under chapter 34.05 RCW and may impose such conditions as authorized by RCW 18.235.110. The disciplinary authority may require successful completion of an examination as a condition of reinstatement. [2007 c 256 § 17; 2002 c 86 § 111.]

18.235.110 Unprofessional conduct—Finding. (1) Upon finding unprofessional conduct, the disciplinary authority may issue an order providing for one or any combination of the following:

- (a) Revocation of the license for an interval of time;
- (b) Suspension of the license for a fixed or indefinite term;
- (c) Restriction or limitation of the practice;
- (d) Satisfactory completion of a specific program of remedial education or treatment;
- (e) Monitoring of the practice in a manner directed by the disciplinary authority;
- (f) Censure or reprimand;
- (g) Compliance with conditions of probation for a designated period of time;
- (h) Payment of a fine for each violation found by the disciplinary authority, not to exceed five thousand dollars per violation. The disciplinary authority must consider aggravating or mitigating circumstances in assessing any fine. Funds received must be deposited in the related program account;
- (i) Denial of an initial or renewal license application for an interval of time; or
- (j) Other corrective action.

(2) The disciplinary authority may require reimbursement to the disciplinary authority for the investigative costs incurred in investigating the matter that resulted in issuance

of an order under this section, but only if any of the sanctions in subsection (1)(a) through (j) of this section is ordered.

(3) Any of the actions under this section may be totally or partly stayed by the disciplinary authority. In determining what action is appropriate, the disciplinary authority must first consider what sanctions are necessary to protect the public health, safety, or welfare. Only after these provisions have been made may the disciplinary authority consider and include in the order requirements designed to rehabilitate the license holder or applicant. All costs associated with compliance with orders issued under this section are the obligation of the license holder or applicant.

(4) The licensee or applicant may enter into a stipulated disposition of charges that includes one or more of the sanctions of this section, but only after a statement of charges has been issued and the licensee has been afforded the opportunity for a hearing and has elected on the record to forego such a hearing. The stipulation shall either contain one or more specific findings of unprofessional conduct or a statement by the licensee acknowledging that evidence is sufficient to justify one or more specified findings of unprofessional conduct. The stipulations entered into under this subsection are considered formal disciplinary action for all purposes. [2007 c 256 § 18; 2002 c 86 § 112.]

18.235.130 Unprofessional conduct—Acts or conditions that constitute. The following conduct, acts, or conditions constitute unprofessional conduct for any license holder or applicant under the jurisdiction of this chapter:

(1) The commission of any act involving moral turpitude, dishonesty, or corruption relating to the practice of the person's profession or operation of the person's business, whether the act constitutes a crime or not. At the disciplinary hearing a certified copy of a final holding of any court of competent jurisdiction is conclusive evidence of the conduct of the license holder or applicant upon which a conviction or the final holding is based. Upon a conviction, however, the judgment and sentence is conclusive evidence at the ensuing disciplinary hearing of the guilt of the license holder or applicant of the crime described in the indictment or information, and of the person's violation of the statute on which it is based. For the purposes of this subsection, conviction includes all instances in which a plea of guilty or nolo contendere is the basis for the conviction and all proceedings in which the sentence has been deferred or suspended. Except as specifically provided by law, nothing in this subsection abrogates the provisions of chapter 9.96A RCW. However, RCW 9.96A.020 does not apply to a person who is required to register as a sex offender under RCW 9A.44.130;

(2) Misrepresentation or concealment of a material fact in obtaining or renewing a license or in reinstatement thereof;

(3) Advertising that is false, deceptive, or misleading;

(4) Incompetence, negligence, or malpractice that results in harm or damage to another or that creates an unreasonable risk of harm or damage to another;

(5) The suspension, revocation, or restriction of a license to engage in any business or profession by competent authority in any state, federal, or foreign jurisdiction. A certified copy of the order, stipulation, or agreement is conclusive evidence of the revocation, suspension, or restriction;

(6) Failure to cooperate with the disciplinary authority in the course of an investigation, audit, or inspection authorized by law by:

(a) Not furnishing any papers or documents requested by the disciplinary authority;

(b) Not furnishing in writing an explanation covering the matter contained in a complaint when requested by the disciplinary authority;

(c) Not responding to a subpoena issued by the disciplinary authority, whether or not the recipient of the subpoena is the accused in the proceeding; or

(d) Not providing authorized access, during regular business hours, to representatives of the disciplinary authority conducting an investigation, inspection, or audit at facilities utilized by the license holder or applicant;

(7) Failure to comply with an order issued by the disciplinary authority;

(8) Violating any of the provisions of this chapter or the chapters specified in RCW 18.235.020(2) or any rules made by the disciplinary authority under the chapters specified in RCW 18.235.020(2);

(9) Aiding or abetting an unlicensed person to practice or operate a business or profession when a license is required;

(10) Practice or operation of a business or profession beyond the scope of practice or operation as defined by law or rule;

(11) Misrepresentation in any aspect of the conduct of the business or profession;

(12) Failure to adequately supervise or oversee auxiliary staff, whether employees or contractors, to the extent that consumers may be harmed or damaged;

(13) Conviction of any gross misdemeanor or felony relating to the practice of the person's profession or operation of the person's business. For the purposes of this subsection, conviction includes all instances in which a plea of guilty or nolo contendere is the basis for conviction and all proceedings in which the sentence has been deferred or suspended. Except as specifically provided by law, nothing in this subsection abrogates the provisions of chapter 9.96A RCW. However, RCW 9.96A.020 does not apply to a person who is required to register as a sex offender under RCW 9A.44.130;

(14) Interference with an investigation or disciplinary action by willful misrepresentation of facts before the disciplinary authority or its authorized representatives, or by the use of threats or harassment against any consumer or witness to discourage them from providing evidence in a disciplinary action or any other legal action, or by the use of financial inducements to any consumer or witness to prevent or attempt to prevent him or her from providing evidence in a disciplinary action; and

(15) Engaging in unlicensed practice as defined in RCW 18.235.010. [2007 c 256 § 19; 2002 c 86 § 114.]

18.235.150 Investigation of complaint—Cease and desist order/notice of intent to issue—Final determination—Fine—Temporary cease and desist order—Action/who may maintain—Remedies not limited. (1) The disciplinary authority may investigate complaints concerning practice by unlicensed persons of a profession or business for which a license is required by the chapters specified in RCW 18.235.020. In the investigation of the com-

plaints, the director has the same authority as provided the disciplinary authority under RCW 18.235.030.

(2) The disciplinary authority may issue a notice of intent to issue a cease and desist order to any person whom the disciplinary authority has reason to believe is engaged or is about to engage in the unlicensed practice of a profession or operation of a business for which a license is required by the chapters specified in RCW 18.235.020.

(3) The disciplinary authority may issue a notice of intent to issue a cease and desist order to any person whom the disciplinary authority has reason to believe is engaged or is about to engage in an act or practice constituting a violation of this chapter or the chapters specified in RCW 18.235.020(2) or a rule adopted or order issued under those chapters.

(4) The person to whom such a notice is issued may request an adjudicative proceeding to contest the allegations. The notice shall include a brief, plain statement of the alleged unlicensed activities, act, or practice constituting a violation of this chapter or the chapters specified in RCW 18.235.020(2) or a rule adopted or order issued under those chapters. The request for hearing must be filed within twenty days after service of the notice of intent to issue a cease and desist order. The failure to request a hearing constitutes a default, whereupon the disciplinary authority may enter a permanent cease and desist order, which may include a civil fine. All proceedings shall be conducted in accordance with chapter 34.05 RCW.

(5) If the disciplinary authority makes a final determination that a person has engaged or is engaging in unlicensed practice or other act or practice constituting a violation of this chapter or the chapters specified in RCW 18.235.020(2) or a rule adopted or order issued under those chapters, the disciplinary authority may issue a permanent cease and desist order. In addition, the disciplinary authority may impose a civil fine in an amount not exceeding one thousand dollars for each day upon which the person engaged in the unlicensed practice of a profession or operation of a business for which a license is required by one or more of the chapters specified in RCW 18.235.020. The proceeds of such a fine shall be deposited in the related program account.

(6) The disciplinary authority may issue a temporary cease and desist order if a person is engaged or is about to engage in unlicensed practice or other act or practice constituting a violation of this chapter or the chapters specified in RCW 18.235.020(2) or a rule adopted or order issued under those chapters if the disciplinary authority makes a written finding of fact that the public interest will be irreparably harmed by delay in issuing an order. The person receiving a temporary cease and desist order shall be provided an opportunity for a prompt hearing. A temporary cease and desist order shall remain in effect until further order of the disciplinary authority. The failure to request a prompt or regularly scheduled hearing constitutes a default, whereupon the disciplinary authority may enter a permanent cease and desist order, which may include a civil fine.

(7) The cease and desist order is conclusive proof of unlicensed practice or other act or practice constituting a violation of this chapter or the chapters specified in RCW 18.235.020(2) or a rule adopted or order issued under those chapters and may be enforced under RCW 7.21.060. This

method of enforcement of the cease and desist order or civil fine may be used in addition to, or as an alternative to, any provisions for enforcement of agency orders set out in chapter 34.05 RCW.

(8) The attorney general, a county prosecuting attorney, the director, a board or commission, or any person may, in accordance with the laws of this state governing injunctions, maintain an action in the name of the state of Washington to enjoin any person practicing a profession or business without a license for which a license is required by the chapters specified in RCW 18.235.020. All fees, fines, forfeitures, and penalties collected or assessed by a court because of a violation of this section shall be deposited in the related program account.

(9) The civil remedies in this section do not limit the ability to pursue criminal prosecution as authorized in any of the acts specified in RCW 18.235.020 nor do the civil remedies limit any criminal sanctions. [2007 c 256 § 20; 2002 c 86 § 116.]

18.235.210 Application of chapter—January 1, 2003.

(1) This chapter applies to any conduct, acts, or conditions occurring on or after January 1, 2003.

(2) This chapter does not apply to or govern the construction of and disciplinary action for any conduct, acts, or conditions occurring prior to January 1, 2003. The conduct, acts, or conditions must be construed and disciplinary action taken according to the provisions of law existing at the time of the occurrence in the same manner as if this chapter had not been enacted.

(3) Notwithstanding subsection (2) of this section, this chapter applies to applications for licensure made on or after January 1, 2003. [2007 c 256 § 21; 2002 c 86 § 122.]

Chapter 18.240 RCW

ANIMAL MASSAGE PRACTITIONERS

Sections

18.240.005	Finding.
18.240.010	Definitions.
18.240.020	Certification required.
18.240.030	Certification requirements.
18.240.040	Limitation of chapter.
18.240.050	Secretary's authority.
18.240.060	Examinations.
18.240.070	Applicant certification—Fees.
18.240.080	Renewal of certification.
18.240.090	Application of uniform disciplinary act.

18.240.005 Finding. The certification of animal massage practitioners is in the interest of the public health, safety, and welfare. While veterinarians and certain massage practitioners may perform animal massage techniques, the legislature finds that meeting all of the requirements of those professions can be unnecessarily cumbersome for those individuals who would like to limit their practice only to animal massage. [2007 c 70 § 1.]

18.240.010 Definitions. The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

(1) "Board" means the veterinary board of governors established in chapter 18.92 RCW.

(2) "Certified animal massage practitioner" means an individual who provides external manipulation or pressure of soft tissues by use of the hands, body, or device designed and limited to providing massage. Animal massage may include techniques such as stroking, percussions, compressions, friction, Swedish gymnastics or movements, gliding, kneading, range of motion or stretching, and fascial or connective tissue stretching, with or without the aid of superficial heat, cold, water, lubricants, or salts. Animal massage does not include: Diagnosis, prognosis, or all treatment of diseases, deformities, defects, wounds, or injuries of animals; attempts to adjust or manipulate any articulations of the animal's body or spine or mobilization of these articulations by the use of a thrusting force; acupuncture involving the use of needles; or mechanical therapies that are restricted to the field of veterinary medicine. Animal massage may be performed solely for purposes of patient well-being.

(3) "Department" means the department of health.

(4) "Secretary" means the secretary of health or the secretary's designee. [2007 c 70 § 2.]

18.240.020 Certification required. No person may practice as a certified animal massage practitioner in this state without having a certification issued by the secretary unless he or she is exempt under RCW 18.240.040. [2007 c 70 § 3.]

18.240.030 Certification requirements. The secretary shall issue a certificate to any applicant who demonstrates that the following requirements have been met:

(1) Successful completion of a training program approved by the secretary that includes three hundred hours of instruction in general animal massage techniques, kinesiology, anatomy, physiology, behavior, first aid care, and handling techniques as follows:

(a) For a certificate to practice animal massage on large animals, the three hundred hours of specialized instruction must be related to the performance of animal massage on large animals; and

(b) For a certificate to practice animal massage on small animals, the three hundred hours of specialized instruction must be related to the performance of animal massage on small animals; and

(2) Successful completion of a competency evaluation, approved by the secretary, in either large animal massage or small animal massage, or both. [2007 c 70 § 4.]

18.240.040 Limitation of chapter. Nothing in this chapter may be construed to prohibit or restrict:

(1) The practice of veterinary medicine by those who are in compliance with chapter 18.92 RCW;

(2) The practice of animal massage by those who are in compliance with chapter 18.108 RCW;

(3) The practice of animal massage therapy by a person who is a regular student in an educational program whose performance of services is pursuant to a regular course of instruction or assignments from an instructor and under the general supervision of the instructor; or

(4) The use of animal massage techniques by the owner of the animal who is the recipient of the services or by an

employee of the owner or another person providing gratuitous assistance. [2007 c 70 § 5.]

18.240.050 Secretary's authority. In addition to any other authority provided by law, the secretary has the authority to:

(1) Adopt rules under chapter 34.05 RCW as required to implement this chapter;

(2) Establish all certification and renewal fees in accordance with RCW 43.70.110 and 43.70.250;

(3) Establish forms and procedures necessary to administer this chapter;

(4) Certify an applicant or deny certification based upon unprofessional conduct or impairment governed by the uniform disciplinary act, chapter 18.130 RCW;

(5) Deny certification to applicants who do not meet the training, competency evaluation, and conduct requirements for certification;

(6) Hire clerical, administrative, investigative, and other staff as needed to implement this chapter;

(7) Maintain the official department record for all applicants and persons with certifications;

(8) Review coursework and training taken by an applicant in another state to determine whether it is substantially equivalent to that required under this chapter and determine whether additional coursework or training is needed before taking an examination for certification under RCW 18.240.060;

(9) Approve education and training programs; and

(10) Convene temporary work groups of individuals knowledgeable in the practice of animal massage to advise the secretary on appropriate standards of practice and credentialing, as necessary. [2007 c 70 § 6.]

18.240.060 Examinations. (1) The date and location of examinations must be established by the secretary. Applicants who have been found by the secretary to meet the other requirements for obtaining a certificate must be scheduled for the next examination following the filing of the application. The secretary shall establish by rule the examination application deadline.

(2) The secretary shall examine each applicant, by means determined most effective, on subjects appropriate to the scope of practice, as applicable. The examinations must be limited to the purpose of determining whether the applicant possesses the minimum skill and knowledge necessary to practice competently.

(3) The examination papers, all grading of the papers, and the grading of any practical work must be preserved for a period of not less than one year after the secretary has made and published the decisions. All examinations must be conducted under fair and wholly impartial methods.

(4) Any applicant failing to make the required grade in the first examination may take up to three subsequent examinations as the applicant desires upon prepaying a fee determined by the secretary under RCW 43.70.250 for each subsequent examination. Upon failing four examinations, the secretary may invalidate the original application and require remedial education before the person may take future examinations.

(5) The secretary may approve an examination prepared or administered by a private testing agency or association of licensing agencies for use by an applicant in meeting the certification requirements. [2007 c 70 § 7.]

18.240.070 Applicant certification—Fees. The secretary shall certify an applicant on forms provided by the secretary. Each applicant shall pay a fee determined by the secretary under RCW 43.70.250. The fee must accompany the application. [2007 c 70 § 8.]

18.240.080 Renewal of certification. The secretary shall establish by rule the procedural requirements and fees for renewal of certification. Failure to renew invalidates the certification and all privileges granted by the certification. [2007 c 70 § 9.]

18.240.090 Application of uniform disciplinary act. The uniform disciplinary act, chapter 18.130 RCW, governs the uncertified practice, the issuance and denial of certification, and the discipline of persons certified under this chapter. The secretary is the disciplining authority under this chapter. [2007 c 70 § 10.]

Chapter 18.250 RCW ATHLETIC TRAINERS

Sections

18.250.005	Purpose. <i>(Effective July 1, 2008.)</i>
18.250.010	Definitions. <i>(Effective July 1, 2008.)</i>
18.250.020	Secretary's authority—Application of uniform disciplinary act. <i>(Effective July 1, 2008.)</i>
18.250.030	Athletic training advisory committee. <i>(Effective July 1, 2008.)</i>
18.250.040	License required. <i>(Effective July 1, 2008.)</i>
18.250.050	Limitations of chapter. <i>(Effective July 1, 2008.)</i>
18.250.060	Applicant requirements. <i>(Effective July 1, 2008.)</i>
18.250.070	Treatment, rehabilitation, and reconditioning—Referral to licensed health care provider. <i>(Effective July 1, 2008.)</i>
18.250.080	Application procedures, requirements, and fees. <i>(Effective July 1, 2008.)</i>
18.250.090	Practice setting not restricted. <i>(Effective July 1, 2008.)</i>
18.250.100	Health carrier contract with athletic trainer not required. <i>(Effective July 1, 2008.)</i>
18.250.900	Severability—2007 c 253.
18.250.901	Effective date—2007 c 253.
18.250.902	Implementation—2007 c 253.

18.250.005 Purpose. *(Effective July 1, 2008.)* It is the purpose of this chapter to provide for the licensure of persons offering athletic training services to the public and to ensure standards of competence and professional conduct on the part of athletic trainers. [2007 c 253 § 1.]

18.250.010 Definitions. *(Effective July 1, 2008.)* The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

(1) "Athlete" means a person who participates in exercise, recreation, sport, or games requiring physical strength, range-of-motion, flexibility, body awareness and control, speed, stamina, or agility, and the exercise, recreation, sports, or games are of a type conducted in association with an educational institution or professional, amateur, or recreational sports club or organization.

(2) "Athletic injury" means an injury or condition sustained by an athlete that affects the person's participation or

performance in exercise, recreation, sport, or games and the injury or condition is within the professional preparation and education of an athletic trainer.

(3) "Athletic trainer" means a person who is licensed under this chapter. An athletic trainer can practice athletic training through the consultation, referral, or guidelines of a licensed health care provider working within their scope of practice.

(4)(a) "Athletic training" means the application of the following principles and methods as provided by a licensed athletic trainer:

(i) Risk management and prevention of athletic injuries through preactivity screening and evaluation, educational programs, physical conditioning and reconditioning programs, application of commercial products, use of protective equipment, promotion of healthy behaviors, and reduction of environmental risks;

(ii) Recognition, evaluation, and assessment of athletic injuries by obtaining a history of the athletic injury, inspection and palpation of the injured part and associated structures, and performance of specific testing techniques related to stability and function to determine the extent of an injury;

(iii) Immediate care of athletic injuries, including emergency medical situations through the application of first-aid and emergency procedures and techniques for nonlife-threatening or life-threatening athletic injuries;

(iv) Treatment, rehabilitation, and reconditioning of athletic injuries through the application of physical agents and modalities, therapeutic activities and exercise, standard reassessment techniques and procedures, commercial products, and educational programs, in accordance with guidelines established with a licensed health care provider as provided in RCW 18.250.070; and

(v) Referral of an athlete to an appropriately licensed health care provider if the athletic injury requires further definitive care or the injury or condition is outside an athletic trainer's scope of practice, in accordance with RCW 18.250.070.

(b) "Athletic training" does not include:

(i) The use of spinal adjustment or manipulative mobilization of the spine and its immediate articulations;

(ii) Orthotic or prosthetic services with the exception of evaluation, measurement, fitting, and adjustment of temporary, prefabricated or direct-formed orthosis as defined in chapter 18.200 RCW;

(iii) The practice of occupational therapy as defined in chapter 18.59 RCW;

(iv) The practice of acupuncture as defined in chapter 18.06 RCW;

(v) Any medical diagnosis; and

(vi) Prescribing legend drugs or controlled substances, or surgery.

(5) "Committee" means the athletic training advisory committee.

(6) "Department" means the department of health.

(7) "Licensed health care provider" means a physician, physician assistant, osteopathic physician, osteopathic physician assistant, advanced registered nurse practitioner, naturopath, physical therapist, chiropractor, dentist, massage practitioner, acupuncturist, occupational therapist, or podiatric physician and surgeon.

(8) "Secretary" means the secretary of health or the secretary's designee. [2007 c 253 § 2.]

18.250.020 Secretary's authority—Application of uniform disciplinary act. (Effective July 1, 2008.) (1) In addition to any other authority provided by law, the secretary may:

(a) Adopt rules, in accordance with chapter 34.05 RCW, necessary to implement this chapter;

(b) Establish all license, examination, and renewal fees in accordance with RCW 43.70.250;

(c) Establish forms and procedures necessary to administer this chapter;

(d) Establish administrative procedures, administrative requirements, and fees in accordance with RCW 43.70.250 and 43.70.280. All fees collected under this section must be credited to the health professions account as required under RCW 43.70.320;

(e) Develop and administer, or approve, or both, examinations to applicants for a license under this chapter;

(f) Issue a license to any applicant who has met the education, training, and examination requirements for licensure and deny a license to applicants who do not meet the minimum qualifications for licensure. However, denial of licenses based on unprofessional conduct or impaired practice is governed by the uniform disciplinary act, chapter 18.130 RCW;

(g) In consultation with the committee, approve examinations prepared or administered by private testing agencies or organizations for use by an applicant in meeting the licensing requirements under RCW 18.250.060;

(h) Determine which states have credentialing requirements substantially equivalent to those of this state, and issue licenses to individuals credentialed in those states that have successfully fulfilled the requirements of RCW 18.250.080;

(i) Hire clerical, administrative, and investigative staff as needed to implement and administer this chapter;

(j) Maintain the official department record of all applicants and licensees; and

(k) Establish requirements and procedures for an inactive license.

(2) The uniform disciplinary act, chapter 18.130 RCW, governs unlicensed practice, the issuance and denial of licenses, and the discipline of licensees under this chapter. [2007 c 253 § 3.]

18.250.030 Athletic training advisory committee. (Effective July 1, 2008.) (1) The athletic training advisory committee is formed to further the purposes of this chapter.

(2) The committee consists of five members. Four members of the committee must be athletic trainers licensed under this chapter and residing in this state, must have not less than five years' experience in the practice of athletic training, and must be actively engaged in practice within two years of appointment. The fifth member must be appointed from the public at large, and have an interest in the rights of consumers of health services.

(3) The committee may provide advice on matters specifically identified and requested by the secretary, such as applications for licenses.

(4) The committee may be requested by the secretary to approve an examination required for licensure under this chapter.

(5) The committee, at the request of the secretary, may recommend rules in accordance with the administrative procedure act, chapter 34.05 RCW, relating to standards for appropriateness of athletic training care.

(6) The committee must meet during the year as necessary to provide advice to the secretary. The committee may elect a chair and a vice-chair. A majority of the members currently serving constitute a quorum.

(7) Each member of the committee must be reimbursed for travel expenses as authorized in RCW 43.03.050 and 43.03.060. In addition, members of the committee must be compensated in accordance with RCW 43.03.240 when engaged in the authorized business of the committee.

(8) The secretary, members of the committee, or individuals acting on their behalf are immune from suit in any action, civil or criminal, based on any credentialing or disciplinary proceedings or other official acts performed in the course of their duties. [2007 c 253 § 4.]

18.250.040 License required. (Effective July 1, 2008.)

It is unlawful for any person to practice or offer to practice as an athletic trainer, or to represent themselves or other persons to be legally able to provide services as an athletic trainer, unless the person is licensed under the provisions of this chapter. [2007 c 253 § 5.]

18.250.050 Limitations of chapter. (Effective July 1, 2008.) Nothing in this chapter may prohibit, restrict, or require licensure of:

(1) Any person licensed, certified, or registered in this state and performing services within the authorized scope of practice;

(2) The practice by an individual employed by the government of the United States as an athletic trainer while engaged in the performance of duties prescribed by the laws of the United States;

(3) Any person pursuing a supervised course of study in an accredited athletic training educational program, if the person is designated by a title that clearly indicates a student or trainee status;

(4) An athletic trainer from another state for purposes of continuing education, consulting, or performing athletic training services while accompanying his or her group, individual, or representatives into Washington state on a temporary basis for no more than ninety days in a calendar year;

(5) Any elementary, secondary, or postsecondary school teacher, educator, coach, or authorized volunteer who does not represent themselves to the public as an athletic trainer; or

(6) A personal trainer employed by an athletic club or fitness center. [2007 c 253 § 6.]

18.250.060 Applicant requirements. (Effective July 1, 2008.) An applicant for an athletic trainer license must:

(1) Have received a bachelor's or advanced degree from an accredited four-year college or university that meets the academic standards of athletic training, accepted by the secretary, as advised by the committee;

(2) Have successfully completed an examination administered or approved by the secretary, in consultation with the committee; and

(3) Submit an application on forms prescribed by the secretary and pay the licensure fee required under this chapter. [2007 c 253 § 7.]

18.250.070 Treatment, rehabilitation, and reconditioning—Referral to licensed health care provider. (Effective July 1, 2008.) (1) Except as necessary to provide emergency care of athletic injuries, an athletic trainer shall not provide treatment, rehabilitation, or reconditioning services to any person except as specified in guidelines established with a licensed health care provider who is licensed to perform the services provided in the guidelines.

(2) If there is no improvement in an athlete who has sustained an athletic injury within fifteen days of initiation of treatment, rehabilitation, or reconditioning, the athletic trainer must refer the athlete to a licensed health care provider that is appropriately licensed to assist the athlete.

(3) If an athletic injury requires treatment, rehabilitation, or reconditioning for more than forty-five days, the athletic trainer must consult with, or refer the athlete to a licensed health care provider. The athletic trainer shall document the action taken. [2007 c 253 § 8.]

18.250.080 Application procedures, requirements, and fees. (Effective July 1, 2008.) Each applicant and license holder must comply with administrative procedures, administrative requirements, and fees under RCW 43.70.250 and 43.70.280. The secretary shall furnish a license to any person who applies and who has qualified under the provisions of this chapter. [2007 c 253 § 9.]

18.250.090 Practice setting not restricted. (Effective July 1, 2008.) Nothing in this chapter restricts the ability of athletic trainers to work in the practice setting of his or her choice. [2007 c 253 § 10.]

18.250.100 Health carrier contract with athletic trainer not required. (Effective July 1, 2008.) Nothing in this chapter may be construed to require that a health carrier defined in RCW 48.43.005 contract with a person licensed as an athletic trainer under this chapter. [2007 c 253 § 11.]

18.250.900 Severability—2007 c 253. If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected. [2007 c 253 § 14.]

18.250.901 Effective date—2007 c 253. This act takes effect July 1, 2008. [2007 c 253 § 16.]

18.250.902 Implementation—2007 c 253. The secretary of health may take the necessary steps to ensure that this act is implemented on its effective date. [2007 c 253 § 17.]

Chapter 18.260 RCW DENTAL PROFESSIONALS

Sections

18.260.010	Definitions.
18.260.020	Registration or license required.
18.260.030	Dental assistants—Registration.
18.260.040	Dental assistants—Scope of practice.
18.260.050	Expanded function dental auxiliary—License.
18.260.060	Expanded function dental auxiliary—License—Reciprocity.
18.260.070	Expanded function dental auxiliary—Scope of practice.
18.260.080	Supervising dentist—Responsibilities.
18.260.090	Initial or renewal credentials—Issuance and denial.
18.260.100	Examinations.
18.260.110	Limitation of chapter.
18.260.120	Rules.
18.260.130	Application of uniform disciplinary act.
18.260.140	Department review.
18.260.900	Application—2007 c 269.
18.260.901	Implementation—2007 c 269.

18.260.010 Definitions. The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

(1) "Close supervision" means that a supervising dentist whose patient is being treated has personally diagnosed the condition to be treated and has personally authorized the procedures to be performed. The supervising dentist is continuously on-site and physically present in the treatment facility while the procedures are performed by the assistive personnel and capable of responding immediately in the event of an emergency. The term does not require a supervising dentist to be physically present in the operator.

(2) "Commission" means the Washington state dental quality assurance commission created in chapter 18.32 RCW.

(3) "Dental assistant" means a person who is registered by the commission to provide supportive services to a licensed dentist to the extent provided in this chapter and under the close supervision of a dentist.

(4) "Dentist" means an individual who holds a license to practice dentistry under chapter 18.32 RCW.

(5) "Department" means the department of health.

(6) "Expanded function dental auxiliary" means a person who is licensed by the commission to provide supportive services to a licensed dentist to the extent provided in this chapter and under the specified level of supervision of a dentist.

(7) "General supervision" means that a supervising dentist has examined and diagnosed the patient and provided subsequent instructions to be performed by the assistive personnel, but does not require that the dentist be physically present in the treatment facility.

(8) "Secretary" means the secretary of health.

(9) "Supervising dentist" means a dentist licensed under chapter 18.32 RCW that is responsible for providing the appropriate level of supervision for dental assistants and expanded function dental auxiliaries. [2007 c 269 § 1.]

18.260.020 Registration or license required. (1) No person may practice or represent himself or herself as a registered dental assistant by use of any title or description without being registered by the commission as having met the standards established for registration under this chapter unless he or she is exempt under RCW 18.260.110.

(2) No person may practice or represent himself or herself as a licensed expanded function dental auxiliary by use of

any title or description without being licensed by the commission under this chapter unless he or she is exempt under RCW 18.260.110. [2007 c 269 § 2.]

18.260.030 Dental assistants—Registration. The commission shall issue a registration to practice as a dental assistant to any applicant who pays any applicable fees, as established by the secretary in accordance with RCW 43.70.110 and 43.70.250, and submits, on forms provided by the secretary, the applicant's name, address, and other information as determined by the secretary. [2007 c 269 § 3.]

18.260.040 Dental assistants—Scope of practice. (1) The commission shall adopt rules relating to the scope of dental assisting services related to patient care and laboratory duties that may be performed by dental assistants. All dental services performed by dental assistants must be performed under the close supervision of a supervising dentist as the dentist may allow.

(2) In addition to any other limitations established by the commission, dental assistants may not perform the following procedures:

- (a) Any scaling procedure;
 - (b) Any oral prophylaxis, except coronal polishing;
 - (c) Administration of any general or local anesthetic, including intravenous sedation;
 - (d) Any removal of or addition to the hard or soft tissue of the oral cavity;
 - (e) Any diagnosis of or prescription for treatment of disease, pain, deformity, deficiency, injury, or physical condition of the human teeth, jaw, or adjacent structures; and
 - (f) The taking of any impressions of the teeth or jaw or the relationships of the teeth or jaws, for the purpose of fabricating any intra-oral restoration, appliance, or prosthesis.
- (3) A dentist may not assign a dental assistant to perform duties until the dental assistant has demonstrated skills necessary to perform competently all assigned duties and responsibilities. [2007 c 269 § 5.]

18.260.050 Expanded function dental auxiliary—License. (1) The commission shall issue a license to practice as an expanded function dental auxiliary to any applicant who:

- (a) Pays any applicable fees as established by the secretary in accordance with RCW 43.70.110 and 43.70.250;
- (b) Submits, on forms provided by the secretary, the applicant's name, address, and other applicable information as determined by the secretary; and
- (c) Demonstrates that the following requirements have been met:
 - (i) Successful completion of a dental assisting education program approved by the commission. The program may be an approved online education program;
 - (ii) Successful completion of an expanded function dental auxiliary education program approved by the commission; and
 - (iii) Successful passage of both a written examination and a clinical examination in restorations approved by the commission.

(2)(a) An applicant that holds a limited license to practice dental hygiene under chapter 18.29 RCW is considered to have met the dental assisting education program requirements of subsection (1)(c)(i) of this section.

(b) An applicant that holds a full license to practice dental hygiene under chapter 18.29 RCW is considered to have met the requirements of subsection (1)(c) of this section upon demonstrating the successful completion of training in taking final impressions as approved by the commission. [2007 c 269 § 4.]

18.260.060 Expanded function dental auxiliary—License—Reciprocity. An applicant holding a license in another state may be licensed as an expanded function dental auxiliary in this state without examination if the commission determines that the other state's licensing standards are substantially equivalent to the standards in this state. [2007 c 269 § 9.]

18.260.070 Expanded function dental auxiliary—Scope of practice. (1) The commission shall adopt rules relating to the scope of expanded function dental auxiliary services related to patient care and laboratory duties that may be performed by expanded function dental auxiliaries.

(2) The scope of expanded function dental auxiliary services that the commission identifies in subsection (1) of this section includes:

(a) In addition to the dental assisting services that a dental assistant may perform under the close supervision of a supervising dentist, the performance of the following services under the general supervision of a supervising dentist as the dentist may allow:

- (i) Performing coronal polishing;
- (ii) Giving fluoride treatments;
- (iii) Applying sealants;
- (iv) Placing dental x-ray film and exposing and developing the films;
- (v) Giving patient oral health instruction; and
- (b) Notwithstanding any prohibitions in RCW 18.260.040, the performance of the following services under the close supervision of a supervising dentist as the dentist may allow:

- (i) Placing and carving direct restorations; and
 - (ii) Taking final impressions.
- (3) A dentist may not assign an expanded function dental auxiliary to perform services until the expanded function dental auxiliary has demonstrated skills necessary to perform competently all assigned duties and responsibilities. [2007 c 269 § 6.]

18.260.080 Supervising dentist—Responsibilities. A supervising dentist is responsible for:

- (1) Maintaining the appropriate level of supervision for dental assistants and expanded function dental auxiliaries; and
- (2) Ensuring that the dental assistants and expanded function dental auxiliaries that the dentist supervises are able to competently perform the tasks that they are assigned. [2007 c 269 § 7.]

18.260.090 Initial or renewal credentials—Issuance and denial. The commission shall issue an initial credential or renewal credential to an applicant who has met the requirements for a credential or deny an initial credential or renewal credential based upon failure to meet the requirements for a credential or unprofessional conduct or impairment governed by chapter 18.130 RCW. [2007 c 269 § 8.]

18.260.100 Examinations. (1) The commission may approve a written examination prepared or administered by a private testing agency or association of licensing agencies for use by an applicant in meeting the licensing requirements under RCW 18.260.050. The requirement that the examination be written does not exclude the use of computerized test administration.

(2) The commission, upon consultation with the dental hygiene examining committee, may approve a clinical examination prepared or administered by a private testing agency or association of licensing agencies for use by an applicant in meeting the licensing requirements under RCW 18.260.050. [2007 c 269 § 10.]

18.260.110 Limitation of chapter. Nothing in this chapter may be construed to prohibit or restrict:

(1) The practice of a dental assistant in the discharge of official duties by dental assistants in the United States federal services on federal reservations, including but not limited to the armed services, coast guard, public health service, veterans' bureau, or bureau of Indian affairs; or

(2) Expanded function dental auxiliary education and training programs approved by the commission and the practice as an expanded function dental auxiliary by students in expanded function dental auxiliary education and training programs approved by the commission, when acting under the direction and supervision of persons licensed under chapter 18.29 or 18.32 RCW. [2007 c 269 § 11.]

18.260.120 Rules. The commission may adopt rules under chapter 34.05 RCW as required to implement this chapter. [2007 c 269 § 12.]

18.260.130 Application of uniform disciplinary act. Chapter 18.130 RCW governs unregistered or unlicensed practice, the issuance and denial of credentials, and the discipline of those credentialed under this chapter. The commission is the disciplining authority under this chapter. [2007 c 269 § 13.]

18.260.140 Department review. By November 15, 2012, the department, in consultation with the commission and the dental hygiene examining committee, shall conduct a review of the effectiveness of the creation of the dental assistant and expanded function dental auxiliary professions as related to:

- (1) Increasing professional standards in dental practices;
- (2) Increasing efficiency in dental practices and community health clinics;
- (3) Promoting career ladders in the dental professions; and

(4) Recommendations for expanding or contracting the practice of dental assistants and expanded function dental auxiliaries. [2007 c 269 § 18.]

18.260.900 Application—2007 c 269. (1) The provisions of this act apply to registered dental assistants effective July 1, 2008.

(2) The provisions of this act apply to expanded function dental auxiliaries effective December 1, 2008. [2007 c 269 § 21.]

18.260.901 Implementation—2007 c 269. The secretary of health and the Washington state dental quality assurance commission may take the necessary steps to ensure that this act is implemented on its effective date. [2007 c 269 § 22.]

Chapter 18.270 RCW

FIRE PROTECTION SPRINKLER FITTING

Sections

18.270.010	Definitions. <i>(Effective January 1, 2009.)</i>
18.270.020	Certificate required—Penalties. <i>(Effective January 1, 2009.)</i>
18.270.030	Examination. <i>(Effective January 1, 2009.)</i>
18.270.040	Application requirements—Certificate without examination. <i>(Effective January 1, 2009.)</i>
18.270.050	Certificate expiration and renewal. <i>(Effective January 1, 2009.)</i>
18.270.060	Fees—Deposit and use. <i>(Effective January 1, 2009.)</i>
18.270.070	Violations—Investigations. <i>(Effective January 1, 2009.)</i>
18.270.080	Appeals. <i>(Effective January 1, 2009.)</i>
18.270.090	Suspension. <i>(Effective January 1, 2009.)</i>
18.270.900	Administration of chapter. <i>(Effective January 1, 2009.)</i>
18.270.901	Effective date—2007 c 435.

18.270.010 Definitions. *(Effective January 1, 2009.)*
The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

(1) "Certificate" means a certificate of competency granted by the director under the terms of this chapter, and is valid within the state and all political subdivisions, and meets all of the requirements for license or certification that may be applied by the political subdivisions.

(2) "Contractor" means any person, corporation, or other entity, licensed under chapter 18.160 RCW, which performs any work covered by the provisions of this chapter.

(3) "Director" means the state director of fire protection.

(4) "Fire protection sprinkler fitting" means installing, altering, and repairing sprinkler, standpipe, hose, or other hazard systems for fire protection purposes that are an assembly of piping or conduit beginning at the connection to the primary water supply within a building, sprinkler tank heaters, air lines, and all tanks and pumps attached thereto.

(5) "Journey-level sprinkler fitter" means any person who has been issued a certificate by the director as provided by this chapter.

(6) "NFPA 13-D" means the standard in use by the national fire protection association for the installation of fire protection sprinkler systems in one and two-family dwellings and manufactured homes whenever the provisions of this chapter are applied.

(7) "NFPA 13-R" means the standard in use by the national fire protection association for the installation of fire

protection sprinkler systems in residential dwellings up to and including four stories in height whenever the provisions of this chapter are applied.

(8) "Person" means a natural person, including an owner, manager, partner, officer, employee, or occupant.

(9) "Residential sprinkler fitter" means anyone who has been issued a certificate by the director limited to installation, maintenance, and repair of the fire protection sprinkler system of residential occupancies as defined by NFPA 13-D and NFPA 13-R.

(10) "Trainee" means anyone who has been issued a training certificate by the director who is learning the fire protection sprinkler fitting trade under the direct supervision of a journey-level sprinkler fitter or residential sprinkler fitter. [2007 c 435 § 1.]

18.270.020 Certificate required--Penalties. (Effective January 1, 2009.) (1) No person may engage in the trade of fire protection sprinkler fitting without having a valid journey-level sprinkler fitter certificate, residential sprinkler fitter certificate, training certificate, or temporary certificate, with the exception of a certified plumber installing a residential fire protection sprinkler system connected to potable water requiring a plumbing certificate.

(2) No contractor may employ a person in violation of subsection (1) of this section to perform fire protection sprinkler fitting work.

(3) A person found by the director to have committed an infraction under this chapter shall be assessed a monetary penalty as set by rule.

(4) Each day in which a person engages in the trade of fire protection sprinkler fitting in violation of subsection (1) of this section or employs a person in violation of subsection (2) of this section is considered a separate infraction. [2007 c 435 § 3.]

18.270.030 Examination. (Effective January 1, 2009.) The director shall adopt a written examination to be administered to applicants for certificates. [2007 c 435 § 4.]

18.270.040 Application requirements—Certificate without examination. (Effective January 1, 2009.) (1) Every applicant for a certificate shall pay an examination fee and satisfactorily pass an examination as provided by rule.

(2) Every applicant for a certificate shall apply to the director on an application form provided by the director and pay the application fee as provided by rule.

(3)(a) Every applicant for a journey-level sprinkler fitter certificate shall provide evidence to the director on a form provided by the director of at least eight thousand hours of trade-related fire protection sprinkler fitting experience.

(b) Every applicant for a residential sprinkler fitter certificate shall provide evidence to the director on a form provided by the director of at least four thousand hours of trade-related fire protection sprinkler fitting or residential sprinkler fitting experience.

(4) Every applicant for a training certificate shall provide evidence to the director on a form provided by the director of trade-related employment by a contractor.

(5)(a) The director shall grant a journey-level sprinkler fitter certificate without examination to any applicant who, during the ninety days following January 1, 2009, submits an application for such certification and evidence of his or her employment as a journey-level sprinkler fitter for a period of not less than eight thousand hours.

(b) The director shall grant a residential sprinkler fitter certificate without examination to any applicant who, during the ninety days following January 1, 2009, submits an application for such certification and evidence of his or her employment as a journey-level sprinkler fitter or a residential sprinkler fitter for a period of not less than four thousand hours.

(6) The director may grant a certificate without examination to any applicant who is a journey-level sprinkler fitter or residential sprinkler fitter from a state whose requirements for certification are at least substantially equivalent to the requirements of this state, and which extends the same privileges of reciprocity to journey-level sprinkler fitters or residential sprinkler fitters from this state. [2007 c 435 § 5.]

18.270.050 Certificate expiration and renewal. (Effective January 1, 2009.) (1) A certificate expires on December 31st.

(2) The certificate shall be renewed every other year.

(3) Before the expiration date of the certificate, every applicant shall reapply to the director on an application form provided by the director and pay the application fee as provided by rule.

(4) If a certificate is not renewed before its expiration date, an applicant must:

(a) Apply to the director on an application form provided by the director;

(b) Pay an application fee to the director as provided by rule;

(c) Pay an examination fee as provided by rule; and

(d) Successfully pass the written examination required by this chapter. [2007 c 435 § 6.]

18.270.060 Fees—Deposit and use. (Effective January 1, 2009.) All receipts from fees and charges or from the money generated by the rules adopted under this chapter shall be deposited into the fire protection contractor license fund created in RCW 18.160.050 and used for the purposes authorized under this chapter. [2007 c 435 § 7.]

18.270.070 Violations—Investigations. (Effective January 1, 2009.) An authorized representative of the director may investigate alleged violations of this chapter. Upon request of an authorized representative, a person performing fire protection sprinkler fitting or residential sprinkler fitting work must produce evidence of a certificate issued by the director in accordance with this chapter. Failure to produce such evidence is an infraction as provided by RCW 18.270.020. [2007 c 435 § 8.]

18.270.080 Appeals. (Effective January 1, 2009.) A person wishing to appeal a determination of infraction under this chapter must file an appeal within twenty days of the date

of the notice of infraction in accordance with chapter 34.05 RCW. [2007 c 435 § 9.]

18.270.090 Suspension. (*Effective January 1, 2009.*)

The director shall immediately suspend any certificate issued under this chapter if the holder has been certified pursuant to RCW 74.20A.320 by the department of social and health services as a person who is not in compliance with a support order. If the person has continued to meet all other requirements for certification during the suspension, reissuance of the certificate shall be automatic upon the director's receipt of a release issued by the department of social and health services stating that the person is in compliance with the order. [2007 c 435 § 10.]

18.270.900 Administration of chapter. (*Effective January 1, 2009.*) (1) This chapter shall be administered by the director.

(2) The director may adopt rules necessary for the administration of this chapter. [2007 c 435 § 2.]

18.270.901 Effective date—2007 c 435. This act takes effect January 1, 2009. [2007 c 435 § 12.]

Title 19

BUSINESS REGULATIONS— MISCELLANEOUS

Chapters

19.02	Business license center act.
19.09	Charitable solicitations.
19.16	Collection agencies.
19.27	State building code.
19.28	Electricians and electrical installations.
19.29	Electrical construction.
19.32	Food lockers.
19.48	Hotels, lodging houses, etc.—Restaurants.
19.60	Pawnbrokers and secondhand dealers.
19.85	Regulatory fairness act.
19.86	Unfair business practices—Consumer protection.
19.112	Motor fuel quality act.
19.118	Motor vehicle warranties.
19.122	Underground utilities.
19.138	Sellers of travel.
19.150	Self-service storage facilities.
19.182	Fair credit reporting act.
19.285	Energy independence act.
19.290	Metal property.
19.295	Estate distribution documents.

Chapter 19.02 RCW

BUSINESS LICENSE CENTER ACT

Sections

19.02.110	Master license—System to include additional licenses.
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19.02.110 Master license—System to include additional licenses. In addition to the licenses processed under the master license system prior to April 1, 1982, on July 1,

1982, use of the master license system shall be expanded as provided by this section.

Applications for the following shall be filed with the business license center and shall be processed, and renewals shall be issued, under the master license system:

- (1) Nursery dealer's licenses required by chapter 15.13 RCW;
- (2) Seed dealer's licenses required by chapter 15.49 RCW;
- (3) Pesticide dealer's licenses required by chapter 15.58 RCW;
- (4) Shopkeeper's licenses required by chapter 18.64 RCW;
- (5) Egg dealer's licenses required by chapter 69.25 RCW. [2007 c 52 § 1; 2000 c 171 § 43; 1988 c 5 § 3; 1982 c 182 § 11.]

Chapter 19.09 RCW

CHARITABLE SOLICITATIONS

Sections

19.09.010	Purpose.
19.09.020	Definitions.
19.09.075	Charitable organizations—Application for registration—Contents—Fee.
19.09.076	Charitable organizations—Application for registration—Exemptions—Soliciting contributions.
19.09.079	Commercial fund raisers—Application for registration—Contents—Fee.
19.09.085	Registration—Duration—Change—Notice to reregister.
19.09.095	Repealed.
19.09.097	Contract with commercial fund raiser—Limitations—Registration form—Contents—Copy—Fee.
19.09.100	Conditions applicable to solicitations.
19.09.210	Financial statements.
19.09.440	Annual report by secretary of state.
19.09.500	Charitable organizations—Financial reports and information.
19.09.510	Charitable organization education program.
19.09.520	Charitable organization education program—Fees.
19.09.530	Charitable organization education account.
19.09.540	Rules—Tiered independent financial reporting.
19.09.550	Charitable advisory council.
19.09.560	Reciprocal agreements with other states.

19.09.010 Purpose. The purpose of this chapter is to:

(1) Provide citizens of the state of Washington with information relating to persons and organizations who solicit funds from the public for public charitable purposes in order to prevent (a) deceptive and dishonest practices in the conduct of soliciting funds for or in the name of charity; and (b) improper use of contributions intended for charitable purposes;

(2) Improve the transparency and accountability of organizations that solicit funds from the public for charitable purposes; and

(3) Develop and operate educational programs or partnerships for charitable organizations, board members, and the general public that help build public confidence and trust in organizations that solicit funds from the public for charitable purposes. [2007 c 471 § 1; 1986 c 230 § 1; 1973 1st ex.s. c 13 § 1.]

19.09.020 Definitions. When used in this chapter, unless the context otherwise requires:

(1) A "bona fide officer or employee" of a charitable organization is one (a) whose conduct is subject to direct con-

trol by such organization; (b) who does not act in the manner of an independent contractor in his or her relation with the organization; and (c) whose compensation is not computed on funds raised or to be raised.

(2) "Charitable organization" means any entity that solicits or collects contributions from the general public where the contribution is or is purported to be used to support a charitable purpose, but does not include any commercial fund raiser, commercial fund-raising entity, commercial coventurer, or any fund-raising counsel, as defined in this section. Churches and their integrated auxiliaries are not charitable organizations, but are subject to RCW 19.09.100 (12), (15), and (18).

(3) "Charitable purpose" means any religious, charitable, scientific, testing for public safety, literary, or educational purpose or any other purpose that is beneficial to the community, including environmental, humanitarian, patriotic, or civic purposes, the support of national or international amateur sports competition, the prevention of cruelty to children or animals, the advancement of social welfare, or the benefit of law enforcement personnel, firefighters, and other persons who protect public safety. The term "charitable" is used in its generally accepted legal sense and includes relief of the poor, the distressed, or the underprivileged; advancement of religion; advancement of education or science; erecting or maintaining public buildings, monuments, or works; lessening the burdens of government; lessening neighborhood tensions; eliminating prejudice and discrimination; defending human and civil rights secured by law; and combating community deterioration and juvenile delinquency.

(4) "Commercial coventurer" means any individual or corporation, partnership, sole proprietorship, limited liability company, limited partnership, limited liability partnership, or any other legal entity, that:

(a) Is regularly and primarily engaged in making sales of goods or services for profit directly to the general public;

(b) Is not otherwise regularly or primarily engaged in making charitable solicitations in this state or otherwise raising funds in this state for one or more charitable organizations;

(c) Represents to prospective purchasers that, if they purchase a good or service from the commercial coventurer, a portion of the sales price or a sum of money or some other specified thing of value will be donated to a named charitable organization; and

(d) Does not ask purchasers to make checks or other instruments payable to a named charitable organization or any entity other than the commercial coventurer itself under its regular commercial name.

(5) "Commercial fund raiser" or "commercial fund-raising entity" means any entity that for compensation or other consideration within this state directly or indirectly solicits or receives contributions for or on behalf of any charitable organization or charitable purpose, or that is engaged in the business of or is held out to persons in this state as independently engaged in the business of soliciting or receiving contributions for such purposes. However, a commercial coventurer, fund-raising counsel, or consultant is not a commercial fund raiser or commercial fund-raising entity.

(6) "Compensation" means salaries, wages, fees, commissions, or any other remuneration or valuable consideration.

(7) "Contribution" means the payment, donation, promise, or grant, for consideration or otherwise, of any money or property of any kind or value which contribution is wholly or partly induced by a solicitation. Reference to dollar amounts of "contributions" or "solicitations" in this chapter means in the case of payments or promises to pay for merchandise or rights of any description, the value of the total amount paid or promised to be paid for such merchandise or rights.

(8) "Cost of solicitation" means and includes all direct and indirect costs, expenditures, debts, obligations, salaries, wages, commissions, fees, or other money or thing of value paid or incurred in making a solicitation.

(9) "Entity" means an individual, organization, group, association, partnership, corporation, agency or unit of state government, or any combination thereof.

(10) "Fund-raising counsel" or "consultant" means any entity or individual who is retained by a charitable organization, for a fixed fee or rate, that is not computed on a percentage of funds raised, or to be raised, under a written agreement only to plan, advise, consult, or prepare materials for a solicitation of contributions in this state, but who does not manage, conduct, or carry on a fund-raising campaign and who does not solicit contributions or employ, procure, or engage any compensated person to solicit contributions, and who does not at any time have custody or control of contributions. A volunteer, employee, or salaried officer of a charitable organization maintaining a permanent establishment or office in this state is not a fund-raising counsel. An attorney, investment counselor, or banker who advises an individual, corporation, or association to make a charitable contribution is not a fund-raising counsel as a result of the advice.

(11) "General public" or "public" means any individual located in Washington state without a membership or other official relationship with a charitable organization before a solicitation by the charitable organization.

(12) "Membership" means that for the payment of fees, dues, assessments, etc., an organization provides services and confers a bona fide right, privilege, professional standing, honor, or other direct benefit, in addition to the right to vote, elect officers, or hold office. The term "membership" does not include those persons who are granted a membership upon making a contribution as the result of solicitation.

(13) "Other employee" of a charitable organization means any person (a) whose conduct is subject to direct control by such organization; (b) who does not act in the manner of any independent contractor in his or her relation with the organization; and (c) who is not engaged in the business of or held out to persons in this state as independently engaged in the business of soliciting contributions for charitable purposes or religious activities.

(14) "Political organization" means those organizations whose activities are subject to chapter 42.17 RCW or the Federal Elections Campaign Act of 1971, as amended.

(15) "Religious organization" means those entities that are not churches or integrated auxiliaries and includes non-denominational ministries, interdenominational and ecumenical organizations, mission organizations, speakers' organizations, faith-based social agencies, and other entities whose

principal purpose is the study, practice, or advancement of religion.

(16) "Secretary" means the secretary of state.

(17) "Signed" means hand-written, or, if the secretary adopts rules facilitating electronic filing that pertain to this chapter, in the manner prescribed by those rules.

(18)(a) "Solicitation" means any oral or written request for a contribution, including the solicitor's offer or attempt to sell any property, rights, services, or other thing in connection with which:

(i) Any appeal is made for any charitable purpose;

(ii) The name of any charitable organization is used as an inducement for consummating the sale; or

(iii) Any statement is made that implies that the whole or any part of the proceeds from the sale will be applied toward any charitable purpose or donated to any charitable organization.

(b) The solicitation shall be deemed completed when made, whether or not the person making it receives any contribution or makes any sale.

(c) "Solicitation" does not include bingo activities, raffles, and amusement games conducted under chapter 9.46 RCW and applicable rules of the Washington state gambling commission. [2007 c 471 § 2; 2002 c 74 § 1; 1993 c 471 § 1; 1986 c 230 § 2; 1983 c 265 § 1; 1979 c 158 § 80; 1977 ex.s. c 222 § 1; 1974 ex.s. c 106 § 1; 1973 1st ex.s. c 13 § 2.]

Captions not law—2002 c 74: "Section captions used in this act are not part of the law." [2002 c 74 § 21.]

19.09.075 Charitable organizations—Application for registration—Contents—Fee. An application for registration as a charitable organization shall be submitted in the form prescribed by rule by the secretary, containing, but not limited to, the following:

(1) The name, address, and telephone number of the charitable organization;

(2) The name(s) under which the organization will solicit contributions;

(3) The name, address, and telephone number of the officers or of persons accepting responsibility for the organization;

(4) The names of the three officers or employees receiving the greatest amount of compensation from the organization;

(5) The purpose of the organization;

(6)(a) Whether the organization is exempt from federal income tax; and if so the organization shall attach to its application a copy of the letter by which the internal revenue service granted such status; and

(b) The name and address of the entity that prepares, reviews, or audits the financial statement of the organization;

(7) A solicitation report of the organization for the preceding accounting year including:

(a) The types of solicitations conducted;

(b) The total dollar value of contributions received from solicitations and from all other sources received on behalf of the charitable purpose of the charitable organization;

(c) The total amount of money applied to charitable purposes, fund raising costs, and other expenses; and

(d) The name, address, and telephone number of any commercial fund raiser used by the organization;

(8) An irrevocable appointment of the secretary to receive service of process in noncriminal proceedings as provided in RCW 19.09.305; and

(9) The total revenue of the preceding fiscal year.

The solicitation report required to be submitted under subsection (7) of this section shall be in the form prescribed by rule by the secretary, or as agreed to by the secretary and a charitable organization. The president, treasurer, or comparable officer of the organization must sign and date the application. The application shall be submitted with a nonrefundable filing fee which shall be in an amount to be established by the secretary by rule. In determining the amount of this application fee, the secretary may consider factors such as the entity's annual budget and its federal income tax status. If the secretary determines that the application is complete, the application shall be filed and the applicant deemed registered. [2007 c 471 § 3; 2002 c 74 § 2; 1993 c 471 § 3; 1986 c 230 § 4; 1983 c 265 § 5.]

Captions not law—2002 c 74: See note following RCW 19.09.020.

19.09.076 Charitable organizations—Application for registration—Exemptions—Soliciting contributions. (1) The application requirements of RCW 19.09.075 do not apply to:

(a) Any charitable organization raising less than an amount as set by rule adopted by the secretary in any accounting year when all the activities of the organization, including all fund raising activities, are carried on by persons who are unpaid for their services and no part of the charitable organization's assets or income inures to the benefit of or is paid to any officer or member of the organization;

(b) Political organizations; or

(c) Appeals for funds on behalf of a specific individual named in the solicitation, but only if all of the proceeds of the solicitation are given to or expended for the direct benefit of that individual.

(2) All entities soliciting contributions for charitable purposes shall comply with the requirements of RCW 19.09.100. [2007 c 471 § 4; 1994 c 287 § 1; 1993 c 471 § 4; 1986 c 230 § 5.]

19.09.079 Commercial fund raisers—Application for registration—Contents—Fee. An application for registration as a commercial fund raiser shall be submitted in the form prescribed by the secretary, containing, but not limited to, the following:

(1) The name, address, and telephone number of the commercial fund-raising entity;

(2) The name(s), address(es), and telephone number(s) of the owner(s) and principal officer(s) of the commercial fund-raising entity;

(3) The name, address, and telephone number of the individual responsible for the activities of the commercial fund-raising entity in Washington;

(4) The names of the three officers or employees receiving the greatest amount of compensation from the commercial fund-raising entity;

(5) The name and address of the entity that prepares, reviews, or audits the financial statement of the organization;

(6) A solicitation report of the commercial fund-raising entity for the preceding accounting year, including:

- (a) The types of fund raising services conducted;
- (b) The names of charitable organizations required to register under RCW 19.09.065 for whom fund raising services have been performed;
- (c) The total value of contributions received on behalf of charitable organizations required to register under RCW 19.09.065 by the commercial fund raiser, affiliate of the commercial fund raiser, or any entity retained by the commercial fund raiser; and
- (d) The amount of money disbursed to charitable organizations for charitable purposes, net of fund raising costs paid by the charitable organization as stipulated in any agreement between charitable organizations and the commercial fund raiser;

(7) The name, address, and telephone number of any commercial fund raiser that was retained in the conduct of providing fund raising services; and

(8) An irrevocable appointment of the secretary to receive service of process in noncriminal proceedings as provided in RCW 19.09.305.

The application shall be signed by an officer or owner of the commercial fund raiser and shall be submitted with a non-refundable fee in an amount to be established by rule of the secretary. If the secretary determines that the application is complete, the application shall be filed and the applicant deemed registered. [2007 c 471 § 5; 1993 c 471 § 5; 1986 c 230 § 7; 1983 c 265 § 15.]

19.09.085 Registration—Duration—Change—Notice to reregister. (1) Registration under this chapter shall be effective for one year or longer, as established by the secretary.

(2) Reregistration required under RCW 19.09.075 or 19.09.079 shall be submitted to the secretary no later than the date established by the secretary by rule.

(3) Entities required to register under this chapter shall file a notice of change of information within thirty days of any change in the information contained in RCW 19.09.075 (1) through (9) or 19.09.079 (1) through (7).

(4) The secretary shall notify entities registered under this chapter of the need to reregister upon the expiration of their current registration. The notification shall be by mail, sent at least sixty days prior to the expiration of their current registration. Failure to register shall not be excused by a failure of the secretary to mail the notice or by an entity's failure to receive the notice. [2007 c 471 § 6; 1993 c 471 § 6; 1986 c 230 § 8; 1983 c 265 § 8.]

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

19.09.097 Contract with commercial fund raiser—Limitations—Registration form—Contents—Copy—Fee. (1) No charitable organization may contract with a commercial fund raiser for any fund raising service or activity unless its contract requires that both parties comply with the law and permits officers of the charity reasonable access to:

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(b) the fund raisers' operations including without limitation the right to be present during any telephone solicitation; and (c) the names of all of the fund raisers' employees or staff who are conducting fund raising or charitable solicitations on behalf of the charitable organization. In addition, the contract shall specify the amount of raised funds that the charitable organization will receive or the method of computing that amount, the amount of compensation of the commercial fund raiser or the method of computing that amount, and whether the compensation is fixed or contingent.

(2) Before a charitable organization may contract with a commercial fund raiser for any fund raising service or activity, the charitable organization and commercial fund raiser shall complete and file a registration form with the secretary. The registration shall be filed by the charitable organization in the form prescribed by the secretary. The registration shall contain, but not be limited to, the following information:

(a) The name and registration number of the commercial fund raiser;

(b) The name of the surety or sureties issuing the bond required by RCW 19.09.190, the aggregate amount of such bond or bonds, the bond number(s), original effective date(s), and termination date(s);

(c) The name and registration number of the charitable organization;

(d) The name of the representative of the commercial fund raiser who will be responsible for the conduct of the fund raising;

(e) The type(s) of service(s) to be provided by the commercial fund raiser;

(f) The dates such service(s) will begin and end;

(g) The terms of the agreement between the charitable organization and commercial fund raiser relating to:

(i) Amount or percentages of amounts to inure to the charitable organization;

(ii) Limitations placed on the maximum amount to be raised by the fund raiser, if the amount to inure to the charitable organization is not stated as a percentage of the amount raised;

(iii) Costs of fund raising that will be the responsibility of the charitable organization, regardless of whether paid as a direct expense, deducted from the amounts disbursed, or otherwise; and

(iv) The manner in which contributions received directly by the charitable organization, not the result of services provided by the commercial fund raiser, will be identified and used in computing the fee owed to the commercial fund raiser; and

(h) The names of any entity to which more than ten percent of the total anticipated fund raising cost is to be paid, and whether any principal officer or owner of the commercial fund raiser or relative by blood or marriage thereof is an owner or officer of any such entity.

(3) A correct copy of the contract shall be filed with the secretary before the commencement of any campaign.

(4) The registration form shall be submitted with a non-refundable filing fee in an amount to be established by rule of the secretary and shall be signed by an owner or principal officer of the commercial fund raiser and the president, trea-

surer, or comparable officer of the charitable organization. [2007 c 471 § 7; 1993 c 471 § 7; 1986 c 230 § 10.]

19.09.100 Conditions applicable to solicitations. The following conditions apply to solicitations as defined by RCW 19.09.020:

(1) A charitable organization, whether or not required to register pursuant to this chapter, that directly solicits contributions from the public in this state shall make the following clear and conspicuous disclosures at the point of solicitation:

(a) The name of the individual making the solicitation;

(b) The identity of the charitable organization and the city of the principal place of business of the charitable organization;

(c) If requested by the solicitee, the published number in the office of the secretary for the donor to obtain additional financial disclosure information on file with the secretary.

(2) A commercial fund raiser shall clearly and conspicuously disclose at the point of solicitation:

(a) The name of the individual making the solicitation;

(b) The name of the entity for which the fund raiser is an agent or employee and the name and city of the charitable organization for which the solicitation is being conducted; and

(c) If requested by the solicitee, the published number in the office of the secretary for the donor to obtain additional financial disclosure information on file with the secretary. The disclosure must be made during an oral solicitation of a contribution, and at the same time at which a written request for a contribution is made.

(3) A person or organization soliciting charitable contributions by telephone shall make the disclosures required under subsection (1) or (2) of this section in the course of the solicitation but prior to asking for a commitment for a contribution from the solicitee, and in writing to any solicitee that makes a pledge within five working days of making the pledge. If the person or organization sends any materials to the person or organization solicited before the receipt of any contribution, those materials shall include the disclosures required in subsection (1) or (2) of this section, whichever is applicable.

(4) In the case of a solicitation by advertisement or mass distribution, including posters, leaflets, automatic dialing machines, publication, and audio or video broadcasts, it shall be clearly and conspicuously disclosed in the body of the solicitation material that:

(a) The solicitation is conducted by a named commercial fund raiser, if it is;

(b) The notice of solicitation required by the charitable solicitation act is on file with the secretary's office; and

(c) The potential donor can obtain additional financial disclosure information at a published number in the office of the secretary.

(5) A container or vending machine displaying a solicitation must also display in a clear and conspicuous manner the name of the charitable organization for which funds are solicited, the name, business address, and telephone number of the individual and any commercial fund raiser responsible for collecting funds placed in the containers or vending machines, and the following statement: "This charity is cur-

rently registered with the secretary's office under the charitable solicitation act, registration number"

(6) A commercial fund raiser shall not represent that tickets to any fund raising event will be donated for use by another person unless all the following requirements are met:

(a) The commercial fund raiser prior to conducting a solicitation has written commitments from persons stating that they will accept donated tickets and specifying the number of tickets they will accept;

(b) The written commitments are kept on file by the commercial fund raiser for three years and are made available to the secretary, attorney general, or county prosecutor on demand;

(c) The contributions solicited for donated tickets may not be more than the amount representing the number of ticket commitments received from persons and kept on file under (a) of this subsection; and

(d) Not later than seven calendar days prior to the date of the event for which ticket donations are solicited, the commercial fund raiser shall give all donated tickets to the persons who made the written commitments to accept them.

(7) Each person or organization soliciting charitable contributions shall not represent orally or in writing that:

(a) The charitable contribution is tax deductible unless the charitable organization for which charitable contributions are being solicited or to which tickets for fund raising events or other services or goods will be donated, has applied for and received from the internal revenue service a letter of determination granting tax deductible status to the charitable organization;

(b) The person soliciting the charitable contribution is a volunteer or words of similar meaning or effect that create the impression that the person soliciting is not a paid solicitor unless such person is unpaid for his or her services;

(c) The person soliciting the charitable contribution is a member, staffer, helper, or employee of the charitable organization or words of similar meaning or effect that create the impression that the person soliciting is not a paid solicitor if the person soliciting is employed, contracted, or paid by a commercial fund raiser.

(8) If the charitable organization is associated with, or has a name that is similar to, any unit of government each person or organization soliciting contributions shall disclose to each person solicited whether the charitable organization is or is not part of any unit of government and the true nature of its relationship to the unit of government. This subsection does not apply to a foundation or other charitable organization that is organized, operated, or controlled by or in connection with a registered public charity, including any governmental agency or unit, from which it derives its name.

(9) No person may, in conducting any solicitation, use the name "police," "sheriff," "firefighter," "firefighters," or a similar name unless properly authorized by a bona fide police, sheriff, or firefighter organization or police, sheriff, or fire department. A proper authorization shall be in writing and signed by two authorized officials of the organization or department and shall be filed with the secretary.

(10) A person may not, in conducting any solicitation, use the name of a federally chartered or nationally recognized military veterans' service organization as determined by the United States veterans' administration unless authorized in

writing by the highest ranking official of that organization in this state.

(11) A charitable organization shall comply with all local governmental regulations that apply to soliciting for or on behalf of charitable organizations.

(12) An entity soliciting contributions for a charitable purpose shall not include in any solicitation, or in any advertising material for a solicitation, or in any promotional plan for a solicitation, any statement that is false, misleading, or deceptive. All solicitations, advertising material, and promotional plans must fully and fairly disclose the identity of the entity on whose behalf the solicitation is made.

(13) Solicitations shall not be conducted by a charitable organization or commercial fund raiser that has, or if a corporation, its officers, directors, or principals have, been convicted of a crime involving solicitations for or on behalf of a charitable organization in this state, the United States, or any other state or foreign country within the past ten years or has been subject to any permanent injunction or administrative order or judgment under RCW 19.86.080 or 19.86.090, involving a violation or violations of RCW 19.86.020, within the past ten years, or of restraining a false or misleading promotional plan involving solicitations for charitable organizations.

(14) No charitable organization or commercial fund raiser subject to this chapter may use or exploit the fact of registration under this chapter so as to lead the public to believe that registration constitutes an endorsement or approval by the state, but the use of the following is not deemed prohibited: "Currently registered with the Washington state secretary of state as required by law. Registration number"

(15) No entity may engage in any solicitation for contributions for or on behalf of any charitable organization or commercial fund raiser unless the charitable organization or commercial fund raiser is currently registered with the secretary.

(16) No charitable organization or commercial fundraiser may engage in any solicitation for contributions unless it complies with all provisions of this chapter.

(17) No entity may place a telephone call to a donor or potential donor for the purpose of charitable solicitation before eight o'clock a.m. or after nine o'clock p.m. pacific time.

(18) No entity may, when contacting a donor or potential donor for the purpose of charitable solicitation, engage in any conduct the natural consequence of which is to harass, intimidate, or torment any person in connection with the contact.

(19) Failure to comply with subsections (1) through (18) of this section is a violation of this chapter. [2007 c 471 § 8; 2007 c 218 § 64; 1994 c 287 § 2; 1993 c 471 § 9; 1986 c 230 § 11; 1983 c 265 § 9; 1982 c 227 § 7; 1977 ex.s. c 222 § 6; 1974 ex.s. c 106 § 3; 1973 1st ex.s. c 13 § 10.]

Reviser's note: This section was amended by 2007 c 218 § 64 and by 2007 c 471 § 8, each without reference to the other. Both amendments are incorporated in the publication of this section under RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

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

Effective date—1982 c 227: "Sections 5 and 6 of this act shall take effect June 30, 1983. The remaining sections of this act are necessary for the immediate preservation of the public peace, health, and safety, the support of

the state government and its existing public institutions, and shall take effect March 1, 1982." [1982 c 227 § 25.]

19.09.210 Financial statements. Upon the request of the attorney general or the county prosecutor, a charitable organization or commercial fund raiser shall submit a financial statement containing, but not limited to, the following information:

(1) The gross amount of the contributions pledged and the gross amount collected.

(2) The amount thereof, given or to be given to charitable purposes represented together with details as to the manner of distribution as may be required.

(3) The aggregate amount paid and to be paid for the expenses of such solicitation.

(4) The amounts paid to and to be paid to commercial fund raisers or charitable organizations.

(5) Copies of any annual or periodic reports furnished by the charitable organization of its activities during or for the same fiscal period. [2007 c 471 § 9; 1993 c 471 § 12; 1986 c 230 § 13; 1983 c 265 § 10; 1982 c 227 § 10; 1977 ex.s. c 222 § 10; 1975 1st ex.s. c 219 § 1; 1973 1st ex.s. c 13 § 21.]

Effective date—1982 c 227: See note following RCW 19.09.100.

19.09.440 Annual report by secretary of state. (1) Annually, the secretary of state shall publish a report indicating:

(a) For each charitable organization registered under RCW 19.09.075 the percentage relationship between (i) the total amount of money applied to charitable purposes; and (ii) the dollar value of total expenditures, including the total amount of money applied to charitable purposes, fund-raising costs, and administrative expenses;

(b) For each commercial fund raiser registered under RCW 19.09.079 the percentage relationship between (i) the amount of money disbursed to charitable organizations for charitable purposes; and (ii) the total value of contributions received on behalf of charitable organizations by the commercial fund raiser; and

(c) Such other information as the secretary of state deems appropriate.

(2) The secretary of state may use the latest information obtained pursuant to RCW 19.09.075, 19.09.079, or otherwise under chapter 19.09 RCW to prepare the report. [2007 c 471 § 10; 1993 c 471 § 42.]

19.09.500 Charitable organizations—Financial reports and information. Charitable organizations must ensure that their boards, or a committee thereof, have reviewed and accepted any financial report that the organization may be required to file with the office of the secretary. Charitable organizations must also ensure that the financial information included in the filing fairly represents, in all material respects, the financial condition and results of operations of the organization as of, and for, the periods presented to the secretary for filing. If the financial information submitted to the secretary is incorrect in any material way, the charitable organization may be subject to penalties as provided under RCW 19.09.279. [2007 c 471 § 11.]

19.09.510 Charitable organization education program. The secretary may, in conjunction with the attorney general, develop and operate an education program for charitable organizations, their board members, and the general public. To the extent practicable, the secretary shall consult with the nonprofit and charitable sector and the charitable advisory council created in RCW 19.09.550 to develop curriculum and other materials intended to educate charitable organizations, their board members, and the general public. [2007 c 471 § 12.]

19.09.520 Charitable organization education program—Fees. (1) To provide for a charitable organization education program as authorized in RCW 19.09.510, the secretary may establish fees on registrations for entities filing with the secretary as organizations pursuant to this chapter.

(2) The fees authorized in this section are in addition to the existing fees established by the secretary in rule for organizations required to register under this chapter. [2007 c 471 § 13.]

19.09.530 Charitable organization education account. The charitable organization education account is created in [the] state treasury. All receipts from the fees authorized in RCW 19.09.520(1) must be deposited into the account. Moneys in the account may be spent only after appropriation. Expenditures from the account may be used only for the charitable organization education program authorized in RCW 19.09.510. [2007 c 471 § 14.]

19.09.540 Rules—Tiered independent financial reporting. The secretary is authorized to adopt rules, in accordance with chapter 34.05 RCW, that establish a set of tiered independent financial reporting requirements for charitable organizations required to register with the secretary pursuant to this chapter. Rules adopted under this section shall include, but not be limited to, substantially the following:

(1) An initial filing requirement for all charitable organizations as currently required in this chapter;

(2) A financial reporting requirement for charitable organizations that have more than one million dollars in annual gross revenue averaged over the last three fiscal years. The secretary may require charitable organizations that meet this threshold to have the federal financial reporting forms the organization normally files to be completed or reviewed by a third party who normally prepares or reviews the forms in the ordinary course of their business. These forms must be submitted to the secretary; and

(3) A financial reporting requirement for charitable organizations with more than three million dollars in annual gross revenue averaged over the last three fiscal years. The secretary may require charitable organizations that meet this threshold to submit to the secretary audited financial statements prepared by an independent certified public accountant. [2007 c 471 § 15.]

19.09.550 Charitable advisory council. (1) The secretary is authorized to create a charitable advisory council to

consist of at least eleven, but not more than twenty-one, members. Members of a charitable advisory council shall:

(a) Be appointed by the secretary, with all members serving at the pleasure of the secretary and all terms expiring no later than the term of the appointing secretary;

(b) Represent a broad range of charities by size, purpose, geographic region of the state, and general expertise in the management and leadership of charitable organizations; and

(c) Annually vote to elect one of its members to serve as chairperson.

(2) The secretary shall not compensate members of the charitable advisory council but may provide reimbursement to members for expenses that are incurred in the conduct of their official duties.

(3) The charitable advisory council shall advise the secretary in determining training and educational needs of charitable organizations and model policies related to governance and administration of charitable organizations in accordance with fiduciary principles, assist the secretary in identifying emerging issues and trends affecting charitable organizations, and advise the secretary on other related issues at the request of the secretary. [2007 c 471 § 16.]

19.09.560 Reciprocal agreements with other states.

(1) The secretary may enter into reciprocal agreements with the appropriate authority of any other state for the purpose of exchanging information with respect to charitable organizations and commercial fund raisers.

(2) Pursuant to such agreements the secretary may:

(a) Accept information filed by a charitable organization or commercial fund raisers with the appropriate authority of another state in lieu of the information required to be filed in accordance with this chapter, if the information is substantially similar to the information required under this chapter; and

(b) Grant exemptions from the requirements for the filing of annual registration statements with the office to charitable organizations organized under the laws of another state having their principal place of business outside this state whose funds are derived principally from sources outside this state and that have been exempted from the filing of registration statements by the statute under whose laws they are organized if such a state has a statute similar in substance to this chapter.

(3) The secretary may adopt rules relating to reciprocal agreements consistent with this section. [2007 c 471 § 17.]

Chapter 19.16 RCW COLLECTION AGENCIES

Sections

19.16.410 Rules, orders, decisions, etc.

19.16.410 Rules, orders, decisions, etc. The board may adopt rules, make specific decisions, orders, and rulings, including therein demands and findings, and take other necessary action for the implementation and enforcement of the board's duties under this chapter. [2007 c 256 § 4; 1971 ex.s. c 253 § 32.]

Chapter 19.27 RCW
STATE BUILDING CODE

Sections

- 19.27.500 Nightclubs—Automatic sprinkler system—Building code council shall adopt rules.
19.27.510 "Nightclub" defined.

19.27.500 Nightclubs—Automatic sprinkler system—Building code council shall adopt rules. (1) The building code council shall adopt rules requiring that all nightclubs be provided with an automatic sprinkler system. Rules adopted by the council shall consider applicable nationally recognized fire and building code standards and local conditions and require that the automatic sprinkler systems be installed by December 1, 2009.

(2) The council shall transmit to the fire protection policy board copies of the rules as adopted. The fire protection policy board shall respond to the council within sixty days after receipt of the rules. If changes are recommended by the fire protection policy board the council shall immediately consider those changes to the rules through its rule-making procedures. [2007 c 434 § 1; 2005 c 148 § 1.]

19.27.510 "Nightclub" defined. As used in this chapter:

"Nightclub" means an A-2 occupancy use under the 2006 international building code in which the aggregate area of concentrated use of unfixed chairs and standing space that is specifically designated and primarily used for dancing or viewing performers exceeds three hundred fifty square feet, excluding adjacent lobby areas. "Nightclub" does not include theaters with fixed seating, banquet halls, or lodge halls. [2007 c 434 § 2; 2005 c 148 § 2.]

Chapter 19.28 RCW
ELECTRICIANS AND ELECTRICAL INSTALLATIONS

Sections

- 19.28.261 Exemptions from RCW 19.28.161 through 19.28.271.
19.28.321 Enforcement—State electrical inspectors—Qualifications—Salaries and expenses.

19.28.261 Exemptions from RCW 19.28.161 through 19.28.271. (1) Nothing in RCW 19.28.161 through 19.28.271 shall be construed to require that a person obtain a license or a certified electrician in order to do electrical work at his or her residence or farm or place of business or on other property owned by him or her unless the electrical work is on the construction of a new building intended for rent, sale, or lease. However, if the construction is of a new residential building with up to four units intended for rent, sale, or lease, the owner may receive an exemption from the requirement to obtain a license or use a certified electrician if he or she provides a signed affidavit to the department stating that he or she will be performing the work and will occupy one of the units as his or her principal residence. The owner shall apply to the department for this exemption and may only receive an exemption once every twenty-four months. It is intended that the owner receiving this exemption shall occupy the unit as

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his or her principal residence for twenty-four months after completion of the units.

(2) Nothing in RCW 19.28.161 through 19.28.271 shall be intended to derogate from or dispense with the requirements of any valid electrical code enacted by a city or town pursuant to RCW 19.28.010(3), except that no code shall require the holder of a certificate of competency to demonstrate any additional proof of competency or obtain any other license or pay any fee in order to engage in the electrical construction trade.

(3) RCW 19.28.161 through 19.28.271 shall not apply to common carriers subject to Part I of the Interstate Commerce Act, nor to their officers and employees.

(4) Nothing in RCW 19.28.161 through 19.28.271 shall be deemed to apply to the installation or maintenance of telephone, telegraph, radio, or television wires and equipment; nor to any electrical utility or its employees in the installation, repair, and maintenance of electrical wiring, circuits, and equipment by or for the utility, or comprising a part of its plants, lines or systems.

(5) The licensing provisions of RCW 19.28.161 through 19.28.271 shall not apply to:

(a) Persons making electrical installations on their own property or to regularly employed employees working on the premises of their employer, unless the electrical work is on the construction of a new building intended for rent, sale, or lease;

(b) Employees of an employer while the employer is performing utility type work of the nature described in RCW 19.28.091 so long as such employees have registered in the state of Washington with or graduated from a state-approved outside lineworker apprenticeship course that is recognized by the department and that qualifies a person to perform such work;

(c) Any work exempted under RCW 19.28.091(6); and

(d) Certified plumbers, certified residential plumbers, or plumber trainees meeting the requirements of chapter 18.106 RCW and performing exempt work under RCW 19.28.091(8).

(6) Nothing in RCW 19.28.161 through 19.28.271 shall be construed to restrict the right of any householder to assist or receive assistance from a friend, neighbor, relative or other person when none of the individuals doing the electrical installation hold themselves out as engaged in the trade or business of electrical installations.

(7) Nothing precludes any person who is exempt from the licensing requirements of this chapter under this section from obtaining a journeyman or specialty certificate of competency if they otherwise meet the requirements of this chapter. [2007 c 218 § 83; 2003 c 399 § 302; 2001 c 211 § 19; 1998 c 98 § 2; 1994 c 157 § 1; 1992 c 240 § 3; 1986 c 156 § 16; 1983 c 206 § 21; 1980 c 30 § 12. Formerly RCW 19.28.610.]

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

Part headings not law—2003 c 399: See note following RCW 19.28.006.

19.28.321 Enforcement—State electrical inspectors—Qualifications—Salaries and expenses. The director of labor and industries of the state of Washington and the officials of all incorporated cities and towns where electrical

inspections are required by local ordinances shall have power and it shall be their duty to enforce the provisions of this chapter in their respective jurisdictions. The director of labor and industries shall appoint a chief electrical inspector and may appoint other electrical inspectors as the director deems necessary to assist the director in the performance of the director's duties. The chief electrical inspector, subject to the review of the director, shall be responsible for providing the final interpretation of adopted state electrical standards, rules, and policies for the department and its inspectors, assistant inspectors, electrical plan examiners, and other individuals supervising electrical program personnel. If a dispute arises within the department regarding the interpretation of adopted state electrical standards, rules, or policies, the chief electrical inspector, subject to the review of the director, shall provide the final interpretation of the disputed standard, rule, or policy. All electrical inspectors appointed by the director of labor and industries shall have not less than: Four years experience as journeyman electricians in the electrical construction trade installing and maintaining electrical wiring and equipment, or two years electrical training in a college of electrical engineering of recognized standing and four years continuous practical electrical experience in installation work, or four years of electrical training in a college of electrical engineering of recognized standing and two years continuous practical electrical experience in electrical installation work; or four years experience as a journeyman electrician performing the duties of an electrical inspector employed by the department or a city or town with an approved inspection program under RCW 19.28.141, except that for work performed in accordance with the national electrical safety code and covered by this chapter, such inspections may be performed by a person certified as an outside journeyman lineworker, under RCW 19.28.261(5)(b), with four years experience or a person with four years experience as a certified outside journeyman lineworker performing the duties of an electrical inspector employed by an electrical utility. Such state inspectors shall be paid such salary as the director of labor and industries shall determine, together with their travel expenses in accordance with RCW 43.03.050 and 43.03.060 as now existing or hereafter amended. As a condition of employment, inspectors hired exclusively to perform inspections in accordance with the national electrical safety code must possess and maintain certification as an outside journeyman lineworker. The expenses of the director of labor and industries and the salaries and expenses of state inspectors incurred in carrying out the provisions of this chapter shall be paid entirely out of the electrical license fund, upon vouchers approved by the director of labor and industries. [2007 c 218 § 84; 2001 c 211 § 21; 1997 c 309 § 4; 1986 c 156 § 4; 1975-'76 2nd ex.s. c 34 § 61; 1967 c 88 § 1; 1935 c 169 § 3; RRS § 8307-3. Formerly RCW 19.28.070, 19.28.080, 19.28.090, 19.28.100, 19.28.110.]

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

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

Chapter 19.29 RCW ELECTRICAL CONSTRUCTION

Sections

19.29.010 Rules for use of electrical apparatus or construction.

19.29.010 Rules for use of electrical apparatus or construction. It shall be unlawful from and after the passage of this chapter for any officer, agent, or employee of the state of Washington, or of any county, city or other political subdivision thereof, or for any other person, firm or corporation, or its officers, agents or employees, to run, place, erect, maintain, or use any electrical apparatus or construction, except as provided in the rules of this chapter.

Rule 1. No wire or cable, except the neutral, carrying a current of less than seven hundred fifty volts of electricity within the corporate limits of any city or town shall be run, placed, erected, maintained or used on any insulator the center of which is less than thirteen inches from the center line of any pole. And no such wire, except the neutral, shall be run past any pole to which it is not attached at a distance of less than thirteen inches from the center line thereof. This rule shall not apply to any wire or cable where the same is run from under ground and placed vertically on the pole; nor to any wire or cable where the same is attached to the top of the pole; nor to a pole top fixture as between it and the same pole; nor to any wire or cable between the points where the same is made to leave any pole or fixture thereon for the purpose of entering any building or other structure and the point of attachment to such building or structure; nor to any jumper wire or cable carrying a current or connected with a transformer or other appliance on the same pole; nor to bridle or jumper wires on any pole which are attached to or connected with signal wires on the same pole; nor to any aerial cable as between such cable and any pole upon which it originates or terminates; nor to exclusive telephone or telegraph toll lines; nor to aerial cables containing telephone, telegraph, or signal wires, or wires continuing from same, where the cable is attached to poles on which no wires or cables other than the wires continuing from said cable are maintained, provided, that electric light or power wires or cables are in no case maintained on the same side of the street or highway on which said aerial cable is placed.

Rule 2. No wire or cable used to carry a current of over seven hundred fifty volts of electricity within the incorporate limits of any city or town shall be run, placed, erected, maintained or used on any insulator the center of which is nearer than twenty-four inches to the center line of any pole. And no such wire or cable shall be run past any pole to which it is not attached at a distance of less than twenty-four inches from the center line thereof: PROVIDED, That this shall not apply to any wire or cable where the same is run from under ground and placed vertically on the pole; nor to any wire or cable where the same is attached to the top of the pole; nor to a pole top fixture, as between it and the same pole; nor to any wire or cable between the points where the same is made to leave any pole or fixture thereon for the purpose of entering any building or other structure, and the point of attachment to said building or structure; nor to any jumper wire or cable carrying a current or connected with transformers or other appliances on the same pole: PROVIDED FURTHER, That

where said wire or cable is run vertically, it shall be rigidly supported and where possible run on the ends of the cross-arms.

Rule 3. No wire or cable carrying a current of more than seven hundred fifty volts, and less than seventy-five hundred volts of electricity, shall be run, placed, erected, maintained or used within three feet of any wire or cable carrying a current of seven hundred fifty volts or less of electricity; and no wire or cable carrying a current of more than seventy-five hundred volts of electricity shall be run, placed, erected, maintained, or used within seven feet of any wire or cable carrying less than seventy-five hundred volts: PROVIDED, That the foregoing provisions of this paragraph shall not apply to any wire or cable within buildings or other structures; nor where the same are run from under ground and placed vertically upon the pole; nor to any service wire or cable where the same is made to leave any pole or fixture thereon for the purpose of entering any building or other structure, and the point of attachment to said building or structure; nor to any jumper wire or cable carrying a current or connected with a transformer or other appliance on the same pole: PROVIDED, That where run vertically, wires or cables shall be rigidly supported, and where possible run on the ends of the cross-arms: PROVIDED FURTHER, That as between any two wires or cables mentioned in Rules 1, 2 and 3 of this section, only the wires or cables last in point of time so run, placed, erected or maintained, shall be held to be in violation of the provisions thereof.

Rule 4. No wire or cable used for telephone, telegraph, district messenger, or call bell circuit, fire or burglar alarm, or any other similar system, shall be run, placed, erected, maintained or used on any pole at a distance of less than three feet from any wire or cable carrying a current of over three hundred volts of electricity; and in all cases (except those mentioned in exceptions to Rules 1, 2 and 3) where such wires or cables are run, above or below, or cross over or under electric light or power wires, or a trolley wire, a suitable method of construction, or insulation or protection to prevent contact shall be maintained as between such wire or cable and such electric light, power or trolley wire; and said methods of construction, insulation or protection shall be installed by, or at the expense of the person owning the wire last placed in point of time: PROVIDED, That telephone, telegraph or signal wires or cables operated for private use and not furnishing service to the public, may be placed less than three feet from any line carrying a voltage of less than seven hundred and fifty volts.

Rule 5. Transformers, either single or in bank, that exceed a total capacity of over ten K.W. shall be supported by a double cross-arm, or some fixture equally as strong. No transformer shall be placed, erected, maintained or used on any cross-arm or other appliance on a pole upon which is placed a series electric arc lamp or arc light: PROVIDED, This shall not apply to a span wire supporting a lamp only. All aerial and underground transformers used for low potential distribution shall be subjected to an insulation test in accordance with the standardized rules of the American Institute of Electrical Engineers. In addition to this each transformer shall be tested at rated line voltage prior to each installation and shall have attached to it a tag showing the date on

which the test was made, and the name of the person making the test.

Rule 6. No wire or cable, other than ground wires, used to conduct or carry electricity, shall be placed, run, erected, maintained or used vertically on any pole without causing such wire or cable to be at all times sufficiently insulated the full length thereof to insure the protection of anyone coming in contact with said wire or cable.

Rule 7. The neutral point or wire of all transformer secondaries strung or erected for use in low potential distributing systems shall be grounded in all cases where the normal maximum difference of potential between the ground and any point in the secondary circuit will not exceed one hundred and fifty volts. When no neutral point or wire is accessible one side of the secondary circuit shall be grounded in the case of single phase transformers, and any one common point in the case of interconnected polyphase bank or banks of transformers. Where the maximum difference of potential between the ground and any point in the secondary circuit will, when grounded, exceed one hundred fifty volts, grounding shall be permitted. Such grounding shall be done in the manner provided in Rule 30.

Rule 8. In all cases where a wire or cable larger than No. 14 B.W.G. originates or terminates on insulators attached to any pin or other appliance, said wire or cable shall be attached to at least two insulators: PROVIDED HOWEVER, That this section shall not apply to service wires to buildings; nor to wires run vertically on a pole; nor to wires originating or terminating on strain insulators or circuit breakers; nor to telephone, telegraph or signal wires outside the limits of any incorporated city or town.

Rule 9. Fixtures placed or erected for the support of wires on the roofs of buildings shall be of sufficient strength to withstand all strains to which they may be subjected, due to the breaking of all wires on one side thereof, and except where insulated wires or cables are held close to fire walls by straps or rings, shall be of such height and so placed that all of the wires supported by such fixtures shall be at least seven feet above any point of roofs less than one-quarter pitch over which they pass or may be attached, and no roof fixtures or wire shall be so placed that they will interfere with the free passage of persons upon, over, to or from the roofs.

Rule 10. No guy wire or cable shall be placed, run, erected, maintained or used within the incorporate limits of any city or town on any pole or appliance to which is attached any wire or cable used to conduct electricity without causing said guy wire or cable to be efficiently insulated with circuit breakers at all times at a distance of not less than eight feet nor more than ten feet measured along the line of said guy wire or cable from each end thereof: PROVIDED, No circuit breaker shall be required at the lower end of the guy wire or cable where the same is attached to a ground anchor, nor shall any circuit breaker be required where said guy wire or cable runs direct from a grounded messenger wire to a grounded anchor rod.

Rule 11. In all span wires used for the purpose of supporting trolley wires or series arc lamps there shall be at least two circuit breakers, one of which shall at all times be maintained no less than four feet nor more than six feet distant from the trolley wire or series arc lamp, and in cases where the same is supported by a building or metallic pole, the other

circuit breaker shall be maintained at the building or at the pole: PROVIDED, That in span wires which support two or more trolley wires no circuit breaker shall be required in the span wire between any two of the trolley wires: PROVIDED FURTHER, That in span wires supporting trolley wires attached to wooden poles only the circuit breaker adjacent to the trolley wire shall be required.

Rule 12. At all points where in case of a breakdown of trolley span wires, the trolley wire would be liable to drop within seven feet of the ground, there shall be double span wires and hangers placed at such points.

Rule 13. All energized wires or appliances installed inside of any building or vault, for the distribution of electrical energy, shall be sufficiently insulated, or so guarded, located, or arranged as to protect any person from injury.

Rule 14. The secondary circuit of current transformers, the casings of all potential regulators and arc light transformers, all metal frames of all switch boards, metal oil tanks used on oil switches except where the tank is part of the conducting system, all motor and generator frames, the entire frame of the crane and the tracks of all traveling cranes and hoisting devices, shall be thoroughly grounded, as provided in Rule 30.

Rule 15. All generators and motors having a potential of more than three hundred volts shall be provided with a suitable insulated platform or mat so arranged as to permit the attendant to stand upon such platform or mat when working upon the live parts of such generators or motors.

Rule 16. Suitable insulated platforms or mats shall be provided for the use of all persons while working on any live part of switchboards on which any wire or appliance carries a potential in excess of three hundred volts.

Rule 17. Every generator, motor, transformer, switch or other similar piece of apparatus and device used in the generation, transmission or distribution of electrical energy in stations or substations, shall be either provided with a name plate giving the capacity in volts and amperes, or have this information stamped thereon in such a manner as to be clearly legible.

Rule 18. When lines of seven hundred fifty volts or over are cut out at the station or substation to allow employees to work upon them, they shall be short-circuited and grounded at the station, and shall in addition, if the line wires are bare, be short-circuited, and where possible grounded at the place where the work is being done.

Rule 19. All switches installed with overload protection devices, and all automatic overload circuit breakers must have the trip coils so adjusted as to afford complete protection against overloads and short circuits, and the same must be so arranged that no pole can be opened manually without opening all the poles, and the trip coils shall be instantly operative upon closing.

Rule 20. All feeders for electric railways must, before leaving the plant or substation, be protected by an approved circuit breaker which will cut off the circuit in case of an accidental ground or short circuit.

Rule 21. There shall be provided in all distributing stations a ground detecting device.

Rule 22. There shall be provided in all stations, plants, and buildings herein specified warning cards printed on red cardboard not less than two and one-quarter by four and one-

half inches in size, which shall be attached to all switches opened for the purpose of lineworkers or other employees working on the wires. The person opening any line switch shall enter upon said card the name of the person ordering the switch opened, the time opened, the time line was reported clear and by whom, and shall sign his own name.

Rule 23. No manhole containing any wire carrying a current of over three hundred volts shall be less than six feet from floor to inside of roof; if circular in shape it shall not be less than six feet in diameter; if square it shall be six feet from wall to wall: PROVIDED HOWEVER, That this paragraph shall not apply to any manhole in which it shall not be required that any person enter to perform work: PROVIDED FURTHER, That the foregoing provisions of this paragraph shall not apply where satisfactory proof shall be submitted to the proper authorities that it is impracticable or physically impossible to comply with this law within the space or location designated by the proper authorities.

Rule 24. All manholes containing any wires or appliances carrying electrical current shall be kept in a sanitary condition, free from stagnant water or seepage or other drainage which is offensive or dangerous to health, either by sewer connection or otherwise, while any person is working in the same.

Rule 25. No manhole shall have an opening to the outer air of less than twenty-six inches in diameter, and the cover of same shall be provided with vent hole or holes equivalent to three square inches in area.

Rule 26. No manhole shall have an opening which is, at the surface of the ground, within a distance of three feet at any point from any rail of any railway or street car track: PROVIDED, That this shall not apply where satisfactory proof shall be submitted to the proper authorities that it is impracticable or physically impossible to comply with the provisions of this paragraph: PROVIDED, That in complying with the provisions of this rule only the construction last in point of time performed, placed or erected shall be held to be in violation thereof.

Rule 27. Whenever persons are working in any manhole whose opening to the outer air is less than three feet from the rail of any railway or street car track, a watchperson or attendant shall be stationed on the surface at the entrance of such manhole at all times while work is being performed therein.

Rule 28. All persons employed in manholes shall be furnished with insulated platforms so as to protect the workers while at work in the manholes: PROVIDED, That this paragraph shall not apply to manholes containing only telephone, telegraph or signal wires or cables.

Rule 29. No work shall be permitted to be done on any live wire, cable or appliance carrying more than seven hundred fifty volts of electricity by less than two competent and experienced persons, who, at all times while performing such work shall be in the same room, chamber, manhole or other place in which, or on the same pole on which, such work is being done: PROVIDED, That in districts where only one competent and experienced person is regularly employed, and a second competent and experienced person cannot be obtained without delay at prevailing rate of pay in said district, such work shall be permitted to be done by one competent and experienced person and a helper who need not be on the same pole on which said work is being done.

No work shall be permitted to be done in any manhole or subway on any live wire, cable or appliance carrying more than three hundred volts of electricity by less than two competent and experienced persons, who at all times while performing such work shall be in the same manhole or subway in which such work is being done.

Rule 30. The grounding provided for in these rules shall be done in the following manner: By connecting a wire or wires not less than No. 6 B.&S. gauge to a water pipe of a metallic system outside of the meter, if there is one, or to a copper plate one-sixteenth inch thick and not less than three feet by six feet area buried in coke below the permanent moisture level, or to other device equally as efficient. The ground wire or wires of a direct current system of three or more wires shall not be smaller than the neutral wire at the central station, and not smaller than a No. 6 B.&S. gauge elsewhere: PROVIDED, That the maximum cross section area of any ground wire or wires at the central station need not exceed one million circular mils. The ground wires shall be carried in as nearly a straight line as possible, and kinks, coils and short bends shall be avoided: PROVIDED, That the provisions of this rule shall not apply as to size to ground wires run from instrument transformers or meters. [2007 c 218 § 81; 1989 c 12 § 3; 1987 c 79 § 1; 1965 ex.s. c 65 § 1; 1913 c 130 § 1; RRS § 5435.] [1954 SLC-RO 29.]

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

Chapter 19.32 RCW FOOD LOCKERS

Sections

19.32.005 through 19.32.900 Repealed.

19.32.005 through 19.32.900 Repealed. See Supplementary Table of Disposition of Former RCW Sections, this volume.

Chapter 19.48 RCW HOTELS, LODGING HOUSES, ETC.—RESTAURANTS

Sections

19.48.130 Automatic service charges.

19.48.130 Automatic service charges. (1) An employer that imposes an automatic service charge related to food, beverages, entertainment, or portage provided to a customer must disclose in an itemized receipt and in any menu provided to the customer the percentage of the automatic service charge that is paid or is payable directly to the employee or employees serving the customer.

(2) For purposes of this section:

(a) "Employee" means nonmanagerial, nonsupervisory workers, including but not limited to servers, busers, banquet houseman, banquet captains, bartenders, barbacks, and porters.

(b) "Employer" means employers as defined in RCW 49.46.010 that provide food, beverages, entertainment, or portage, including but not limited to restaurants, catering houses, convention centers, and overnight accommodations.

[2007 RCW Supp—page 156]

(c) "Service charge" means a separately designated amount collected by employers from customers that is for services provided by employees, or is described in such a way that customers might reasonably believe that the amounts are for such services. Service charges include but are not limited to charges designated on receipts as a "service charge," "gratuity," "delivery charge," or "portage charge." Service charges are in addition to hourly wages paid or payable to the employee or employees serving the customer. [2007 c 390 § 1.]

Chapter 19.60 RCW

PAWNBROKERS AND SECONDHAND DEALERS

Sections

19.60.060 Rates of interest and other fees—Sale of pledged property.
19.60.061 Pawnbrokers—Sale of pledged property limited—Written document required for transactions.

19.60.060 Rates of interest and other fees—Sale of pledged property. All pawnbrokers are authorized to charge and receive interest and other fees at the following rates for money on the security of personal property actually received in pledge:

(1) The interest for the loan period shall not exceed:

(a) For an amount loaned up to \$9.99 - interest at \$1.00 for each thirty-day period to include the loan date.

(b) For an amount loaned from \$10.00 to \$19.99 - interest at the rate of \$1.25 for each thirty-day period to include the loan date.

(c) For an amount loaned from \$20.00 to \$24.99 - interest at the rate of \$1.50 for each thirty-day period to include the loan date.

(d) For an amount loaned from \$25.00 to \$34.99 - interest at the rate of \$1.75 for each thirty-day period to include the loan date.

(e) For an amount loaned from \$35.00 to \$39.99 - interest at the rate of \$2.00 for each thirty-day period to include the loan date.

(f) For an amount loaned from \$40.00 to \$49.99 - interest at the rate of \$2.25 for each thirty-day period to include the loan date.

(g) For the amount loaned from \$50.00 to \$59.99 - interest at the rate of \$2.50 for each thirty-day period to include the loan date.

(h) For the amount loaned from \$60.00 to \$69.99 - interest at the rate of \$2.75 for each thirty-day period to include the loan date.

(i) For the amount loaned from \$70.00 to \$79.99 - interest at the rate of \$3.00 for each thirty-day period to include the loan date.

(j) For the amount loaned from \$80.00 to \$89.99 - interest at the rate of \$3.25 for each thirty-day period to include the loan date.

(k) For the amount loaned from \$90.00 to \$99.99 - interest at the rate of \$3.50 for each thirty-day period to include the loan date.

(l) For the amount loaned from \$100.00 or more - interest at the rate of three percent for each thirty-day period to include the loan date.

(2) The fee for the preparation of loan documents, pledges, or reports required under the laws of the United States of America, the state of Washington, or the counties, cities, towns, or other political subdivisions thereof, shall not exceed:

- (a) For the amount loaned up to \$4.99 - the sum of \$1.50.
- (b) For the amount loaned from \$5.00 to \$9.99 - the sum of \$3.00.
- (c) For the amount loaned from \$10.00 to \$14.99 - the sum of \$4.00.
- (d) For the amount loaned from \$15.00 to \$19.99 - the sum of \$4.50.
- (e) For the amount loaned from \$20.00 to \$24.99 - the sum of \$5.00.
- (f) For the amount loaned from \$25.00 to \$29.99 - the sum of \$5.50.
- (g) For the amount loaned from \$30.00 to \$34.99 - the sum of \$6.00.
- (h) For the amount loaned from \$35.00 to \$39.99 - the sum of \$6.50.
- (i) For the amount loaned from \$40.00 to \$44.99 - the sum of \$7.00.
- (j) For the amount loaned from \$45.00 to \$49.99 - the sum of \$7.50.
- (k) For the amount loaned from \$50.00 to \$54.99 - the sum of \$8.00.
- (l) For the amount loaned from \$55.00 to \$59.99 - the sum of \$8.50.
- (m) For the amount loaned from \$60.00 to \$64.99 - the sum of \$9.00.
- (n) For the amount loaned from \$65.00 to \$69.99 - the sum of \$9.50.
- (o) For the amount loaned from \$70.00 to \$74.99 - the sum of \$10.00.
- (p) For the amount loaned from \$75.00 to \$79.99 - the sum of \$10.50.
- (q) For the amount loaned from \$80.00 to \$84.99 - the sum of \$11.00.
- (r) For the amount loaned from \$85.00 to \$89.99 - the sum of \$11.50.
- (s) For the amount loaned from \$90.00 to \$94.99 - the sum of \$12.00.
- (t) For the amount loaned from \$95.00 to \$99.99 - the sum of \$12.50.
- (u) For the amount loaned from \$100.00 to \$104.99 - the sum of \$13.00.
- (v) For the amount loaned from \$105.00 to \$109.99 - the sum of \$13.25.
- (w) For the amount loaned from \$110.00 to \$114.99 - the sum of \$13.75.
- (x) For the amount loaned from \$115.00 to \$119.99 - the sum of \$14.25.
- (y) For the amount loaned from \$120.00 to \$124.99 - the sum of \$14.50.
- (z) For the amount loaned from \$125.00 to \$129.99 - the sum of \$14.75.
- (aa) For the amount loaned from \$130.00 to \$149.99 - the sum of \$15.50.
- (bb) For the amount loaned from \$150.00 to \$174.99 - the sum of \$15.75.

- (cc) For the amount loaned from \$175.00 to \$199.99 - the sum of \$16.00.
 - (dd) For the amount loaned from \$200.00 to \$224.99 - the sum of \$17.00.
 - (ee) For the amount loaned from \$225.00 to \$249.99 - the sum of \$18.00.
 - (ff) For the amount loaned from \$250.00 to \$274.99 - the sum of \$19.00.
 - (gg) For the amount loaned from \$275.00 to \$299.99 - the sum of \$20.00.
 - (hh) For the amount loaned from \$300.00 to \$324.99 - the sum of \$21.00.
 - (ii) For the amount loaned from \$325.00 to \$349.99 - the sum of \$22.00.
 - (jj) For the amount loaned from \$350.00 to \$374.99 - the sum of \$23.00.
 - (kk) For the amount loaned from \$375.00 to \$399.99 - the sum of \$24.00.
 - (ll) For the amount loaned from \$400.00 to \$424.99 - the sum of \$25.00.
 - (mm) For the amount loaned from \$425.00 to \$449.99 - the sum of \$26.00.
 - (nn) For the amount loaned from \$450.00 to \$474.99 - the sum of \$27.00.
 - (oo) For the amount loaned from \$475.00 to \$499.99 - the sum of \$28.00.
 - (pp) For the amount loaned from \$500.00 to \$524.99 - the sum of \$29.00.
 - (qq) For the amount loaned from \$525.00 to \$549.99 - the sum of \$30.00.
 - (rr) For the amount loaned from \$550.00 to \$599.99 - the sum of \$31.00.
 - (ss) For the amount loaned from \$600.00 to \$699.99 - the sum of \$36.00.
 - (t) For the amount loaned from \$700.00 to \$799.99 - the sum of \$41.00.
 - (uu) For the amount loaned from \$800.00 to \$899.99 - the sum of \$46.00.
 - (vv) For the amount loaned from \$900.00 to \$999.99 - the sum of \$51.00.
 - (ww) For the amount loaned from \$1000.00 to \$1499.99 - the sum of \$56.00.
 - (xx) For the amount loaned from \$1500.00 to \$1999.99 - the sum of \$61.00.
 - (yy) For the amount loaned from \$2000.00 to \$2499.99 - the sum of \$66.00.
 - (zz) For the amount loaned from \$2500.00 to \$2999.99 - the sum of \$71.00.
 - (aaa) For the amount loaned from \$3000.00 to \$3499.99 - the sum of \$76.00.
 - (bbb) For the amount loaned from \$3500.00 to \$3999.99 - the sum of \$81.00.
 - (ccc) For the amount loaned from \$4000.00 to \$4499.99 - the sum of \$86.00.
 - (ddd) For the amount loaned from \$4500.00 or more - the sum of \$91.00.
- (3) A pawnbroker may charge a storage fee of \$3.00. An additional fee of \$3.00 may be charged for storing a firearm.
- (4) Fees under subsection (2) of this section may be charged one time only for each loan period; no additional fees, other than interest allowed under subsection (1) of this

section, shall be charged for making the loan. Storage fees are allowed under subsection (3) of this section.

A copy of this section, set in twelve point type or larger, shall be posted prominently in each premises subject to this chapter. [2007 c 125 § 1; 1995 c 133 § 2; 1991 c 323 § 7; 1984 c 10 § 9; 1973 1st ex.s. c 91 § 1; 1909 c 249 § 234; RRS § 2486.]

Interest—Usury: Chapter 19.52 RCW.

19.60.061 Pawnbrokers—Sale of pledged property limited—Written document required for transactions.

(1) The term of the loan shall be for a period of ninety days to include the date of the loan.

(2) A pawnbroker shall not sell any property received in pledge, until a minimum of ninety days has expired. However, if a pledged article is not redeemed within the ninety-day period of the term of the loan, the pawnbroker shall have all rights, title, and interest of that item of personal property. The pawnbroker shall not be required to account to the pledgor for the proceeds received from the disposition of that item. Any provision of law relating to the foreclosures and the subsequent sale of forfeited pledged items, shall not be applicable to any pledge as defined under this chapter, the title to which is transferred in accordance with this section.

(3) Every loan transaction entered into by a pawnbroker shall be evidenced by a written document, a copy of which shall be furnished to the pledgor. The document shall set forth the term of the loan; the final date on which the loan is due and payable; the loan preparation fee; the storage fee; the firearm fee, if applicable; any other fee allowed under law that is charged; the amount of interest charged every thirty days; the total amount due including the principal amount, the preparation fee, and all interest charges due if the loan is outstanding for the full ninety days allowed by the term; and the annual percentage rate, and shall inform the pledgor of the pledgor's right to redeem the pledge at any time within the term of the loan.

(4) If a person who has entered into a loan transaction with a pawnbroker in this state is unable to redeem and repay the loan on or before the expiration of the term of the loan, and that person wishes to retain his or her rights to use that item by rewriting the loan, and if both parties mutually agree, an existing loan transaction may be rewritten into a new loan, either in person or by mail. All applicable provisions of this chapter shall be followed in rewriting a loan, except that where an existing loan is rewritten by mail RCW 19.60.020(1) (a) and (g) shall not apply. [2007 c 125 § 2; 1995 c 133 § 3; 1991 c 323 § 8; 1984 c 10 § 10.]

Chapter 19.85 RCW

REGULATORY FAIRNESS ACT

Sections

19.85.020	Definitions.
19.85.030	Agency rules—Small business economic impact statement—Reduction of costs imposed by rule.
19.85.040	Small business economic impact statement—Purpose—Contents.

19.85.020 Definitions. The definitions in this section apply through this chapter unless the context clearly requires otherwise.

(1) "Industry" means all of the businesses in this state in any one four-digit standard industrial classification as published by the United States department of commerce, or the North American industry classification system as published by the executive office of the president and the office of management and budget. However, if the use of a four-digit standard industrial classification or North American industry classification system would result in the release of data that would violate state confidentiality laws, "industry" means all businesses in a three-digit standard industrial classification or the North American industry classification system.

(2) "Minor cost" means a cost per business that is less than three-tenths of one percent of annual revenue or income, or one hundred dollars, whichever is greater, or one percent of annual payroll. However, for the rules of the department of social and health services "minor cost" means cost per business that is less than fifty dollars of annual cost per client or other appropriate unit of service.

(3) "Small business" means any business entity, including a sole proprietorship, corporation, partnership, or other legal entity, that is owned and operated independently from all other businesses, and that has fifty or fewer employees.

(4) "Small business economic impact statement" means a statement meeting the requirements of RCW 19.85.040 prepared by a state agency pursuant to RCW 19.85.030. [2007 c 239 § 2; 2003 c 166 § 1; 1994 c 249 § 10; 1993 c 280 § 34; 1989 c 374 § 1; 1982 c 6 § 2.]

Findings—2007 c 239: "The legislature finds that:

(1) A vibrant and growing small business sector is critical to creating jobs in a dynamic economy;

(2) Small businesses bear a disproportionate share of regulatory costs and burdens;

(3) Fundamental changes that are needed in the regulatory and enforcement culture of state agencies to make them more responsive to small business can be made without compromising the statutory missions of the agencies;

(4) When adopting rules to protect the health, safety, and economic welfare of Washington, state agencies should seek to achieve statutory goals as effectively and efficiently as possible without imposing unnecessary burdens on small employers;

(5) Uniform regulatory and reporting requirements can impose unnecessary and disproportionately burdensome demands including legal, accounting, and consulting costs upon small businesses with limited resources;

(6) The failure to recognize differences in the scale and resources of regulated businesses can adversely affect competition in the marketplace, discourage innovation, and restrict improvements in productivity;

(7) Unnecessary regulations create entry barriers in many industries and discourage potential entrepreneurs from introducing beneficial products and processes;

(8) The practice of treating all regulated businesses the same leads to inefficient use of regulatory agency resources, enforcement problems, and, in some cases, to actions inconsistent with the legislative intent of health, safety, environmental, and economic welfare legislation;

(9) Alternative regulatory approaches which do not conflict with the state objective of applicable statutes may be available to minimize the significant economic impact of rules on small businesses; and

(10) The process by which state rules are developed and adopted should be reformed to require agencies to solicit the ideas and comments of small businesses, to examine the impact of proposed and existing rules on such businesses, and to review the continued need for existing rules." [2007 c 239 § 1.]

Effective date—1994 c 249 § 10: "Section 10 of this act shall take effect July 1, 1994." [1994 c 249 § 37.]

Severability—Application—1994 c 249: See notes following RCW 34.05.310.

Effective date—Severability—1993 c 280: See RCW 43.330.902 and 43.330.903.

19.85.030 Agency rules—Small business economic impact statement—Reduction of costs imposed by rule.

(1) In the adoption of a rule under chapter 34.05 RCW, an agency shall prepare a small business economic impact statement: (a) If the proposed rule will impose more than minor costs on businesses in an industry; or (b) if requested to do so by a majority vote of the joint administrative rules review committee within forty-five days of receiving the notice of proposed rule making under RCW 34.05.320. However, if the agency has completed the pilot rule process as defined by RCW 34.05.313 before filing the notice of a proposed rule, the agency is not required to prepare a small business economic impact statement.

An agency shall prepare the small business economic impact statement in accordance with RCW 19.85.040, and file it with the code reviser along with the notice required under RCW 34.05.320. An agency shall file a statement prepared at the request of the joint administrative rules review committee with the code reviser upon its completion before the adoption of the rule. An agency shall provide a copy of the small business economic impact statement to any person requesting it.

(2) Based upon the extent of disproportionate impact on small business identified in the statement prepared under RCW 19.85.040, the agency shall, where legal and feasible in meeting the stated objectives of the statutes upon which the rule is based, reduce the costs imposed by the rule on small businesses. Methods to reduce the costs on small businesses may include:

- (a) Reducing, modifying, or eliminating substantive regulatory requirements;
- (b) Simplifying, reducing, or eliminating recordkeeping and reporting requirements;
- (c) Reducing the frequency of inspections;
- (d) Delaying compliance timetables;
- (e) Reducing or modifying fine schedules for noncompliance; or
- (f) Any other mitigation techniques.

(3) If the agency determines it cannot reduce the costs imposed by the rule on small businesses, the agency shall provide a clear explanation of why it has made that determination and include that statement with its filing of the proposed rule pursuant to RCW 34.05.320.

(4)(a) All small business economic impact statements are subject to selective review by the joint administrative rules review committee pursuant to RCW 34.05.630.

(b) Any person affected by a proposed rule where there is [a] small business economic impact statement may petition the joint administrative rules review committee for review pursuant to the procedure in RCW 34.05.655. [2007 c 239 § 3; 2000 c 171 § 60; 1995 c 403 § 402; 1994 c 249 § 11. Prior: 1989 c 374 § 2; 1989 c 175 § 72; 1982 c 6 § 3.]

Findings—2007 c 239: See note following RCW 19.85.020.

Application—1995 c 403 §§ 201, 301-305, 401-405, and 801: See note following RCW 34.05.328.

Findings—Short title—Intent—1995 c 403: See note following RCW 34.05.328.

Part headings not law—Severability—1995 c 403: See RCW 43.05.903 and 43.05.904.

Severability—Application—1994 c 249: See notes following RCW 34.05.310.

Effective date—1989 c 175: See note following RCW 34.05.010.

Publication of small business economic impact statement in Washington State Register: RCW 34.08.020.

19.85.040 Small business economic impact statement—Purpose—Contents.

(1) A small business economic impact statement must include a brief description of the reporting, recordkeeping, and other compliance requirements of the proposed rule, and the kinds of professional services that a small business is likely to need in order to comply with such requirements. It shall analyze the costs of compliance for businesses required to comply with the proposed rule adopted pursuant to RCW 34.05.320, including costs of equipment, supplies, labor, professional services, and increased administrative costs. It shall consider, based on input received, whether compliance with the rule will cause businesses to lose sales or revenue. To determine whether the proposed rule will have a disproportionate cost impact on small businesses, the impact statement must compare the cost of compliance for small business with the cost of compliance for the ten percent of businesses that are the largest businesses required to comply with the proposed rules using one or more of the following as a basis for comparing costs:

- (a) Cost per employee;
- (b) Cost per hour of labor; or
- (c) Cost per one hundred dollars of sales.

(2) A small business economic impact statement must also include:

(a) A statement of the steps taken by the agency to reduce the costs of the rule on small businesses as required by RCW 19.85.030(2), or reasonable justification for not doing so, addressing the options listed in RCW 19.85.030(2);

(b) A description of how the agency will involve small businesses in the development of the rule;

(c) A list of industries that will be required to comply with the rule. However, this subsection (2)(c) shall not be construed to preclude application of the rule to any business or industry to which it would otherwise apply; and

(d) An estimate of the number of jobs that will be created or lost as the result of compliance with the proposed rule.

(3) To obtain information for purposes of this section, an agency may survey a representative sample of affected businesses or trade associations and should, whenever possible, appoint a committee under RCW 34.05.310(2) to assist in the accurate assessment of the costs of a proposed rule, and the means to reduce the costs imposed on small business. [2007 c 239 § 4; 1995 c 403 § 403; 1994 c 249 § 12. Prior: 1989 c 374 § 3; 1989 c 175 § 73; 1982 c 6 § 4.]

Findings—2007 c 239: See note following RCW 19.85.020.

Application—1995 c 403 §§ 201, 301-305, 401-405, and 801: See note following RCW 34.05.328.

Findings—Short title—Intent—1995 c 403: See note following RCW 34.05.328.

Part headings not law—Severability—1995 c 403: See RCW 43.05.903 and 43.05.904.

Severability—Application—1994 c 249: See notes following RCW 34.05.310.

Effective date—1989 c 175: See note following RCW 34.05.010.

Publication in Washington State Register: RCW 34.08.020.

Chapter 19.86 RCW

UNFAIR BUSINESS PRACTICES— CONSUMER PROTECTION

Sections

- 19.86.080 Attorney general may restrain prohibited acts—Costs—Restoration of property.
19.86.090 Civil action for damages—Treble damages authorized—Action by governmental entities.

19.86.080 Attorney general may restrain prohibited acts—Costs—Restoration of property. (1) The attorney general may bring an action in the name of the state, or as *parens patriae* on behalf of persons residing in the state, against any person to restrain and prevent the doing of any act herein prohibited or declared to be unlawful; and the prevailing party may, in the discretion of the court, recover the costs of said action including a reasonable attorney's fee.

(2) The court may make such additional orders or judgments as may be necessary to restore to any person in interest any moneys or property, real or personal, which may have been acquired by means of any act herein prohibited or declared to be unlawful.

(3) Upon a violation of RCW 19.86.030, 19.86.040, 19.86.050, or 19.86.060, the court may also make such additional orders or judgments as may be necessary to restore to any person in interest any moneys or property, real or personal, which may have been acquired, regardless of whether such person purchased or transacted for goods or services directly with the defendant or indirectly through resellers. The court shall exclude from the amount of monetary relief awarded in an action pursuant to this subsection any amount that duplicates amounts that have been awarded for the same violation. The court should consider consolidation or coordination with other related actions, to the extent practicable, to avoid duplicate recovery. [2007 c 66 § 1; 1970 ex.s. c 26 § 1; 1961 c 216 § 8.]

Effective date—2007 c 66: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately [April 17, 2007]." [2007 c 66 § 3.]

19.86.090 Civil action for damages—Treble damages authorized—Action by governmental entities. Any person who is injured in his or her business or property by a violation of RCW 19.86.020, 19.86.030, 19.86.040, 19.86.050, or 19.86.060, or any person so injured because he or she refuses to accede to a proposal for an arrangement which, if consummated, would be in violation of RCW 19.86.030, 19.86.040, 19.86.050, or 19.86.060, may bring a civil action in the superior court to enjoin further violations, to recover the actual damages sustained by him or her, or both, together with the costs of the suit, including a reasonable attorney's fee, and the court may in its discretion, increase the award of damages to an amount not to exceed three times the actual damages sustained: PROVIDED, That such increased damage award for violation of RCW 19.86.020 may not exceed ten thousand

dollars: PROVIDED FURTHER, That such person may bring a civil action in the district court to recover his or her actual damages, except for damages which exceed the amount specified in RCW 3.66.020, and the costs of the suit, including reasonable attorney's fees. The district court may, in its discretion, increase the award of damages to an amount not more than three times the actual damages sustained, but such increased damage award shall not exceed the amount specified in RCW 3.66.020. For the purpose of this section, "person" shall include the counties, municipalities, and all political subdivisions of this state.

Whenever the state of Washington is injured, directly or indirectly, by reason of a violation of RCW 19.86.030, 19.86.040, 19.86.050, or 19.86.060, it may sue therefor in the superior court to recover the actual damages sustained by it, whether direct or indirect, and to recover the costs of the suit including a reasonable attorney's fee. [2007 c 66 § 2; 1987 c 202 § 187; 1983 c 288 § 3; 1970 ex.s. c 26 § 2; 1961 c 216 § 9.]

Effective date—2007 c 66: See note following RCW 19.86.080.

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

Short title—Purposes—1983 c 288: "This act may be cited as the anti-trust/consumer protection improvements act. Its purposes are to strengthen public and private enforcement of the unfair business practices-consumer protection act, chapter 19.86 RCW, and to repeal the unfair practices act, chapter 19.90 RCW, in order to eliminate a statute which is unnecessary in light of the provisions and remedies of chapter 19.86 RCW. In repealing chapter 19.90 RCW, it is the intent of the legislature that chapter 19.86 RCW should continue to provide appropriate remedies for predatory pricing and other pricing practices which constitute violations of federal antitrust law." [1983 c 288 § 1.]

Chapter 19.112 RCW

MOTOR FUEL QUALITY ACT

Sections

- 19.112.010 Definitions.
19.112.100 Methyl tertiary-butyl ether.
19.112.120 Motor vehicle fuel licensees—Required sales of denatured ethanol—Rules—Limitation of section.

19.112.010 Definitions. The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

(1) "Alcohol fuel" means any alcohol made from a product other than petroleum or natural gas that is used alone or in combination with gasoline or other petroleum products for use as a fuel in self-propelled motor vehicles.

(2) "Alternative fuel" means all products or energy sources used to propel motor vehicles, other than conventional gasoline, diesel, or reformulated gasoline. Alternative fuel includes, but is not limited to, liquefied petroleum gas, liquefied natural gas, compressed natural gas, biodiesel fuel, E85 motor fuel, fuels containing seventy percent or more by volume of alcohol fuel, fuels that are derived from biomass, hydrogen fuel, anhydrous ammonia fuel, nonhazardous motor fuel, or electricity, excluding onboard electric generation.

(3) "Biodiesel fuel" means the monoalkyl esters of long chain fatty acids derived from plant or animal matter that meet the registration requirements for fuels and fuel additives established by the federal environmental protection agency

and standards established by the American society of testing and materials.

(4) "Diesel" means special fuel as defined in RCW 82.38.020, and diesel fuel dyed in accordance with the regulations in 26 C.F.R. Sec. 48.4082-1T as of October 24, 2005.

(5) "Director" means the director of agriculture.

(6) "E85 motor fuel" means an alternative fuel that is a blend of ethanol and hydrocarbon of which the ethanol portion is nominally seventy-five to eighty-five percent denatured fuel ethanol by volume that complies with the most recent version of American society of testing and materials specification D 5798.

(7) "Motor fuel" means any liquid product used for the generation of power in an internal combustion engine used for the propulsion of a motor vehicle upon the highways of this state, and any biodiesel fuel. Motor fuels containing ethanol may be marketed if either (a) the base motor fuel meets the applicable standards before the addition of the ethanol or (b) the resultant blend meets the applicable standards after the addition of the ethanol.

(8) "Nonhazardous motor fuel" means any fuel of a type distributed for use in self-propelled motor vehicles that does not contain a hazardous liquid as defined in RCW 19.122.020. [2007 c 309 § 1; 2006 c 338 § 15; 1991 c 145 § 1; 1990 c 102 § 2.]

Findings—Intent—2006 c 338: See note following RCW 19.112.110.

19.112.100 Methyl tertiary-butyl ether. Methyl tertiary-butyl ether may not be intentionally added to any gasoline, motor fuel, or clean fuel produced for sale or use in the state of Washington after December 31, 2003. In no event may methyl tertiary-butyl ether be knowingly mixed in gasoline above fifteen one-hundredths of one percent by volume. [2007 c 310 § 1; 2001 c 218 § 1.]

19.112.120 Motor vehicle fuel licensees—Required sales of denatured ethanol—Rules—Limitation of section. (1) By December 1, 2008, motor vehicle fuel licensees under chapter 82.36 RCW, other than motor vehicle fuel distributors, shall provide evidence to the department of licensing that at least two percent of total gasoline sold in Washington, measured on a quarterly basis, is denatured ethanol.

(2) If the director of ecology determines that ethanol content greater than two percent of the total gasoline sold in Washington will not jeopardize continued attainment of the federal clean air act's national ambient air quality standard for ozone pollution in Washington and the director of agriculture determines and publishes this determination in the Washington State Register that sufficient raw materials are available within Washington to support economical production of ethanol at higher levels, the director of agriculture may require by rule that licensees provide evidence to the department of licensing that denatured ethanol comprises between two percent and at least ten percent of total gasoline sold in Washington, measured on a quarterly basis.

(3) The requirements of subsections (1) and (2) of this section shall take effect no sooner than one hundred eighty days after the determination has been published in the Washington State Register.

(4) The director and the director of licensing shall each adopt rules, in coordination with each other, for enforcing and carrying out the purposes of this section.

(5) Nothing in this section is intended to prohibit the production, sale, or use of motor fuel for use in federally designated flexibly fueled vehicles capable of using E85 motor fuel. Nothing in this section is intended to limit the use of high octane gasoline not blended with ethanol for use in aircraft. [2007 c 309 § 2; 2006 c 338 § 3.]

Findings—Intent—2006 c 338: See note following RCW 19.112.110.

Chapter 19.118 RCW

MOTOR VEHICLE WARRANTIES

Sections

19.118.021 Definitions.

19.118.041 Replacement or repurchase of nonconforming new motor vehicle—Reasonable number of attempts—Notice by consumer regarding motor home nonconformity—Liabilities and rights of parties—Application of consumer protection act.

19.118.021 Definitions. Unless the context clearly requires otherwise, the definitions in this section apply throughout this chapter.

(1) "Board" means new motor vehicle arbitration board.

(2) "Collateral charges" means any sales or lease related charges including but not limited to sales tax, use tax, arbitration service fees, unused license fees, unused registration fees, unused title fees, finance charges, prepayment penalties, credit disability and credit life insurance costs not otherwise refundable, any other insurance costs prorated for time out of service, transportation charges, dealer preparation charges, or any other charges for service contracts, undercoating, rust-proofing, or factory or dealer installed options.

(3) "Condition" means a general problem that results from a defect or malfunction of one or more parts, or their improper installation by the manufacturer, its agents, or the new motor vehicle dealer.

(4) "Consumer" means any person who has entered into an agreement or contract for the transfer, lease, or purchase of a new motor vehicle, other than for purposes of resale or sublease, during the duration of the warranty period defined under this section.

(5) "Court" means the superior court in the county where the consumer resides, except if the consumer does not reside in this state, then the superior court in the county where an arbitration hearing or determination was conducted or made pursuant to this chapter.

(6) "Incidental costs" means any reasonable expenses incurred by the consumer in connection with the repair of the new motor vehicle, including any towing charges and the costs of obtaining alternative transportation.

(7) "Manufacturer" means any person engaged in the business of constructing or assembling new motor vehicles or engaged in the business of importing new motor vehicles into the United States for the purpose of selling or distributing new motor vehicles to new motor vehicle dealers. "Manufacturer" does not include any person engaged in the business of set-up of motorcycles as an agent of a new motor vehicle dealer if the person does not otherwise construct or assemble motorcycles.

(8) "Motorcycle" means any motorcycle as defined in RCW 46.04.330 which has an engine displacement of at least seven hundred fifty cubic centimeters.

(9) "Motor home" means a vehicular unit designed to provide temporary living quarters for recreational, camping, or travel use, built on or permanently attached to a self-propelled motor vehicle chassis or on a chassis cab or van that is an integral part of the completed vehicle.

(10) "Motor home manufacturer" means the first stage manufacturer, the component manufacturer, and the final stage manufacturer.

(a) "First stage manufacturer" means a person who manufactures incomplete new motor vehicles such as chassis, chassis cabs, or vans, that are directly warranted by the first stage manufacturer to the consumer, and are completed by a final stage manufacturer into a motor home.

(b) "Component manufacturer" means a person who manufactures components used in the manufacture or assembly of a chassis, chassis cab, or van that is completed into a motor home and whose components are directly warranted by the component manufacturer to the consumer.

(c) "Final stage manufacturer" means a person who assembles, installs, or permanently affixes a body, cab, or equipment to an incomplete new motor vehicle such as a chassis, chassis cab, or van provided by a first stage manufacturer, to complete the vehicle into a motor home.

(11) "New motor vehicle" means any new self-propelled vehicle, including a new motorcycle, primarily designed for the transportation of persons or property over the public highways that was originally purchased or leased at retail from a new motor vehicle dealer or leasing company in this state, but does not include vehicles purchased or leased by a business as part of a fleet of ten or more vehicles at one time or under a single purchase or lease agreement. If the motor vehicle is a motor home, this chapter shall apply to the self-propelled vehicle and chassis, but does not include those portions of the vehicle designated, used, or maintained primarily as a mobile dwelling, office, or commercial space. The term "new motor vehicle" does not include trucks with nineteen thousand pounds or more gross vehicle weight rating. The term "new motor vehicle" includes a demonstrator or lease-purchase vehicle as long as a manufacturer's warranty was issued as a condition of sale.

(12) "New motor vehicle dealer" means a person who holds a dealer agreement with a manufacturer for the sale of new motor vehicles, who is engaged in the business of purchasing, selling, servicing, exchanging, or dealing in new motor vehicles, and who is licensed or required to be licensed as a vehicle dealer by the state of Washington.

(13) "Nonconformity" means a defect, serious safety defect, or condition that substantially impairs the use, value, or safety of a new motor vehicle, but does not include a defect or condition that is the result of abuse, neglect, or unauthorized modification or alteration of the new motor vehicle.

(14) "Purchase price" means the cash price of the new motor vehicle appearing in the sales agreement or contract.

(a) "Purchase price" in the instance of a lease means the actual written capitalized cost disclosed to the consumer contained in the lease agreement. If there is no disclosed capitalized cost in the lease agreement the "purchase price" is the manufacturer's suggested retail price including manufacturer

installed accessories or items of optional equipment displayed on the manufacturer label, required by 15 U.S.C. Sec. 1232.

(b) "Purchase price" in the instance of both a vehicle purchase or lease agreement includes any allowance for a trade-in vehicle but does not include any manufacturer-to-consumer rebate appearing in the agreement or contract that the consumer received or that was applied to reduce the purchase or lease cost.

Where the consumer is a subsequent transferee and the consumer selects repurchase of the motor vehicle, "purchase price" means the consumer's subsequent purchase price. Where the consumer is a subsequent transferee and the consumer selects replacement of the motor vehicle, "purchase price" means the original purchase price.

(15) "Reasonable offset for use" means the definition provided in RCW 19.118.041(1)(c) for a new motor vehicle other than a new motorcycle. The reasonable offset for use for a new motorcycle shall be computed by the number of miles that the vehicle traveled before the manufacturer's acceptance of the vehicle upon repurchase or replacement multiplied by the purchase price, and divided by twenty-five thousand.

(16) "Reasonable number of attempts" means the definition provided in RCW 19.118.041.

(17) "Replacement motor vehicle" means a new motor vehicle that is identical or reasonably equivalent to the motor vehicle to be replaced, as the motor vehicle to be replaced existed at the time of original purchase or lease, including any service contract, undercoating, rustproofing, and factory or dealer installed options.

(18) "Serious safety defect" means a life-threatening malfunction or nonconformity that impedes the consumer's ability to control or operate the new motor vehicle for ordinary use or reasonable intended purposes or creates a risk of fire or explosion.

(19) "Subsequent transferee" means a consumer who acquires a motor vehicle, within the warranty period, as defined in this section, with an applicable manufacturer's written warranty and where the vehicle otherwise met the definition of a new motor vehicle at the time of original retail sale or lease.

(20) "Substantially impair" means to render the new motor vehicle unreliable, or unsafe for ordinary use, or to diminish the resale value of the new motor vehicle below the average resale value for comparable motor vehicles.

(21) "Warranty" means any implied warranty, any written warranty of the manufacturer, or any affirmation of fact or promise made by the manufacturer in connection with the sale of a new motor vehicle that becomes part of the basis of the bargain. The term "warranty" pertains to the obligations of the manufacturer in relation to materials, workmanship, and fitness of a new motor vehicle for ordinary use or reasonably intended purposes throughout the duration of the warranty period as defined under this section.

(22) "Warranty period" means the period ending two years after the date of the original delivery to the consumer of a new motor vehicle, or the first twenty-four thousand miles of operation, whichever occurs first. [2007 c 425 § 1; 1998 c 298 § 2; 1995 c 254 § 1; 1990 c 239 § 1; 1989 c 347 § 1; 1987 c 344 § 2.]

Severability—1998 c 298: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1998 c 298 § 7.]

Effective date—1995 c 254: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and shall take effect immediately [May 5, 1995]." [1995 c 254 § 11.]

Severability—1995 c 254: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1995 c 254 § 12.]

19.118.041 Replacement or repurchase of nonconforming new motor vehicle—Reasonable number of attempts—Notice by consumer regarding motor home nonconformity—Liabilities and rights of parties—Application of consumer protection act. (1) If the manufacturer, its agent, or the new motor vehicle dealer is unable to conform the new motor vehicle to the warranty by repairing or correcting any nonconformity after a reasonable number of attempts, the manufacturer, within forty calendar days of a consumer's written request to the manufacturer's corporate, dispute resolution, zone, or regional office address shall, at the option of the consumer, replace or repurchase the new motor vehicle.

(a) The replacement motor vehicle shall be identical or reasonably equivalent to the motor vehicle to be replaced as the motor vehicle to be replaced existed at the time of original purchase or lease, including any service contract, undercoating, rustproofing, and factory or dealer installed options. Where the manufacturer supplies a replacement motor vehicle, the manufacturer shall be responsible for sales tax, license, registration fees, and refund of any incidental costs. Compensation for a reasonable offset for use shall be paid by the consumer to the manufacturer in the event that the consumer accepts a replacement motor vehicle.

(b) When repurchasing the new motor vehicle, the manufacturer shall refund to the consumer the purchase price, all collateral charges, and incidental costs, less a reasonable offset for use. When repurchasing the new motor vehicle, in the instance of a lease, the manufacturer shall refund to the consumer all payments made by the consumer under the lease including but not limited to all lease payments, trade-in value or inception payment, security deposit, all collateral charges and incidental costs less a reasonable offset for use. The manufacturer shall make such payment to the lessor and/or lienholder of record as necessary to obtain clear title to the motor vehicle and upon the lessor's and/or lienholder's receipt of that payment and payment by the consumer of any late payment charges, the consumer shall be relieved of any future obligation to the lessor and/or lienholder.

(c) The reasonable offset for use shall be computed by multiplying the number of miles that the vehicle traveled directly attributable to use by the consumer during the time between the original purchase, lease, or in-service date and the date beginning the first attempt to diagnose or repair a nonconformity which ultimately results in the repurchase or replacement of the vehicle multiplied times the purchase price, and dividing the product by one hundred twenty thousand, except in the case of a motor home, in which event it shall be divided by ninety thousand. However, the reason-

able offset for use calculation total for a motor home is subject to modification by the board by decreasing or increasing the offset total up to a maximum of one-third of the offset total. The board may modify the offset total in those circumstances where the board determines that the wear and tear on those portions of the motor home designated, used, or maintained primarily as a mobile dwelling, office, or commercial space are significantly greater or significantly less than that which could be reasonably expected based on the mileage attributable to the consumer's use of the motor home. Except in the case of a motor home, where a manufacturer repurchases or replaces a vehicle solely due to accumulated days out of service by reason of diagnosis or repair of one or more nonconformities, "the number of miles that the vehicle traveled directly attributable to use by the consumer" shall be limited to the period between the original purchase, lease, or in-service date and the date of the fifteenth cumulative calendar day out of service. Where the consumer is a second or subsequent purchaser, lessee, or transferee of the motor vehicle and the consumer selects repurchase of the motor vehicle, "the number of miles that the vehicle traveled" directly attributable to use by the consumer shall be limited to the period between the date of purchase, lease by, or transfer to the consumer and the date of the consumer's initial attempt to obtain diagnosis or repair of a nonconformity which ultimately results in the repurchase or replacement of the vehicle or which adds to thirty or more cumulative calendar days out of service. Where the consumer is a second or subsequent purchaser, lessee, or transferee of the motor vehicle and the consumer selects replacement of the motor vehicle, "the number of miles that the vehicle traveled" directly attributable to use by the consumer shall be calculated from the date of the original purchase, lease, or in-service date and the first attempt to diagnose or repair a nonconformity which ultimately results in the replacement of the vehicle. Except in the case of a motor home, where the consumer is a second or subsequent purchaser, lessee, or transferee of the motor vehicle and the manufacturer replaces the vehicle solely due to accumulated days out of service by reason of diagnosis or repair of one or more nonconformities, "the number of miles that the vehicle traveled" directly attributable to use by the consumer shall be calculated from the date of the original purchase, lease, or in-service date and the date of the fifteenth cumulative calendar day out of service.

(d) In the case of a motor vehicle that is a motor home, where a manufacturer repurchases or replaces a motor home from the first purchaser, lessee, or transferee or from the second or subsequent purchaser, lessee, or transferee solely due to accumulated days out of service by reason of diagnosis or repair of one or more nonconformities, "the number of miles that a motor home traveled directly attributable to use by the consumer" shall be limited to the period between the original purchase, lease, or in-service date and the date of the thirtieth cumulative calendar day out-of-service.

(2) Reasonable number of attempts, except in the case of a new motor vehicle that is a motor home acquired after June 30, 1998, shall be deemed to have been undertaken by the manufacturer, its agent, or the new motor vehicle dealer to conform the new motor vehicle to the warranty within the warranty period, if: (a) The same serious safety defect has been subject to diagnosis or repair two or more times, at least

one of which is during the period of coverage of the applicable manufacturer's written warranty, and the serious safety defect continues to exist; (b) the same nonconformity has been subject to diagnosis or repair four or more times, at least one of which is during the period of coverage of the applicable manufacturer's written warranty, and the nonconformity continues to exist; or (c) the vehicle is out of service by reason of diagnosis or repair of one or more nonconformities for a cumulative total of thirty calendar days, at least fifteen of them during the period of the applicable manufacturer's written warranty. For purposes of this subsection, the manufacturer's written warranty shall be at least one year after the date of the original delivery to the consumer of the vehicle or the first twelve thousand miles of operation, whichever occurs first. A new motor vehicle is deemed to have been "subject to diagnose or repair" when a consumer presents the new motor vehicle for warranty service at a service and repair facility authorized, designated, or maintained by a manufacturer to provide warranty services or a facility to which the manufacturer or an authorized facility has directed the consumer to obtain warranty service. A new motor vehicle has not been "subject to diagnose or repair" if the consumer refuses to allow the facility to attempt or complete a recommended warranty repair, or demands return of the vehicle to the consumer before an attempt to diagnose or repair can be completed.

(3)(a) In the case of a new motor vehicle that is a motor home acquired after June 30, 1998, a reasonable number of attempts shall be deemed to have been undertaken by the motor home manufacturers, their respective agents, or their respective new motor vehicle dealers to conform the new motor vehicle to the warranty within the warranty period, if: (i) The same serious safety defect has been subject to diagnosis or repair one or more times during the period of coverage of the applicable motor home manufacturer's written warranty, plus a final attempt to repair the vehicle as provided for in (b) of this subsection, and the serious safety defect continues to exist; (ii) the same nonconformity has been subject to repair three or more times, at least one of which is during the period of coverage of the applicable motor home manufacturer's written warranty, plus a final attempt to repair the vehicle as provided for in (b) of this subsection, and the nonconformity continues to exist; or (iii) the vehicle is out of service by reason of diagnosis or repair of one or more nonconformities for a cumulative total of sixty calendar days aggregating all motor home manufacturer days out of service, and the motor home manufacturers have had at least one opportunity to coordinate and complete an inspection and any repairs of the vehicle's nonconformities after receipt of notification from the consumer as provided for in (c) of this subsection. For purposes of this subsection, each motor home manufacturer's written warranty must be at least one year after the date of the original delivery to the consumer of the vehicle or the first twelve thousand miles of operation, whichever occurs first.

(b) In the case of a new motor vehicle that is a motor home, after one attempt has been made to repair a serious safety defect, or after three attempts have been made to repair the same nonconformity, the consumer shall give written notification of the need to repair the nonconformity to each of the motor home manufacturers at their respective corporate,

zone, or regional office addresses to allow the motor home manufacturers to coordinate and complete a final attempt to cure the nonconformity. The motor home manufacturers each have fifteen days, commencing upon receipt of the notification, to respond and inform the consumer of the location of the facility where the vehicle will be repaired. If the vehicle is unsafe to drive due to a serious safety defect, or to the extent the repair facility is more than one hundred miles from the motor home location, the motor home manufacturers are responsible for the cost of transporting the vehicle to and from the repair facility. The motor home manufacturers have a cumulative total of thirty days, commencing upon delivery of the vehicle to the designated repair facility by the consumer, to conform the vehicle to the applicable motor home manufacturer's written warranty. This time period may be extended if the consumer agrees in writing. If a motor home manufacturer fails to respond to the consumer or perform the repairs within the time period prescribed, that motor home manufacturer is not entitled to a final attempt to cure the nonconformity.

(c) In the case of a new motor vehicle that is a motor home, if the vehicle is out of service by reason of diagnosis or repair of one or more nonconformities by the motor home manufacturers, their respective agents, or their respective new motor vehicle dealers for a cumulative total of thirty or more days aggregating all motor home manufacturer days out of service, the consumer shall so notify each motor home manufacturer in writing at their respective corporate, zone, or regional office addresses to allow the motor home manufacturers, their respective agents, or their respective new motor vehicle dealers an opportunity to coordinate and complete an inspection and any repairs of the vehicle's nonconformities. The motor home manufacturers have fifteen days, commencing upon receipt of the notification, to respond and inform the consumer of the location of the facility where the vehicle will be repaired. If the vehicle is unsafe to drive due to a serious safety defect, or to the extent the repair facility is more than one hundred miles from the motor home location, the motor home manufacturers are responsible for the cost of transporting the vehicle to and from the repair facility. Once the buyer delivers the vehicle to the designated repair facility, the inspection and repairs must be completed by the motor home manufacturers either (i) within ten days or (ii) before the vehicle is out of service by reason of diagnosis or repair of one or more nonconformities for sixty days, whichever time period is longer. This time period may be extended if the consumer agrees in writing. If a motor home manufacturer fails to respond to the consumer or perform the repairs within the time period prescribed, that motor home manufacturer is not entitled to at least one opportunity to inspect and repair the vehicle's nonconformities after receipt of notification from the buyer as provided for in this subsection (3)(c).

(4) No new motor vehicle dealer may be held liable by the manufacturer for any collateral charges, incidental costs, purchase price refunds, or vehicle replacements. Manufacturers shall not have a cause of action against dealers under this chapter. Consumers shall not have a cause of action against dealers under this chapter, but a violation of any responsibilities imposed upon dealers under this chapter is a per se violation of chapter 19.86 RCW. Consumers may pursue rights and remedies against dealers under any other law,

including chapters 46.70 and 46.71 RCW. Manufacturers and consumers may not make dealers parties to arbitration board proceedings under this chapter. [2007 c 426 § 1; 1998 c 298 § 4; 1995 c 254 § 3; 1989 c 347 § 2; 1987 c 344 § 4.]

Severability—1998 c 298: See note following RCW 19.118.021.

Effective date—Severability—1995 c 254: See notes following RCW 19.118.021.

Chapter 19.122 RCW UNDERGROUND UTILITIES

Sections

19.122.020 Definitions.

19.122.020 Definitions. Unless the context clearly requires otherwise, the definitions in this section apply throughout this chapter:

(1) "Business day" means any day other than Saturday, Sunday, or a legal local, state, or federal holiday.

(2) "Damage" includes the substantial weakening of structural or lateral support of an underground facility, penetration, impairment, or destruction of any underground protective coating, housing, or other protective device, or the severance, partial or complete, of any underground facility to the extent that the project owner or the affected utility owner determines that repairs are required.

(3) "Emergency" means any condition constituting a clear and present danger to life or property, or a customer service outage.

(4) "Excavation" means any operation in which earth, rock, or other material on or below the ground is moved or otherwise displaced by any means, except the tilling of soil less than twelve inches in depth for agricultural purposes, or road and ditch maintenance that does not change the original road grade or ditch flowline.

(5) "Excavation confirmation code" means a code or ticket issued by the one-number locator service for the site where an excavation is planned. The code must be accompanied by the date and time it was issued.

(6) "Excavator" means any person who engages directly in excavation.

(7) "Gas" means natural gas, flammable gas, or toxic or corrosive gas.

(8) "Hazardous liquid" means: (a) Petroleum, petroleum products, or anhydrous ammonia as those terms are defined in 49 C.F.R. Part 195 as in effect on March 1, 1998; and (b) carbon dioxide. The utilities and transportation commission may by rule incorporate by reference other substances designated as hazardous by the secretary of transportation.

(9) "Identified facility" means any underground facility which is indicated in the project plans as being located within the area of proposed excavation.

(10) "Identified but unlocatable underground facility" means an underground facility which has been identified but cannot be located with reasonable accuracy.

(11) "Locatable underground facility" means an underground facility which can be field-marked with reasonable accuracy.

(12) "Marking" means the use of stakes, paint, or other clearly identifiable materials to show the field location of

underground facilities, in accordance with the current color code standard of the American public works association. Markings shall include identification letters indicating the specific type of the underground facility.

(13) "Notice" or "notify" means contact in person or by telephone or other electronic methods that results in the receipt of a valid excavation confirmation code.

(14) "One-number locator service" means a service through which a person can notify utilities and request field-marking of underground facilities.

(15) "Operator" means the individual conducting the excavation.

(16) "Person" means an individual, partnership, franchise holder, association, corporation, a state, a city, a county, or any subdivision or instrumentality of a state, and its employees, agents, or legal representatives.

(17) "Pipeline" or "pipeline system" means all or parts of a pipeline facility through which hazardous liquid or gas moves in transportation, including, but not limited to, line pipe, valves, and other appurtenances connected to line pipe, pumping units, fabricated assemblies associated with pumping or compressor units, metering and delivery stations and fabricated assemblies therein, and breakout tanks. "Pipeline" or "pipeline system" does not include process or transfer pipelines.

(18) "Pipeline company" means a person or entity constructing, owning, or operating a pipeline for transporting hazardous liquid or gas. A pipeline company does not include: (a) Distribution systems owned and operated under franchise for the sale, delivery, or distribution of natural gas at retail; or (b) excavation contractors or other contractors that contract with a pipeline company.

(19) "Reasonable accuracy" means location within twenty-four inches of the outside dimensions of both sides of an underground facility.

(20) "Transfer pipeline" means a buried or aboveground pipeline used to carry hazardous liquid between a tank vessel or transmission pipeline and the first valve inside secondary containment at the facility provided that any discharge on the facility side of that first valve will not directly impact waters of the state. A transfer pipeline includes valves, and other appurtenances connected to the pipeline, pumping units, and fabricated assemblies associated with pumping units. A transfer pipeline does not include process pipelines, pipelines carrying ballast or bilge water, transmission pipelines, or tank vessel or storage tanks.

(21) "Transmission pipeline" means a pipeline that transports hazardous liquid or gas within a storage field, or transports hazardous liquid or gas from an interstate pipeline or storage facility to a distribution main or a large volume hazardous liquid or gas user, or operates at a hoop stress of twenty percent or more of the specified minimum yield strength.

(22) "Underground facility" means any item buried or placed below ground for use in connection with the storage or conveyance of water, sewage, electronic, telephonic or telegraphic communications, cablevision, electric energy, petroleum products, gas, gaseous vapors, hazardous liquids, or other substances and including but not limited to pipes, sewers, conduits, cables, valves, lines, wires, manholes, attachments, and those parts of poles or anchors below ground.

This definition does not include pipelines as defined in subsection (17) of this section, but does include distribution systems owned and operated under franchise for the sale, delivery, or distribution of natural gas at retail. [2007 c 142 § 9; 2005 c 448 § 1; 2000 c 191 § 15; 1984 c 144 § 2.]

Intent—Findings—Conflict with federal requirements—Short title—Effective date—2000 c 191: See RCW 81.88.005 and 81.88.900 through 81.88.902.

Chapter 19.138 RCW SELLERS OF TRAVEL

Sections

19.138.340 Restrictions regarding promoting prostitution, commercial sexual abuse of a minor, or other commercial sex acts.

19.138.340 Restrictions regarding promoting prostitution, commercial sexual abuse of a minor, or other commercial sex acts. (1) No seller of travel shall engage in any of the following:

(a) Promoting travel for prostitution or promoting travel for commercial sexual abuse of a minor;

(b) Selling, advertising, or otherwise offering to sell travel services or facilitate travel:

- (i) For the purposes of engaging in a commercial sex act;
- (ii) That consists of tourism packages or activities using and offering sexual acts as an enticement for tourism; or
- (iii) That provides, purports to provide access to, or facilitates the availability of sex escorts or sexual services.

(2) For the purposes of this section:

(a) "Commercial sex act" means any sexual contact, as defined in chapter 9A.44 RCW, for which anything of value is given to or received by any person.

(b) "Sexual act" means any sexual contact as defined in chapter 9A.44 RCW. [2007 c 368 § 6; 2006 c 250 § 3.]

Finding—2006 c 250: See note following RCW 9A.88.085.

Chapter 19.150 RCW SELF-SERVICE STORAGE FACILITIES

Sections

19.150.010 Definitions.

19.150.040 Unpaid rent—Termination of occupant's rights—Notice.

19.150.060 Attachment of lien—Final notice of lien sale or notice of disposal.

19.150.070 Sale of property.

19.150.080 Manner of sale—Who may not acquire property—Interest on excess proceeds.

19.150.100 Payment prior to sale by persons claiming a right to the property.

19.150.010 Definitions. The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

(1) "Self-service storage facility" means any real property designed and used for the purpose of renting or leasing individual storage space to occupants who are to have access to the space for the purpose of storing and removing personal property on a self-service basis, but does not include a garage or other storage area in a private residence. No occupant may use a self-service storage facility for residential purposes.

(2) "Owner" means the owner, operator, lessor, or sublessor of a self-service storage facility, his or her agent, or

any other person authorized by him or her to manage the facility, or to receive rent from an occupant under a rental agreement.

(3) "Occupant" means a person, or his or her sublessee, successor, or assign, who is entitled to the use of the storage space at a self-service storage facility under a rental agreement, to the exclusion of others.

(4) "Rental agreement" means any written agreement or lease which establishes or modifies the terms, conditions, rules or any other provision concerning the use and occupancy of a self-service storage facility.

(5) "Personal property" means movable property not affixed to land, and includes, but is not limited to, goods, merchandise, furniture, and household items.

(6) "Last known address" means that address provided by the occupant in the latest rental agreement, or the address provided by the occupant in a subsequent written notice of a change of address.

(7) "Reasonable manner" means to dispose of personal property by donation to a not-for-profit charitable organization, removal of the personal property from the self-service storage facility by a trash hauler or recycler, or any other method that in the discretion of the owner is reasonable under the circumstances.

(8) "Commercially reasonable manner" means a public sale of the personal property in the self-storage space. The personal property may be sold in the owner's discretion on or off the self-service storage facility site as a single lot or in parcels. If five or more bidders are in attendance at a public sale of the personal property, the proceeds received are deemed to be commercially reasonable.

(9) "Costs of the sale" means reasonable costs directly incurred by the delivering or sending of notices, advertising, accessing, inventorying, auctioning, conducting a public sale, removing, and disposing of property stored in a self-service storage facility. [2007 c 113 § 1; 1988 c 240 § 2.]

19.150.040 Unpaid rent—Termination of occupant's rights—Notice. When any part of the rent or other charges due from an occupant remains unpaid for fourteen consecutive days, an owner may terminate the right of the occupant to the use of the storage space at a self-service storage facility by sending a preliminary lien notice to the occupant's last known address, and to the alternative address specified in RCW 19.150.120(2), by first class mail, postage prepaid, containing all of the following:

(1) An itemized statement of the owner's claim showing the sums due at the time of the notice and the date when the sums become due.

(2) A statement that the occupant's right to use the storage space will terminate on a specified date (not less than fourteen days after the mailing of the notice) unless all sums due and to become due by that date are paid by the occupant prior to the specified date.

(3) A notice that the occupant may be denied or continue to be denied, as the case may be, access to the storage space after the termination date if the sums are not paid, and that an owner's lien, as provided for in RCW 19.150.020 may be imposed thereafter.

(4) The name, street address, and telephone number of the owner, or his or her designated agent, whom the occupant

may contact to respond to the notice. [2007 c 113 § 2; 1988 c 240 § 5.]

19.150.060 Attachment of lien—Final notice of lien sale or notice of disposal. If a notice has been sent, as required by RCW 19.150.040, and the total sum due has not been paid as of the date specified in the preliminary lien notice, the lien proposed by this notice attaches as of that date and the owner may deny an occupant access to the space, enter the space, inventory the goods therein, and remove any property found therein to a place of safe keeping. The owner shall then serve by personal service or send to the occupant, addressed to the occupant's last known address and to the alternative address specified in RCW 19.150.120(2) by certified mail, postage prepaid, a notice of final lien sale or final notice of disposition which shall state all of the following:

(1) That the occupant's right to use the storage space has terminated and that the occupant no longer has access to the stored property.

(2) That the stored property is subject to a lien, and the amount of the lien accrued and to accrue prior to the date required to be specified in subsection (3) of this section.

(3) That all the property, other than personal papers and personal photographs, may be sold to satisfy the lien after a specified date which is not less than fourteen days from the date of mailing the final lien sale notice, or a minimum of forty-two days after the date when any part of the rent or other charges due from the occupants remain unpaid, whichever is later, unless the amount of the lien is paid. The owner is not required to sell the personal property within a maximum number of days of when the rent or other charges first became due. If the total value of property in the storage space is less than three hundred dollars, the owner may, instead of sale, dispose of the property in any reasonable manner, subject to the restrictions of RCW 19.150.080(4). After the sale or other disposition pursuant to this section has been completed, the owner shall provide an accounting of the disposition of the proceeds of the sale or other disposition to the occupant at the occupant's last known address and at the alternative address.

(4) That any excess proceeds of the sale or other disposition under RCW 19.150.080(2) over the lien amount and reasonable costs of sale will be retained by the owner and may be reclaimed by the occupant, or claimed by another person, at any time for a period of six months from the sale and that thereafter the proceeds will be turned over to the state as abandoned property as provided in RCW 63.29.165.

(5) That any personal papers and personal photographs will be retained by the owner and may be reclaimed by the occupant at any time for a period of six months from the sale or other disposition of property and that thereafter the owner may dispose of the personal papers and photographs in a reasonable manner, subject to the restrictions of RCW 19.150.080(3).

(6) That the occupant has no right to repurchase any property sold at the lien sale. [2007 c 113 § 3; 1996 c 220 § 1; 1993 c 498 § 5; 1988 c 240 § 7.]

Application—1996 c 220: "This act shall only apply to rental agreements entered into, extended, or renewed after June 6, 1996. Rental agreements entered into before June 6, 1996, which provide for monthly rental payments but providing no specific termination date shall be subject to this

act on the first monthly rental payment date next succeeding June 6, 1996." [1996 c 220 § 4.]

19.150.070 Sale of property. The owner, subject to RCW 19.150.090 and 19.150.100, may sell the property, other than personal papers and personal photographs, upon complying with the requirements set forth in RCW 19.150.080. [2007 c 113 § 4; 1988 c 240 § 8.]

19.150.080 Manner of sale—Who may not acquire property—Interest on excess proceeds. (1) After the expiration of the time given in the final notice of lien sale pursuant to RCW 19.150.060, the property, other than personal papers and personal photographs, may be sold or disposed of in a reasonable manner as provided in this section.

(2)(a) If the property has a value of three hundred dollars or more, the sale shall be conducted in a commercially reasonable manner, and, after applying the proceeds to costs of the sale and then to the amount of the lien, the owner shall retain any excess proceeds of the sale on the occupant's behalf. The occupant, or any other person having a court order or other judicial process against the property, may claim the excess proceeds, or a portion thereof sufficient to satisfy the particular claim, at any time within six months of the date of sale.

(b) If the property has a value of less than three hundred dollars, the property may be disposed of in a reasonable manner.

(3) Personal papers and personal photographs that are not reclaimed by the occupant within six months of a sale under subsection (2)(a) of this section or other disposition under subsection (2)(b) of this section may be disposed of in a reasonable manner.

(4) No employee or owner, or family member of an employee or owner, may acquire, directly or indirectly, the property sold pursuant to subsection (2)(a) of this section or disposed of pursuant to subsection (2)(b) of this section, or personal papers and personal photographs disposed of under subsection (3) of this section.

(5) The owner is entitled to retain any interest earned on the excess proceeds until the excess proceeds are claimed by another person or are turned over to the state as abandoned property pursuant to RCW 63.29.165. [2007 c 113 § 5; 1996 c 220 § 2; 1993 c 498 § 6; 1988 c 240 § 9.]

Application—1996 c 220: See note following RCW 19.150.060.

19.150.100 Payment prior to sale by persons claiming a right to the property. Prior to any sale pursuant to RCW 19.150.080, any person claiming a right to the personal property may pay the amount necessary to satisfy the lien and one month's rent in advance. In that event, the personal property may not be sold, but must be retained by the owner pending a court order directing the disposition of the personal property. If such an order is not obtained within thirty days of the original payment, the claimant must pay the monthly rental charge for the space where the personal property is stored. If rent is not paid, the owner may sell or dispose of the personal property in accordance with RCW 19.150.080. The owner has no liability to a claimant who fails to secure a court order in a timely manner or pay the required rental charge for any

sale or other disposition of the personal property. [2007 c 113 § 6; 1988 c 240 § 11.]

Chapter 19.182 RCW
FAIR CREDIT REPORTING ACT

Sections

19.182.020 Consumer report—Furnishing—Procuring.
19.182.170 Victim of identity theft—Security freeze. (*Effective September 1, 2008.*)

19.182.020 Consumer report—Furnishing—Procuring. (1) A consumer reporting agency may furnish a consumer report only under the following circumstances:

(a) In response to the order of a court having jurisdiction to issue the order;

(b) In accordance with the written instructions of the consumer to whom it relates; or

(c) To a person that the agency has reason to believe:

(i) Intends to use the information in connection with a credit transaction involving the consumer on whom the information is to be furnished and involving the extension of credit to, or review or collection of an account of, the consumer;

(ii) Intends to use the information for employment purposes;

(iii) Intends to use the information in connection with the underwriting of insurance involving the consumer;

(iv) Intends to use the information in connection with a determination of the consumer's eligibility for a license or other benefit granted by a governmental instrumentality required by law to consider an applicant's financial responsibility or status; or

(v) Otherwise has a legitimate business need for the information in connection with a business transaction involving the consumer.

(2)(a) Subject to (c) of this subsection, a person may not procure a consumer report, or cause a consumer report to be procured, for employment purposes with respect to any consumer who is not an employee at the time the report is procured or caused to be procured unless:

(i) A clear and conspicuous disclosure has been made in writing to the consumer before the report is procured or caused to be procured that a consumer report may be obtained for purposes of considering the consumer for employment. The disclosure may be contained in a written statement contained in employment application materials; or

(ii) The consumer authorizes the procurement of the report.

(b) A person may not procure a consumer report, or cause a consumer report to be procured, for employment purposes with respect to any employee unless the employee has received, at any time after the person became an employee, written notice that consumer reports may be used for employment purposes. A written statement that consumer reports may be used for employment purposes that is contained in employee guidelines or manuals available to employees or included in written materials provided to employees constitutes written notice for purposes of this subsection. This subsection does not apply with respect to a consumer report of an employee who the employer has reasonable cause to believe

has engaged in specific activity that constitutes a violation of law.

(c) As applied to (a) and (b) of this subsection, a person may not procure a consumer report for employment purposes where any information contained in the report bears on the consumer's creditworthiness, credit standing, or credit capacity, unless the information is either:

(i) Substantially job related and the employer's reasons for the use of such information are disclosed to the consumer in writing; or

(ii) Required by law.

(d) In using a consumer report for employment purposes, before taking any adverse action based in whole or part on the report, a person shall provide to the consumer to whom the report relates: (i) The name, address, and telephone number of the consumer reporting agency providing the report; (ii) a description of the consumer's rights under this chapter pertaining to consumer reports obtained for employment purposes; and (iii) a reasonable opportunity to respond to any information in the report that is disputed by the consumer. This subsection applies to job applicants and current employees. [2007 c 93 § 1; 1993 c 476 § 4.]

19.182.170 Victim of identity theft—Security freeze. (*Effective September 1, 2008.*) (1) A consumer, who is a resident of this state, may elect to place a security freeze on his or her credit report by making a request in writing by certified mail to a consumer reporting agency. "Security freeze"

means a prohibition, consistent with this section, on a consumer reporting agency's furnishing of a consumer's credit report to a third party intending to use the credit report to determine the consumer's eligibility for credit. If a security freeze is in place, information from a consumer's credit report may not be released to a third party without prior express authorization from the consumer. This subsection does not prevent a consumer reporting agency from advising a third party that a security freeze is in effect with respect to the consumer's credit report.

(2) For purposes of this section and RCW 19.182.180 through 19.182.210:

(a) "Victim of identity theft" means a person who has a police report evidencing their claim to be a victim of a violation of RCW 9.35.020 and which report will be produced to a consumer reporting agency, upon such consumer reporting agency's request.

(b) "Credit report" means a consumer report, as defined in 15 U.S.C. Sec. 1681a, that is used or collected to serve as a factor in establishing a consumer's eligibility for credit for personal, family, or household purposes.

(c) "Normal business hours" means Sunday through Saturday, between the hours of 6:00 a.m. and 9:30 p.m. Pacific time.

(3) A consumer reporting agency shall place a security freeze on a consumer's credit report no later than five business days after receiving a written request from the consumer and payment of the fee required by the consumer reporting agency under subsection (13) of this section.

(4) The consumer reporting agency shall send a written confirmation of the security freeze to the consumer within ten business days and shall provide the consumer with a unique personal identification number or password to be used by the

consumer when providing authorization for the release of his or her credit report for a specific party or period of time.

(5) If the consumer wishes to allow his or her credit report to be accessed for a specific period of time while a freeze is in place, he or she shall contact the consumer reporting agency, request that the freeze be temporarily lifted, and provide the following:

(a) Proper identification, which means that information generally deemed sufficient to identify a person. Only if the consumer is unable to sufficiently identify himself or herself, may a consumer reporting agency require additional information concerning the consumer's employment and personal or family history in order to verify his or her identity;

(b) The unique personal identification number or password provided by the consumer reporting agency under subsection (4) of this section;

(c) The proper information regarding the time period for which the report is available to users of the credit report; and

(d) Payment of the fee required by the consumer reporting agency under subsection (13) of this section.

(6) A consumer reporting agency that receives a request from a consumer to temporarily lift a freeze on a credit report under subsection (5) of this section shall comply with the request within:

(a) Three business days of receiving the request by mail; or

(b) Fifteen minutes of receiving the request from the consumer through the electronic contact method chosen by the consumer reporting agency in accordance with subsection (8) of this section, if the request:

(i) Is received during normal business hours; and

(ii) Includes the consumer's proper identification and correct personal identification number or password.

(7) A consumer reporting agency is not required to remove a security freeze within the time provided in subsection (6)(b) of this section if:

(a) The consumer fails to meet the requirements of subsection (5) of this section; or

(b) The consumer reporting agency's ability to remove the security freeze within fifteen minutes is prevented by:

(i) An act of God, including fire, earthquakes, hurricanes, storms, or similar natural disasters or phenomena;

(ii) Unauthorized or illegal acts by a third party, including terrorism, sabotage, riot, vandalism, labor strikes, or disputes disrupting operations, or similar occurrences;

(iii) An interruption in operations, including electrical failure, unanticipated delay in equipment or replacement part delivery, computer hardware or software failures inhibiting response time, or similar disruptions;

(iv) Governmental action, including emergency orders or regulations, judicial or law enforcement action, or similar directives;

(v) Regularly scheduled maintenance of, or updates to, the consumer reporting agency's systems outside of normal business hours;

(vi) Commercially reasonable maintenance of, or repair to, the consumer reporting agency's systems that is unexpected or unscheduled; or

(vii) Receipt of a removal request outside of normal business hours.

(8) A consumer reporting agency may develop procedures involving the use of telephone, fax, the internet, or other electronic media to receive and process a request from a consumer to temporarily lift a freeze on a credit report under subsection (5) of this section in an expedited manner.

(9) A consumer reporting agency shall remove or temporarily lift a freeze placed on a consumer's credit report only in the following cases:

(a) Upon consumer request, under subsection (5) or (12) of this section; or

(b) When the consumer's credit report was frozen due to a material misrepresentation of fact by the consumer. When a consumer reporting agency intends to remove a freeze upon a consumer's credit report under this subsection, the consumer reporting agency shall notify the consumer in writing prior to removing the freeze on the consumer's credit report.

(10) When a third party requests access to a consumer credit report on which a security freeze is in effect, and this request is in connection with an application for credit or any other use, and the consumer does not allow his or her credit report to be accessed for that period of time, the third party may treat the application as incomplete.

(11) When a consumer requests a security freeze, the consumer reporting agency shall disclose the process of placing and temporarily lifting a freeze, and the process for allowing access to information from the consumer's credit report for a specific period of time while the freeze is in place.

(12) A security freeze remains in place until the consumer requests that the security freeze be removed. A consumer reporting agency shall remove a security freeze within three business days of receiving a request for removal from the consumer, who provides all of the following:

(a) Proper identification, as defined in subsection (5)(a) of this section;

(b) The unique personal identification number or password provided by the consumer reporting agency under subsection (4) of this section; and

(c) Payment of the fee required by the consumer reporting agency under subsection (13) of this section.

(13)(a) Except as provided in (b) of this subsection, a consumer reporting agency may charge a fee of no more than ten dollars to a consumer for placement of each freeze, temporary lift of the freeze, or removal of the freeze.

(b) A consumer reporting agency may not charge a fee to place a security freeze for a victim of identity theft or for a consumer, who is sixty-five years old or older.

(14) This section does not apply to the use of a consumer credit report by any of the following:

(a) A person or entity, or a subsidiary, affiliate, or agent of that person or entity, or an assignee of a financial obligation owing by the consumer to that person or entity, or a prospective assignee of a financial obligation owing by the consumer to that person or entity in conjunction with the proposed purchase of the financial obligation, with which the consumer has or had prior to assignment an account or contract, including a demand deposit account, or to whom the consumer issued a negotiable instrument, for the purposes of reviewing the account or collecting the financial obligation owing for the account, contract, or negotiable instrument. For purposes of this subsection, "reviewing the account"

includes activities related to account maintenance, monitoring, credit line increases, and account upgrades and enhancements;

(b) Any federal, state, or local entity, including a law enforcement agency, court, or their agents or assigns;

(c) Any person acting under a court order, warrant, or subpoena;

(d) A child support agency acting under Title IV-D of the social security act (42 U.S.C. et seq.);

(e) The department of social and health services acting to fulfill any of its statutory responsibilities;

(f) The internal revenue service acting to investigate or collect delinquent taxes or unpaid court orders or to fulfill any of its other statutory responsibilities;

(g) The use of credit information for the purposes of pre-screening as provided for by the federal fair credit reporting act;

(h) Any person or entity administering a credit file monitoring subscription service to which the consumer has subscribed;

(i) Any person or entity for the purpose of providing a consumer with a copy of his or her credit report upon the consumer's request; and

(j) A mortgage broker or loan originator required to be licensed under chapter 19.146 RCW.

(15) Liability may not result to the consumer reporting agency if through inadvertence or mistake the consumer reporting agency releases credit report information to a person or entity purporting to be a mortgage broker or loan originator under subsection (14) of this section that is, in fact, not a mortgage broker or loan originator.

(16) The consumer's request for a security freeze does not prohibit the consumer reporting agency from disclosing the consumer's credit report for other than credit-related purposes.

(17) A violation of subsection (6) of this section does not provide a private cause of action under RCW 19.86.090. A violation of subsection (6) of this section shall be enforced exclusively by the attorney general. A violation of subsection (6) of this section is subject to all other remedies and penalties available under this chapter. [2007 c 499 § 1; 2005 c 342 § 1.]

Effective date—2007 c 499: "This act takes effect September 1, 2008." [2007 c 499 § 2.]

Chapter 19.285 RCW

ENERGY INDEPENDENCE ACT

Sections

19.285.010	Intent.
19.285.020	Declaration of policy.
19.285.030	Definitions.
19.285.040	Energy conservation and renewable energy targets.
19.285.050	Resource costs.
19.285.060	Accountability and enforcement—Energy independence act special account.
19.285.070	Reporting and public disclosure.
19.285.080	Rule making.
19.285.900	Construction—2007 c 1 (Initiative Measure No. 937).
19.285.901	Severability—2007 c 1 (Initiative Measure No. 937).
19.285.902	Short title—2007 c 1 (Initiative Measure No. 937).
19.285.903	Captions not law—2007 c 1 (Initiative Measure No. 937).

19.285.010 Intent. This chapter concerns requirements for new energy resources. This chapter requires large utilities to obtain fifteen percent of their electricity from new renewable resources such as solar and wind by 2020 and undertake cost-effective energy conservation. [2007 c 1 § 1 (Initiative Measure No. 937, approved November 7, 2006).]

19.285.020 Declaration of policy. Increasing energy conservation and the use of appropriately sited renewable energy facilities builds on the strong foundation of low-cost renewable hydroelectric generation in Washington state and will promote energy independence in the state and the Pacific Northwest region. Making the most of our plentiful local resources will stabilize electricity prices for Washington residents, provide economic benefits for Washington counties and farmers, create high-quality jobs in Washington, provide opportunities for training apprentice workers in the renewable energy field, protect clean air and water, and position Washington state as a national leader in clean energy technologies. [2007 c 1 § 2 (Initiative Measure No. 937, approved November 7, 2006).]

19.285.030 Definitions. The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

(1) "Attorney general" means the Washington state office of the attorney general.

(2) "Auditor" means: (a) The Washington state auditor's office or its designee for qualifying utilities under its jurisdiction that are not investor-owned utilities; or (b) an independent auditor selected by a qualifying utility that is not under the jurisdiction of the state auditor and is not an investor-owned utility.

(3) "Commission" means the Washington state utilities and transportation commission.

(4) "Conservation" means any reduction in electric power consumption resulting from increases in the efficiency of energy use, production, or distribution.

(5) "Cost-effective" has the same meaning as defined in RCW 80.52.030.

(6) "Council" means the Washington state apprenticeship and training council within the department of labor and industries.

(7) "Customer" means a person or entity that purchases electricity for ultimate consumption and not for resale.

(8) "Department" means the department of community, trade, and economic development or its successor.

(9) "Distributed generation" means an eligible renewable resource where the generation facility or any integrated cluster of such facilities has a generating capacity of not more than five megawatts.

(10) "Eligible renewable resource" means:

(a) Electricity from a generation facility powered by a renewable resource other than fresh water that commences operation after March 31, 1999, where: (i) The facility is located in the Pacific Northwest; or (ii) the electricity from the facility is delivered into Washington state on a real-time basis without shaping, storage, or integration services; or

(b) Incremental electricity produced as a result of efficiency improvements completed after March 31, 1999, to hydroelectric generation projects owned by a qualifying util-

ity and located in the Pacific Northwest or to hydroelectric generation in irrigation pipes and canals located in the Pacific Northwest, where the additional generation in either case does not result in new water diversions or impoundments.

(11) "Investor-owned utility" has the same meaning as defined in RCW 19.29A.010.

(12) "Load" means the amount of kilowatt-hours of electricity delivered in the most recently completed year by a qualifying utility to its Washington retail customers.

(13) "Nonpower attributes" means all environmentally related characteristics, exclusive of energy, capacity reliability, and other electrical power service attributes, that are associated with the generation of electricity from a renewable resource, including but not limited to the facility's fuel type, geographic location, vintage, qualification as an eligible renewable resource, and avoided emissions of pollutants to the air, soil, or water, and avoided emissions of carbon dioxide and other greenhouse gases.

(14) "Pacific Northwest" has the same meaning as defined for the Bonneville power administration in section 3 of the Pacific Northwest electric power planning and conservation act (94 Stat. 2698; 16 U.S.C. Sec. 839a).

(15) "Public facility" has the same meaning as defined in RCW 39.35C.010.

(16) "Qualifying utility" means an electric utility, as the term "electric utility" is defined in RCW 19.29A.010, that serves more than twenty-five thousand customers in the state of Washington. The number of customers served may be based on data reported by a utility in form 861, "annual electric utility report," filed with the energy information administration, United States department of energy.

(17) "Renewable energy credit" means a tradable certificate of proof of at least one megawatt-hour of an eligible renewable resource where the generation facility is not powered by fresh water, the certificate includes all of the non-power attributes associated with that one megawatt-hour of electricity, and the certificate is verified by a renewable energy credit tracking system selected by the department.

(18) "Renewable resource" means: (a) Water; (b) wind; (c) solar energy; (d) geothermal energy; (e) landfill gas; (f) wave, ocean, or tidal power; (g) gas from sewage treatment facilities; (h) biodiesel fuel as defined in RCW 82.29A.135 that is not derived from crops raised on land cleared from old growth or first-growth forests where the clearing occurred after December 7, 2006; and (i) biomass energy based on animal waste or solid organic fuels from wood, forest, or field residues, or dedicated energy crops that do not include (i) wood pieces that have been treated with chemical preservatives such as creosote, pentachlorophenol, or copper-chrome-arsenic; (ii) black liquor byproduct from paper production; (iii) wood from old growth forests; or (iv) municipal solid waste.

(19) "Rule" means rules adopted by an agency or other entity of Washington state government to carry out the intent and purposes of this chapter.

(20) "Year" means the twelve-month period commencing January 1st and ending December 31st. [2007 c 1 § 3 (Initiative Measure No. 937, approved November 7, 2006).]

19.285.040 Energy conservation and renewable energy targets. (1) Each qualifying utility shall pursue all

available conservation that is cost-effective, reliable, and feasible.

(a) By January 1, 2010, using methodologies consistent with those used by the Pacific Northwest electric power and conservation planning council in its most recently published regional power plan, each qualifying utility shall identify its achievable cost-effective conservation potential through 2019. At least every two years thereafter, the qualifying utility shall review and update this assessment for the subsequent ten-year period.

(b) Beginning January 2010, each qualifying utility shall establish and make publicly available a biennial acquisition target for cost-effective conservation consistent with its identification of achievable opportunities in (a) of this subsection, and meet that target during the subsequent two-year period. At a minimum, each biennial target must be no lower than the qualifying utility's pro rata share for that two-year period of its cost-effective conservation potential for the subsequent ten-year period.

(c) In meeting its conservation targets, a qualifying utility may count high-efficiency cogeneration owned and used by a retail electric customer to meet its own needs. High-efficiency cogeneration is the sequential production of electricity and useful thermal energy from a common fuel source, where, under normal operating conditions, the facility has a useful thermal energy output of no less than thirty-three percent of the total energy output. The reduction in load due to high-efficiency cogeneration shall be: (i) Calculated as the ratio of the fuel chargeable to power heat rate of the cogeneration facility compared to the heat rate on a new and clean basis of a best-commercially available technology combined-cycle natural gas-fired combustion turbine; and (ii) counted towards meeting the biennial conservation target in the same manner as other conservation savings.

(d) The commission may determine if a conservation program implemented by an investor-owned utility is cost-effective based on the commission's policies and practice.

(e) The commission may rely on its standard practice for review and approval of investor-owned utility conservation targets.

(2)(a) Each qualifying utility shall use eligible renewable resources or acquire equivalent renewable energy credits, or a combination of both, to meet the following annual targets:

(i) At least three percent of its load by January 1, 2012, and each year thereafter through December 31, 2015;

(ii) At least nine percent of its load by January 1, 2016, and each year thereafter through December 31, 2019; and

(iii) At least fifteen percent of its load by January 1, 2020, and each year thereafter.

(b) A qualifying utility may count distributed generation at double the facility's electrical output if the utility: (i) Owns or has contracted for the distributed generation and the associated renewable energy credits; or (ii) has contracted to purchase the associated renewable energy credits.

(c) In meeting the annual targets in (a) of this subsection, a qualifying utility shall calculate its annual load based on the average of the utility's load for the previous two years.

(d) A qualifying utility shall be considered in compliance with an annual target in (a) of this subsection if: (i) The utility's weather-adjusted load for the previous three years on

average did not increase over that time period; (ii) after December 7, 2006, the utility did not commence or renew ownership or incremental purchases of electricity from resources other than renewable resources other than on a daily spot price basis and the electricity is not offset by equivalent renewable energy credits; and (iii) the utility invested at least one percent of its total annual retail revenue requirement that year on eligible renewable resources, renewable energy credits, or a combination of both.

(e) The requirements of this section may be met for any given year with renewable energy credits produced during that year, the preceding year, or the subsequent year. Each renewable energy credit may be used only once to meet the requirements of this section.

(f) In complying with the targets established in (a) of this subsection, a qualifying utility may not count:

(i) Eligible renewable resources or distributed generation where the associated renewable energy credits are owned by a separate entity; or

(ii) Eligible renewable resources or renewable energy credits obtained for and used in an optional pricing program such as the program established in RCW 19.29A.090.

(g) Where fossil and combustible renewable resources are cofired in one generating unit located in the Pacific Northwest where the cofiring commenced after March 31, 1999, the unit shall be considered to produce eligible renewable resources in direct proportion to the percentage of the total heat value represented by the heat value of the renewable resources.

(h)(i) A qualifying utility that acquires an eligible renewable resource or renewable energy credit may count that acquisition at one and two-tenths times its base value:

(A) Where the eligible renewable resource comes from a facility that commenced operation after December 31, 2005; and

(B) Where the developer of the facility used apprenticeship programs approved by the council during facility construction.

(ii) The council shall establish minimum levels of labor hours to be met through apprenticeship programs to qualify for this extra credit.

(i) A qualifying utility shall be considered in compliance with an annual target in (a) of this subsection if events beyond the reasonable control of the utility that could not have been reasonably anticipated or ameliorated prevented it from meeting the renewable energy target. Such events include weather-related damage, mechanical failure, strikes, lockouts, and actions of a governmental authority that adversely affect the generation, transmission, or distribution of an eligible renewable resource under contract to a qualifying utility.

(3) Utilities that become qualifying utilities after December 31, 2006, shall meet the requirements in this section on a time frame comparable in length to that provided for qualifying utilities as of December 7, 2006. [2007 c 1 § 4 (Initiative Measure No. 937, approved November 7, 2006).]

19.285.050 Resource costs. (1)(a) A qualifying utility shall be considered in compliance with an annual target created in RCW 19.285.040(2) for a given year if the utility invested four percent of its total annual retail revenue require-

ment on the incremental costs of eligible renewable resources, the cost of renewable energy credits, or a combination of both, but a utility may elect to invest more than this amount.

(b) The incremental cost of an eligible renewable resource is calculated as the difference between the levelized delivered cost of the eligible renewable resource, regardless of ownership, compared to the levelized delivered cost of an equivalent amount of reasonably available substitute resources that do not qualify as eligible renewable resources, where the resources being compared have the same contract length or facility life.

(2) An investor-owned utility is entitled to recover all prudently incurred costs associated with compliance with this chapter. The commission shall address cost recovery issues of qualifying utilities that are investor-owned utilities that serve both in Washington and in other states in complying with this chapter. [2007 c 1 § 5 (Initiative Measure No. 937, approved November 7, 2006).]

19.285.060 Accountability and enforcement—Energy independence act special account.

(1) Except as provided in subsection (2) of this section, a qualifying utility that fails to comply with the energy conservation or renewable energy targets established in RCW 19.285.040 shall pay an administrative penalty to the state of Washington in the amount of fifty dollars for each megawatt-hour of shortfall. Beginning in 2007, this penalty shall be adjusted annually according to the rate of change of the inflation indicator, gross domestic product-implicit price deflator, as published by the bureau of economic analysis of the United States department of commerce or its successor.

(2) A qualifying utility that does not meet an annual renewable energy target established in RCW 19.285.040(2) is exempt from the administrative penalty in subsection (1) of this section for that year if the commission for investor-owned utilities or the auditor for all other qualifying utilities determines that the utility complied with RCW 19.285.040(2) (d) or (i) or 19.285.050(1).

(3) A qualifying utility must notify its retail electric customers in published form within three months of incurring a penalty regarding the size of the penalty and the reason it was incurred.

(4) The commission shall determine if an investor-owned utility may recover the cost of this administrative penalty in electric rates, and may consider providing positive incentives for an investor-owned utility to exceed the targets established in RCW 19.285.040.

(5) Administrative penalties collected under this chapter shall be deposited into the energy independence act special account which is hereby created. All receipts from administrative penalties collected under this chapter must be deposited into the account. Expenditures from the account may be used only for the purchase of renewable energy credits or for energy conservation projects at public facilities, local government facilities, community colleges, or state universities. The state shall own and retire any renewable energy credits purchased using moneys from the account. Only the director of general administration or the director's designee may authorize expenditures from the account. The account is sub-

ject to allotment procedures under chapter 43.88 RCW, but an appropriation is not required for expenditures.

(6) For a qualifying utility that is an investor-owned utility, the commission shall determine compliance with the provisions of this chapter and assess penalties for noncompliance as provided in subsection (1) of this section.

(7) For qualifying utilities that are not investor-owned utilities, the auditor is responsible for auditing compliance with this chapter and rules adopted under this chapter that apply to those utilities and the attorney general is responsible for enforcing that compliance. [2007 c 1 § 6 (Initiative Measure No. 937, approved November 7, 2006).]

19.285.070 Reporting and public disclosure. (1) On or before June 1, 2012, and annually thereafter, each qualifying utility shall report to the department on its progress in the preceding year in meeting the targets established in RCW 19.285.040, including expected electricity savings from the biennial conservation target, expenditures on conservation, actual electricity savings results, the utility's annual load for the prior two years, the amount of megawatt-hours needed to meet the annual renewable energy target, the amount of megawatt-hours of each type of eligible renewable resource acquired, the type and amount of renewable energy credits acquired, and the percent of its total annual retail revenue requirement invested in the incremental cost of eligible renewable resources and the cost of renewable energy credits. For each year that a qualifying utility elects to demonstrate alternative compliance under RCW 19.285.040(2) (d) or (i) or 19.285.050(1), it must include in its annual report relevant data to demonstrate that it met the criteria in that section. A qualifying utility may submit its report to the department in conjunction with its annual obligations in chapter 19.29A RCW.

(2) A qualifying utility that is an investor-owned utility shall also report all information required in subsection (1) of this section to the commission, and all other qualifying utilities shall also make all information required in subsection (1) of this section available to the auditor.

(3) A qualifying utility shall also make reports required in this section available to its customers. [2007 c 1 § 7 (Initiative Measure No. 937, approved November 7, 2006).]

19.285.080 Rule making. (1) The commission may adopt rules to ensure the proper implementation and enforcement of this chapter as it applies to investor-owned utilities.

(2) The department shall adopt rules concerning only process, timelines, and documentation to ensure the proper implementation of this chapter as it applies to qualifying utilities that are not investor-owned utilities. Those rules include, but are not limited to, rules associated with a qualifying utility's development of conservation targets under RCW 19.285.040(1); a qualifying utility's decision to pursue alternative compliance in RCW 19.285.040(2) (d) or (i) or 19.285.050(1); and the format and content of reports required in RCW 19.285.070. Nothing in this subsection may be construed to restrict the rate-making authority of the commission or a qualifying utility as otherwise provided by law.

(3) The commission and department may coordinate in developing rules related to process, timelines, and documentation that are necessary for implementation of this chapter.

(4) Pursuant to the administrative procedure act, chapter 34.05 RCW, rules needed for the implementation of this chapter must be adopted by December 31, 2007. These rules may be revised as needed to carry out the intent and purposes of this chapter. [2007 c 1 § 8 (Initiative Measure No. 937, approved November 7, 2006).]

19.285.900 Construction—2007 c 1 (Initiative Measure No. 937). The provisions of this chapter are to be liberally construed to effectuate the intent, policies, and purposes of this chapter. [2007 c 1 § 9 (Initiative Measure No. 937, approved November 7, 2006).]

19.285.901 Severability—2007 c 1 (Initiative Measure No. 937). If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected. [2007 c 1 § 10 (Initiative Measure No. 937, approved November 7, 2006).]

19.285.902 Short title—2007 c 1 (Initiative Measure No. 937). This chapter may be known and cited as the energy independence act. [2007 c 1 § 11 (Initiative Measure No. 937, approved November 7, 2006).]

19.285.903 Captions not law—2007 c 1 (Initiative Measure No. 937). Captions used in this chapter are not any part of the law. [2007 c 1 § 12 (Initiative Measure No. 937, approved November 7, 2006).]

Chapter 19.290 RCW METAL PROPERTY

Sections

19.290.010	Definitions.
19.290.020	Nonferrous metal property—Records required.
19.290.030	Metal property and metallic wire—Requirements for transactions.
19.290.040	Scrap metal businesses—Record of commercial accounts.
19.290.050	Reports to law enforcement.
19.290.060	Stolen metal property—Preserving evidence.
19.290.070	Violations—Penalty.
19.290.080	Civil penalties.
19.290.090	Exemptions from chapter.
19.290.900	Captions not law—2007 c 377.
19.290.901	Severability—2007 c 377.

19.290.010 Definitions. The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

(1) "Commercial account" means a relationship between a scrap metal business and a commercial enterprise that is ongoing and properly documented under RCW 19.290.030.

(2) "Commercial enterprise" means a corporation, partnership, limited liability company, association, state agency, political subdivision of the state, public corporation, or any other legal or commercial entity.

(3) "Commercial metal property" means: Utility access covers; street light poles and fixtures; road and bridge guardrails; highway or street signs; water meter covers; traffic

directional and control signs; traffic light signals; any metal property marked with the name of a commercial enterprise, including but not limited to a telephone, commercial mobile radio services, cable, electric, water, natural gas, or other utility, or railroad; unused or undamaged building construction materials consisting of copper pipe, tubing, or wiring, or aluminum wire, siding, downspouts, or gutters; aluminum or stainless steel fence panels made from one inch tubing, forty-two inches high with four-inch gaps; aluminum decking, bleachers, or risers; historical markers; statue plaques; grave markers and funeral vases; or agricultural irrigation wheels, sprinkler heads, and pipes.

(4) "Nonferrous metal property" means metal property for which the value of the metal property is derived from the property's content of copper, brass, aluminum, bronze, lead, zinc, nickel, and their alloys. "Nonferrous metal property" does not include precious metals.

(5) "Precious metals" means gold, silver, and platinum.

(6) "Record" means a paper, electronic, or other method of storing information.

(7) "Scrap metal business" means a scrap metal supplier, scrap metal recycling center, and scrap metal processor.

(8) "Scrap metal processor" means a person with a current business license that conducts business from a permanent location, that is engaged in the business of purchasing or receiving nonferrous metal property and commercial metal property for the purpose of altering the metal in preparation for its use as feedstock in the manufacture of new products, and that maintains a hydraulic bailer, shearing device, or shredding device for recycling.

(9) "Scrap metal recycling center" means a person with a current business license that is engaged in the business of purchasing or receiving nonferrous metal property and commercial metal property for the purpose of aggregation and sale to another scrap metal business and that maintains a fixed place of business within the state.

(10) "Scrap metal supplier" means a person with a current business license that is engaged in the business of purchasing or receiving nonferrous metal property for the purpose of aggregation and sale to a scrap metal recycling center or scrap metal processor and that does not maintain a fixed business location in the state.

(11) "Transaction" means a pledge, or the purchase of, or the trade of any item of nonferrous metal property by a scrap metal business from a member of the general public. "Transaction" does not include donations or the purchase or receipt of nonferrous metal property by a scrap metal business from a commercial enterprise, from another scrap metal business, or from a duly authorized employee or agent of the commercial enterprise or scrap metal business. [2007 c 377 § 1.]

19.290.020 Nonferrous metal property—Records required. (1) At the time of a transaction, every scrap metal business doing business in this state shall produce wherever that business is conducted an accurate and legible record of each transaction involving nonferrous metal property. This record must be written in the English language, documented on a standardized form or in electronic form, and contain the following information:

(a) The signature of the person with whom the transaction is made;

(b) The time, date, location, and value of the transaction;

(c) The name of the employee representing the scrap metal business in the transaction;

(d) The name, street address, and telephone number of the person with whom the transaction is made;

(e) The license plate number and state of issuance of the license plate on the motor vehicle used to deliver the nonferrous metal property subject to the transaction;

(f) A description of the motor vehicle used to deliver the nonferrous metal property subject to the transaction;

(g) The current driver's license number or other government-issued picture identification card number of the seller or a copy of the seller's government-issued picture identification card; and

(h) A description of the predominant types of nonferrous metal property subject to the transaction, including the property's classification code as provided in the institute of scrap recycling industries scrap specifications circular, 2006, and weight, quantity, or volume.

(2) For every transaction that involves nonferrous metal property, every scrap metal business doing business in the state shall require the person with whom a transaction is being made to sign a declaration. The declaration may be included as part of the transactional record required under subsection (1) of this section, or on a receipt for the transaction. The declaration must state substantially the following:

"I, the undersigned, affirm under penalty of law that the property that is subject to this transaction is not to the best of my knowledge stolen property."

The declaration must be signed and dated by the person with whom the transaction is being made. An employee of the scrap metal business must witness the signing and dating of the declaration and sign the declaration accordingly before any transaction may be consummated.

(3) The record and declaration required under this section must be open to the inspection of any commissioned law enforcement officer of the state or any of its political subdivisions at all times during the ordinary hours of business, or at reasonable times if ordinary hours of business are not kept, and must be maintained wherever that business is conducted for one year following the date of the transaction. [2007 c 377 § 2.]

19.290.030 Metal property and metallic wire—Requirements for transactions. (1) No scrap metal business may enter into a transaction to purchase or receive nonferrous metal property from any person who cannot produce at least one piece of current government-issued picture identification, including a valid driver's license or identification card issued by any state.

(2) No scrap metal business may purchase or receive commercial metal property unless the seller: (a) Has a commercial account with the scrap metal business; (b) can prove ownership of the property by producing written documentation that the seller is the owner of the property; or (c) can produce written documentation that the seller is an employee or agent authorized to sell the property on behalf of a commercial enterprise.

(3) No scrap metal business may enter into a transaction to purchase or receive metallic wire that was burned in whole or in part to remove insulation unless the seller can produce

written proof to the scrap metal business that the wire was lawfully burned.

(4) No transaction involving nonferrous metal property valued at greater than thirty dollars may be made in cash or with any person who does not provide a street address under the requirements of RCW 19.290.020. For transactions valued at greater than thirty dollars, the person with whom the transaction is being made may only be paid by a nontransferable check, mailed by the scrap metal business to a street address provided under RCW 19.290.020, no earlier than ten days after the transaction was made. A transaction occurs on the date provided in the record required under RCW 19.290.020.

(5) No scrap metal business may purchase or receive beer kegs from anyone except a manufacturer of beer kegs or licensed brewery. [2007 c 377 § 3.]

19.290.040 Scrap metal businesses—Record of commercial accounts. (1) Every scrap metal business must create and maintain a permanent record with a commercial enterprise, including another scrap metal business, in order to establish a commercial account. That record, at a minimum, must include the following information:

(a) The full name of the commercial enterprise or commercial account;

(b) The business address and telephone number of the commercial enterprise or commercial account; and

(c) The full name of the person employed by the commercial enterprise who is authorized to deliver nonferrous metal property and commercial metal property to the scrap metal business.

(2) The record maintained by a scrap metal business for a commercial account must document every purchase or receipt of nonferrous metal property and commercial metal property from the commercial enterprise. The documentation must include, at a minimum, the following information:

(a) The time, date, and value of the property being purchased or received;

(b) A description of the predominant types of property being purchased or received; and

(c) The signature of the person delivering the property to the scrap metal business. [2007 c 377 § 4.]

19.290.050 Reports to law enforcement. (1) Upon request by any commissioned law enforcement officer of the state or any of its political subdivisions, every scrap metal business shall furnish a full, true, and correct transcript of the records from the purchase or receipt of nonferrous metal property and commercial metal property involving a specific individual, vehicle, or item of nonferrous metal property or commercial metal property. This information may be transmitted within a specified time of not less than two business days to the applicable law enforcement agency electronically, by facsimile transmission, or by modem or similar device, or by delivery of computer disk subject to the requirements of, and approval by, the chief of police or the county's chief law enforcement officer.

(2) If the scrap metal business has good cause to believe that any nonferrous metal property or commercial metal property in his or her possession has been previously lost or

stolen, the scrap metal business shall promptly report that fact to the applicable commissioned law enforcement officer of the state, the chief of police, or the county's chief law enforcement officer, together with the name of the owner, if known, and the date when and the name of the person from whom it was received. [2007 c 377 § 5.]

19.290.060 Stolen metal property—Preserving evidence. (1) Following notification, either verbally or in writing, from a commissioned law enforcement officer of the state or any of its political subdivisions that an item of nonferrous metal property or commercial metal property has been reported as stolen, a scrap metal business shall hold that property intact and safe from alteration, damage, or commingling, and shall place an identifying tag or other suitable identification upon the property. The scrap metal business shall hold the property for a period of time as directed by the applicable law enforcement agency up to a maximum of ten business days.

(2) A commissioned law enforcement officer of the state or any of its political subdivisions shall not place on hold any item of nonferrous metal property or commercial metal property unless that law enforcement agency reasonably suspects that the property is a lost or stolen item. Any hold that is placed on the property must be removed within ten business days after the property on hold is determined not to be stolen or lost and the property must be returned to the owner or released. [2007 c 377 § 6.]

19.290.070 Violations—Penalty. It is a gross misdemeanor under chapter 9A.20 RCW for:

(1) Any person to deliberately remove, alter, or obliterate any manufacturer's make, model, or serial number, personal identification number, or identifying marks engraved or etched upon an item of nonferrous metal property or commercial metal property in order to deceive a scrap metal business;

(2) Any scrap metal business to enter into a transaction to purchase or receive any nonferrous metal property or commercial metal property where the manufacturer's make, model, or serial number, personal identification number, or identifying marks engraved or etched upon the property have been deliberately and conspicuously removed, altered, or obliterated;

(3) Any person to knowingly make, cause, or allow to be made any false entry or misstatement of any material matter in any book, record, or writing required to be kept under this chapter;

(4) Any scrap metal business to enter into a transaction to purchase or receive nonferrous metal property or commercial metal property from any person under the age of eighteen years or any person who is discernibly under the influence of intoxicating liquor or drugs;

(5) Any scrap metal business to enter into a transaction to purchase or receive nonferrous metal property or commercial metal property with anyone whom the scrap metal business has been informed by a law enforcement agency to have been convicted of a crime involving drugs, burglary, robbery, theft, or possession of or receiving stolen property, manufacturing, delivering, or possessing with intent to deliver meth-

amphetamine, or possession of ephedrine or any of its salts or isomers or salts of isomers, pseudoephedrine or any of its salts or isomers or salts of isomers, or anhydrous ammonia with intent to manufacture methamphetamine within the past ten years whether the person is acting in his or her own behalf or as the agent of another;

(6) Any person to sign the declaration required under RCW 19.290.020 knowing that the nonferrous metal property subject to the transaction is stolen. The signature of a person on the declaration required under RCW 19.290.020 constitutes evidence of intent to defraud a scrap metal business if that person is found to have known that the nonferrous metal property subject to the transaction was stolen;

(7) Any scrap metal business to possess commercial metal property that was not lawfully purchased or received under the requirements of this chapter; or

(8) Any scrap metal business to engage in a series of transactions valued at less than thirty dollars with the same seller for the purposes of avoiding the requirements of RCW 19.290.030(4). [2007 c 377 § 7.]

19.290.080 Civil penalties. (1) Each violation of the requirements of this chapter that are not subject to the criminal penalties under RCW 19.290.070 shall be punishable, upon conviction, by a fine of not more than one thousand dollars.

(2) Within two years of being convicted of a violation of any of the requirements of this chapter that are not subject to the criminal penalties under RCW 19.290.070, each subsequent violation shall be punishable, upon conviction, by a fine of not more than two thousand dollars. [2007 c 377 § 8.]

19.290.090 Exemptions from chapter. The provisions of this chapter do not apply to transactions conducted by the following:

(1) Motor vehicle dealers licensed under chapter 46.70 RCW;

(2) Vehicle wreckers or hulk haulers licensed under chapter 46.79 or 46.80 RCW;

(3) Persons in the business of operating an automotive repair facility as defined under RCW 46.71.011; and

(4) Persons in the business of buying or selling empty food and beverage containers, including metal food and beverage containers. [2007 c 377 § 9.]

19.290.900 Captions not law—2007 c 377. Captions used in this act are not any part of the law. [2007 c 377 § 13.]

19.290.901 Severability—2007 c 377. If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected. [2007 c 377 § 14.]

Chapter 19.295 RCW

ESTATE DISTRIBUTION DOCUMENTS

Sections

19.295.005 Findings—Intent.
19.295.010 Definitions.

[2007 RCW Supp—page 176]

19.295.020 Marketing of estate distribution documents.
19.295.030 Violations—Application of consumer protection act.

19.295.005 Findings—Intent. The legislature finds the practice of using "living trusts" as a marketing tool by persons who are not authorized to practice law, who are not acting directly under the supervision of a person authorized to practice law, or who are not a financial institution to be a deceptive means of obtaining personal asset information and of developing and generating leads for sales to senior citizens. The legislature further finds that this practice endangers the financial security of consumers and may frustrate their estate planning objectives. Therefore, the legislature intends to prohibit the marketing of services related to preparation of estate distribution documents by persons who are not authorized to practice law or who are not a financial institution.

This chapter is not intended to limit consumers from receiving legitimate estate planning services, including "living trusts," from those authorized to practice law; but is intended to prohibit persons not licensed to engage in the practice of law from the unscrupulous practice of marketing legal services as a means of targeting senior citizens for financial exploitation. [2007 c 67 § 1.]

19.295.010 Definitions. The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

(1) "Market" or "marketing" includes every offer, contract, or agreement to prepare or gather information for the preparation of, or to provide, individualized advice about an estate distribution document.

(2) "Estate distribution document" means any one or more of the following documents, instruments, or writings prepared, or intended to be prepared, for a specific person or as marketing materials for distribution to any person, other than documents, instruments, writings, or marketing materials relating to a payable on death account established under RCW 30.22.040(9):

(a) Last will and testament or any writing, however designated, that is intended to have the same legal effect as a last will and testament, and any codicil thereto;

(b) Revocable and irrevocable inter vivos trusts and any instrument which purports to transfer any of the trustor's current and/or future interest in real or personal property thereto;

(c) Agreement that fixes the terms and provisions of the sale of a decedent's interest in any real or personal property at or following the date of the decedent's death.

(3) "Financial institution" means a bank holding company registered under federal law, or a bank, trust company, mutual savings bank, savings bank, savings and loan association or credit union organized under state or federal law, or any affiliate, subsidiary, officer or employee of a financial institution.

(4) "Person" means any natural person, corporation, partnership, limited liability company, firm, or association. [2007 c 67 § 2.]

19.295.020 Marketing of estate distribution documents. (1) Except as provided in subsection (2) of this section, it is unlawful for a person to market estate distribution

documents, directly or indirectly, in or from this state unless the person is authorized to practice law in this state.

(2) A person employed by someone authorized to practice law in this state may gather information for, or assist in the preparation of, estate distribution documents as long as that person does not provide any legal advice.

(3) This chapter applies to any person who markets estate distribution documents in or from this state. Marketing occurs in this state, whether or not either party is then present in this state, if the offer originates in this state or is directed into this state or is received or accepted in this state.

(4) This chapter does not apply to any financial institution. [2007 c 67 § 3.]

19.295.030 Violations—Application of consumer protection act. The legislature finds that the practices covered by this chapter are matters vitally affecting the public interest for the purpose of applying the consumer protection act, chapter 19.86 RCW. A violation of this chapter is not reasonable in relation to the development and preservation of business and is an unfair or deceptive act in trade or commerce and an unfair method of competition for purposes of applying the consumer protection act, chapter 19.86 RCW. [2007 c 67 § 4.]

Title 20

COMMISSION MERCHANTS— AGRICULTURAL PRODUCTS

Chapters

20.01 Agricultural products—Commission merchants, dealers, brokers, buyers, agents.

Chapter 20.01 RCW

AGRICULTURAL PRODUCTS— COMMISSION MERCHANTS, DEALERS, BROKERS, BUYERS, AGENTS

Sections

20.01.380 Dealers, cash buyers, livestock dealers—Recordkeeping—Carrying identification and health documents.
20.01.610 Authority to stop vehicle violating chapter—Failure to stop, civil infraction.

20.01.380 Dealers, cash buyers, livestock dealers—Recordkeeping—Carrying identification and health documents. Every dealer or cash buyer purchasing any agricultural products from the consignor thereof shall promptly make and keep for three years a correct record showing in detail the following:

- (1) The name and address of the consignor.
- (2) The date received.
- (3) The terms of the sale.
- (4) The quality and quantity delivered by the consignor, and where applicable the dockage, tare, grade, size, net weight, or quantity.
- (5) An itemized statement of any charges paid by the dealer or cash buyer for the account of the consignor.

(6) The name and address of the purchaser: PROVIDED, That the name and address of the purchaser may be deleted from the record furnished to the consignor.

A copy of such record containing the above matters shall be forwarded to the consignor forthwith.

Livestock dealers must also maintain individual animal identification and disposition records as may be required by law, or rule adopted by the director.

Livestock dealers must carry animal identification and animal health documents as required by chapters 16.36 and 16.57 RCW and rules adopted by the director under those chapters. [2007 c 71 § 7; 1991 c 109 § 21; 1989 c 354 § 42; 1988 c 254 § 17; 1981 c 296 § 33; 1963 c 232 § 4; 1959 c 139 § 38.]

Severability—1989 c 354: See note following RCW 15.36.012.

Severability—1981 c 296: See note following RCW 15.08.010.

20.01.610 Authority to stop vehicle violating chapter—Failure to stop, civil infraction. The director may establish points of inspection for vehicles transporting agricultural products on the public roads of this state. Vehicles transporting agricultural products on the public roads of this state are subject to inspection and must stop at any posted inspection point established by the director. The director or appointed officers may stop a vehicle transporting agricultural products upon the public roads of this state at a place other than an inspection point if there is reasonable cause to believe the carrier, seller, or buyer may be in violation of this chapter. Any operator of a vehicle failing or refusing to stop when directed to do so has committed a civil infraction.

The director and appointed officers shall work to ensure that vehicles carrying perishable agricultural products are detained no longer than is absolutely necessary for a prompt assessment of compliance with this chapter. If a vehicle carrying perishable agricultural products is found to be in violation of this chapter, the director or appointed officers shall promptly issue necessary notices of civil infraction, as provided in RCW 20.01.482 and 20.01.484, and shall allow the vehicle to continue toward its destination without further delay. [2007 c 71 § 6; 2003 c 395 § 10; 1986 c 178 § 14; 1983 c 305 § 8.]

Severability—1983 c 305: See note following RCW 20.01.010.

Title 23B

WASHINGTON BUSINESS CORPORATION ACT

Chapters

23B.07 Shareholders.
23B.08 Directors and officers.
23B.10 Amendment of articles of incorporation and bylaws.
23B.19 Significant business transactions.

Chapter 23B.07 RCW

SHAREHOLDERS

Sections

23B.07.035 Inspectors to act at meetings—Appointment—Duties—Certain corporations.

23B.07.035 Inspectors to act at meetings—Appointment—Duties—Certain corporations. (1) A corporation having any shares listed on a national securities exchange or regularly traded in a market maintained by one or more members of a national or affiliated securities association shall, and any other corporation may, appoint one or more inspectors to act at a meeting of shareholders and make a written report of the inspectors' determinations. Each inspector shall take and sign an oath faithfully to execute the duties of inspector with strict impartiality and according to the best of the inspector's ability.

(2) The inspectors shall:

- (a) Ascertain the number of shares outstanding and the voting power of each;
 - (b) Determine the shares represented at a meeting;
 - (c) Determine the validity of proxies and ballots;
 - (d) Count all votes; and
 - (e) Determine the result.
- (3) An inspector may be an officer or employee of the corporation.
- (4) If no challenge of a determination by the inspectors is timely made, such determination is conclusive. Challenge of any determination by the inspectors may be made in a court of competent jurisdiction. [2007 c 467 § 6.]

Chapter 23B.08 RCW

DIRECTORS AND OFFICERS

Sections

23B.08.030 Number and election of directors.
 23B.08.050 Terms of directors—Generally.
 23B.08.070 Resignation of directors.
 23B.08.100 Vacancy on board of directors.

23B.08.030 Number and election of directors. (1) A board of directors must consist of one or more individuals, with the number specified in or fixed in accordance with the articles of incorporation or bylaws.

(2) Directors are elected at the first annual shareholders' meeting and at each annual meeting thereafter unless (a) their terms are staggered under RCW 23B.08.060, or (b) their terms are otherwise governed by RCW 23B.05.050. Directors also may be elected by consent action under RCW 23B.07.040. [2007 c 467 § 1; 2002 c 297 § 27; 1994 c 256 § 29; 1989 c 165 § 82.]

Findings—Construction—1994 c 256: See RCW 43.320.007.

23B.08.050 Terms of directors—Generally. (1) The terms of the initial directors of a corporation expire at the first shareholders' meeting at which directors are elected.

(2) The terms of all other directors expire at the next annual shareholders' meeting following their election unless (a) their terms are staggered under RCW 23B.08.060 then at the applicable second or third annual shareholders' meeting following their election; or (b) their terms are otherwise gov-

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erned by RCW 23B.05.050, except to the extent (i) the terms are otherwise provided in a bylaw adopted pursuant to RCW 23B.10.205, or (ii) a shorter term is specified in the articles of incorporation in the event of a director nominee failing to receive a specified vote for election.

(3) A decrease in the number of directors does not shorten an incumbent director's term.

(4) The term of a director elected to fill a vacancy expires at the next shareholders' meeting at which directors are elected.

(5) Except to the extent otherwise provided in the articles of incorporation or pursuant to RCW 23B.10.205, if a bylaw electing to be governed by that section is in effect, despite the expiration of a director's term, the director continues to serve until the director's successor is elected and qualified or there is a decrease in the number of directors. [2007 c 467 § 2; 1994 c 256 § 30; 1989 c 165 § 84.]

Findings—Construction—1994 c 256: See RCW 43.320.007.

23B.08.070 Resignation of directors. (1) A director may resign at any time by delivering notice in the form of an executed resignation to the board of directors, its chairperson, the president, or the secretary of the corporation.

(2) A notice of resignation is effective when the resignation is delivered unless the resignation specifies a later effective date, or an effective date determined upon the happening of an event or events. A notice of resignation that is conditioned upon failing to receive a specified vote for election as a director may provide that it is irrevocable. [2007 c 467 § 3; 2002 c 297 § 28; 1989 c 165 § 86.]

23B.08.100 Vacancy on board of directors. (1) Unless the articles of incorporation provide otherwise, if a vacancy occurs on a board of directors, including a vacancy resulting from an increase in the number of directors:

- (a) The shareholders may fill the vacancy;
- (b) The board of directors may fill the vacancy; or
- (c) If the directors in office constitute fewer than a quorum of the board, they may fill the vacancy by the affirmative vote of a majority of all the directors in office.

(2) If the vacant office was held by a director elected by a voting group of shareholders, only the holders of shares of that voting group are entitled to vote to fill the vacancy, if it is filled by the shareholders, and only the directors elected by that voting group are entitled to fill the vacancy if it is filled by the directors.

(3) A vacancy that will occur at a specific later date, by reason of a resignation effective at a later date under RCW 23B.08.070(2) or otherwise, may be filled before the vacancy occurs but the new director may not take office until the vacancy occurs. [2007 c 467 § 4; 1989 c 165 § 89.]

Chapter 23B.10 RCW

AMENDMENT OF ARTICLES OF INCORPORATION AND BYLAWS

Sections

23B.10.200 Amendment of bylaws by board of directors or shareholders.
 23B.10.205 Amendment of bylaws—Election of directors.

23B.10.200 Amendment of bylaws by board of directors or shareholders. (1) A corporation's board of directors may amend or repeal the corporation's bylaws, or adopt new bylaws, unless:

(a) The articles of incorporation, RCW 23B.10.205, or, if applicable, RCW 23B.07.035, or any other provision of this title reserve this power exclusively to the shareholders in whole or part; or

(b) The shareholders, in amending or repealing a particular bylaw, provide expressly that the board of directors may not amend or repeal that bylaw.

(2) A corporation's shareholders may amend or repeal the corporation's bylaws, or adopt new bylaws, even though the bylaws may also be amended or repealed, or new bylaws may also be adopted, by its board of directors. [2007 c 467 § 7; 1989 c 165 § 129.]

23B.10.205 Amendment of bylaws—Election of directors. (1) Unless the articles of incorporation (a) specifically prohibit the adoption of a bylaw pursuant to this section, (b) alter the vote specified in RCW 23B.07.280(2), or (c) allow for or do not exclude cumulative voting, a public company may elect in its bylaws to be governed in the election of directors as follows:

(i) Each vote entitled to be cast may be voted for, voted against, or withheld for one or more candidates up to that number of candidates that is equal to the number of directors to be elected but without cumulating the votes, or a shareholder may indicate an abstention for one or more candidates;

(ii) To be elected, a candidate must have received the number, percentage, or level of votes specified in the bylaws; provided that holders of shares entitled to vote in the election and constituting a quorum are present at the meeting. Except in a contested election as provided in (c)(v) of this subsection, a candidate who does not receive the number, percentage, or level of votes specified in the bylaws but who was a director at the time of the election shall continue to serve as a director for a term that shall terminate on the date that is the earlier of (A) the date specified in the bylaw, but not longer than ninety days from the date on which the voting results are determined pursuant to RCW 23B.07.035(2), or (B) the date on which an individual is selected by the board of directors to fill the office held by such director, which selection shall be deemed to constitute the filling of a vacancy by the board to which RCW 23B.08.100 applies;

(iii) A bylaw adopted pursuant to this section may provide that votes cast against and/or withheld as to a candidate are to be taken into account in determining whether the number, percentage, or level of votes required for election has been received. Unless the bylaw specifies otherwise, only votes cast are to be taken into account and a ballot marked "withheld" in respect to a share is deemed to be a vote cast. Unless the bylaws specify otherwise, shares otherwise present at the meeting but for which there is an abstention or as to which no authority or direction to vote in the election is given or specified, are not deemed to be votes cast in the election;

(iv) The board of directors may select any qualified individual to fill the office held by a director who did not receive the specified vote for election referenced in (c)(ii) of this subsection; and

(v) Unless the bylaw specifies otherwise, a bylaw adopted pursuant to this subsection (1) shall not apply to an election of directors by a voting group if (A) at the expiration of the time fixed under a provision requiring advance notification of director candidates, or (B) absent such a provision, at a time fixed by the board of directors which is not more than fourteen days before notice is given of the meeting at which the election is to occur, there are more candidates for election by the voting group than the number of directors to be elected, one or more of whom are properly proposed by shareholders. An individual shall not be considered a candidate for purposes of this subsection (1)(c)(v) if the board of directors determines before the notice of meeting is given that such individual's candidacy does not create a bona fide election contest.

(2) A bylaw containing an election to be governed by this section may be repealed or amended:

(a) If originally adopted by the shareholders, only by the shareholders, unless the bylaw otherwise provides; or

(b) If adopted by the board of directors, by the board of directors or the shareholders. [2007 c 467 § 5.]

Chapter 23B.19 RCW

SIGNIFICANT BUSINESS TRANSACTIONS

Sections

23B.19.040 Approval of significant business transaction required—Violation.

23B.19.040 Approval of significant business transaction required—Violation. (1)(a) Notwithstanding anything to the contrary contained in this title, a target corporation shall not for a period of five years following the acquiring person's share acquisition time engage in a significant business transaction unless:

(i) It is exempted by RCW 23B.19.030;

(ii) The significant business transaction or the purchase of shares made by the acquiring person is approved prior to the acquiring person's share acquisition time by a majority of the members of the board of directors of the target corporation; or

(iii) At or subsequent to the acquiring person's share acquisition time, such significant business transaction is approved by a majority of the members of the board of directors of the target corporation and authorized at an annual or special meeting of shareholders, and not by written consent, by the affirmative vote of at least two-thirds of the outstanding voting shares, except shares beneficially owned by or under the voting control of the acquiring person.

(b) If a good faith proposal for a significant business transaction is made in writing to the board of directors of the target corporation prior to the significant business transaction or prior to the share acquisition time, the board of directors shall respond in writing, within thirty days or such shorter period, if any, as may be required by the exchange act setting forth its reasons for its decision regarding the proposal. If a good faith proposal to purchase shares is made in writing to the board of directors of the target corporation, the board of directors, unless it responds affirmatively in writing within thirty days or a shorter period, if any, as may be required by

the exchange act shall be deemed to have disapproved such share purchase.

(2) Except for a significant business transaction approved under subsection (1) of this section or exempted by RCW 23B.19.030, in addition to any other requirement, a target corporation shall not engage at any time in any significant business transaction described in RCW 23B.19.020(15) (a) or (e) with any acquiring person of such a corporation other than a significant business transaction that either meets all of the conditions of (a), (b), and (c) of this subsection or meets the conditions of (d) of this subsection:

(a) The aggregate amount of the cash and the market value as of the consummation date of consideration other than cash to be received per share by holders of outstanding common shares of such a target corporation in a significant business transaction is at least equal to the higher of the following:

(i) The highest per share price paid by such an acquiring person at a time when the person was the beneficial owner, directly or indirectly, of five percent or more of the outstanding voting shares of a target corporation, for any shares of common shares of the same class or series acquired by it: (A) Within the five-year period immediately prior to the announcement date with respect to a significant business transaction; or (B) within the five-year period immediately prior to, or in, the transaction in which the acquiring person became an acquiring person, whichever is higher plus, in either case, interest compounded annually from the earliest date on which the highest per share acquisition price was paid through the consummation date at the rate for one-year United States treasury obligations from time to time in effect; less the aggregate amount of any cash dividends paid, and the market value of any dividends paid other than in cash, per share of common shares since the earliest date, up to the amount of the interest; and

(ii) The market value per share of common shares on the announcement date with respect to a significant business transaction or on the date of the acquiring person's share acquisition time, whichever is higher; plus interest compounded annually from such a date through the consummation date at the rate for one-year United States treasury obligations from time to time in effect; less the aggregate amount of any cash dividends paid, and the market value of any dividends paid other than in cash, per share of common shares since the date, up to the amount of the interest.

(b) The aggregate amount of the cash and the market value as of the consummation date of consideration other than cash to be received per share by holders of outstanding shares of any class or series of shares, other than common shares, of the target corporation is at least equal to the highest of the following, whether or not the acquiring person has previously acquired any shares of such a class or series of shares:

(i) The highest per share price paid by an acquiring person at a time when the person was the beneficial owner, directly or indirectly, of five percent or more of the outstanding voting shares of a resident domestic corporation, for any shares of the same class or series of shares acquired by it: (A) Within the five-year period immediately prior to the announcement date with respect to a significant business transaction; or (B) within the five-year period immediately prior to, or in, the transaction in which the acquiring person

became an acquiring person, whichever is higher; plus, in either case, interest compounded annually from the earliest date on which the highest per share acquisition price was paid through the consummation date at the rate for one-year United States treasury obligations from time to time in effect; less the aggregate amount of any cash dividends paid, and the market value of any dividends paid other than in cash, per share of the same class or series of shares since the earliest date, up to the amount of the interest;

(ii) The highest preferential amount per share to which the holders of shares of the same class or series of shares are entitled in the event of any voluntary liquidation, dissolution, or winding up of the target corporation, plus the aggregate amount of any dividends declared or due as to which the holders are entitled prior to payment of dividends on some other class or series of shares, unless the aggregate amount of the dividends is included in the preferential amount; and

(iii) The market value per share of the same class or series of shares on the announcement date with respect to a significant business transaction or on the date of the acquiring person's share acquisition time, whichever is higher; plus interest compounded annually from such a date through the consummation date at the rate for one-year United States treasury obligations from time to time in effect; less the aggregate amount of any cash dividends paid and the market value of any dividends paid other than in cash, per share of the same class or series of shares since the date, up to the amount of the interest.

(c) The consideration to be received by holders of a particular class or series of outstanding shares, including common shares, of the target corporation in a significant business transaction is in cash or in the same form as the acquiring person has used to acquire the largest number of shares of the same class or series of shares previously acquired by the person, and the consideration shall be distributed promptly.

(d) The significant business transaction is approved at an annual meeting of shareholders, or special meeting of shareholders called for such a purpose, no earlier than five years after the acquiring person's share acquisition time, by a majority of the votes entitled to be counted within each voting group entitled to vote separately on the transaction. The votes of all outstanding shares entitled to vote under this title or the articles of incorporation shall be entitled to be counted under this subsection except that the votes of shares as to which an acquiring person has beneficial ownership or voting control may not be counted to determine whether shareholders have approved a transaction for purposes of this subsection. The votes of shares as to which an acquiring person has beneficial ownership or voting control shall, however, be counted in determining whether a transaction is approved under other sections of this title and for purposes of determining a quorum.

(3) Subsection (2) of this section does not apply to a target corporation that on June 6, 1996, had a provision in its articles of incorporation, adopted under RCW 23B.17.020(3)(d), expressly electing not to be covered under RCW 23B.17.020, which is repealed by section 6, chapter 155, Laws of 1996.

(4) A significant business transaction that is made in violation of subsection (1) or (2) of this section and that is not

exempt under RCW 23B.19.030 is void. [2007 c 45 § 1; 1997 c 19 § 3; 1996 c 155 § 3; 1989 c 165 § 200.]

*Reviser's note: RCW 23B.17.020 was repealed by 1996 c 155 § 6.

Title 26

DOMESTIC RELATIONS

Chapters

- 26.04 **Marriage.**
- 26.09 **Dissolution of marriage—Legal separation.**
- 26.10 **Nonparental actions for child custody.**
- 26.12 **Family court.**
- 26.18 **Child support enforcement.**
- 26.19 **Child support schedule.**
- 26.23 **State support registry.**
- 26.28 **Age of majority.**
- 26.33 **Adoption.**
- 26.44 **Abuse of children.**
- 26.50 **Domestic violence prevention.**
- 26.60 **State registered domestic partnerships.**

Chapter 26.04 RCW

MARRIAGE

Sections

26.04.050 Who may solemnize.

26.04.050 Who may solemnize. The following named officers and persons, active or retired, are hereby authorized to solemnize marriages, to wit: Justices of the supreme court, judges of the court of appeals, judges of the superior courts, supreme court commissioners, court of appeals commissioners, superior court commissioners, any regularly licensed or ordained minister or any priest of any church or religious denomination, and judges of courts of limited jurisdiction as defined in RCW 3.02.010. [2007 c 29 § 1; 1987 c 291 § 1; 1984 c 258 § 95; 1983 c 186 § 1; 1971 c 81 § 69; 1913 c 35 § 1; 1890 p 98 § 1; 1883 p 43 § 1; Code 1881 § 2382; 1866 p 82 § 4; 1854 p 404 § 4; RRS § 8441.]

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

Chapter 26.09 RCW

DISSOLUTION OF MARRIAGE— LEGAL SEPARATION

Sections

- 26.09.002 Policy.
- 26.09.003 Policy—Intent—Findings.
- 26.09.013 Interpretive services—Literacy assistance—Guardian ad litem charges—Telephone or interactive videoconference participation—Residential time in cases involving domestic violence or child abuse—Supervised visitation and safe exchange centers.
- 26.09.015 Mediation proceedings. (*Effective until January 1, 2009.*)
- 26.09.015 Mediation proceedings. (*Effective January 1, 2009.*)
- 26.09.016 Mediation in cases involving domestic violence or child abuse.
- 26.09.020 Petition in proceeding for dissolution of marriage, legal separation, or for a declaration concerning validity of marriage—Contents—Parties—Certificate.
- 26.09.173 Modification of child support order—Child support order summary report.
- 26.09.182 Permanent parenting plan—Determination of relevant information.
- 26.09.184 Permanent parenting plan.

- 26.09.187 Criteria for establishing permanent parenting plan.
- 26.09.191 Restrictions in temporary or permanent parenting plans.
- 26.09.197 Issuance of temporary parenting plan—Criteria.
- 26.09.231 Residential time summary report.

26.09.002 Policy. Parents have the responsibility to make decisions and perform other parental functions necessary for the care and growth of their minor children. In any proceeding between parents under this chapter, the best interests of the child shall be the standard by which the court determines and allocates the parties' parental responsibilities. The state recognizes the fundamental importance of the parent-child relationship to the welfare of the child, and that the relationship between the child and each parent should be fostered unless inconsistent with the child's best interests. Residential time and financial support are equally important components of parenting arrangements. The best interests of the child are served by a parenting arrangement that best maintains a child's emotional growth, health and stability, and physical care. Further, the best interest of the child is ordinarily served when the existing pattern of interaction between a parent and child is altered only to the extent necessitated by the changed relationship of the parents or as required to protect the child from physical, mental, or emotional harm. [2007 c 496 § 101; 1987 c 460 § 2.]

Part headings not law—2007 c 496: "Part headings used in this act are not any part of the law." [2007 c 496 § 801.]

26.09.003 Policy—Intent—Findings. The legislature reaffirms the intent of the current law as expressed in RCW 26.09.002. However, after review, the legislature finds that there are certain components of the existing law which do not support the original legislative intent. In order to better implement the existing legislative intent the legislature finds that incentives for parties to reduce family conflict and additional alternative dispute resolution options can assist in reducing the number of contested trials. Furthermore, the legislature finds that the identification of domestic violence as defined in RCW 26.50.010 and the treatment needs of the parties to dissolutions are necessary to improve outcomes for children. When judicial officers have the discretion to tailor individualized resolutions, the legislative intent expressed in RCW 26.09.002 can more readily be achieved. Judicial officers should have the discretion and flexibility to assess each case based on the merits of the individual cases before them. [2007 c 496 § 102.]

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

26.09.013 Interpretive services—Literacy assistance—Guardian ad litem charges—Telephone or interactive videoconference participation—Residential time in cases involving domestic violence or child abuse—Supervised visitation and safe exchange centers. In order to provide judicial officers with better information and to facilitate decision making which allows for the protection of children from physical, mental, or emotional harm and in order to facilitate consistent healthy contact between both parents and their children:

(1) Parties and witnesses who require the assistance of interpreters shall be provided access to qualified interpreters pursuant to chapter 2.42 or 2.43 RCW. To the extent practi-

cable and within available resources, interpreters shall also be made available at dissolution-related proceedings.

(2) Parties and witnesses who require literacy assistance shall be referred to the multipurpose service centers established in chapter 28B.04 RCW.

(3) In matters involving guardian ad litem, the court shall specify the hourly rate the guardian ad litem may charge for his or her services, and shall specify the maximum amount the guardian ad litem may charge without additional review. Counties may, and to the extent state funding is provided therefor counties shall, provide indigent parties with guardian ad litem services at a reduced or waived fee.

(4) Parties may request to participate by telephone or interactive videoconference. The court may allow telephonic or interactive videoconference participation of one or more parties at any proceeding in its discretion. The court may also allow telephonic or interactive videoconference participation of witnesses.

(5) In cases involving domestic violence or child abuse, if residential time is ordered, the court may:

(a) Order exchange of a child to occur in a protected setting;

(b) Order residential time supervised by a neutral and independent adult and pursuant to an adequate plan for supervision of such residential time. The court shall not approve of a supervisor for contact between the child and the parent unless the supervisor is willing to and capable of protecting the child from harm. The court shall revoke court approval of the supervisor if the court determines, after a hearing, that the supervisor has failed to protect the child or is no longer willing or capable of protecting the child. If the court allows a family or household member to supervise residential time, the court shall establish conditions to be followed during residential time.

(6) In cases in which the court finds that the parties do not have a satisfactory history of cooperation or there is a high level of parental conflict, the court may order the parties to use supervised visitation and safe exchange centers or alternative safe locations to facilitate the exercise of residential time. [2007 c 496 § 401.]

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

26.09.015 Mediation proceedings. (Effective until January 1, 2009.) (1) In any proceeding under this chapter, the matter may be set for mediation of the contested issues before or concurrent with the setting of the matter for hearing. The purpose of the mediation proceeding shall be to reduce acrimony which may exist between the parties and to develop an agreement assuring the child's close and continuing contact with both parents after the marriage is dissolved. The mediator shall use his or her best efforts to effect a settlement of the dispute.

(2) Each superior court may make available a mediator. The mediator may be a member of the professional staff of a family court or mental health services agency, or may be any other person or agency designated by the court. In order to provide mediation services, the court is not required to institute a family court.

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(3)(a) Mediation proceedings under this chapter shall be governed in all respects by chapter 7.07 RCW, except as follows:

(i) Mediation communications in postdecree mediations mandated by a parenting plan are admissible in subsequent proceedings for the limited purpose of proving:

(A) Abuse, neglect, abandonment, exploitation, or unlawful harassment as defined in RCW 9A.46.020(1), of a child;

(B) Abuse or unlawful harassment as defined in RCW 9A.46.020(1), of a family or household member as defined in RCW 26.50.010(2); or

(C) That a parent used or frustrated the dispute resolution process without good reason for purposes of RCW 26.09.184(4)(d).

(ii) If a postdecree mediation-arbitration proceeding is required pursuant to a parenting plan and the same person acts as both mediator and arbitrator, mediation communications in the mediation phase of such a proceeding may be admitted during the arbitration phase, and shall be admissible in the judicial review of such a proceeding under RCW 26.09.184(4)(e) to the extent necessary for such review to be effective.

(b) None of the exceptions under (a)(i) and (ii) of this subsection shall subject a mediator to compulsory process to testify except by court order for good cause shown, taking into consideration the need for the mediator's testimony and the interest in the mediator maintaining an appearance of impartiality. If a mediation communication is not privileged under (a)(i) of this subsection or that portion of (a)(ii) of this subsection pertaining to judicial review, only the portion of the communication necessary for the application of the exception may be admitted, and such admission of evidence shall not render any other mediation communication discoverable or admissible except as may be provided in chapter 7.07 RCW.

(4) The mediator shall assess the needs and interests of the child or children involved in the controversy and may interview the child or children if the mediator deems such interview appropriate or necessary.

(5) Any agreement reached by the parties as a result of mediation shall be reported to the court and to counsel for the parties by the mediator on the day set for mediation or any time thereafter designated by the court. [2007 c 496 § 602; 2005 c 172 § 17; 1991 c 367 § 2; 1989 c 375 § 2; 1986 c 95 § 4.]

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

Short title—Captions not law—Severability—Effective date—2005 c 172: See RCW 7.07.900 through 7.07.902 and 7.07.904.

Severability—1991 c 367: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1991 c 367 § 54.]

Effective date—1991 c 367: "This act shall take effect September 1, 1991." [1991 c 367 § 55.]

Captions not law—1991 c 367: "Captions as used in this act do not constitute any part of the law." [1991 c 367 § 57.]

Mediation testimony competency: RCW 5.60.070 and 5.60.072.

26.09.015 Mediation proceedings. (Effective January 1, 2009.) (1) In any proceeding under this chapter, the matter

may be set for mediation of the contested issues before or concurrent with the setting of the matter for hearing. The purpose of the mediation proceeding shall be to reduce acrimony which may exist between the parties and to develop an agreement assuring the child's close and continuing contact with both parents after the marriage is dissolved. The mediator shall use his or her best efforts to effect a settlement of the dispute.

(2)(a) Each superior court may make available a mediator. The court shall use the most cost-effective mediation services that are readily available unless there is good cause to access alternative providers. The mediator may be a member of the professional staff of a family court or mental health services agency, or may be any other person or agency designated by the court. In order to provide mediation services, the court is not required to institute a family court.

(b) In any proceeding involving issues relating to residential time or other matters governed by a parenting plan, the matter may be set for mediation of the contested issues before or concurrent with the setting of the matter for hearing. Counties may, and to the extent state funding is provided therefor counties shall, provide both predecree and postdecree mediation at reduced or waived fee to the parties within one year of the filing of the dissolution petition.

(3)(a) Mediation proceedings under this chapter shall be governed in all respects by chapter 7.07 RCW, except as follows:

(i) Mediation communications in postdecree mediations mandated by a parenting plan are admissible in subsequent proceedings for the limited purpose of proving:

(A) Abuse, neglect, abandonment, exploitation, or unlawful harassment as defined in RCW 9A.46.020(1), of a child;

(B) Abuse or unlawful harassment as defined in RCW 9A.46.020(1), of a family or household member as defined in RCW 26.50.010(2); or

(C) That a parent used or frustrated the dispute resolution process without good reason for purposes of RCW 26.09.184(4)(d).

(ii) If a postdecree mediation-arbitration proceeding is required pursuant to a parenting plan and the same person acts as both mediator and arbitrator, mediation communications in the mediation phase of such a proceeding may be admitted during the arbitration phase, and shall be admissible in the judicial review of such a proceeding under RCW 26.09.184(4)(e) to the extent necessary for such review to be effective.

(b) None of the exceptions under (a)(i) and (ii) of this subsection shall subject a mediator to compulsory process to testify except by court order for good cause shown, taking into consideration the need for the mediator's testimony and the interest in the mediator maintaining an appearance of impartiality. If a mediation communication is not privileged under (a)(i) of this subsection or that portion of (a)(ii) of this subsection pertaining to judicial review, only the portion of the communication necessary for the application of the exception may be admitted, and such admission of evidence shall not render any other mediation communication discoverable or admissible except as may be provided in chapter 7.07 RCW.

(4) The mediator shall assess the needs and interests of the child or children involved in the controversy and may interview the child or children if the mediator deems such interview appropriate or necessary.

(5) Any agreement reached by the parties as a result of mediation shall be reported to the court and to counsel for the parties by the mediator on the day set for mediation or any time thereafter designated by the court. [2007 c 496 § 602; 2007 c 496 § 501; 2005 c 172 § 17; 1991 c 367 § 2; 1989 c 375 § 2; 1986 c 95 § 4.]

Reviser's note: This section was amended by 2007 c 496 § 501 and by 2007 c 496 § 602, each without reference to the other. Both amendments are incorporated in the publication of this section under RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

Effective dates—2007 c 496 §§ 201, 202, 204, and 501: See note following RCW 26.12.260.

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

Short title—Captions not law—Severability—Effective date—2005 c 172: See RCW 7.07.900 through 7.07.902 and 7.07.904.

Severability—1991 c 367: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1991 c 367 § 54.]

Effective date—1991 c 367: "This act shall take effect September 1, 1991." [1991 c 367 § 55.]

Captions not law—1991 c 367: "Captions as used in this act do not constitute any part of the law." [1991 c 367 § 57.]

Mediation testimony competency: RCW 5.60.070 and 5.60.072.

26.09.016 Mediation in cases involving domestic violence or child abuse. Mediation is generally inappropriate in cases involving domestic violence and child abuse. In order to effectively identify cases where issues of domestic violence and child abuse are present and reduce conflict in dissolution matters: (1) Where appropriate parties shall be provided access to trained domestic violence advocates; and (2) in cases where a victim requests mediation the court may make exceptions and permit mediation, so long as the court makes a finding that mediation is appropriate under the circumstances and the victim is permitted to have a supporting person present during the mediation proceedings. [2007 c 496 § 301.]

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

26.09.020 Petition in proceeding for dissolution of marriage, legal separation, or for a declaration concerning validity of marriage—Contents—Parties—Certificate. (1) A petition in a proceeding for dissolution of marriage, legal separation, or for a declaration concerning the validity of a marriage shall allege:

(a) The last known state of residence of each party, and if a party's last known state of residence is Washington, the last known county of residence;

(b) The date and place of the marriage;

(c) If the parties are separated the date on which the separation occurred;

(d) The names and ages of any child dependent upon either or both spouses and whether the wife is pregnant;

(e) Any arrangements as to the residential schedule of, decision making for, dispute resolution for, and support of the children and the maintenance of a spouse;

(f) A statement specifying whether there is community or separate property owned by the parties to be disposed of;

(g) If the county has established a program under RCW 26.12.260, a statement affirming that the moving party met and conferred with the program prior to filing the petition;

(h) The relief sought.

(2) Either or both parties to the marriage may initiate the proceeding.

(3) The petitioner shall complete and file with the petition a certificate under RCW 43.70.150 on the form provided by the department of health and the confidential information form under RCW 26.23.050.

(4) Nothing in this section shall be construed to limit or prohibit the ability of parties to obtain appropriate emergency orders. [2007 c 496 § 203; 2001 c 42 § 1; 1997 c 58 § 945. Prior: 1989 1st ex.s. c 9 § 204; 1989 c 375 § 3; 1983 1st ex.s. c 45 § 2; 1973 2nd ex.s. c 23 § 1; 1973 1st ex.s. c 157 § 2.]

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

Effective date—2001 c 42: "This act takes effect October 1, 2001." [2001 c 42 § 7.]

Severability—2001 c 42: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [2001 c 42 § 8.]

Short title—Part headings, captions, table of contents not law—Exemptions and waivers from federal law—Conflict with federal requirements—Severability—1997 c 58: See RCW 74.08A.900 through 74.08A.904.

Effective date—Severability—1989 1st ex.s. c 9: See RCW 43.70.910 and 43.70.920.

26.09.173 Modification of child support order—Child support order summary report. The party seeking the establishment or modification of a child support order shall file with the clerk of the court the child support order summary report. The summary report shall be on the form developed by the administrator for the courts pursuant to RCW 26.18.210. The party must complete the form and file the form with the court order. The clerk of the court must forward the form to the division of child support on at least a monthly basis. [2007 c 313 § 2; 1990 1st ex.s. c 2 § 23.]

Findings—2007 c 313: See note following RCW 26.19.025.

Effective dates—Severability—1990 1st ex.s. c 2: See notes following RCW 26.09.100.

26.09.182 Permanent parenting plan—Determination of relevant information. Before entering a permanent parenting plan, the court shall determine the existence of any information and proceedings relevant to the placement of the child that are available in the judicial information system and databases. [2007 c 496 § 304.]

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

26.09.184 Permanent parenting plan. (1) OBJECTIVES. The objectives of the permanent parenting plan are to:

(a) Provide for the child's physical care;

(b) Maintain the child's emotional stability;

(c) Provide for the child's changing needs as the child grows and matures, in a way that minimizes the need for future modifications to the permanent parenting plan;

(d) Set forth the authority and responsibilities of each parent with respect to the child, consistent with the criteria in RCW 26.09.187 and 26.09.191;

(e) Minimize the child's exposure to harmful parental conflict;

(f) Encourage the parents, where appropriate under RCW 26.09.187 and 26.09.191, to meet their responsibilities to their minor children through agreements in the permanent parenting plan, rather than by relying on judicial intervention; and

(g) To otherwise protect the best interests of the child consistent with RCW 26.09.002.

(2) CONTENTS OF THE PERMANENT PARENTING PLAN. The permanent parenting plan shall contain provisions for resolution of future disputes between the parents, allocation of decision-making authority, and residential provisions for the child.

(3) CONSIDERATION IN ESTABLISHING THE PERMANENT PARENTING PLAN. In establishing a permanent parenting plan, the court may consider the cultural heritage and religious beliefs of a child.

(4) DISPUTE RESOLUTION. A process for resolving disputes, other than court action, shall be provided unless precluded or limited by RCW 26.09.187 or 26.09.191. A dispute resolution process may include counseling, mediation, or arbitration by a specified individual or agency, or court action. In the dispute resolution process:

(a) Preference shall be given to carrying out the parenting plan;

(b) The parents shall use the designated process to resolve disputes relating to implementation of the plan, except those related to financial support, unless an emergency exists;

(c) A written record shall be prepared of any agreement reached in counseling or mediation and of each arbitration award and shall be provided to each party;

(d) If the court finds that a parent has used or frustrated the dispute resolution process without good reason, the court shall award attorneys' fees and financial sanctions to the prevailing parent;

(e) The parties have the right of review from the dispute resolution process to the superior court; and

(f) The provisions of (a) through (e) of this subsection shall be set forth in the decree.

(5) ALLOCATION OF DECISION-MAKING AUTHORITY.

(a) The plan shall allocate decision-making authority to one or both parties regarding the children's education, health care, and religious upbringing. The parties may incorporate an agreement related to the care and growth of the child in these specified areas, or in other areas, into their plan, consistent with the criteria in RCW 26.09.187 and 26.09.191. Regardless of the allocation of decision-making in the parenting plan, either parent may make emergency decisions affecting the health or safety of the child.

(b) Each parent may make decisions regarding the day-to-day care and control of the child while the child is residing with that parent.

(c) When mutual decision making is designated but cannot be achieved, the parties shall make a good-faith effort to resolve the issue through the dispute resolution process.

(6) **RESIDENTIAL PROVISIONS FOR THE CHILD.** The plan shall include a residential schedule which designates in which parent's home each minor child shall reside on given days of the year, including provision for holidays, birthdays of family members, vacations, and other special occasions, consistent with the criteria in RCW 26.09.187 and 26.09.191.

(7) **PARENTS' OBLIGATION UNAFFECTED.** If a parent fails to comply with a provision of a parenting plan or a child support order, the other parent's obligations under the parenting plan or the child support order are not affected. Failure to comply with a provision in a parenting plan or a child support order may result in a finding of contempt of court, under RCW 26.09.160.

(8) **PROVISIONS TO BE SET FORTH IN PERMANENT PARENTING PLAN.** The permanent parenting plan shall set forth the provisions of subsections (4)(a) through (c), (5)(b) and (c), and (7) of this section. [2007 c 496 § 601; 1991 c 367 § 7; 1989 c 375 § 9; 1987 c 460 § 8.]

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

Severability—Effective date—Captions not law—1991 c 367: See notes following RCW 26.09.015.

Custody, designation of for purposes of other statutes: RCW 26.09.285.

Failure to comply with decree or temporary injunction—Obligations not suspended: RCW 26.09.160.

26.09.187 Criteria for establishing permanent parenting plan. (1) **DISPUTE RESOLUTION PROCESS.** The court shall not order a dispute resolution process, except court action, when it finds that any limiting factor under RCW 26.09.191 applies, or when it finds that either parent is unable to afford the cost of the proposed dispute resolution process. If a dispute resolution process is not precluded or limited, then in designating such a process the court shall consider all relevant factors, including:

(a) Differences between the parents that would substantially inhibit their effective participation in any designated process;

(b) The parents' wishes or agreements and, if the parents have entered into agreements, whether the agreements were made knowingly and voluntarily; and

(c) Differences in the parents' financial circumstances that may affect their ability to participate fully in a given dispute resolution process.

(2) **ALLOCATION OF DECISION-MAKING AUTHORITY.**

(a) **AGREEMENTS BETWEEN THE PARTIES.** The court shall approve agreements of the parties allocating decision-making authority, or specifying rules in the areas listed in RCW 26.09.184(5)(a), when it finds that:

(i) The agreement is consistent with any limitations on a parent's decision-making authority mandated by RCW 26.09.191; and

(ii) The agreement is knowing and voluntary.

(b) **SOLE DECISION-MAKING AUTHORITY.** The court shall order sole decision-making to one parent when it finds that:

(i) A limitation on the other parent's decision-making authority is mandated by RCW 26.09.191;

(ii) Both parents are opposed to mutual decision making;

(iii) One parent is opposed to mutual decision making, and such opposition is reasonable based on the criteria in (c) of this subsection.

(c) **MUTUAL DECISION-MAKING AUTHORITY.** Except as provided in (a) and (b) of this subsection, the court shall consider the following criteria in allocating decision-making authority:

(i) The existence of a limitation under RCW 26.09.191;

(ii) The history of participation of each parent in decision making in each of the areas in RCW 26.09.184(5)(a);

(iii) Whether the parents have a demonstrated ability and desire to cooperate with one another in decision making in each of the areas in RCW 26.09.184(5)(a); and

(iv) The parents' geographic proximity to one another, to the extent that it affects their ability to make timely mutual decisions.

(3) **RESIDENTIAL PROVISIONS.**

(a) The court shall make residential provisions for each child which encourage each parent to maintain a loving, stable, and nurturing relationship with the child, consistent with the child's developmental level and the family's social and economic circumstances. The child's residential schedule shall be consistent with RCW 26.09.191. Where the limitations of RCW 26.09.191 are not dispositive of the child's residential schedule, the court shall consider the following factors:

(i) The relative strength, nature, and stability of the child's relationship with each parent;

(ii) The agreements of the parties, provided they were entered into knowingly and voluntarily;

(iii) Each parent's past and potential for future performance of parenting functions as defined in RCW 26.09.004(3), including whether a parent has taken greater responsibility for performing parenting functions relating to the daily needs of the child;

(iv) The emotional needs and developmental level of the child;

(v) The child's relationship with siblings and with other significant adults, as well as the child's involvement with his or her physical surroundings, school, or other significant activities;

(vi) The wishes of the parents and the wishes of a child who is sufficiently mature to express reasoned and independent preferences as to his or her residential schedule; and

(vii) Each parent's employment schedule, and shall make accommodations consistent with those schedules.

Factor (i) shall be given the greatest weight.

(b) Where the limitations of RCW 26.09.191 are not dispositive, the court may order that a child frequently alternate his or her residence between the households of the parents for brief and substantially equal intervals of time if such provision is in the best interests of the child. In determining whether such an arrangement is in the best interests of the child, the court may consider the parties geographic proxim-

ity to the extent necessary to ensure the ability to share performance of the parenting functions.

(c) For any child, residential provisions may contain any reasonable terms or conditions that facilitate the orderly and meaningful exercise of residential time by a parent, including but not limited to requirements of reasonable notice when residential time will not occur. [2007 c 496 § 603; 1989 c 375 § 10; 1987 c 460 § 9.]

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

Custody, designation of for purposes of other statutes: RCW 26.09.285.

26.09.191 Restrictions in temporary or permanent parenting plans. (1) The permanent parenting plan shall not require mutual decision-making or designation of a dispute resolution process other than court action if it is found that a parent has engaged in any of the following conduct: (a) Willful abandonment that continues for an extended period of time or substantial refusal to perform parenting functions; (b) physical, sexual, or a pattern of emotional abuse of a child; or (c) a history of acts of domestic violence as defined in RCW 26.50.010(1) or an assault or sexual assault which causes grievous bodily harm or the fear of such harm.

(2)(a) The parent's residential time with the child shall be limited if it is found that the parent has engaged in any of the following conduct: (i) Willful abandonment that continues for an extended period of time or substantial refusal to perform parenting functions; (ii) physical, sexual, or a pattern of emotional abuse of a child; (iii) a history of acts of domestic violence as defined in RCW 26.50.010(1) or an assault or sexual assault which causes grievous bodily harm or the fear of such harm; or (iv) the parent has been convicted as an adult of a sex offense under:

(A) RCW 9A.44.076 if, because of the difference in age between the offender and the victim, no rebuttable presumption exists under (d) of this subsection;

(B) RCW 9A.44.079 if, because of the difference in age between the offender and the victim, no rebuttable presumption exists under (d) of this subsection;

(C) RCW 9A.44.086 if, because of the difference in age between the offender and the victim, no rebuttable presumption exists under (d) of this subsection;

(D) RCW 9A.44.089;

(E) RCW 9A.44.093;

(F) RCW 9A.44.096;

(G) RCW 9A.64.020 (1) or (2) if, because of the difference in age between the offender and the victim, no rebuttable presumption exists under (d) of this subsection;

(H) Chapter 9.68A RCW;

(I) Any predecessor or antecedent statute for the offenses listed in (a)(iv)(A) through (H) of this subsection;

(J) Any statute from any other jurisdiction that describes an offense analogous to the offenses listed in (a)(iv)(A) through (H) of this subsection.

This subsection (2)(a) shall not apply when (c) or (d) of this subsection applies.

(b) The parent's residential time with the child shall be limited if it is found that the parent resides with a person who has engaged in any of the following conduct: (i) Physical, sexual, or a pattern of emotional abuse of a child; (ii) a history of acts of domestic violence as defined in RCW

26.50.010(1) or an assault or sexual assault that causes grievous bodily harm or the fear of such harm; or (iii) the person has been convicted as an adult or as a juvenile has been adjudicated of a sex offense under:

(A) RCW 9A.44.076 if, because of the difference in age between the offender and the victim, no rebuttable presumption exists under (e) of this subsection;

(B) RCW 9A.44.079 if, because of the difference in age between the offender and the victim, no rebuttable presumption exists under (e) of this subsection;

(C) RCW 9A.44.086 if, because of the difference in age between the offender and the victim, no rebuttable presumption exists under (e) of this subsection;

(D) RCW 9A.44.089;

(E) RCW 9A.44.093;

(F) RCW 9A.44.096;

(G) RCW 9A.64.020 (1) or (2) if, because of the difference in age between the offender and the victim, no rebuttable presumption exists under (e) of this subsection;

(H) Chapter 9.68A RCW;

(I) Any predecessor or antecedent statute for the offenses listed in (b)(iii)(A) through (H) of this subsection;

(J) Any statute from any other jurisdiction that describes an offense analogous to the offenses listed in (b)(iii)(A) through (H) of this subsection.

This subsection (2)(b) shall not apply when (c) or (e) of this subsection applies.

(c) If a parent has been found to be a sexual predator under chapter 71.09 RCW or under an analogous statute of any other jurisdiction, the court shall restrain the parent from contact with a child that would otherwise be allowed under this chapter. If a parent resides with an adult or a juvenile who has been found to be a sexual predator under chapter 71.09 RCW or under an analogous statute of any other jurisdiction, the court shall restrain the parent from contact with the parent's child except contact that occurs outside that person's presence.

(d) There is a rebuttable presumption that a parent who has been convicted as an adult of a sex offense listed in (d)(i) through (ix) of this subsection poses a present danger to a child. Unless the parent rebuts this presumption, the court shall restrain the parent from contact with a child that would otherwise be allowed under this chapter:

(i) RCW 9A.64.020 (1) or (2), provided that the person convicted was at least five years older than the other person;

(ii) RCW 9A.44.073;

(iii) RCW 9A.44.076, provided that the person convicted was at least eight years older than the victim;

(iv) RCW 9A.44.079, provided that the person convicted was at least eight years older than the victim;

(v) RCW 9A.44.083;

(vi) RCW 9A.44.086, provided that the person convicted was at least eight years older than the victim;

(vii) RCW 9A.44.100;

(viii) Any predecessor or antecedent statute for the offenses listed in (d)(i) through (vii) of this subsection;

(ix) Any statute from any other jurisdiction that describes an offense analogous to the offenses listed in (d)(i) through (vii) of this subsection.

(e) There is a rebuttable presumption that a parent who resides with a person who, as an adult, has been convicted, or

as a juvenile has been adjudicated, of the sex offenses listed in (e)(i) through (ix) of this subsection places a child at risk of abuse or harm when that parent exercises residential time in the presence of the convicted or adjudicated person. Unless the parent rebuts the presumption, the court shall restrain the parent from contact with the parent's child except for contact that occurs outside of the convicted or adjudicated person's presence:

- (i) RCW 9A.64.020 (1) or (2), provided that the person convicted was at least five years older than the other person;
- (ii) RCW 9A.44.073;
- (iii) RCW 9A.44.076, provided that the person convicted was at least eight years older than the victim;
- (iv) RCW 9A.44.079, provided that the person convicted was at least eight years older than the victim;
- (v) RCW 9A.44.083;
- (vi) RCW 9A.44.086, provided that the person convicted was at least eight years older than the victim;
- (vii) RCW 9A.44.100;
- (viii) Any predecessor or antecedent statute for the offenses listed in (e)(i) through (vii) of this subsection;
- (ix) Any statute from any other jurisdiction that describes an offense analogous to the offenses listed in (e)(i) through (vii) of this subsection.

(f) The presumption established in (d) of this subsection may be rebutted only after a written finding that:

- (i) If the child was not the victim of the sex offense committed by the parent requesting residential time, (A) contact between the child and the offending parent is appropriate and poses minimal risk to the child, and (B) the offending parent has successfully engaged in treatment for sex offenders or is engaged in and making progress in such treatment, if any was ordered by a court, and the treatment provider believes such contact is appropriate and poses minimal risk to the child; or
- (ii) If the child was the victim of the sex offense committed by the parent requesting residential time, (A) contact between the child and the offending parent is appropriate and poses minimal risk to the child, (B) if the child is in or has been in therapy for victims of sexual abuse, the child's counselor believes such contact between the child and the offending parent is in the child's best interest, and (C) the offending parent has successfully engaged in treatment for sex offenders or is engaged in and making progress in such treatment, if any was ordered by a court, and the treatment provider believes such contact is appropriate and poses minimal risk to the child.

(g) The presumption established in (e) of this subsection may be rebutted only after a written finding that:

- (i) If the child was not the victim of the sex offense committed by the person who is residing with the parent requesting residential time, (A) contact between the child and the parent residing with the convicted or adjudicated person is appropriate and that parent is able to protect the child in the presence of the convicted or adjudicated person, and (B) the convicted or adjudicated person has successfully engaged in treatment for sex offenders or is engaged in and making progress in such treatment, if any was ordered by a court, and the treatment provider believes such contact is appropriate and poses minimal risk to the child; or
- (ii) If the child was the victim of the sex offense committed by the person who is residing with the parent requesting

residential time, (A) contact between the child and the parent in the presence of the convicted or adjudicated person is appropriate and poses minimal risk to the child, (B) if the child is in or has been in therapy for victims of sexual abuse, the child's counselor believes such contact between the child and the parent residing with the convicted or adjudicated person in the presence of the convicted or adjudicated person is in the child's best interest, and (C) the convicted or adjudicated person has successfully engaged in treatment for sex offenders or is engaged in and making progress in such treatment, if any was ordered by a court, and the treatment provider believes contact between the parent and child in the presence of the convicted or adjudicated person is appropriate and poses minimal risk to the child.

(h) If the court finds that the parent has met the burden of rebutting the presumption under (f) of this subsection, the court may allow a parent who has been convicted as an adult of a sex offense listed in (d)(i) through (ix) of this subsection to have residential time with the child supervised by a neutral and independent adult and pursuant to an adequate plan for supervision of such residential time. The court shall not approve of a supervisor for contact between the child and the parent unless the court finds, based on the evidence, that the supervisor is willing and capable of protecting the child from harm. The court shall revoke court approval of the supervisor upon finding, based on the evidence, that the supervisor has failed to protect the child or is no longer willing or capable of protecting the child.

(i) If the court finds that the parent has met the burden of rebutting the presumption under (g) of this subsection, the court may allow a parent residing with a person who has been adjudicated as a juvenile of a sex offense listed in (e)(i) through (ix) of this subsection to have residential time with the child in the presence of the person adjudicated as a juvenile, supervised by a neutral and independent adult and pursuant to an adequate plan for supervision of such residential time. The court shall not approve of a supervisor for contact between the child and the parent unless the court finds, based on the evidence, that the supervisor is willing and capable of protecting the child from harm. The court shall revoke court approval of the supervisor upon finding, based on the evidence, that the supervisor has failed to protect the child or is no longer willing or capable of protecting the child.

(j) If the court finds that the parent has met the burden of rebutting the presumption under (g) of this subsection, the court may allow a parent residing with a person who, as an adult, has been convicted of a sex offense listed in (e)(i) through (ix) of this subsection to have residential time with the child in the presence of the convicted person supervised by a neutral and independent adult and pursuant to an adequate plan for supervision of such residential time. The court shall not approve of a supervisor for contact between the child and the parent unless the court finds, based on the evidence, that the supervisor is willing and capable of protecting the child from harm. The court shall revoke court approval of the supervisor upon finding, based on the evidence, that the supervisor has failed to protect the child or is no longer willing or capable of protecting the child.

(k) A court shall not order unsupervised contact between the offending parent and a child of the offending parent who was sexually abused by that parent. A court may order unsu-

pervised contact between the offending parent and a child who was not sexually abused by the parent after the presumption under (d) of this subsection has been rebutted and supervised residential time has occurred for at least two years with no further arrests or convictions of sex offenses involving children under chapter 9A.44 RCW, RCW 9A.64.020, or chapter 9.68A RCW and (i) the sex offense of the offending parent was not committed against a child of the offending parent, and (ii) the court finds that unsupervised contact between the child and the offending parent is appropriate and poses minimal risk to the child, after consideration of the testimony of a state-certified therapist, mental health counselor, or social worker with expertise in treating child sexual abuse victims who has supervised at least one period of residential time between the parent and the child, and after consideration of evidence of the offending parent's compliance with community supervision requirements, if any. If the offending parent was not ordered by a court to participate in treatment for sex offenders, then the parent shall obtain a psychosexual evaluation conducted by a certified sex offender treatment provider or a certified affiliate sex offender treatment provider indicating that the offender has the lowest likelihood of risk to reoffend before the court grants unsupervised contact between the parent and a child.

(l) A court may order unsupervised contact between the parent and a child which may occur in the presence of a juvenile adjudicated of a sex offense listed in (e)(i) through (ix) of this subsection who resides with the parent after the presumption under (e) of this subsection has been rebutted and supervised residential time has occurred for at least two years during which time the adjudicated juvenile has had no further arrests, adjudications, or convictions of sex offenses involving children under chapter 9A.44 RCW, RCW 9A.64.020, or chapter 9.68A RCW, and (i) the court finds that unsupervised contact between the child and the parent that may occur in the presence of the adjudicated juvenile is appropriate and poses minimal risk to the child, after consideration of the testimony of a state-certified therapist, mental health counselor, or social worker with expertise in treatment of child sexual abuse victims who has supervised at least one period of residential time between the parent and the child in the presence of the adjudicated juvenile, and after consideration of evidence of the adjudicated juvenile's compliance with community supervision or parole requirements, if any. If the adjudicated juvenile was not ordered by a court to participate in treatment for sex offenders, then the adjudicated juvenile shall obtain a psychosexual evaluation conducted by a certified sex offender treatment provider or a certified affiliate sex offender treatment provider indicating that the adjudicated juvenile has the lowest likelihood of risk to reoffend before the court grants unsupervised contact between the parent and a child which may occur in the presence of the adjudicated juvenile who is residing with the parent.

(m)(i) The limitations imposed by the court under (a) or (b) of this subsection shall be reasonably calculated to protect the child from the physical, sexual, or emotional abuse or harm that could result if the child has contact with the parent requesting residential time. The limitations shall also be reasonably calculated to provide for the safety of the parent who may be at risk of physical, sexual, or emotional abuse or harm that could result if the parent has contact with the parent

requesting residential time. The limitations the court may impose include, but are not limited to: Supervised contact between the child and the parent or completion of relevant counseling or treatment. If the court expressly finds based on the evidence that limitations on the residential time with the child will not adequately protect the child from the harm or abuse that could result if the child has contact with the parent requesting residential time, the court shall restrain the parent requesting residential time from all contact with the child.

(ii) The court shall not enter an order under (a) of this subsection allowing a parent to have contact with a child if the parent has been found by clear and convincing evidence in a civil action or by a preponderance of the evidence in a dependency action to have sexually abused the child, except upon recommendation by an evaluator or therapist for the child that the child is ready for contact with the parent and will not be harmed by the contact. The court shall not enter an order allowing a parent to have contact with the child in the offender's presence if the parent resides with a person who has been found by clear and convincing evidence in a civil action or by a preponderance of the evidence in a dependency action to have sexually abused a child, unless the court finds that the parent accepts that the person engaged in the harmful conduct and the parent is willing to and capable of protecting the child from harm from the person.

(iii) If the court limits residential time under (a) or (b) of this subsection to require supervised contact between the child and the parent, the court shall not approve of a supervisor for contact between a child and a parent who has engaged in physical, sexual, or a pattern of emotional abuse of the child unless the court finds based upon the evidence that the supervisor accepts that the harmful conduct occurred and is willing to and capable of protecting the child from harm. The court shall revoke court approval of the supervisor upon finding, based on the evidence, that the supervisor has failed to protect the child or is no longer willing to or capable of protecting the child.

(n) If the court expressly finds based on the evidence that contact between the parent and the child will not cause physical, sexual, or emotional abuse or harm to the child and that the probability that the parent's or other person's harmful or abusive conduct will recur is so remote that it would not be in the child's best interests to apply the limitations of (a), (b), and (m)(i) and (iii) of this subsection, or if the court expressly finds that the parent's conduct did not have an impact on the child, then the court need not apply the limitations of (a), (b), and (m)(i) and (iii) of this subsection. The weight given to the existence of a protection order issued under chapter 26.50 RCW as to domestic violence is within the discretion of the court. This subsection shall not apply when (c), (d), (e), (f), (g), (h), (i), (j), (k), (l), and (m)(ii) of this subsection apply.

(3) A parent's involvement or conduct may have an adverse effect on the child's best interests, and the court may preclude or limit any provisions of the parenting plan, if any of the following factors exist:

(a) A parent's neglect or substantial nonperformance of parenting functions;

(b) A long-term emotional or physical impairment which interferes with the parent's performance of parenting functions as defined in RCW 26.09.004;

(c) A long-term impairment resulting from drug, alcohol, or other substance abuse that interferes with the performance of parenting functions;

(d) The absence or substantial impairment of emotional ties between the parent and the child;

(e) The abusive use of conflict by the parent which creates the danger of serious damage to the child's psychological development;

(f) A parent has withheld from the other parent access to the child for a protracted period without good cause; or

(g) Such other factors or conduct as the court expressly finds adverse to the best interests of the child.

(4) In cases involving allegations of limiting factors under subsection (2)(a)(ii) and (iii) of this section, both parties shall be screened to determine the appropriateness of a comprehensive assessment regarding the impact of the limiting factor on the child and the parties.

(5) In entering a permanent parenting plan, the court shall not draw any presumptions from the provisions of the temporary parenting plan.

(6) In determining whether any of the conduct described in this section has occurred, the court shall apply the civil rules of evidence, proof, and procedure.

(7) For the purposes of this section, a parent's child means that parent's natural child, adopted child, or stepchild. [2007 c 496 § 303; 2004 c 38 § 12; 1996 c 303 § 1; 1994 c 267 § 1. Prior: 1989 c 375 § 11; 1989 c 326 § 1; 1987 c 460 § 10.]

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

Effective date—2004 c 38: See note following RCW 18.155.075.

Effective date—1996 c 303: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately [March 30, 1996]." [1996 c 303 § 3.]

Effective date—1994 c 267: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and shall take effect immediately [April 1, 1994]." [1994 c 267 § 6.]

26.09.197 Issuance of temporary parenting plan—Criteria. After considering the affidavit required by RCW 26.09.194(1) and other relevant evidence presented, the court shall make a temporary parenting plan that is in the best interest of the child. In making this determination, the court shall give particular consideration to:

(1) The relative strength, nature, and stability of the child's relationship with each parent; and

(2) Which parenting arrangements will cause the least disruption to the child's emotional stability while the action is pending.

The court shall also consider the factors used to determine residential provisions in the permanent parenting plan. [2007 c 496 § 604; 1987 c 460 § 14.]

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

26.09.231 Residential time summary report. The parties to dissolution matters shall file with the clerk of the court the residential time summary report. The summary report shall be on the form developed by the administrative office of the courts in consultation with the department of social and health services division of child support. The parties must

complete the form and file the form with the court order. The clerk of the court must forward the form to the division of child support on at least a monthly basis. [2007 c 496 § 701.]

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

Chapter 26.10 RCW

NONPARENTAL ACTIONS FOR CHILD CUSTODY

Sections

26.10.195 Modification of child support order—Child support order summary report.

26.10.195 Modification of child support order—Child support order summary report. The party seeking the establishment or modification of a child support order shall file with the clerk of the court the child support order summary report. The summary report shall be on the form developed by the administrator for the courts pursuant to RCW 26.18.210. The party must complete the form and file the form with the court order. The clerk of the court must forward the form to the division of child support on at least a monthly basis. [2007 c 313 § 3; 1990 1st ex.s. c 2 § 24.]

Findings—2007 c 313: See note following RCW 26.19.025.

Effective dates—Severability—1990 1st ex.s. c 2: See notes following RCW 26.09.100.

Chapter 26.12 RCW

FAMILY COURT

Sections

26.12.177 Guardians ad litem and investigators—Training—Registry—Subregistry—Selection—Substitution—Exceptions.
26.12.260 Program to provide services to parties involved in dissolutions and legal separations—Fees. (*Effective July 1, 2009.*)

26.12.177 Guardians ad litem and investigators—Training—Registry—Subregistry—Selection—Substitution—Exceptions. (1) All guardians ad litem and investigators appointed under this title must comply with the training requirements established under RCW 2.56.030(15), prior to their appointment in cases under Title 26 RCW, except that volunteer guardians ad litem or court-appointed special advocates may comply with alternative training requirements approved by the administrative office of the courts that meet or exceed the statewide requirements. In cases involving allegations of limiting factors under RCW 26.09.191, the guardians ad litem and investigators appointed under this title must have additional relevant training under RCW 2.56.030(15) and as recommended under RCW 2.53.040, when it is available.

(2)(a) Each guardian ad litem program for compensated guardians ad litem shall establish a rotational registry system for the appointment of guardians ad litem and investigators under this title. If a judicial district does not have a program the court shall establish the rotational registry system. Guardians ad litem and investigators under this title shall be selected from the registry except in exceptional circumstances as determined and documented by the court. The parties may make a joint recommendation for the appointment of a guardian ad litem from the registry.

(b) In judicial districts with a population over one hundred thousand, a list of three names shall be selected from the registry and given to the parties along with the background information as specified in RCW 26.12.175(3), including their hourly rate for services. Each party may, within three judicial days, strike one name from the list. If more than one name remains on the list, the court shall make the appointment from the names on the list. In the event all three names are stricken the person whose name appears next on the registry shall be appointed.

(c) If a party reasonably believes that the appointed guardian ad litem lacks the necessary expertise for the proceeding, charges an hourly rate higher than what is reasonable for the particular proceeding, or has a conflict of interest, the party may, within three judicial days from the appointment, move for substitution of the appointed guardian ad litem by filing a motion with the court.

(d) Under this section, within either registry referred to in (a) of this subsection, a subregistry may be created that consists of guardians ad litem under contract with the department of social and health services' division of child support. Guardians ad litem on such a subregistry shall be selected and appointed in state-initiated paternity cases only.

(e) The superior court shall remove any person from the guardian ad litem registry who misrepresents his or her qualifications pursuant to a grievance procedure established by the court.

(3) The rotational registry system shall not apply to court-appointed special advocate programs. [2007 c 496 § 305; 2005 c 282 § 30; 2000 c 124 § 7; 1997 c 41 § 7; 1996 c 249 § 18.]

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

Intent—1996 c 249: See note following RCW 2.56.030.

26.12.260 Program to provide services to parties involved in dissolutions and legal separations—Fees. (Effective July 1, 2009.) (1) After July 1, 2009, but no later than November 1, 2009, a county may, and to the extent state funding is provided to meet the minimum requirements of the program a county shall, create a program to provide services to all parties involved in proceedings under chapter 26.09 RCW. Minimum components of this program shall include: (a) An individual to serve as an initial point of contact for parties filing petitions for dissolutions or legal separations under chapter 26.09 RCW; (b) informing parties about courthouse facilitation programs and orientations; (c) informing parties of alternatives to filing a dissolution petition, such as marriage counseling; (d) informing parties of alternatives to litigation including counseling, legal separation, and mediation services if appropriate; (e) informing parties of supportive family services available in the community; (f) screening for referral for services in the areas of domestic violence as defined in RCW 26.50.010, child abuse, substance abuse, and mental health; and (g) assistance to the court in superior court cases filed under chapter 26.09 RCW.

(2) This program shall not provide legal advice. No attorney-client relationship or privilege is created, by implication or by inference, between persons providing basic information under this section and the participants in the program.

(3) The legislative authority of any county may impose user fees or may impose a surcharge of up to twenty dollars on only those superior court cases filed under this title, or both, to pay for the expenses of this program. Fees collected under this section shall be collected and deposited in the same manner as other county funds are collected and deposited, and shall be maintained in a separate account to be used as provided in this section. The program shall provide services to indigent persons at no expense.

(4) Persons who implement the program shall be appointed in the same manner as investigators, stenographers, and clerks as described in RCW 26.12.050.

(5) If the county has a program under this section, any petition under RCW 26.09.020 must allege that the moving party met and conferred with the program prior to the filing of the petition.

(6) If the county has a program under this section, parties shall meet and confer with the program prior to participation in mediation under RCW 26.09.016. [2007 c 496 § 201.]

Effective dates—2007 c 496 §§ 201, 202, 204, and 501: "(1) Sections 201 and 204 of this act take effect July 1, 2009.

(2) Section 202 of this act takes effect January 1, 2008.

(3) Section 501 of this act takes effect January 1, 2009." [2007 c 496 § 805.]

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

Chapter 26.18 RCW

CHILD SUPPORT ENFORCEMENT

Sections

26.18.170	Health insurance coverage—Enforcement—Rules.
26.18.210	Child support order summary report form.
26.18.230	Residential time summary report form.

26.18.170 Health insurance coverage—Enforcement—Rules. (1) Whenever a parent who has been ordered to provide health insurance coverage for a dependent child fails to provide such coverage or lets it lapse, the department or a parent may seek enforcement of the coverage order as provided under this section.

(2)(a) If the parent's order to provide health insurance coverage contains language notifying the parent that failure to provide such coverage or proof that such coverage is unavailable may result in direct enforcement of the order and orders payments through, or has been submitted to, the Washington state support registry for enforcement, then the department may, without further notice to the parent, send a national medical support notice pursuant to 42 U.S.C. Sec. 666(a)(19), and sections 401 (e) and (f) of the federal child support and performance incentive act of 1998 to the parent's employer or union. The notice shall be served:

(i) By regular mail;

(ii) In the manner prescribed for the service of a summons in a civil action;

(iii) By certified mail, return receipt requested; or

(iv) By electronic means if there is an agreement between the secretary of the department and the person, firm, corporation, association, political subdivision, department of the state, or agency, subdivision, or instrumentality of the United States to accept service by electronic means.

(b) The notice shall require the employer or union to enroll the child in the health insurance plan as provided in subsection (3) of this section.

(c) The returned part A of the national medical support notice to the division of child support by the employer constitutes proof of service of the notice in the case where the notice was served by regular mail.

(d) If the parent's order to provide health insurance coverage does not order payments through, and has not been submitted to, the Washington state support registry for enforcement:

(i) The parent seeking enforcement may, without further notice to the other parent, send a certified copy of the order requiring health insurance coverage to the obligor's employer or union by certified mail, return receipt requested; and

(ii) The parent seeking enforcement shall attach a notarized statement to the order declaring that the order is the latest order addressing coverage entered by the court and require the employer or union to enroll the child in the health insurance plan as provided in subsection (3) of this section.

(3) Upon receipt of an order that provides for health insurance coverage:

(a) The parent's employer or union shall answer the party who sent the order within twenty days and confirm that the child:

(i) Has been enrolled in the health insurance plan;

(ii) Will be enrolled; or

(iii) Cannot be covered, stating the reasons why such coverage cannot be provided;

(b) The employer or union shall withhold any required premium from the parent's income or wages;

(c) If more than one plan is offered by the employer or union, and each plan may be extended to cover the child, then the child shall be enrolled in the parent's plan. If the parent's plan does not provide coverage which is accessible to the child, the child shall be enrolled in the least expensive plan otherwise available to the parent;

(d) The employer or union shall provide information about the name of the health insurance coverage provider or issuer and the extent of coverage available to the parent and shall make available any necessary claim forms or enrollment membership cards.

(4) Upon receipt of a national medical support notice from a child support agency operating under Title IV-D of the federal social security act:

(a) The parent's employer or union shall comply with the provisions of the notice, including meeting response time frames and withholding requirements required under part A of the notice;

(b) The parent's employer or union shall also be responsible for complying with forwarding part B of the notice to the child's plan administrator, if required by the notice;

(c) The plan administrator shall be responsible for complying with the provisions of the notice.

(5) If the order for coverage contains no language notifying either or both parents that failure to provide health insurance coverage or proof that such coverage is unavailable may result in direct enforcement of the order, the department or the parent seeking enforcement may serve a written notice of intent to enforce the order on the other parent by certified mail, return receipt requested, or by personal service. If the

parent required to provide medical support fails to provide written proof that such coverage has been obtained or applied for or fails to provide proof that such coverage is unavailable within twenty days of service of the notice, the department or the parent seeking enforcement may proceed to enforce the order directly as provided in subsection (2) of this section.

(6) If the parent ordered to provide health insurance coverage elects to provide coverage that will not be accessible to the child because of geographic or other limitations when accessible coverage is otherwise available, the department or the parent seeking enforcement may serve a written notice of intent to purchase health insurance coverage on the parent required to provide medical support by certified mail, return receipt requested. The notice shall also specify the type and cost of coverage.

(7) If the department serves a notice under subsection (6) of this section the parent required to provide medical support shall, within twenty days of the date of service:

(a) File an application for an adjudicative proceeding; or

(b) Provide written proof to the department that the parent has either applied for, or obtained, coverage accessible to the child.

(8) If the parent seeking enforcement serves a notice under subsection (6) of this section, within twenty days of the date of service the parent required to provide medical support shall provide written proof to the parent seeking enforcement that the parent required to provide medical support has either applied for, or obtained, coverage accessible to the child.

(9) If the parent required to provide medical support fails to respond to a notice served under subsection (6) of this section to the party who served the notice, the party who served the notice may purchase the health insurance coverage specified in the notice directly. The amount of the monthly premium shall be added to the support debt and be collectible without further notice. The amount of the monthly premium may be collected or accrued until the parent required to provide medical support provides proof of the required coverage.

(10) The signature of the parent seeking enforcement or of a department employee shall be a valid authorization to the coverage provider or issuer for purposes of processing a payment to the child's health services provider. An order for health insurance coverage shall operate as an assignment of all benefit rights to the parent seeking enforcement or to the child's health services provider, and in any claim against the coverage provider or issuer, the parent seeking enforcement or his or her assignee shall be subrogated to the rights of the parent obligated to provide medical support for the child. Notwithstanding the provisions of this section regarding assignment of benefits, this section shall not require a health care service contractor authorized under chapter 48.44 RCW or a health maintenance organization authorized under chapter 48.46 RCW to deviate from their contractual provisions and restrictions regarding reimbursement for covered services. If the coverage is terminated, the employer shall mail a notice of termination to the department or the parent seeking enforcement at that parent's last known address within thirty days of the termination date.

(11) This section shall not be construed to limit the right of the parents or parties to the support order to bring an action in superior court at any time to enforce, modify, or clarify the original support order.

(12) Where a child does not reside in the issuer's service area, an issuer shall cover no less than urgent and emergent care. Where the issuer offers broader coverage, whether by policy or reciprocal agreement, the issuer shall provide such coverage to any child otherwise covered that does not reside in the issuer's service area.

(13) If a parent required to provide medical support fails to pay his or her portion, determined under RCW 26.19.080, of any deductible, copay, or uninsured medical expense incurred on behalf of the child, pursuant to a child support order, the department or the obligee parent may enforce collection of that parent's portion of the deductible, copay, or uninsured medical expense incurred on behalf of the child. If the department is enforcing the order, the parent required to provide medical support shall have his or her portion of the deductible, copay, or uninsured medical expenses incurred on behalf of the child added to the support debt and be collectible without further notice, following the reduction of the expenses to a sum certain either in a court order or by the department, pursuant to RCW 26.23.110.

(14) The department has rule-making authority to enact rules consistent with 42 U.S.C. Sec. 652(f) and 42 U.S.C. Sec. 666(a)(19) as amended by section 7307 of the deficit reduction act of 2005. Additionally, the department has rule-making authority to implement regulations required under parts 45 C.F.R. 302, 303, 304, 305, and 308. [2007 c 143 § 1; 2000 c 86 § 2; 1995 c 34 § 7; 1994 c 230 § 7; 1993 c 426 § 14; 1989 c 416 § 5.]

Severability—2007 c 143: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [2007 c 143 § 10.]

26.18.210 Child support order summary report form. (1) The administrative office of the courts shall develop a child support order summary report form to provide for the reporting of summary information in every case in which a child support order is entered or modified either judicially or administratively. The child support order summary report must be included at the top of the first page of the Washington state child support worksheets, but must not be considered part of the worksheets.

(2) The child support order summary report form must include all data the department of social and health services division of child support has determined necessary, in order to perform the required quadrennial review of the Washington state child support guidelines under RCW 26.19.025. The division of child support must store and maintain all of the order summary report information and prepare a report at least every four years. On a monthly basis, the clerk of the court must forward all child support worksheets that have been filed with the court to the division of child support. [2007 c 313 § 4; 2005 c 282 § 33; 1990 1st ex.s. c 2 § 22.]

Findings—2007 c 313: See note following RCW 26.19.025.

Effective dates—Severability—1990 1st ex.s. c 2: See notes following RCW 26.09.100.

26.18.230 Residential time summary report form. (1) The administrative office of the courts in consultation with the department of social and health services, division of child support, shall develop a residential time summary

report form to provide for the reporting of summary information in every case in which residential time with children is to be established or modified.

(2) The residential time summary report must include at a minimum: A breakdown of residential schedules with a reasonable degree of specificity regarding actual time with each parent, including enforcement practices, representation status of the parties, whether domestic violence, child abuse, chemical dependency, or mental health issues exist, and whether the matter was agreed or contested.

(3) The division of child support shall compile and electronically transmit the information in the residential time summary reports to the administrative office of the courts for purposes of tracking residential time awards by parent, enforcement practices, representation status of the parties, the existence of domestic violence, child abuse, chemical dependency, or mental health issues and whether the matter was agreed or contested.

(4) The administrative office of the courts shall report the compiled information, organized by each county, on at least an annual basis. The information shall be itemized by quarter. These reports shall be made publicly available through the judicial information public access services and shall not contain any personal identifying information of parties in the proceedings. [2007 c 496 § 702.]

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

Chapter 26.19 RCW CHILD SUPPORT SCHEDULE

Sections

- | | |
|-----------|---|
| 26.19.025 | Quadrennial review of child support guidelines and child support review report—Work group membership—Report to legislature. |
| 26.19.026 | Joint legislative audit and review committee review and analysis—Report. (<i>Expires July 1, 2011.</i>) |
| 26.19.027 | Work group review and recommendations. (<i>Expires June 30, 2009.</i>) |

26.19.025 Quadrennial review of child support guidelines and child support review report—Work group membership—Report to legislature. (1) Beginning in 2011 and every four years thereafter, the division of child support shall convene a work group to review the child support guidelines and the child support review report prepared under RCW 26.19.026 and determine if the application of the child support guidelines results in appropriate support orders. Membership of the work group shall be determined as provided in this subsection.

(a) The president of the senate shall appoint one member from each of the two largest caucuses of the senate;

(b) The speaker of the house of representatives shall appoint one member from each of the two largest caucuses of the house of representatives;

(c) The governor, in consultation with the division of child support, shall appoint the following members:

(i) The director of the division of child support;

(ii) A professor of law specializing in family law;

(iii) A representative from the Washington state bar association's family law executive committee;

(iv) An economist;

- (v) A representative of the tribal community;
- (vi) Two representatives from the superior court judges association, including a superior court judge and a court commissioner who is familiar with child support issues;
- (vii) A representative from the administrative office of the courts;
- (viii) A prosecutor appointed by the Washington association of prosecuting attorneys;
- (ix) A representative from legal services;
- (x) Three noncustodial parents, each of whom may be a representative of an advocacy group, an attorney, or an individual, with at least one representing the interests of low-income, noncustodial parents;
- (xi) Three custodial parents, each of whom may be a representative of an advocacy group, an attorney, or an individual, with at least one representing the interests of low-income, custodial parents; and
- (xii) An administrative law judge appointed by the office of administrative hearings.

(2) Appointments to the work group shall be made by December 1, 2010, and every four years thereafter. The governor shall appoint the chair from among the work group membership.

(3) The division of child support shall provide staff support to the work group, and shall carefully consider all input received from interested organizations and individuals during the review process.

(4) The work group may form an executive committee, create subcommittees, designate alternative representatives, and define other procedures, as needed, for operation of the work group.

(5) Legislative members of the work group shall be reimbursed for travel expenses under RCW 44.04.120. Nonlegislative members, except those representing an employee or organization, are entitled to be reimbursed for travel expenses in accordance with RCW 43.03.050 and 43.03.060.

(6) By October 1, 2011, and every four years thereafter, the work group shall report its findings and recommendations to the legislature, including recommendations for legislative action, if necessary. [2007 c 313 § 5; 1991 c 367 § 26.]

Findings—2007 c 313: "Federal law requires the states to periodically review and update their child support guidelines. Accurate and consistent reporting of the terms of child support orders entered by the courts or administrative agencies in Washington state is necessary in order to accomplish a review of the child support guidelines. In addition, a process for review of the guidelines should be established to ensure the integrity of any reviews undertaken to comply with federal law." [2007 c 313 § 1.]

Severability—Effective date—Captions not law—1991 c 367: See notes following RCW 26.09.015.

26.19.026 Joint legislative audit and review committee review and analysis—Report. (Expires July 1, 2011.) By July 1, 2010, the joint legislative audit and review committee shall:

(1) Review and analyze data collected from the order summary report, the recommendations of the child support work group in RCW 26.19.027, the current child support guidelines, and other relevant research and data regarding the cost of child rearing, as well as research and data on the application of, and deviations from, the child support guidelines.

(2) Prepare a report on the application of the current child support guidelines and the recommendations of the work group.

This section expires July 1, 2011. [2007 c 313 § 6.]

Findings—2007 c 313: See note following RCW 26.19.025.

26.19.027 Work group review and recommendations. (Expires June 30, 2009.) (1) By August 1, 2007, the division of child support shall convene a work group to examine the current laws, administrative rules, and practices regarding child support, with members as provided in this subsection. The objective of the work group shall be to continue the work of the 2005 child support guidelines work group, and produce findings and recommendations to the legislature, including recommendations for legislative action, by December 30, 2008.

(a) The speaker of the house of representatives shall appoint one member from each of the two largest caucuses of the house of representatives;

(b) The president of the senate shall appoint one member from each of the two largest caucuses in the senate;

(c) The governor, in consultation with the division of child support, shall appoint the following members:

(i) The director of the division of child support;

(ii) A professor of law specializing in family law;

(iii) A representative from the Washington state bar association's family law executive committee;

(iv) An economist;

(v) A representative of the tribal community;

(vi) Two representatives from the superior court judges association, including a superior court judge and a court commissioner who is familiar with child support issues;

(vii) A representative from the administrative office of the courts;

(viii) A prosecutor appointed by the Washington association of prosecuting attorneys;

(ix) A representative from legal services;

(x) Three noncustodial parents, each of whom may be a representative of an advocacy group, an attorney, or an individual, with at least one representing the interests of low-income, noncustodial parents;

(xi) Three custodial parents, each of whom may be a representative of an advocacy group, an attorney, or an individual, with at least one representing the interests of low-income, custodial parents;

(xii) An administrative law judge appointed by the office of administrative hearings.

(2) The director of the division of child support shall serve as chair of the work group.

(3) The division of child support shall provide staff support to the work group.

(4) The work group shall review and make recommendations to the legislature and the governor regarding the child support guidelines in Washington state. In preparing the recommendations, the work group shall, at a minimum, review the following issues:

(a) How the support schedule and guidelines shall treat children from other relationships, including whether the whole family formula should be applied presumptively;

(b) Whether the economic table for calculating child support should include combined income greater than five thousand dollars;

(c) Whether the economic table should start at one hundred twenty-five percent of the federal poverty guidelines, and move upward in one hundred dollar increments;

(d) Whether the economic table should distinguish between children under twelve years of age and over twelve years of age;

(e) Whether child care costs and ordinary medical costs should be included in the economic table, or treated separately;

(f) Whether the estimated cost of child rearing, as reflected in the economic table, should be based on the Rothbarth estimate, the Engle estimator, or some other basis for calculating the cost of child rearing;

(g) Whether the self-support reserve should be tied to the federal poverty level;

(h) How to treat imputation of income for purposes of calculating the child support obligation, including whether minimum wage should be imputed in the absence of adequate information regarding income;

(i) How extraordinary medical expenses should be addressed, either through the basic child support obligation or independently;

(j) Whether the amount of the presumptive minimum order should be adjusted;

(k) Whether gross or net income should be used for purposes of calculating the child support obligation;

(l) How to treat overtime income or income from a second job for purposes of calculating the child support obligation;

(m) Whether the noncustodial parent's current child support obligation should be limited to forty-five percent of net income; and

(n) Whether the residential schedule should affect the amount of the child support obligation.

(5) Legislative members of the work group shall be reimbursed for travel expenses under RCW 44.04.120. Nonlegislative members, except those representing an employee or organization, are entitled to be reimbursed for travel expenses in accordance with RCW 43.03.050 and 43.03.060.

(6) This section expires June 30, 2009. [2007 c 313 § 7.]

Findings—2007 c 313: See note following RCW 26.19.025.

Chapter 26.23 RCW

STATE SUPPORT REGISTRY

Sections

26.23.035	Distribution of support received—Rules.
26.23.050	Support orders—Provisions—Enforcement—Confidential information form—Rules.
26.23.110	Procedures when amount of support obligation needs to be determined—Notice—Adjudicative proceeding—Rules.

26.23.035 Distribution of support received—Rules.

(1) The department of social and health services shall adopt rules for the distribution of support money collected by the division of child support. These rules shall:

(a) Comply with Title IV-D of the federal social security act as amended by the personal responsibility and work

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opportunity reconciliation act of 1996 and the federal deficit reduction act of 2005;

(b) Direct the division of child support to distribute support money within eight days of receipt, unless one of the following circumstances, or similar circumstances specified in the rules, prevents prompt distribution:

(i) The location of the custodial parent is unknown;

(ii) The support debt is in litigation;

(iii) The division of child support cannot identify the responsible parent or the custodian;

(c) Provide for proportionate distribution of support payments if the responsible parent owes a support obligation or a support debt for two or more Title IV-D cases; and

(d) Authorize the distribution of support money, except money collected under 42 U.S.C. Sec. 664, to satisfy a support debt owed to the IV-D custodian before the debt owed to the state when the custodian stops receiving a public assistance grant.

(2) The division of child support may distribute support payments to the payee under the support order or to another person who has lawful physical custody of the child or custody with the payee's consent. The payee may file an application for an adjudicative proceeding to challenge distribution to such other person. Prior to distributing support payments to any person other than the payee, the registry shall:

(a) Obtain a written statement from the child's physical custodian, under penalty of perjury, that the custodian has lawful custody of the child or custody with the payee's consent;

(b) Mail to the responsible parent and to the payee at the payee's last known address a copy of the physical custodian's statement and a notice which states that support payments will be sent to the physical custodian; and

(c) File a copy of the notice with the clerk of the court that entered the original support order.

(3) If the Washington state support registry distributes a support payment to a person in error, the registry may obtain restitution by means of a set-off against future payments received on behalf of the person receiving the erroneous payment, or may act according to RCW 74.20A.270 as deemed appropriate. Any set-off against future support payments shall be limited to amounts collected on the support debt and ten percent of amounts collected as current support.

(4) The division of child support shall ensure that the fifty dollar pass through payment, as required by 42 U.S.C. Sec. 657 before the adoption of P.L. 104-193, is terminated immediately upon July 27, 1997, and all rules to the contrary adopted before July 27, 1997, are without force and effect.

(5) Effective October 1, 2008, consistent with 42 U.S.C. Sec. 657(a) as amended by section 7301(b)(7)(B) of the federal deficit reduction act of 2005, the department shall pass through child support that does not exceed one hundred dollars per month collected on behalf of a family, or in the case of a family that includes two or more children, an amount that is not more than two hundred dollars per month. The department has rule-making authority to implement this subsection. [2007 c 143 § 2; 1997 c 58 § 933; 1991 c 367 § 38; 1989 c 360 § 34.]

Severability—2007 c 143: See note following RCW 26.18.170.

Short title—Part headings, captions, table of contents not law—Exemptions and waivers from federal law—Conflict with federal

requirements—Severability—1997 c 58: See RCW 74.08A.900 through 74.08A.904.

Severability—Effective date—Captions not law—1991 c 367: See notes following RCW 26.09.015.

26.23.050 Support orders—Provisions—Enforcement—Confidential information form—Rules. (1) If the division of child support is providing support enforcement services under RCW 26.23.045, or if a party is applying for support enforcement services by signing the application form on the bottom of the support order, the superior court shall include in all court orders that establish or modify a support obligation:

(a) A provision that orders and directs the responsible parent to make all support payments to the Washington state support registry;

(b) A statement that withholding action may be taken against wages, earnings, assets, or benefits, and liens enforced against real and personal property under the child support statutes of this or any other state, without further notice to the responsible parent at any time after entry of the court order, unless:

(i) One of the parties demonstrates, and the court finds, that there is good cause not to require immediate income withholding and that withholding should be delayed until a payment is past due; or

(ii) The parties reach a written agreement that is approved by the court that provides for an alternate arrangement;

(c) A statement that the receiving parent might be required to submit an accounting of how the support is being spent to benefit the child; and

(d) A statement that the responsible parent's privileges to obtain and maintain a license, as defined in RCW 74.20A.320, may not be renewed, or may be suspended if the parent is not in compliance with a support order as provided in RCW 74.20A.320.

As used in this subsection and subsection (3) of this section, "good cause not to require immediate income withholding" means a written determination of why implementing immediate wage withholding would not be in the child's best interests and, in modification cases, proof of timely payment of previously ordered support.

(2) In all other cases not under subsection (1) of this section, the court may order the responsible parent to make payments directly to the person entitled to receive the payments, to the Washington state support registry, or may order that payments be made in accordance with an alternate arrangement agreed upon by the parties.

(a) The superior court shall include in all orders under this subsection that establish or modify a support obligation:

(i) A statement that withholding action may be taken against wages, earnings, assets, or benefits, and liens enforced against real and personal property under the child support statutes of this or any other state, without further notice to the responsible parent at any time after entry of the court order, unless:

(A) One of the parties demonstrates, and the court finds, that there is good cause not to require immediate income withholding and that withholding should be delayed until a payment is past due; or

(B) The parties reach a written agreement that is approved by the court that provides for an alternate arrangement; and

(ii) A statement that the receiving parent may be required to submit an accounting of how the support is being spent to benefit the child.

As used in this subsection, "good cause not to require immediate income withholding" is any reason that the court finds appropriate.

(b) The superior court may order immediate or delayed income withholding as follows:

(i) Immediate income withholding may be ordered if the responsible parent has earnings. If immediate income withholding is ordered under this subsection, all support payments shall be paid to the Washington state support registry. The superior court shall issue a mandatory wage assignment order as set forth in chapter 26.18 RCW when the support order is signed by the court. The parent entitled to receive the transfer payment is responsible for serving the employer with the order and for its enforcement as set forth in chapter 26.18 RCW.

(ii) If immediate income withholding is not ordered, the court shall require that income withholding be delayed until a payment is past due. The support order shall contain a statement that withholding action may be taken against wages, earnings, assets, or benefits, and liens enforced against real and personal property under the child support statutes of this or any other state, without further notice to the responsible parent, after a payment is past due.

(c) If a mandatory wage withholding order under chapter 26.18 RCW is issued under this subsection and the division of child support provides support enforcement services under RCW 26.23.045, the existing wage withholding assignment is prospectively superseded upon the division of child support's subsequent service of an income withholding notice.

(3) The office of administrative hearings and the department of social and health services shall require that all support obligations established as administrative orders include a provision which orders and directs that the responsible parent shall make all support payments to the Washington state support registry. All administrative orders shall also state that the responsible parent's privileges to obtain and maintain a license, as defined in RCW 74.20A.320, may not be renewed, or may be suspended if the parent is not in compliance with a support order as provided in RCW 74.20A.320. All administrative orders shall also state that withholding action may be taken against wages, earnings, assets, or benefits, and liens enforced against real and personal property under the child support statutes of this or any other state without further notice to the responsible parent at any time after entry of the order, unless:

(a) One of the parties demonstrates, and the presiding officer finds, that there is good cause not to require immediate income withholding; or

(b) The parties reach a written agreement that is approved by the presiding officer that provides for an alternate agreement.

(4) If the support order does not include the provision ordering and directing that all payments be made to the Washington state support registry and a statement that withholding action may be taken against wages, earnings, assets,

or benefits if a support payment is past due or at any time after the entry of the order, or that a parent's licensing privileges may not be renewed, or may be suspended, the division of child support may serve a notice on the responsible parent stating such requirements and authorizations. Service may be by personal service or any form of mail requiring a return receipt.

(5) Every support order shall state:

(a) The address where the support payment is to be sent;

(b) That withholding action may be taken against wages, earnings, assets, or benefits, and liens enforced against real and personal property under the child support statutes of this or any other state, without further notice to the responsible parent at any time after entry of a support order, unless:

(i) One of the parties demonstrates, and the court finds, that there is good cause not to require immediate income withholding; or

(ii) The parties reach a written agreement that is approved by the court that provides for an alternate arrangement;

(c) The income of the parties, if known, or that their income is unknown and the income upon which the support award is based;

(d) The support award as a sum certain amount;

(e) The specific day or date on which the support payment is due;

(f) The names and ages of the dependent children;

(g) A provision requiring both the responsible parent and the custodial parent to keep the Washington state support registry informed of whether he or she has access to health insurance coverage at reasonable cost and, if so, the health insurance policy information;

(h) That either or both the responsible parent and the custodial parent shall be obligated to provide health insurance coverage for his or her child if coverage that can be extended to cover the child is or becomes available to the parent through employment or is union-related as provided under RCW 26.09.105;

(i) That if proof of health insurance coverage or proof that the coverage is unavailable is not provided within twenty days, the parent seeking enforcement or the department may seek direct enforcement of the coverage through the employer or union of the parent required to provide medical support without further notice to the parent as provided under chapter 26.18 RCW;

(j) The reasons for not ordering health insurance coverage if the order fails to require such coverage;

(k) That the responsible parent's privileges to obtain and maintain a license, as defined in RCW 74.20A.320, may not be renewed, or may be suspended if the parent is not in compliance with a support order as provided in RCW 74.20A.320;

(l) That each parent must:

(i) Promptly file with the court and update as necessary the confidential information form required by subsection (7) of this section; and

(ii) Provide the state case registry and update as necessary the information required by subsection (7) of this section; and

(m) That parties to administrative support orders shall provide to the state case registry and update as necessary their

residential addresses and the address of the responsible parent's employer. The division of child support may adopt rules that govern the collection of parties' current residence and mailing addresses, telephone numbers, dates of birth, social security numbers, the names of the children, social security numbers of the children, dates of birth of the children, driver's license numbers, and the names, addresses, and telephone numbers of the parties' employers to enforce an administrative support order. The division of child support shall not release this information if the division of child support determines that there is reason to believe that release of the information may result in physical or emotional harm to the party or to the child, or a restraining order or protective order is in effect to protect one party from the other party.

(6) After the responsible parent has been ordered or notified to make payments to the Washington state support registry under this section, the responsible parent shall be fully responsible for making all payments to the Washington state support registry and shall be subject to payroll deduction or other income-withholding action. The responsible parent shall not be entitled to credit against a support obligation for any payments made to a person or agency other than to the Washington state support registry except as provided under RCW 74.20.101. A civil action may be brought by the payor to recover payments made to persons or agencies who have received and retained support moneys paid contrary to the provisions of this section.

(7) All petitioners and parties to all court actions under chapters 26.09, 26.10, 26.12, 26.18, 26.21A, 26.23, 26.26, and 26.27 RCW shall complete to the best of their knowledge a verified and signed confidential information form or equivalent that provides the parties' current residence and mailing addresses, telephone numbers, dates of birth, social security numbers, driver's license numbers, and the names, addresses, and telephone numbers of the parties' employers. The clerk of the court shall not accept petitions, except in parentage actions initiated by the state, orders of child support, decrees of dissolution, or paternity orders for filing in such actions unless accompanied by the confidential information form or equivalent, or unless the confidential information form or equivalent is already on file with the court clerk. In lieu of or in addition to requiring the parties to complete a separate confidential information form, the clerk may collect the information in electronic form. The clerk of the court shall transmit the confidential information form or its data to the division of child support with a copy of the order of child support or paternity order, and may provide copies of the confidential information form or its data and any related findings, decrees, parenting plans, orders, or other documents to the state administrative agency that administers Title IV-A, IV-D, IV-E, or XIX of the federal social security act. In state initiated paternity actions, the parties adjudicated the parents of the child or children shall complete the confidential information form or equivalent or the state's attorney of record may complete that form to the best of the attorney's knowledge.

(8) The department has rule-making authority to enact rules consistent with 42 U.S.C. Sec. 652(f) and 42 U.S.C. Sec. 666(a)(19) as amended by section 7307 of the deficit reduction act of 2005. Additionally, the department has rule-making authority to implement regulations required under parts 45 C.F.R. 302, 303, 304, 305, and 308. [2007 c 143 § 3;

2001 c 42 § 3; 1998 c 160 § 2; 1997 c 58 § 888; 1994 c 230 § 9; 1993 c 207 § 1; 1991 c 367 § 39; 1989 c 360 § 15; 1987 c 435 § 5.]

Severability—2007 c 143: See note following RCW 26.18.170.

Effective date—Severability—2001 c 42: See notes following RCW 26.09.020.

Short title—Part headings, captions, table of contents not law—Exemptions and waivers from federal law—Conflict with federal requirements—Severability—1997 c 58: See RCW 74.08A.900 through 74.08A.904.

Intent—1997 c 58: See note following RCW 74.20A.320.

Severability—Effective date—Captions not law—1991 c 367: See notes following RCW 26.09.015.

26.23.110 Procedures when amount of support obligation needs to be determined—Notice—Adjudicative proceeding—Rules. (1) The department may serve a notice of support owed on a responsible parent when a support order:

(a) Does not state the current and future support obligation as a fixed dollar amount;

(b) Contains an escalation clause or adjustment provision for which additional information not contained in the support order is needed to determine the fixed dollar amount of the support debt or the fixed dollar amount of the current and future support obligation, or both; or

(c) Provides that the responsible parent is responsible for paying for a portion of uninsured medical costs, copayments, and/or deductibles incurred on behalf of the child, but does not reduce the costs to a fixed dollar amount.

(2) The department may serve a notice of support owed on a parent who has been designated to pay for a support order a portion of uninsured medical costs, copayments, or deductibles incurred on behalf of the child, but only when the support order does not reduce the costs to a fixed dollar amount.

(3) The notice of support owed shall facilitate enforcement of the support order and implement and effectuate the terms of the support order, rather than modify those terms. When the office of support enforcement issues a notice of support owed, the office shall inform the payee under the support order.

(4) The notice of support owed shall be served on a responsible parent by personal service or any form of mailing requiring a return receipt. The notice shall be served on the applicant or recipient of services by first-class mail to the last known address. The notice of support owed shall contain an initial finding of the fixed dollar amount of current and future support obligation that should be paid or the fixed dollar amount of the support debt owed under the support order, or both.

(5) A parent who objects to the fixed dollar amounts stated in the notice of support owed has twenty days from the date of the service of the notice of support owed to file an application for an adjudicative proceeding or initiate an action in superior court.

(6) The notice of support owed shall state that the parent may:

(a) File an application for an adjudicative proceeding governed by chapter 34.05 RCW, the administrative procedure act, in which the parent will be required to appear and

show cause why the fixed dollar amount of support debt or current and future support obligation, or both, stated in the notice of support owed is incorrect and should not be ordered; or

(b) Initiate an action in superior court.

(7) If either parent does not file an application for an adjudicative proceeding or initiate an action in superior court, the fixed dollar amount of current and future support obligation or support debt, or both, stated in the notice of support owed shall become final and subject to collection action.

(8) If an adjudicative proceeding is requested, the department shall mail a copy of the notice of adjudicative proceeding to the parties.

(9) If either parent does not initiate an action in superior court, and serve notice of the action on the department and the other party to the support order within the twenty-day period, the parent shall be deemed to have made an election of remedies and shall be required to exhaust administrative remedies under this chapter with judicial review available as provided for in RCW 34.05.510 through 34.05.598.

(10) An adjudicative order entered in accordance with this section shall state the basis, rationale, or formula upon which the fixed dollar amounts established in the adjudicative order were based. The fixed dollar amount of current and future support obligation or the amount of the support debt, or both, determined under this section shall be subject to collection under this chapter and other applicable state statutes.

(11) The department shall also provide for:

(a) An annual review of the support order if either the office of support enforcement or the parent requests such a review; and

(b) A late adjudicative proceeding if the parent fails to file an application for an adjudicative proceeding in a timely manner under this section.

(12) If an annual review or late adjudicative proceeding is requested under subsection (11) of this section, the department shall mail a copy of the notice of adjudicative proceeding to the parties' last known address.

(13) The department has rule-making authority to enact rules consistent with 42 U.S.C. Sec. 652(f) and 42 U.S.C. Sec. 666(a)(19) as amended by section 7307 of the deficit reduction act of 2005. Additionally, the department has rule-making authority to implement regulations required under parts 45 C.F.R. 302, 303, 304, 305, and 308. [2007 c 143 § 4; 1993 c 12 § 1. Prior: 1989 c 360 § 16; 1989 c 175 § 77; 1987 c 435 § 11.]

Severability—2007 c 143: See note following RCW 26.18.170.

Effective dates—1989 c 360 §§ 9, 10, 16, and 39: See note following RCW 74.20A.060.

Effective date—1989 c 175: See note following RCW 34.05.010.

Chapter 26.28 RCW AGE OF MAJORITY

Sections

26.28.060 Child labor—Penalty.

26.28.060 Child labor—Penalty. (1) Every person who shall employ, and every parent, guardian or other person having the care, custody or control of such child, who shall

permit to be employed, by another, any child under the age of fourteen years at any labor whatever, in or in connection with any store, shop, factory, mine or any inside employment not connected with farm or house work, without the written permit thereto of a judge of a superior court of the county wherein such child may live, shall be guilty of a misdemeanor.

(2) Subsection (1) of this section does not apply to children employed as:

(a) Actors or performers in film, video, audio, or theatrical productions; or

(b) Youth soccer referees who have been certified by a national referee certification program. [2007 c 464 § 1; 1994 c 62 § 1; 1973 1st ex.s. c 154 § 39; 1909 c 249 § 195; RRS § 2447.]

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

Child labor: Chapter 49.12 RCW.

Employment permits: RCW 28A.225.080.

Chapter 26.33 RCW ADOPTION

Sections

26.33.190 Preplacement report—Requirements—Fees.

26.33.190 Preplacement report—Requirements—

Fees. (1) Any person may at any time request an agency, the department, an individual approved by the court, or a qualified salaried court employee to prepare a preplacement report. A certificate signed under penalty of perjury by the person preparing the report specifying his or her qualifications as required in this chapter shall be attached to or filed with each preplacement report and shall include a statement of training or experience that qualifies the person preparing the report to discuss relevant adoption issues. A person may have more than one preplacement report prepared. All preplacement reports shall be filed with the court in which the petition for adoption is filed.

(2) The preplacement report shall be a written document setting forth all relevant information relating to the fitness of the person requesting the report as an adoptive parent. The report shall be based on a study which shall include an investigation of the home environment, family life, health, facilities, and resources of the person requesting the report. The report shall include a list of the sources of information on which the report is based. The report shall include a recommendation as to the fitness of the person requesting the report to be an adoptive parent. The report shall also verify that the following issues were discussed with the prospective adoptive parents:

(a) The concept of adoption as a lifelong developmental process and commitment;

(b) The potential for the child to have feelings of identity confusion and loss regarding separation from the birth parents;

(c) Disclosure of the fact of adoption to the child;

(d) The child's possible questions about birth parents and relatives; and

(e) The relevance of the child's racial, ethnic, and cultural heritage.

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(3) All preplacement reports shall include a background check of any conviction records, pending charges, or disciplinary board final decisions of prospective adoptive parents. The background check shall include an examination of state and national criminal identification data provided by the Washington state patrol criminal identification system including, but not limited to, a fingerprint-based background check of national crime information databases for any person being investigated. It shall also include a review of any child abuse and neglect history of any adult living in the prospective adoptive parents' home. The background check of the child abuse and neglect registries of all states in which the prospective adoptive parents or any other adult living in the home have lived during the five years preceding the date of the preplacement report.

(4) An agency, the department, or a court approved individual may charge a reasonable fee based on the time spent in conducting the study and preparing the preplacement report. The court may set a reasonable fee for conducting the study and preparing the report when a court employee has prepared the report. An agency, the department, a court approved individual, or the court may reduce or waive the fee if the financial condition of the person requesting the report so warrants. An agency's, the department's, or court approved individual's, fee is subject to review by the court upon request of the person requesting the report.

(5) The person requesting the report shall designate to the agency, the department, the court approved individual, or the court in writing the county in which the preplacement report is to be filed. If the person requesting the report has not filed a petition for adoption, the report shall be indexed in the name of the person requesting the report and a cause number shall be assigned. A fee shall not be charged for filing the report. The applicable filing fee may be charged at the time a petition governed by this chapter is filed. Any subsequent preplacement reports shall be filed together with the original report.

(6) A copy of the completed preplacement report shall be delivered to the person requesting the report.

(7) A person may request that a report not be completed. A reasonable fee may be charged for the value of work done. [2007 c 387 § 2; 1991 c 136 § 3; 1990 c 146 § 3; 1984 c 155 § 19.]

Chapter 26.44 RCW ABUSE OF CHILDREN

Sections

- 26.44.020 Definitions. (*Effective October 1, 2008.*)
- 26.44.030 Reports—Duty and authority to make—Duty of receiving agency—Duty to notify—Case planning and consultation—Penalty for unauthorized exchange of information—Filing dependency petitions—Interviews of children—Records—Risk assessment process. (*Effective until October 1, 2008.*)
- 26.44.030 Reports—Duty and authority to make—Duty of receiving agency—Duty to notify—Case planning and consultation—Penalty for unauthorized exchange of information—Filing dependency petitions—Investigations—Interviews of children—Records—Risk assessment process. (*Effective October 1, 2008.*)
- 26.44.031 Records—Maintenance and disclosure—Destruction of screened-out, unfounded, or inconclusive reports—Rules—Proceedings for enforcement. (*Effective October 1, 2008.*)

- 26.44.060 Immunity from civil or criminal liability—Confidential communications not violated—Actions against state not affected—False report, penalty.
- 26.44.061 False reporting—Statement warning against—Determination letter and referral.
- 26.44.185 Investigation of child sexual abuse—Revision and expansion of protocols—Child fatality, child physical abuse, and criminal child neglect cases.

26.44.020 Definitions. (Effective October 1, 2008.)

The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

(1) "Abuse or neglect" means sexual abuse, sexual exploitation, or injury of a child by any person under circumstances which cause harm to the child's health, welfare, or safety, excluding conduct permitted under RCW 9A.16.100; or the negligent treatment or maltreatment of a child by a person responsible for or providing care to the child. An abused child is a child who has been subjected to child abuse or neglect as defined in this section.

(2) "Child" or "children" means any person under the age of eighteen years of age.

(3) "Child protective services" means those services provided by the department designed to protect children from child abuse and neglect and safeguard such children from future abuse and neglect, and conduct investigations of child abuse and neglect reports. Investigations may be conducted regardless of the location of the alleged abuse or neglect. Child protective services includes referral to services to ameliorate conditions that endanger the welfare of children, the coordination of necessary programs and services relevant to the prevention, intervention, and treatment of child abuse and neglect, and services to children to ensure that each child has a permanent home. In determining whether protective services should be provided, the department shall not decline to provide such services solely because of the child's unwillingness or developmental inability to describe the nature and severity of the abuse or neglect.

(4) "Child protective services section" means the child protective services section of the department.

(5) "Clergy" means any regularly licensed or ordained minister, priest, or rabbi of any church or religious denomination, whether acting in an individual capacity or as an employee or agent of any public or private organization or institution.

(6) "Court" means the superior court of the state of Washington, juvenile department.

(7) "Department" means the state department of social and health services.

(8) "Founded" means the determination following an investigation by the department that, based on available information, it is more likely than not that child abuse or neglect did occur.

(9) "Inconclusive" means the determination following an investigation by the department, prior to October 1, 2008, that based on available information a decision cannot be made that more likely than not, child abuse or neglect did or did not occur.

(10) "Institution" means a private or public hospital or any other facility providing medical diagnosis, treatment, or care.

(11) "Law enforcement agency" means the police department, the prosecuting attorney, the state patrol, the director of public safety, or the office of the sheriff.

(12) "Malice" or "maliciously" means an intent, wish, or design to intimidate, annoy, or injure another person. Such malice may be inferred from an act done in willful disregard of the rights of another, or an act wrongfully done without just cause or excuse, or an act or omission of duty betraying a willful disregard of social duty.

(13) "Negligent treatment or maltreatment" means an act or a failure to act, or the cumulative effects of a pattern of conduct, behavior, or inaction, that evidences a serious disregard of consequences of such magnitude as to constitute a clear and present danger to a child's health, welfare, or safety, including but not limited to conduct prohibited under RCW 9A.42.100. When considering whether a clear and present danger exists, evidence of a parent's substance abuse as a contributing factor to negligent treatment or maltreatment shall be given great weight. The fact that siblings share a bedroom is not, in and of itself, negligent treatment or maltreatment. Poverty, homelessness, or exposure to domestic violence as defined in RCW 26.50.010 that is perpetrated against someone other than the child does not constitute negligent treatment or maltreatment in and of itself.

(14) "Pharmacist" means any registered pharmacist under chapter 18.64 RCW, whether acting in an individual capacity or as an employee or agent of any public or private organization or institution.

(15) "Practitioner of the healing arts" or "practitioner" means a person licensed by this state to practice podiatric medicine and surgery, optometry, chiropractic, nursing, dentistry, osteopathic medicine and surgery, or medicine and surgery or to provide other health services. The term "practitioner" includes a duly accredited Christian Science practitioner: PROVIDED, HOWEVER, That a person who is being furnished Christian Science treatment by a duly accredited Christian Science practitioner will not be considered, for that reason alone, a neglected person for the purposes of this chapter.

(16) "Professional school personnel" include, but are not limited to, teachers, counselors, administrators, child care facility personnel, and school nurses.

(17) "Psychologist" means any person licensed to practice psychology under chapter 18.83 RCW, whether acting in an individual capacity or as an employee or agent of any public or private organization or institution.

(18) "Screened-out report" means a report of alleged child abuse or neglect that the department has determined does not rise to the level of a credible report of abuse or neglect and is not referred for investigation.

(19) "Sexual exploitation" includes: (a) Allowing, permitting, or encouraging a child to engage in prostitution by any person; or (b) allowing, permitting, encouraging, or engaging in the obscene or pornographic photographing, filming, or depicting of a child by any person.

(20) "Sexually aggressive youth" means a child who is defined in RCW 74.13.075(1)(b) as being a sexually aggressive youth.

(21) "Social service counselor" means anyone engaged in a professional capacity during the regular course of employment in encouraging or promoting the health, welfare,

support or education of children, or providing social services to adults or families, including mental health, drug and alcohol treatment, and domestic violence programs, whether in an individual capacity, or as an employee or agent of any public or private organization or institution.

(22) "Unfounded" means the determination following an investigation by the department that available information indicates that, more likely than not, child abuse or neglect did not occur, or that there is insufficient evidence for the department to determine whether the alleged child abuse did or did not occur. [2007 c 220 § 1; 2006 c 339 § 108; (2006 c 339 § 107 expired January 1, 2007); 2005 c 512 § 5; 2000 c 162 § 19; 1999 c 176 § 29; 1998 c 314 § 7. Prior: 1997 c 386 § 45; 1997 c 386 § 24; 1997 c 282 § 4; 1997 c 132 § 2; 1996 c 178 § 10; prior: 1993 c 412 § 12; 1993 c 402 § 1; 1988 c 142 § 1; prior: 1987 c 524 § 9; 1987 c 206 § 2; 1984 c 97 § 2; 1982 c 129 § 6; 1981 c 164 § 1; 1977 ex.s. c 80 § 25; 1975 1st ex.s. c 217 § 2; 1969 ex.s. c 35 § 2; 1965 c 13 § 2.]

Effective date—2007 c 220 §§ 1-3: "Sections 1 through 3 of this act take effect October 1, 2008." [2007 c 220 § 10.]

Implementation—2007 c 220 §§ 1-3: "The secretary of the department of social and health services may take the necessary steps to ensure that sections 1 through 3 of this act are implemented on their effective date." [2007 c 220 § 11.]

Effective date—2006 c 339 § 108: "Section 108 of this act takes effect January 1, 2007." [2006 c 339 § 404.]

Expiration date—2006 c 339 § 107: "Section 107 of this act expires January 1, 2007." [2006 c 339 § 403.]

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

Finding—Intent—Effective date—Short title—2005 c 512: See notes following RCW 26.44.100.

Findings—Purpose—Severability—Conflict with federal requirements—1999 c 176: See notes following RCW 74.34.005.

Application—Effective date—1997 c 386: See notes following RCW 13.50.010.

Findings—1997 c 132: "The legislature finds that housing is frequently influenced by the economic situation faced by the family. This may include siblings sharing a bedroom. The legislature also finds that the family living situation due to economic circumstances in and of itself is not sufficient to justify a finding of child abuse, negligent treatment, or maltreatment." [1997 c 132 § 1.]

Effective date—1996 c 178: See note following RCW 18.35.110.

Severability—1984 c 97: See RCW 74.34.900.

Severability—1982 c 129: See note following RCW 9A.04.080.

Purpose—Intent—Severability—1977 ex.s. c 80: See notes following RCW 4.16.190.

26.44.030 Reports—Duty and authority to make—Duty of receiving agency—Duty to notify—Case planning and consultation—Penalty for unauthorized exchange of information—Filing dependency petitions—Interviews of children—Records—Risk assessment process. (Effective until October 1, 2008.) (1)(a) When any practitioner, county coroner or medical examiner, law enforcement officer, professional school personnel, registered or licensed nurse, social service counselor, psychologist, pharmacist, employee of the department of early learning, licensed or certified child care providers or their employees, employee of the department, juvenile probation officer, placement and liaison specialist, responsible living skills program staff, HOPE center staff, or state family and children's ombudsman or any volunteer in the ombudsman's office has reasonable cause to

believe that a child has suffered abuse or neglect, he or she shall report such incident, or cause a report to be made, to the proper law enforcement agency or to the department as provided in RCW 26.44.040.

(b) When any person, in his or her official supervisory capacity with a nonprofit or for-profit organization, has reasonable cause to believe that a child has suffered abuse or neglect caused by a person over whom he or she regularly exercises supervisory authority, he or she shall report such incident, or cause a report to be made, to the proper law enforcement agency, provided that the person alleged to have caused the abuse or neglect is employed by, contracted by, or volunteers with the organization and coaches, trains, educates, or counsels a child or children or regularly has unsupervised access to a child or children as part of the employment, contract, or voluntary service. No one shall be required to report under this section when he or she obtains the information solely as a result of a privileged communication as provided in RCW 5.60.060.

Nothing in this subsection (1)(b) shall limit a person's duty to report under (a) of this subsection.

For the purposes of this subsection, the following definitions apply:

(i) "Official supervisory capacity" means a position, status, or role created, recognized, or designated by any nonprofit or for-profit organization, either for financial gain or without financial gain, whose scope includes, but is not limited to, overseeing, directing, or managing another person who is employed by, contracted by, or volunteers with the nonprofit or for-profit organization.

(ii) "Regularly exercises supervisory authority" means to act in his or her official supervisory capacity on an ongoing or continuing basis with regards to a particular person.

(c) The reporting requirement also applies to department of corrections personnel who, in the course of their employment, observe offenders or the children with whom the offenders are in contact. If, as a result of observations or information received in the course of his or her employment, any department of corrections personnel has reasonable cause to believe that a child has suffered abuse or neglect, he or she shall report the incident, or cause a report to be made, to the proper law enforcement agency or to the department as provided in RCW 26.44.040.

(d) The reporting requirement shall also apply to any adult who has reasonable cause to believe that a child who resides with them, has suffered severe abuse, and is able or capable of making a report. For the purposes of this subsection, "severe abuse" means any of the following: Any single act of abuse that causes physical trauma of sufficient severity that, if left untreated, could cause death; any single act of sexual abuse that causes significant bleeding, deep bruising, or significant external or internal swelling; or more than one act of physical abuse, each of which causes bleeding, deep bruising, significant external or internal swelling, bone fracture, or unconsciousness.

(e) The report must be made at the first opportunity, but in no case longer than forty-eight hours after there is reasonable cause to believe that the child has suffered abuse or neglect. The report must include the identity of the accused if known.

(2) The reporting requirement of subsection (1) of this section does not apply to the discovery of abuse or neglect that occurred during childhood if it is discovered after the child has become an adult. However, if there is reasonable cause to believe other children are or may be at risk of abuse or neglect by the accused, the reporting requirement of subsection (1) of this section does apply.

(3) Any other person who has reasonable cause to believe that a child has suffered abuse or neglect may report such incident to the proper law enforcement agency or to the department of social and health services as provided in RCW 26.44.040.

(4) The department, upon receiving a report of an incident of alleged abuse or neglect pursuant to this chapter, involving a child who has died or has had physical injury or injuries inflicted upon him or her other than by accidental means or who has been subjected to alleged sexual abuse, shall report such incident to the proper law enforcement agency. In emergency cases, where the child's welfare is endangered, the department shall notify the proper law enforcement agency within twenty-four hours after a report is received by the department. In all other cases, the department shall notify the law enforcement agency within seventy-two hours after a report is received by the department. If the department makes an oral report, a written report must also be made to the proper law enforcement agency within five days thereafter.

(5) Any law enforcement agency receiving a report of an incident of alleged abuse or neglect pursuant to this chapter, involving a child who has died or has had physical injury or injuries inflicted upon him or her other than by accidental means, or who has been subjected to alleged sexual abuse, shall report such incident in writing as provided in RCW 26.44.040 to the proper county prosecutor or city attorney for appropriate action whenever the law enforcement agency's investigation reveals that a crime may have been committed. The law enforcement agency shall also notify the department of all reports received and the law enforcement agency's disposition of them. In emergency cases, where the child's welfare is endangered, the law enforcement agency shall notify the department within twenty-four hours. In all other cases, the law enforcement agency shall notify the department within seventy-two hours after a report is received by the law enforcement agency.

(6) Any county prosecutor or city attorney receiving a report under subsection (5) of this section shall notify the victim, any persons the victim requests, and the local office of the department, of the decision to charge or decline to charge a crime, within five days of making the decision.

(7) The department may conduct ongoing case planning and consultation with those persons or agencies required to report under this section, with consultants designated by the department, and with designated representatives of Washington Indian tribes if the client information exchanged is pertinent to cases currently receiving child protective services. Upon request, the department shall conduct such planning and consultation with those persons required to report under this section if the department determines it is in the best interests of the child. Information considered privileged by statute and not directly related to reports required by this section

must not be divulged without a valid written waiver of the privilege.

(8) Any case referred to the department by a physician licensed under chapter 18.57 or 18.71 RCW on the basis of an expert medical opinion that child abuse, neglect, or sexual assault has occurred and that the child's safety will be seriously endangered if returned home, the department shall file a dependency petition unless a second licensed physician of the parents' choice believes that such expert medical opinion is incorrect. If the parents fail to designate a second physician, the department may make the selection. If a physician finds that a child has suffered abuse or neglect but that such abuse or neglect does not constitute imminent danger to the child's health or safety, and the department agrees with the physician's assessment, the child may be left in the parents' home while the department proceeds with reasonable efforts to remedy parenting deficiencies.

(9) Persons or agencies exchanging information under subsection (7) of this section shall not further disseminate or release the information except as authorized by state or federal statute. Violation of this subsection is a misdemeanor.

(10) Upon receiving reports of alleged abuse or neglect, the department or law enforcement agency may interview children. The interviews may be conducted on school premises, at day-care facilities, at the child's home, or at other suitable locations outside of the presence of parents. Parental notification of the interview must occur at the earliest possible point in the investigation that will not jeopardize the safety or protection of the child or the course of the investigation. Prior to commencing the interview the department or law enforcement agency shall determine whether the child wishes a third party to be present for the interview and, if so, shall make reasonable efforts to accommodate the child's wishes. Unless the child objects, the department or law enforcement agency shall make reasonable efforts to include a third party in any interview so long as the presence of the third party will not jeopardize the course of the investigation.

(11) Upon receiving a report of alleged child abuse and neglect, the department or investigating law enforcement agency shall have access to all relevant records of the child in the possession of mandated reporters and their employees.

(12) In investigating and responding to allegations of child abuse and neglect, the department may conduct background checks as authorized by state and federal law.

(13) The department shall maintain investigation records and conduct timely and periodic reviews of all cases constituting abuse and neglect. The department shall maintain a log of screened-out nonabusive cases.

(14) The department shall use a risk assessment process when investigating alleged child abuse and neglect referrals. The department shall present the risk factors at all hearings in which the placement of a dependent child is an issue. Substance abuse must be a risk factor. The department shall, within funds appropriated for this purpose, offer enhanced community-based services to persons who are determined not to require further state intervention.

(15) Upon receipt of a report of alleged abuse or neglect the law enforcement agency may arrange to interview the person making the report and any collateral sources to determine if any malice is involved in the reporting.

(16) The department shall make reasonable efforts to learn the name, address, and telephone number of each person making a report of abuse or neglect under this section. The department shall provide assurances of appropriate confidentiality of the identification of persons reporting under this section. If the department is unable to learn the information required under this subsection, the department shall only investigate cases in which: (a) The department believes there is a serious threat of substantial harm to the child; (b) the report indicates conduct involving a criminal offense that has, or is about to occur, in which the child is the victim; or (c) the department has, after investigation, a report of abuse or neglect that has been founded with regard to a member of the household within three years of receipt of the referral. [2007 c 387 § 3; 2005 c 417 § 1; 2003 c 207 § 4. Prior: 1999 c 267 § 20; 1999 c 176 § 30; 1998 c 328 § 5; 1997 c 386 § 25; 1996 c 278 § 2; 1995 c 311 § 17; prior: 1993 c 412 § 13; 1993 c 237 § 1; 1991 c 111 § 1; 1989 c 22 § 1; prior: 1988 c 142 § 2; 1988 c 39 § 1; prior: 1987 c 524 § 10; 1987 c 512 § 23; 1987 c 206 § 3; 1986 c 145 § 1; 1985 c 259 § 2; 1984 c 97 § 3; 1982 c 129 § 7; 1981 c 164 § 2; 1977 ex.s. c 80 § 26; 1975 1st ex.s. c 217 § 3; 1971 ex.s. c 167 § 1; 1969 ex.s. c 35 § 3; 1965 c 13 § 3.]

Severability—2005 c 417: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [2005 c 417 § 2.]

Findings—Intent—Severability—1999 c 267: See notes following RCW 43.20A.790.

Short title—Purpose—Entitlement not granted—Federal waivers—1999 c 267 §§ 10-26: See RCW 74.15.900 and 74.15.901.

Findings—Purpose—Severability—Conflict with federal requirements—1999 c 176: See notes following RCW 74.34.005.

Application—Effective date—1997 c 386: See notes following RCW 13.50.010.

Finding—Intent—1996 c 278: "The legislature finds that including certain department of corrections personnel among the professionals who are mandated to report suspected abuse or neglect of children, dependent adults, or people with developmental disabilities is an important step toward improving the protection of these vulnerable populations. The legislature intends, however, to limit the circumstances under which department of corrections personnel are mandated reporters of suspected abuse or neglect to only those circumstances when the information is obtained during the course of their employment. This act is not to be construed to alter the circumstances under which other professionals are mandated to report suspected abuse or neglect, nor is it the legislature's intent to alter current practices and procedures utilized by other professional organizations who are mandated reporters under RCW 26.44.030(1)(a)." [1996 c 278 § 1.]

Severability—1987 c 512: See RCW 18.19.901.

Legislative findings—1985 c 259: "The Washington state legislature finds and declares:

The children of the state of Washington are the state's greatest resource and the greatest source of wealth to the state of Washington. Children of all ages must be protected from child abuse. Governmental authorities must give the prevention, treatment, and punishment of child abuse the highest priority, and all instances of child abuse must be reported to the proper authorities who should diligently and expeditiously take appropriate action, and child abusers must be held accountable to the people of the state for their actions.

The legislature recognizes the current heavy caseload of governmental authorities responsible for the prevention, treatment, and punishment of child abuse. The information obtained by child abuse reporting requirements, in addition to its use as a law enforcement tool, will be used to determine the need for additional funding to ensure that resources for appropriate governmental response to child abuse are available." [1985 c 259 § 1.]

Severability—1984 c 97: See RCW 74.34.900.

Severability—1982 c 129: See note following RCW 9A.04.080.

Purpose—Intent—Severability—1977 ex.s. c 80: See notes following RCW 4.16.190.

26.44.030 Reports—Duty and authority to make—Duty of receiving agency—Duty to notify—Case planning and consultation—Penalty for unauthorized exchange of information—Filing dependency petitions—Investigations—Interviews of children—Records—Risk assessment process. (Effective October 1, 2008.) (1)(a) When any practitioner, county coroner or medical examiner, law enforcement officer, professional school personnel, registered or licensed nurse, social service counselor, psychologist, pharmacist, employee of the department of early learning, licensed or certified child care providers or their employees, employee of the department, juvenile probation officer, placement and liaison specialist, responsible living skills program staff, HOPE center staff, or state family and children's ombudsman or any volunteer in the ombudsman's office has reasonable cause to believe that a child has suffered abuse or neglect, he or she shall report such incident, or cause a report to be made, to the proper law enforcement agency or to the department as provided in RCW 26.44.040.

(b) When any person, in his or her official supervisory capacity with a nonprofit or for-profit organization, has reasonable cause to believe that a child has suffered abuse or neglect caused by a person over whom he or she regularly exercises supervisory authority, he or she shall report such incident, or cause a report to be made, to the proper law enforcement agency, provided that the person alleged to have caused the abuse or neglect is employed by, contracted by, or volunteers with the organization and coaches, trains, educates, or counsels a child or children or regularly has unsupervised access to a child or children as part of the employment, contract, or voluntary service. No one shall be required to report under this section when he or she obtains the information solely as a result of a privileged communication as provided in RCW 5.60.060.

Nothing in this subsection (1)(b) shall limit a person's duty to report under (a) of this subsection.

For the purposes of this subsection, the following definitions apply:

(i) "Official supervisory capacity" means a position, status, or role created, recognized, or designated by any nonprofit or for-profit organization, either for financial gain or without financial gain, whose scope includes, but is not limited to, overseeing, directing, or managing another person who is employed by, contracted by, or volunteers with the nonprofit or for-profit organization.

(ii) "Regularly exercises supervisory authority" means to act in his or her official supervisory capacity on an ongoing or continuing basis with regards to a particular person.

(c) The reporting requirement also applies to department of corrections personnel who, in the course of their employment, observe offenders or the children with whom the offenders are in contact. If, as a result of observations or information received in the course of his or her employment, any department of corrections personnel has reasonable cause to believe that a child has suffered abuse or neglect, he or she shall report the incident, or cause a report to be made, to the proper law enforcement agency or to the department as provided in RCW 26.44.040.

(d) The reporting requirement shall also apply to any adult who has reasonable cause to believe that a child who resides with them, has suffered severe abuse, and is able or capable of making a report. For the purposes of this subsection, "severe abuse" means any of the following: Any single act of abuse that causes physical trauma of sufficient severity that, if left untreated, could cause death; any single act of sexual abuse that causes significant bleeding, deep bruising, or significant external or internal swelling; or more than one act of physical abuse, each of which causes bleeding, deep bruising, significant external or internal swelling, bone fracture, or unconsciousness.

(e) The report must be made at the first opportunity, but in no case longer than forty-eight hours after there is reasonable cause to believe that the child has suffered abuse or neglect. The report must include the identity of the accused if known.

(2) The reporting requirement of subsection (1) of this section does not apply to the discovery of abuse or neglect that occurred during childhood if it is discovered after the child has become an adult. However, if there is reasonable cause to believe other children are or may be at risk of abuse or neglect by the accused, the reporting requirement of subsection (1) of this section does apply.

(3) Any other person who has reasonable cause to believe that a child has suffered abuse or neglect may report such incident to the proper law enforcement agency or to the department of social and health services as provided in RCW 26.44.040.

(4) The department, upon receiving a report of an incident of alleged abuse or neglect pursuant to this chapter, involving a child who has died or has had physical injury or injuries inflicted upon him or her other than by accidental means or who has been subjected to alleged sexual abuse, shall report such incident to the proper law enforcement agency. In emergency cases, where the child's welfare is endangered, the department shall notify the proper law enforcement agency within twenty-four hours after a report is received by the department. In all other cases, the department shall notify the law enforcement agency within seventy-two hours after a report is received by the department. If the department makes an oral report, a written report must also be made to the proper law enforcement agency within five days thereafter.

(5) Any law enforcement agency receiving a report of an incident of alleged abuse or neglect pursuant to this chapter, involving a child who has died or has had physical injury or injuries inflicted upon him or her other than by accidental means, or who has been subjected to alleged sexual abuse, shall report such incident in writing as provided in RCW 26.44.040 to the proper county prosecutor or city attorney for appropriate action whenever the law enforcement agency's investigation reveals that a crime may have been committed. The law enforcement agency shall also notify the department of all reports received and the law enforcement agency's disposition of them. In emergency cases, where the child's welfare is endangered, the law enforcement agency shall notify the department within twenty-four hours. In all other cases, the law enforcement agency shall notify the department within seventy-two hours after a report is received by the law enforcement agency.

(6) Any county prosecutor or city attorney receiving a report under subsection (5) of this section shall notify the victim, any persons the victim requests, and the local office of the department, of the decision to charge or decline to charge a crime, within five days of making the decision.

(7) The department may conduct ongoing case planning and consultation with those persons or agencies required to report under this section, with consultants designated by the department, and with designated representatives of Washington Indian tribes if the client information exchanged is pertinent to cases currently receiving child protective services. Upon request, the department shall conduct such planning and consultation with those persons required to report under this section if the department determines it is in the best interests of the child. Information considered privileged by statute and not directly related to reports required by this section must not be divulged without a valid written waiver of the privilege.

(8) Any case referred to the department by a physician licensed under chapter 18.57 or 18.71 RCW on the basis of an expert medical opinion that child abuse, neglect, or sexual assault has occurred and that the child's safety will be seriously endangered if returned home, the department shall file a dependency petition unless a second licensed physician of the parents' choice believes that such expert medical opinion is incorrect. If the parents fail to designate a second physician, the department may make the selection. If a physician finds that a child has suffered abuse or neglect but that such abuse or neglect does not constitute imminent danger to the child's health or safety, and the department agrees with the physician's assessment, the child may be left in the parents' home while the department proceeds with reasonable efforts to remedy parenting deficiencies.

(9) Persons or agencies exchanging information under subsection (7) of this section shall not further disseminate or release the information except as authorized by state or federal statute. Violation of this subsection is a misdemeanor.

(10) Upon receiving a report of alleged abuse or neglect, the department shall make reasonable efforts to learn the name, address, and telephone number of each person making a report of abuse or neglect under this section. The department shall provide assurances of appropriate confidentiality of the identification of persons reporting under this section. If the department is unable to learn the information required under this subsection, the department shall only investigate cases in which:

(a) The department believes there is a serious threat of substantial harm to the child;

(b) The report indicates conduct involving a criminal offense that has, or is about to occur, in which the child is the victim; or

(c) The department has a prior founded report of abuse or neglect with regard to a member of the household that is within three years of receipt of the referral.

(11)(a) For reports of alleged abuse or neglect that are accepted for investigation by the department, the investigation shall be conducted within time frames established by the department in rule. In no case shall the investigation extend longer than ninety days from the date the report is received, unless the investigation is being conducted under a written protocol pursuant to RCW 26.44.180 and a law enforcement

agency or prosecuting attorney has determined that a longer investigation period is necessary. At the completion of the investigation, the department shall make a finding that the report of child abuse or neglect is founded or unfounded.

(b) If a court in a civil or criminal proceeding, considering the same facts or circumstances as are contained in the report being investigated by the department, makes a judicial finding by a preponderance of the evidence or higher that the subject of the pending investigation has abused or neglected the child, the department shall adopt the finding in its investigation.

(12) In conducting an investigation of alleged abuse or neglect, the department or law enforcement agency:

(a) May interview children. The interviews may be conducted on school premises, at day-care facilities, at the child's home, or at other suitable locations outside of the presence of parents. Parental notification of the interview must occur at the earliest possible point in the investigation that will not jeopardize the safety or protection of the child or the course of the investigation. Prior to commencing the interview the department or law enforcement agency shall determine whether the child wishes a third party to be present for the interview and, if so, shall make reasonable efforts to accommodate the child's wishes. Unless the child objects, the department or law enforcement agency shall make reasonable efforts to include a third party in any interview so long as the presence of the third party will not jeopardize the course of the investigation; and

(b) Shall have access to all relevant records of the child in the possession of mandated reporters and their employees.

(13) In investigating and responding to allegations of child abuse and neglect, the department may conduct background checks as authorized by state and federal law.

(14) The department shall maintain investigation records and conduct timely and periodic reviews of all founded cases of abuse and neglect. The department shall maintain a log of screened-out nonabusive cases.

(15) The department shall use a risk assessment process when investigating alleged child abuse and neglect referrals. The department shall present the risk factors at all hearings in which the placement of a dependent child is an issue. Substance abuse must be a risk factor. The department shall, within funds appropriated for this purpose, offer enhanced community-based services to persons who are determined not to require further state intervention.

(16) Upon receipt of a report of alleged abuse or neglect the law enforcement agency may arrange to interview the person making the report and any collateral sources to determine if any malice is involved in the reporting. [2007 c 387 § 3; 2007 c 220 § 2; 2005 c 417 § 1; 2003 c 207 § 4. Prior: 1999 c 267 § 20; 1999 c 176 § 30; 1998 c 328 § 5; 1997 c 386 § 25; 1996 c 278 § 2; 1995 c 311 § 17; prior: 1993 c 412 § 13; 1993 c 237 § 1; 1991 c 111 § 1; 1989 c 22 § 1; prior: 1988 c 142 § 2; 1988 c 39 § 1; prior: 1987 c 524 § 10; 1987 c 512 § 23; 1987 c 206 § 3; 1986 c 145 § 1; 1985 c 259 § 2; 1984 c 97 § 3; 1982 c 129 § 7; 1981 c 164 § 2; 1977 ex.s. c 80 § 26; 1975 1st ex.s. c 217 § 3; 1971 ex.s. c 167 § 1; 1969 ex.s. c 35 § 3; 1965 c 13 § 3.]

Reviser's note: This section was amended by 2007 c 220 § 2 and by 2007 c 387 § 3, each without reference to the other. Both amendments are

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incorporated in the publication of this section under RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

Effective date—Implementation—2007 c 220 §§ 1-3: See notes following RCW 26.44.020.

Severability—2005 c 417: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [2005 c 417 § 2.]

Findings—Intent—Severability—1999 c 267: See notes following RCW 43.20A.790.

Short title—Purpose—Entitlement not granted—Federal waivers—1999 c 267 §§ 10-26: See RCW 74.15.900 and 74.15.901.

Findings—Purpose—Severability—Conflict with federal requirements—1999 c 176: See notes following RCW 74.34.005.

Application—Effective date—1997 c 386: See notes following RCW 13.50.010.

Finding—Intent—1996 c 278: "The legislature finds that including certain department of corrections personnel among the professionals who are mandated to report suspected abuse or neglect of children, dependent adults, or people with developmental disabilities is an important step toward improving the protection of these vulnerable populations. The legislature intends, however, to limit the circumstances under which department of corrections personnel are mandated reporters of suspected abuse or neglect to only those circumstances when the information is obtained during the course of their employment. This act is not to be construed to alter the circumstances under which other professionals are mandated to report suspected abuse or neglect, nor is it the legislature's intent to alter current practices and procedures utilized by other professional organizations who are mandated reporters under RCW 26.44.030(1)(a)." [1996 c 278 § 1.]

Severability—1987 c 512: See RCW 18.19.901.

Legislative findings—1985 c 259: "The Washington state legislature finds and declares:

The children of the state of Washington are the state's greatest resource and the greatest source of wealth to the state of Washington. Children of all ages must be protected from child abuse. Governmental authorities must give the prevention, treatment, and punishment of child abuse the highest priority, and all instances of child abuse must be reported to the proper authorities who should diligently and expeditiously take appropriate action, and child abusers must be held accountable to the people of the state for their actions.

The legislature recognizes the current heavy caseload of governmental authorities responsible for the prevention, treatment, and punishment of child abuse. The information obtained by child abuse reporting requirements, in addition to its use as a law enforcement tool, will be used to determine the need for additional funding to ensure that resources for appropriate governmental response to child abuse are available." [1985 c 259 § 1.]

Severability—1984 c 97: See RCW 74.34.900.

Severability—1982 c 129: See note following RCW 9A.04.080.

Purpose—Intent—Severability—1977 ex.s. c 80: See notes following RCW 4.16.190.

26.44.031 Records—Maintenance and disclosure—Destruction of screened-out, unfounded, or inconclusive reports—Rules—Proceedings for enforcement. (Effective October 1, 2008.) (1) To protect the privacy in reporting and the maintenance of reports of nonaccidental injury, neglect, death, sexual abuse, and cruelty to children by their parents, and to safeguard against arbitrary, malicious, or erroneous information or actions, the department shall not disclose or maintain information related to reports of child abuse or neglect except as provided in this section or as otherwise required by state and federal law.

(2) The department shall destroy all of its records concerning:

(a) A screened-out report, within three years from the receipt of the report; and

(b) An unfounded or inconclusive report, within six years of completion of the investigation, unless a prior or subsequent founded report has been received regarding the child who is the subject of the report, a sibling or half-sibling of the child, or a parent, guardian, or legal custodian of the child, before the records are destroyed.

(3) The department may keep records concerning founded reports of child abuse or neglect as the department determines by rule.

(4) An unfounded, screened-out, or inconclusive report may not be disclosed to a child-placing agency, private adoption agency, or any other provider licensed under chapter 74.15 RCW.

(5)(a) If the department fails to comply with this section, an individual who is the subject of a report may institute proceedings for injunctive or other appropriate relief for enforcement of the requirement to purge information. These proceedings may be instituted in the superior court for the county in which the person resides or, if the person is not then a resident of this state, in the superior court for Thurston county.

(b) If the department fails to comply with subsection (4) of this section and an individual who is the subject of the report is harmed by the disclosure of information, in addition to the relief provided in (a) of this subsection, the court may award a penalty of up to one thousand dollars and reasonable attorneys' fees and court costs to the petitioner.

(c) A proceeding under this subsection does not preclude other methods of enforcement provided for by law.

(6) Nothing in this section shall prevent the department from retaining general, nonidentifying information which is required for state and federal reporting and management purposes. [2007 c 220 § 3; 1997 c 282 § 1.]

Effective date—Implementation—2007 c 220 §§ 1-3: See notes following RCW 26.44.020.

26.44.060 Immunity from civil or criminal liability—Confidential communications not violated—Actions against state not affected—False report, penalty. (1)(a) Except as provided in (b) of this subsection, any person participating in good faith in the making of a report pursuant to this chapter or testifying as to alleged child abuse or neglect in a judicial proceeding shall in so doing be immune from any liability arising out of such reporting or testifying under any law of this state or its political subdivisions.

(b) A person convicted of a violation of subsection (4) of this section shall not be immune from liability under (a) of this subsection.

(2) An administrator of a hospital or similar institution or any physician licensed pursuant to chapters 18.71 or 18.57 RCW taking a child into custody pursuant to RCW 26.44.056 shall not be subject to criminal or civil liability for such taking into custody.

(3) Conduct conforming with the reporting requirements of this chapter shall not be deemed a violation of the confidential communication privilege of RCW 5.60.060 (3) and (4), 18.53.200 and 18.83.110. Nothing in this chapter shall be construed as to supersede or abridge remedies provided in chapter 4.92 RCW.

(4) A person who, intentionally and in bad faith, knowingly makes a false report of alleged abuse or neglect shall be

guilty of a misdemeanor punishable in accordance with RCW 9A.20.021.

(5) A person who, in good faith and without gross negligence, cooperates in an investigation arising as a result of a report made pursuant to this chapter, shall not be subject to civil liability arising out of his or her cooperation. This subsection does not apply to a person who caused or allowed the child abuse or neglect to occur. [2007 c 118 § 1; 2004 c 37 § 1; 1997 c 386 § 29; 1988 c 142 § 3; 1982 c 129 § 9; 1975 1st ex.s. c 217 § 6; 1965 c 13 § 6.]

Application—Effective date—1997 c 386: See notes following RCW 13.50.010.

Severability—1982 c 129: See note following RCW 9A.04.080.

Nurse-patient privilege subject to RCW 26.44.060(3): RCW 5.62.030.

26.44.061 False reporting—Statement warning against—Determination letter and referral. (1) The child protective services section shall prepare a statement warning against false reporting of alleged child abuse or neglect for inclusion in any instructions, informational brochures, educational forms, and handbooks developed or prepared for or by the department and relating to the reporting of abuse or neglect of children. Such statement shall include information on the criminal penalties that apply to false reports of alleged child abuse or neglect under RCW 26.44.060(4). It shall not be necessary to reprint existing materials if any other less expensive technique can be used. Materials shall be revised when reproduced.

(2) The child protective services section shall send a letter by certified mail to any person determined by the section to have made a false report of child abuse or neglect informing the person that such a determination has been made and that a second or subsequent false report will be referred to the proper law enforcement agency for investigation. [2007 c 118 § 2.]

26.44.185 Investigation of child sexual abuse—Revision and expansion of protocols—Child fatality, child physical abuse, and criminal child neglect cases. (1) Each county shall revise and expand its existing child sexual abuse investigation protocol to address investigations of child fatality, child physical abuse, and criminal child neglect cases and to incorporate the statewide guidelines for first responders to child fatalities developed by the criminal justice training commission. The protocols shall address the coordination of child fatality, child physical abuse, and criminal child neglect investigations between the county and city prosecutor's offices, law enforcement, children's protective services, local advocacy groups, emergency medical services, and any other local agency involved in the investigation of such cases. The protocol revision and expansion shall be developed by the prosecuting attorney in collaboration with the agencies referenced in this section.

(2) Revised and expanded protocols under this section shall be adopted and in place by July 1, 2008. Thereafter, the protocols shall be reviewed every two years to determine whether modifications are needed. [2007 c 410 § 3.]

Short title—2007 c 410: See note following RCW 13.34.138.

Chapter 26.50 RCW

DOMESTIC VIOLENCE PREVENTION

Sections

26.50.110 Violation of order—Penalties.

26.50.110 Violation of order—Penalties. (1)(a)

Whenever an order is granted under this chapter, chapter 7.90, 10.99, 26.09, 26.10, 26.26, or 74.34 RCW, or there is a valid foreign protection order as defined in RCW 26.52.020, and the respondent or person to be restrained knows of the order, a violation of any of the following provisions of the order is a gross misdemeanor, except as provided in subsections (4) and (5) of this section:

(i) The restraint provisions prohibiting acts or threats of violence against, or stalking of, a protected party, or restraint provisions prohibiting contact with a protected party;

(ii) A provision excluding the person from a residence, workplace, school, or day care;

(iii) A provision prohibiting a person from knowingly coming within, or knowingly remaining within, a specified distance of a location; or

(iv) A provision of a foreign protection order specifically indicating that a violation will be a crime.

(b) Upon conviction, and in addition to any other penalties provided by law, the court may require that the respondent submit to electronic monitoring. The court shall specify who shall provide the electronic monitoring services, and the terms under which the monitoring shall be performed. The order also may include a requirement that the respondent pay the costs of the monitoring. The court shall consider the ability of the convicted person to pay for electronic monitoring.

(2) A peace officer shall arrest without a warrant and take into custody a person whom the peace officer has probable cause to believe has violated an order issued under this chapter, chapter 7.90, 10.99, 26.09, 26.10, 26.26, or 74.34 RCW, or a valid foreign protection order as defined in RCW 26.52.020, that restrains the person or excludes the person from a residence, workplace, school, or day care, or prohibits the person from knowingly coming within, or knowingly remaining within, a specified distance of a location, if the person restrained knows of the order. Presence of the order in the law enforcement computer-based criminal intelligence information system is not the only means of establishing knowledge of the order.

(3) A violation of an order issued under this chapter, chapter 7.90, 10.99, 26.09, 26.10, 26.26, or 74.34 RCW, or of a valid foreign protection order as defined in RCW 26.52.020, shall also constitute contempt of court, and is subject to the penalties prescribed by law.

(4) Any assault that is a violation of an order issued under this chapter, chapter 7.90, 10.99, 26.09, 26.10, 26.26, or 74.34 RCW, or of a valid foreign protection order as defined in RCW 26.52.020, and that does not amount to assault in the first or second degree under RCW 9A.36.011 or 9A.36.021 is a class C felony, and any conduct in violation of such an order that is reckless and creates a substantial risk of death or serious physical injury to another person is a class C felony.

(5) A violation of a court order issued under this chapter, chapter 7.90, 10.99, 26.09, 26.10, 26.26, or 74.34 RCW, or of

a valid foreign protection order as defined in RCW 26.52.020, is a class C felony if the offender has at least two previous convictions for violating the provisions of an order issued under this chapter, chapter 7.90, 10.99, 26.09, 26.10, 26.26, or 74.34 RCW, or a valid foreign protection order as defined in RCW 26.52.020. The previous convictions may involve the same victim or other victims specifically protected by the orders the offender violated.

(6) Upon the filing of an affidavit by the petitioner or any peace officer alleging that the respondent has violated an order granted under this chapter, chapter 7.90, 10.99, 26.09, 26.10, 26.26, or 74.34 RCW, or a valid foreign protection order as defined in RCW 26.52.020, the court may issue an order to the respondent, requiring the respondent to appear and show cause within fourteen days why the respondent should not be found in contempt of court and punished accordingly. The hearing may be held in the court of any county or municipality in which the petitioner or respondent temporarily or permanently resides at the time of the alleged violation. [2007 c 173 § 2; 2006 c 138 § 25; 2000 c 119 § 24; 1996 c 248 § 16; 1995 c 246 § 14; 1992 c 86 § 5; 1991 c 301 § 6; 1984 c 263 § 12.]

Finding—Intent—2007 c 173: "The legislature finds this act necessary to restore and make clear its intent that a willful violation of a no-contact provision of a court order is a criminal offense and shall be enforced accordingly to preserve the integrity and intent of the domestic violence act. This act is not intended to broaden the scope of law enforcement power or effectuate any substantive change to any criminal provision in the Revised Code of Washington." [2007 c 173 § 1.]

Short title—2006 c 138: See RCW 7.90.900.

Application—2000 c 119: See note following RCW 26.50.021.

Severability—1995 c 246: See note following RCW 26.50.010.

Finding—1991 c 301: See note following RCW 10.99.020.

Violation of order protecting vulnerable adult: RCW 74.34.145.

Chapter 26.60 RCW

STATE REGISTERED DOMESTIC PARTNERSHIPS

Sections

26.60.010	Legislative findings.
26.60.020	Definitions.
26.60.030	Requirements.
26.60.040	Registration—Records—Fees.
26.60.050	Termination—Records—Fees.
26.60.060	Domestic partnerships created by subdivisions of the state.
26.60.070	Patient visitation.

Certificate of death—Domestic partnership information: RCW 70.58.175.

Domestic partnership registry—Forms—Rules: RCW 43.07.400.

Public employees—Same sex domestic partner benefits: RCW 41.05.066.

26.60.010 Legislative findings. Many Washingtonians are in intimate, committed, and exclusive relationships with another person to whom they are not legally married. These relationships are important to the individuals involved and their families; they also benefit the public by providing a private source of mutual support for the financial, physical, and emotional health of those individuals and their families. The public has an interest in providing a legal framework for such mutually supportive relationships, whether the partners are of the same or different sexes, and irrespective of their sexual orientation.

The legislature finds that same sex couples, because they cannot marry in this state, do not automatically have the same access that married couples have to certain rights and benefits, such as those associated with hospital visitation, health care decision-making, organ donation decisions, and other issues related to illness, incapacity, and death. Although many of these rights and benefits may be secured by private agreement, doing so often is costly and complex.

The legislature also finds that the public interest would be served by extending rights and benefits to different sex couples in which either or both of the partners is at least sixty-two years of age. While these couples are entitled to marry under the state's marriage statutes, some social security and pension laws nevertheless make it impractical for these couples to marry. For this reason, chapter 156, Laws of 2007 specifically allows couples to enter into a state registered domestic partnership if one of the persons is at least sixty-two years of age, the age at which many people choose to retire and are eligible to begin collecting social security and pension benefits.

The rights granted to state registered domestic partners in chapter 156, Laws of 2007 will further Washington's interest in promoting family relationships and protecting family members during life crises. Chapter 156, Laws of 2007 does not affect marriage or any other ways in which legal rights and responsibilities between two adults may be created, recognized, or given effect in Washington. [2007 c 156 § 1.]

26.60.020 Definitions. The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

(1) "State registered domestic partners" means two adults who meet the requirements for a valid state registered domestic partnership as established by RCW 26.60.030 and who have been issued a certificate of state registered domestic partnership by the secretary.

(2) "Secretary" means the secretary of state's office.

(3) "Share a common residence" means inhabit the same residence. Two persons shall be considered to share a common residence even if:

(a) Only one of the domestic partners has legal ownership of the common residence;

(b) One or both domestic partners have additional residences not shared with the other domestic partner; or

(c) One domestic partner leaves the common residence with the intent to return. [2007 c 156 § 2.]

26.60.030 Requirements. To enter into a state registered domestic partnership the two persons involved must meet the following requirements:

(1) Both persons share a common residence;

(2) Both persons are at least eighteen years of age;

(3) Neither person is married to someone other than the party to the domestic partnership and neither person is in a state registered domestic partnership with another person;

(4) Both persons are capable of consenting to the domestic partnership;

(5) Both of the following are true:

(a) The persons are not nearer of kin to each other than second cousins, whether of the whole or half blood computing by the rules of the civil law; and

(b) Neither person is a sibling, child, grandchild, aunt, uncle, niece, or nephew to the other person; and

(6) Either (a) both persons are members of the same sex; or (b) at least one of the persons is sixty-two years of age or older. [2007 c 156 § 4.]

26.60.040 Registration—Records—Fees. (1) Two persons desiring to become state registered domestic partners who meet the requirements of RCW 26.60.030 may register their domestic partnership by filing a declaration of state registered domestic partnership with the secretary and paying the filing fee established pursuant to subsection (4) of this section. The declaration must be signed by both parties and notarized.

(2) Upon receipt of a signed, notarized declaration and the filing fee, the secretary shall register the declaration and provide a certificate of state registered domestic partnership to each party named on the declaration.

(3) The secretary shall permanently maintain a record of each declaration of state registered domestic partnership filed with the secretary. The secretary shall provide the state registrar of vital statistics with records of declarations of state registered domestic partnerships.

(4) The secretary shall set by rule and collect a reasonable fee for filing the declaration, calculated to cover the secretary's costs, but not to exceed fifty dollars. Fees collected under this section are expressly designated for deposit in the secretary of state's revolving fund established under RCW 43.07.130. [2007 c 156 § 5.]

26.60.050 Termination—Records—Fees. (1)(a) A party to a state registered domestic partnership may terminate the relationship by filing a notice of termination of the state registered domestic partnership with the secretary and paying the filing fee established pursuant to subsection (5) of this section. The notice must be signed by one or both parties and notarized. If the notice is not signed by both parties, the party seeking termination must also file with the secretary an affidavit stating either that the other party has been served in writing in the manner prescribed for the service of summons in a civil action, that a notice of termination is being filed or that the party seeking termination has not been able to find the other party after reasonable effort and that notice has been made by publication pursuant to (b) of this subsection.

(b) When the other party cannot be found after reasonable effort, the party seeking termination may provide notice by publication in a newspaper of general circulation in the county in which the residence most recently shared by the domestic partners is located. Notice must be published at least once.

(2) The state registered domestic partnership shall be terminated effective ninety days after the date of filing the notice of termination and payment of the filing fee.

(3) Upon receipt of a signed, notarized notice of termination, affidavit, if required, and the filing fee, the secretary shall register the notice of termination and provide a certificate of termination of the state registered domestic partner-

ship to each party named on the notice. The secretary shall maintain a record of each notice of termination filed with the secretary and each certificate of termination issued by the secretary. The secretary shall provide the state registrar of vital statistics with records of terminations of state registered domestic partnerships, except for those state registered domestic partnerships terminated under subsection (4) of this section.

(4) A state registered domestic partnership is automatically terminated if, subsequent to the registration of the domestic partnership with the secretary, either or both the parties enter into a marriage that is recognized as valid in this state, either with each other or with another person.

(5) The secretary shall set by rule and collect a reasonable fee for filing the declaration, calculated to cover the secretary's costs, but not to exceed fifty dollars. Fees collected under this section are expressly designated for deposit in the secretary of state's revolving fund established under RCW 43.07.130. [2007 c 156 § 6.]

26.60.060 Domestic partnerships created by subdivisions of the state. (1)(a) A domestic partnership created by a subdivision of the state is not a state registered domestic partnership for the purposes of a state registered domestic partnership under this chapter. Those persons desiring to become state registered domestic partners under this chapter must register pursuant to RCW 26.60.040.

(b) A subdivision of the state that provides benefits to the domestic partners of its employees and chooses to use the definition of state registered domestic partner as set forth in RCW 26.60.020 must allow the certificate issued by the secretary of state to satisfy any registration requirements of the subdivision. A subdivision that uses the definition of state registered domestic partner as set forth in RCW 26.60.020 shall notify the secretary of state. The secretary of state shall compile and maintain a list of all subdivisions that have filed such notice. The secretary of state shall post this list on the secretary's web page and provide a copy of the list to each person that receives a certificate of state registered domestic partnership under RCW 26.60.040(2).

(c) Nothing in this section shall affect domestic partnerships created by any public entity.

(2) Nothing in chapter 156, Laws of 2007 affects any remedy available in common law. [2007 c 156 § 7.]

26.60.070 Patient visitation. A patient's state registered domestic partner shall have the same rights as a spouse with respect to visitation of the patient in a health care facility as defined in RCW 48.43.005. [2007 c 156 § 8.]

Title 27

LIBRARIES, MUSEUMS, AND HISTORICAL ACTIVITIES

Chapters

27.34 State historical societies—Historic preservation.

[2007 RCW Supp—page 208]

Chapter 27.34 RCW

STATE HISTORICAL SOCIETIES— HISTORIC PRESERVATION

Sections

27.34.020	Definitions.
27.34.390	Vancouver national historic reserve.
27.34.395	Vancouver national historic reserve—Designated partner representative—Duties of Washington state historical society.
27.34.400	Heritage barn preservation program.
27.34.405	Heritage barn preservation advisory board—Report. (<i>Expires December 31, 2010.</i>)
27.34.410	Heritage barn preservation fund.

27.34.020 Definitions. Unless the context clearly requires otherwise, the definitions in this section apply throughout this chapter:

(1) "Advisory council" means the advisory council on historic preservation.

(2) "Department" means the department of archaeology and historic preservation.

(3) "Director" means the director of the department of archaeology and historic preservation.

(4) "Federal act" means the national historic preservation act of 1966 (Public Law 89-655; 80 Stat. 915).

(5) "Heritage barn" means any large agricultural outbuilding used to house animals, crops, or farm equipment, that is over fifty years old and has been determined by the department to: (a) Be eligible for listing on the Washington heritage register or the national register of historic places; or (b) have been listed on a local historic register and approved by the advisory council. In addition to barns, "heritage barn" includes agricultural resources such as milk houses, sheds, silos, or other outbuildings, that are historically associated with the working life of the farm or ranch, if these outbuildings are on the same property as a heritage barn.

(6) "Heritage council" means the Washington state heritage council.

(7) "Historic preservation" includes the protection, rehabilitation, restoration, identification, scientific excavation, and reconstruction of districts, sites, buildings, structures, and objects significant in American and Washington state history, architecture, archaeology, or culture.

(8) "Preservation officer" means the state historic preservation officer as provided for in RCW 43.334.020.

(9) "Project" means programs leading to the preservation for public benefit of historical properties, whether by state and local governments or other public bodies, or private organizations or individuals, including the acquisition of title or interests in, and the development of, any district, site, building, structure, or object that is significant in American and Washington state history, architecture, archaeology, or culture, and property used in connection therewith, or for its development.

(10) "State historical agencies" means the state historical societies and the department.

(11) "State historical societies" means the Washington state historical society and the eastern Washington state historical society.

(12) "Cultural resource management plan" means a comprehensive plan which identifies and organizes information on the state of Washington's historic, archaeological, and architectural resources into a set of management criteria, and

which is to be used for producing reliable decisions, recommendations, and advice relative to the identification, evaluation, and protection of these resources. [2007 c 333 § 5; 2005 c 333 § 13; 1995 c 399 § 13; 1993 c 101 § 10; 1986 c 266 § 9; 1983 c 91 § 2.]

Finding—Purpose—2007 c 333: See note following RCW 27.34.400.

Findings—1993 c 101: See note following RCW 27.34.010.

Severability—1986 c 266: See note following RCW 38.52.005.

Transfer of powers and duties of office of archaeology and historic preservation—Construction of statutory references: See note following RCW 38.52.005.

27.34.390 Vancouver national historic reserve. The legislature affirms that the state of Washington is partner in the Vancouver national historic reserve as mandated under Public Law 104-333: The omnibus parks and public lands management act of 1996. As such, the state will take an active role in supporting the protection, preservation, interpretation, and rehabilitation of the Vancouver national historic reserve. [2007 c 138 § 2.]

Finding—Purpose—2007 c 138: "The three hundred sixty-six acre Vancouver national historic reserve was created by Congress through Public Law 104-333: The "omnibus parks and public lands management act of 1996" in recognition of the significant cultural, historic, and natural resources of the area. The historic reserve includes Fort Vancouver national historic site, Pearson airfield, Pearson air museum, officers row, Vancouver barracks, and a section of the Columbia river waterfront. The four legislatively designated partners in the reserve are the national park service, the United States army, the state of Washington, and the city of Vancouver.

The Vancouver national historic reserve trust, a 501(c)(3), was created in 1998 as the official nonprofit for the reserve. P.L. 104-333 required that the reserve be administered under a general management plan to be developed no later than three years after the enactment of the law. The management plan was adopted in February 2000 with the state of Washington as one of the signatories.

The legislature finds that the state of Washington, as one of four federally designated partners in the Vancouver national historic reserve, should be actively engaged in the protection, preservation, interpretation, and rehabilitation of the historic reserve for the use and benefit of the people of the state. Southwest Washington is a traditionally underserved area of the state with regard to cultural and recreational opportunities. The Vancouver national historic reserve is a unique historic site that offers a variety of historic, cultural, natural, and recreational opportunities and currently serves almost one million visitors per year. From the Hudson's Bay company fort, the story of the early settlers and fur traders to Vancouver barracks, over one hundred fifty years of military history, to the story of pioneering aviation and the golden age of flight at Pearson field, the historic reserve is unique because of the layers of history visitors can experience in one location. In addition, the historic reserve offers acres of green space and waterfront in the midst of the large Portland/Vancouver metropolitan area.

The legislature has declared through RCW 27.34.200 that it is the public policy and in the public interest of the state to designate, preserve, protect, enhance, and perpetuate those structures, sites, districts, buildings, and objects that reflect outstanding elements of the state's historic, archaeological, architectural, or cultural heritage, for the inspiration and enrichment of the people of the state. The Vancouver national historic reserve is on both the state and federal registers as a historic district and encompasses some of the richest historic, archaeological, architectural, and cultural resources in the state.

It is the purpose of this act to:

(1) Confirm the role of the state of Washington in the development and management of the Vancouver national historic reserve;

(2) Identify the role of state agencies in the Vancouver national historic reserve; and

(3) Establish an account in the state treasury through the Washington state historical society for funds designated specifically for the Vancouver national historic reserve." [2007 c 138 § 1.]

27.34.395 Vancouver national historic reserve—Designated partner representative—Duties of Washington state historical society. The legislature affirms that the Washington state historical society is the state's designated partner representative for the Vancouver national historic reserve. Accordingly, the Washington state historical society shall:

(1) Participate in the regularly scheduled coordination meetings of the Vancouver national historic reserve partners;

(2) Participate in the development of management, education, and interpretive plans and policies associated with the Vancouver national historic reserve;

(3) Partner with Washington State University and other agencies for purposes of managing the center for Columbia river history, headquartered on the Vancouver national historic reserve, and with the department for preservation and rehabilitation of the site; and

(4) Develop and submit to the office of financial management and the legislature operating and capital budget requests concurrent with the biennial cycle and oversee the management of all funds appropriated by the state for the Vancouver national historic reserve. [2007 c 138 § 3.]

Finding—Purpose—2007 c 138: See note following RCW 27.34.390.

27.34.400 Heritage barn preservation program. (1) The Washington state heritage barn preservation program is created in the department.

(2) The director, in consultation with the heritage barn preservation advisory board, shall conduct a thematic study of Washington state's barns. The study shall include a determination of types, an assessment of the most unique and significant barns in the state, and a condition and needs assessment of historic barns in the state.

(3)(a) The department, in consultation with the heritage barn preservation advisory board, shall establish a heritage barn recognition program. To apply for recognition as a heritage barn, the barn owner shall supply to the department photos of the barn, photos of the farm and surrounding landscape, a brief history of the farm, and a construction date for the barn.

(b) Three times a year, the governor's advisory council on historic places shall review the list of barns submitted by the department for formal recognition as a heritage barn.

(4) Eligible applicants for heritage barn preservation fund awards include property owners, nonprofit organizations, and local governments.

(5) To apply for support from the heritage barn preservation fund, an applicant must submit an application to the department in a form prescribed by the department. Applicants must provide at least fifty percent of the cost of the project through in-kind labor, the applicant's own moneys, or other funding sources.

(6) The following types of projects are eligible for funding:

(a) Stabilization of endangered heritage barns and related agricultural buildings, including but not limited to repairs to foundations, sills, windows, walls, structural framework, and the repair and replacement of roofs; and

(b) Work that preserves the historic character, features, and materials of a historic barn.

(7) In making awards, the advisory board shall consider the following criteria:

(a) Relative historical and cultural significance of the barn;

(b) Urgency of the threat and need for repair;

(c) Extent to which the project preserves historic character and extends the useful life of the barn or associated agricultural building;

(d) Visibility of the barn from a state designated scenic byway or other publicly traveled way;

(e) Extent to which the project leverages other sources of financial assistance;

(f) Provision for long-term preservation;

(g) Readiness of the applicant to initiate and complete the project; and

(h) Extent to which the project contributes to the equitable geographic distribution of heritage barn preservation fund awards across the state.

(8) In awarding funds, special consideration shall be given to barns that are:

(a) Still in agricultural use;

(b) Listed on the national register of historic places; or

(c) Outstanding examples of their type or era.

(9) The conditions in this subsection must be met by recipients of funding in order to satisfy the public benefit requirements of the heritage barn preservation program.

(a) Recipients must execute a contract with the department before commencing work. The contract must include a historic preservation easement for between five to fifteen years depending on the amount of the award. The contract must specify public benefit and minimum maintenance requirements.

(b) Recipients must proactively maintain their historic barn for a minimum of ten years.

(c) Public access to the exterior of properties that are not visible from a public right-of-way must be provided under reasonable terms and circumstances, including the requirement that visits by nonprofit organizations or school groups must be offered at least one day per year.

(10) All work must comply with the United States secretary of the interior's standards for the rehabilitation of historic properties; however, exceptions may be made for the retention or installation of metal roofs on a case-by-case basis.

(11) The heritage barn preservation fund shall be acknowledged on any materials produced and in publicity for the project. A sign acknowledging the fund shall be posted at the worksite for the duration of the preservation agreement.

(12) Projects must be initiated within one year of funding approval and completed within two years, unless an extension is provided by the department in writing.

(13) If a recipient of a heritage barn preservation fund award, or subsequent owner of a property that was assisted by the fund, takes any action within ten years of the funding award with respect to the assisted property such as dismantlement, removal, or substantial alteration, which causes it to be no longer eligible for listing in the Washington heritage register, the fund shall be repaid in full within one year. [2007 c 333 § 2.]

Finding—Purpose—2007 c 333: "The legislature finds that historic barns are essential symbols of Washington's heritage representing a pioneer-

ing spirit of industriousness. Important for their association with broad patterns of agricultural history and community development and as examples of distinct architectural styles and methods of construction, historic barns serve as highly visible icons for local residents and visitors alike. The legislature acknowledges that factors such as changes in the agricultural economy and farming technologies, prohibitive rehabilitation costs, development pressures, and regulations restricting new uses, collectively work to endanger historic barns statewide and contribute to their falling into decay or being demolished altogether.

As historic barns represent irreplaceable resources, and recognizing that barn preservation will work to retain these structures as functional and economically viable elements of working lands, the purpose of this act is to create a system acknowledging heritage barns statewide that provides emergency assistance to heritage barn owners through matching grants, assesses the need for long-term barn preservation, and considers additional incentives and regulatory revisions that work toward the preservation of heritage barns as integral components of Washington's historic landscapes." [2007 c 333 § 1.]

27.34.405 Heritage barn preservation advisory board—Report. (Expires December 31, 2010.) (1) The director shall establish a Washington state heritage barn preservation advisory board that includes:

(a) Two members representing owners of heritage barns nominated by recognized agricultural organizations;

(b) The chair of the advisory council, or the chair's designee;

(c) A representative of a statewide historic preservation organization;

(d) A representative of a county heritage commission that is recognized by the department as a certified local government;

(e) Two elected county officials, one appointed by the Washington state association of counties and one appointed by the Washington association of county officials;

(f) A representative of a private foundation with an interest in the preservation of barns;

(g) A representative of a land trust that is experienced with easements; and

(h) At least one at large member with appropriate expertise in barn architecture, architectural history, construction, engineering, or a related field.

(2) The director may invite representatives of federal agencies that have barn preservation programs or expertise to participate on the advisory board, who shall serve as ex officio members.

(3) The director shall work to assure that the advisory board members are from diverse geographic regions of the state. The director may serve as chair, or appoint a person to serve as chair.

(4) The advisory board shall provide advice to the director regarding:

(a) The criteria for designation of heritage barns;

(b) The criteria for determining eligibility for grant funds including contracting provisions between the department and grant recipients. In developing this criteria, the department and the advisory board shall consult with the state attorney general; and

(c) The criteria for awarding grants for barn rehabilitation.

(5) The advisory board shall examine regulatory issues that impose constraints on the ability to use heritage barns for contemporary economically productive purposes including building and land use codes.

(6) By December 1, 2010, the department shall provide a final report to appropriate committees of the legislature that summarizes the accomplishments of the program, addresses regulatory issues examined under subsection (5) of this section, and makes final recommendations.

(7) This section expires December 31, 2010. [2007 c 333 § 3.]

Finding—Purpose—2007 c 333: See note following RCW 27.34.400.

27.34.410 Heritage barn preservation fund. (1) The heritage barn preservation fund is created as an account in the state treasury. All receipts from appropriations and private sources must be deposited into the account. Moneys in the account may be spent only after appropriation. Expenditures from the account may be used only to provide assistance to owners of heritage barns in Washington state in the stabilization and restoration of their barns so that these historic properties may continue to serve the community.

(2) The department shall minimize the amount of funds that are used for program administration, which shall include consultation with the department of general administration's barrier-free facilities program for input regarding accessibility for people with disabilities where public access to historic barns is permitted.

(3) The primary public benefit of funding through the heritage barn preservation program is the preservation and enhancement of significant historic properties that provide economic benefit to the state's citizens and enrich communities throughout the state. [2007 c 333 § 4.]

Finding—Purpose—2007 c 333: See note following RCW 27.34.400.

Title 28A

COMMON SCHOOL PROVISIONS

Chapters

- 28A.150 General provisions.
- 28A.155 Special education.
- 28A.160 Student transportation.
- 28A.175 Dropout prevention, intervention, and retrieval system.
- 28A.210 Health—Screening and requirements.
- 28A.215 Early childhood, preschools, and before-and-after school care.
- 28A.220 Traffic safety.
- 28A.230 Compulsory course work and activities.
- 28A.245 Skill centers.
- 28A.300 Superintendent of public instruction.
- 28A.305 State board of education.
- 28A.310 Educational service districts.
- 28A.320 Provisions applicable to all districts.
- 28A.400 Employees.
- 28A.405 Certificated employees.
- 28A.410 Certification.
- 28A.415 Institutes, workshops, and training.
- 28A.515 Common school construction fund.
- 28A.600 Students.
- 28A.630 Temporary provisions—Special projects.
- 28A.655 Academic achievement and accountability.
- 28A.660 Alternative route teacher certification.

Chapter 28A.150 RCW GENERAL PROVISIONS

Sections

- 28A.150.210 Basic education act—Goal.
- 28A.150.315 Voluntary all-day kindergarten programs—Funding.
- 28A.150.410 Basic education certificated instructional staff—Salary allocation schedule—Limits on postgraduate credits.

28A.150.210 Basic education act—Goal. The goal of the basic education act for the schools of the state of Washington set forth in this chapter shall be to provide students with the opportunity to become responsible and respectful global citizens, to contribute to their economic well-being and that of their families and communities, to explore and understand different perspectives, and to enjoy productive and satisfying lives. Additionally, the state of Washington intends to provide for a public school system that is able to evolve and adapt in order to better focus on strengthening the educational achievement of all students, which includes high expectations for all students and gives all students the opportunity to achieve personal and academic success. To these ends, the goals of each school district, with the involvement of parents and community members, shall be to provide opportunities for every student to develop the knowledge and skills essential to:

(1) Read with comprehension, write effectively, and communicate successfully in a variety of ways and settings and with a variety of audiences;

(2) Know and apply the core concepts and principles of mathematics; social, physical, and life sciences; civics and history, including different cultures and participation in representative government; geography; arts; and health and fitness;

(3) Think analytically, logically, and creatively, and to integrate different experiences and knowledge to form reasoned judgments and solve problems; and

(4) Understand the importance of work and finance and how performance, effort, and decisions directly affect future career and educational opportunities. [2007 c 400 § 1; 1993 c 336 § 101; (1992 c 141 § 501 repealed by 1993 c 336 § 1203); 1977 ex.s. c 359 § 2. Formerly RCW 28A.58.752.]

Captions not law—2007 c 400: "Captions used in this act are not any part of the law." [2007 c 400 § 9.]

Findings—Intent—1993 c 336: "The legislature finds that student achievement in Washington must be improved to keep pace with societal changes, changes in the workplace, and an increasingly competitive international economy.

To increase student achievement, the legislature finds that the state of Washington needs to develop a public school system that focuses more on the educational performance of students, that includes high expectations for all students, and that provides more flexibility for school boards and educators in how instruction is provided.

The legislature further finds that improving student achievement will require:

(1) Establishing what is expected of students, with standards set at internationally competitive levels;

(2) Parents to be primary partners in the education of their children, and to play a significantly greater role in local school decision making;

(3) Students taking more responsibility for their education;

(4) Time and resources for educators to collaboratively develop and implement strategies for improved student learning;

(5) Making instructional programs more relevant to students' future plans;

(6) All parties responsible for education to focus more on what is best for students; and

(7) An educational environment that fosters mutually respectful interactions in an atmosphere of collaboration and cooperation.

It is the intent of the legislature to provide students the opportunity to achieve at significantly higher levels, and to provide alternative or additional instructional opportunities to help students who are having difficulty meeting the essential academic learning requirements in RCW 28A.630.885.

It is also the intent of the legislature that students who have met or exceeded the essential academic learning requirements be provided with alternative or additional instructional opportunities to help advance their educational experience.

The provisions of chapter 336, Laws of 1993 shall not be construed to change current state requirements for students who receive home-based instruction under chapter 28A.200 RCW, or for students who attend state-approved private schools under chapter 28A.195 RCW." [1993 c 336 § 1.]

Effective date—1993 c 336 § 101: "Section 101 of this act shall take effect September 1, 1994." [1993 c 336 § 102.]

Findings—1993 c 336: "(1) The legislature finds that preparing students to make successful transitions from school to work helps promote educational, career, and personal success for all students.

(2) A successful school experience should prepare students to make informed career direction decisions at critical points in their educational progress. Schools that demonstrate the relevancy and practical application of course work will expose students to a broad range of interrelated career and educational opportunities and will expand students' posthigh school options.

(3) The school-to-work transitions program, under chapter 335, Laws of 1993, is intended to help secondary schools develop model programs for school-to-work transitions. The purposes of the model programs are to provide incentives for selected schools to:

(a) Integrate vocational and academic instruction into a single curriculum;

(b) Provide each student with a choice of multiple, flexible educational pathways based on the student's career interest areas;

(c) Emphasize increased vocational and academic guidance and counseling for students;

(d) Foster partnerships with local employers and employees to incorporate work sites as part of work-based learning experiences;

(e) Encourage collaboration among middle or junior high schools and secondary schools in developing successful transition programs and to encourage articulation agreements between secondary schools and community and technical colleges.

(4) The legislature further finds that successful implementation of the school-to-work transitions program is an important part of achieving the purposes of chapter 336, Laws of 1993." [1993 c 336 § 601.]

Part headings not law—1993 c 336: "Part headings as used in this act constitute no part of the law." [1993 c 336 § 1204.]

Findings—Part headings—Severability—1992 c 141: See notes following RCW 28A.410.040.

Effective date—Severability—1977 ex.s. c 359: See notes following RCW 28A.150.200.

28A.150.315 Voluntary all-day kindergarten programs—Funding. (1) Beginning with the 2007-08 school year, funding for voluntary all-day kindergarten programs shall be phased-in beginning with schools with the highest poverty levels, defined as those schools with the highest percentages of students qualifying for free and reduced-price lunch support in the prior school year. Once a school receives funding for the all-day kindergarten program, that school shall remain eligible for funding in subsequent school years regardless of changes in the school's percentage of students eligible for free and reduced-price lunches as long as other program requirements are fulfilled. Additionally, schools receiving all-day kindergarten program support shall agree to the following conditions:

(a) Provide at least a one thousand-hour instructional program;

(b) Provide a curriculum that offers a rich, varied set of experiences that assist students in:

(i) Developing initial skills in the academic areas of reading, mathematics, and writing;

(ii) Developing a variety of communication skills;

(iii) Providing experiences in science, social studies, arts, health and physical education, and a world language other than English;

(iv) Acquiring large and small motor skills;

(v) Acquiring social and emotional skills including successful participation in learning activities as an individual and as part of a group; and

(vi) Learning through hands-on experiences;

(c) Establish learning environments that are developmentally appropriate and promote creativity;

(d) Demonstrate strong connections and communication with early learning community providers; and

(e) Participate in kindergarten program readiness activities with early learning providers and parents.

(2) Subject to funds appropriated for this purpose, the superintendent of public instruction shall designate one or more school districts to serve as resources and examples of best practices in designing and operating a high-quality all-day kindergarten program. Designated school districts shall serve as lighthouse programs and provide technical assistance to other school districts in the initial stages of implementing an all-day kindergarten program. Examples of topics addressed by the technical assistance include strategic planning, developing the instructional program and curriculum, working with early learning providers to identify students and communicate with parents, and developing kindergarten program readiness activities.

(3) Any funds allocated to support all-day kindergarten programs under this section shall not be considered as basic education funding. [2007 c 400 § 2.]

Captions not law—2007 c 400: See note following RCW 28A.150.210.

28A.150.410 Basic education certificated instructional staff—Salary allocation schedule—Limits on post-graduate credits. (1) The legislature shall establish for each school year in the appropriations act a statewide salary allocation schedule, for allocation purposes only, to be used to distribute funds for basic education certificated instructional staff salaries under RCW 28A.150.260.

(2) Salary allocations for state-funded basic education certificated instructional staff shall be calculated by the superintendent of public instruction by determining the district's average salary for certificated instructional staff, using the statewide salary allocation schedule and related documents, conditions, and limitations established by the omnibus appropriations act.

(3) Beginning January 1, 1992, no more than ninety college quarter-hour credits received by any employee after the baccalaureate degree may be used to determine compensation allocations under the state salary allocation schedule and LEAP documents referenced in the omnibus appropriations act, or any replacement schedules and documents, unless:

(a) The employee has a masters degree; or

(b) The credits were used in generating state salary allocations before January 1, 1992.

(4) Beginning in the 2007-08 school year, the calculation of years of service for occupational therapists, physical ther-

apists, speech-language pathologists, audiologists, nurses, social workers, counselors, and psychologists regulated under Title 18 RCW may include experience in schools and other nonschool positions as occupational therapists, physical therapists, speech-language pathologists, audiologists, nurses, social workers, counselors, or psychologists. The calculation shall be that one year of service in a nonschool position counts as one year of service for purposes of this chapter, up to a limit of two years of nonschool service. Nonschool years of service included in calculations under this subsection shall not be applied to service credit totals for purposes of any retirement benefit under chapter 41.32, 41.35, or 41.40 RCW, or any other state retirement system benefits. [2007 c 403 § 1; 2002 c 353 § 1; 1997 c 141 § 1; 1990 c 33 § 118; 1989 1st ex.s. c 16 § 1; 1987 3rd ex.s. c 1 § 4; 1987 1st ex.s. c 2 § 204. Formerly RCW 28A.41.112.]

Effective date—2002 c 353: "This act takes effect September 1, 2002." [2002 c 353 § 3.]

Intent—Severability—Effective date—1987 1st ex.s. c 2: See notes following RCW 84.52.0531.

Chapter 28A.155 RCW SPECIAL EDUCATION

Sections

28A.155.010	Purpose.
28A.155.020	Administration of program in the office of the superintendent of public instruction—Adoption of definitions by rule—Local school district powers not limited.
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28A.155.040	Authority of districts—Participation of department of social and health services.
28A.155.045	Certificate of individual achievement.
28A.155.050	Services through special excess cost aid programs—Apportionment—Allocations from state excess funds.
28A.155.060	District authority to contract with approved agencies—Approval standards.
28A.155.065	Early intervention services.
28A.155.070	Services to students of preschool age with disabilities—Apportionment—Allocations from state excess cost funds. (<i>Effective until September 1, 2009.</i>)
28A.155.070	Services to students of preschool age with disabilities—Apportionment—Allocations from state excess cost funds. (<i>Effective September 1, 2009.</i>)
28A.155.080	Appeal from denial of educational program.
28A.155.090	Superintendent of public instruction's duty and authority.
28A.155.100	Sanctions applied to noncomplying districts.
28A.155.115	Braille instruction—Assessment—Provision in student's curriculum.
28A.155.140	Curriculum-based assessment procedures for early intervening services.
28A.155.160	Assistive devices and services—Interagency cooperative agreements—Definitions.
28A.155.170	Graduation ceremony—Certificate of attendance—Students with individualized education programs.
28A.155.180	Safety net funds—Application—Technical assistance—Annual survey.

28A.155.010 Purpose. It is the purpose of RCW 28A.155.010 through 28A.155.160, 28A.160.030, and 28A.150.390 to ensure that all children with disabilities as defined in RCW 28A.155.020 shall have the opportunity for an appropriate education at public expense as guaranteed to them by the Constitution of this state and applicable federal laws. [2007 c 115 § 1; 1995 c 77 § 7; 1990 c 33 § 120; 1971 ex.s. c 66 § 1. Formerly RCW 28A.13.005.]

Severability—1971 ex.s. c 66: "If any provision of this 1971 amendatory act, or its application to any person or circumstance is held invalid, the remainder of the act, or the application of the provision to other persons or circumstances is not affected." [1971 ex.s. c 66 § 13.]

Effective date—1971 ex.s. c 66: "This 1971 amendatory act will take effect July 1, 1973." [1971 ex.s. c 66 § 14.]

28A.155.020 Administration of program in the office of the superintendent of public instruction—Adoption of definitions by rule—Local school district powers not limited. There is established in the office of the superintendent of public instruction an administrative section or unit for the education of children with disabilities who require special education.

Students with disabilities are those children whether enrolled in school or not who through an evaluation process are determined eligible for special education due to a disability.

In accordance with part B of the federal individuals with disabilities education improvement act and any other federal or state laws relating to the provision of special education services, the superintendent of public instruction shall require each school district in the state to insure an appropriate educational opportunity for all children with disabilities between the ages of three and twenty-one, but when the twenty-first birthday occurs during the school year, the educational program may be continued until the end of that school year. The superintendent of public instruction, by rule, shall establish for the purpose of excess cost funding, as provided in RCW 28A.150.390, 28A.160.030, and 28A.155.010 through 28A.155.160, functional definitions of special education, the various types of disabling conditions, and eligibility criteria for special education programs for children with disabilities, including referral procedures, use of aversive interventions, the education curriculum and statewide or district-wide assessments, parent and district requests for special education due process hearings, and procedural safeguards. For the purposes of RCW 28A.155.010 through 28A.155.160, an appropriate education is defined as an education directed to the unique needs, abilities, and limitations of the children with disabilities who are enrolled either full time or part time in a school district. School districts are strongly encouraged to provide parental training in the care and education of the children and to involve parents in the classroom.

Nothing in this section shall prohibit the establishment or continuation of existing cooperative programs between school districts or contracts with other agencies approved by the superintendent of public instruction, which can meet the obligations of school districts to provide education for children with disabilities, or prohibit the continuation of needed related services to school districts by the department of social and health services.

This section shall not be construed as in any way limiting the powers of local school districts set forth in RCW 28A.155.070. [2007 c 115 § 2; 1995 c 77 § 8; 1990 c 33 § 121; 1985 c 341 § 4; 1984 c 160 § 1; 1971 ex.s. c 66 § 2; 1969 ex.s. c 2 § 2; 1969 ex.s. c 223 § 28A.13.010. Prior: 1951 c 92 § 1; prior: (i) 1943 c 120 § 1; Rem. Supp. 1943 § 4679-25. (ii) 1943 c 120 § 2, part; Rem. Supp. 1943 § 4679-26, part. Formerly RCW 28A.13.010, 28.13.010.]

Effective date—1985 c 341 §§ 4 and 13: "Sections 4 and 13 of this act shall take effect August 1, 1985." [1985 c 341 § 18.]

Severability—1984 c 160: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1984 c 160 § 6.]

Severability—Effective date—1971 ex.s. c 66: See notes following RCW 28A.155.010.

28A.155.030 Division administrative officer—Duties.

The superintendent of public instruction shall employ an administrative officer of the division. The administrative officer, under the direction of the superintendent of public instruction, shall coordinate and supervise the program of special education for eligible children with disabilities in the school districts of the state. He or she shall ensure that school districts provide an appropriate educational opportunity for all children with disabilities in need of special education and related services and shall coordinate with the state secretary of social and health services and with county and regional officers on cases where related services are available for children with disabilities. [2007 c 115 § 3; 1995 c 77 § 9; 1990 c 33 § 122; 1975 1st ex.s. c 275 § 52; 1972 ex.s. c 10 § 1. Prior: 1971 ex.s. c 66 § 3; 1971 c 48 § 3; 1969 ex.s. c 223 § 28A.13.020; prior: 1943 c 120 § 3; Rem. Supp. 1943 § 4679-27. Formerly RCW 28A.13.020, 28.13.020.]

Severability—Effective date—1971 ex.s. c 66: See notes following RCW 28A.155.010.

28A.155.040 Authority of districts—Participation of department of social and health services. The board of directors of each school district, for the purpose of compliance with the provisions of RCW 28A.150.390, 28A.160.030, and 28A.155.010 through 28A.155.160 and chapter 28A.190 RCW, shall cooperate with the superintendent of public instruction and with the administrative officer and shall provide an appropriate educational opportunity to children with disabilities, as defined in RCW 28A.155.020, in regular or special school facilities within the district or shall contract for such services with other agencies as provided in RCW 28A.155.060 or shall participate in an inter-district arrangement in accordance with RCW 28A.335.160 and 28A.225.220 and/or 28A.225.250 and 28A.225.260.

In carrying out their responsibilities under this chapter, school districts severally or jointly with the approval of the superintendent of public instruction are authorized to support and/or contract for residential schools and/or homes approved by the department of social and health services for aid and special attention to students with disabilities.

The cost of board and room in facilities approved by the department of social and health services shall be provided by the department of social and health services for those students with disabilities eligible for such aid under programs of the department. The cost of approved board and room shall be provided for those students with disabilities not eligible under programs of the department of social and health services but deemed in need of the same by the superintendent of public instruction: PROVIDED, That no school district shall be financially responsible for special education programs for students who are attending residential schools operated by the department of social and health services: PROVIDED FURTHER, That the provisions of RCW 28A.150.390, 28A.160.030, and 28A.155.010 through 28A.155.100 shall not preclude the extension by the superintendent of public instruction of special education opportunities to students with disabilities in residential schools operated by the department of social and health services. [2007 c

115 § 4; 1995 c 77 § 10; 1990 c 33 § 123; 1971 ex.s. c 66 § 4; 1969 ex.s. c 223 § 28A.13.030. Prior: 1959 c 122 § 1; 1953 c 135 § 1; 1943 c 120 § 4; Rem. Supp. 1943 § 4679-28. Formerly RCW 28A.13.030, 28.13.030.]

Severability—Effective date—1971 ex.s. c 66: See notes following RCW 28A.155.010.

28A.155.045 Certificate of individual achievement.

Beginning with the graduating class of 2008, students served under this chapter, who are not appropriately assessed by the high school Washington assessment system as defined in RCW 28A.655.061, even with accommodations, may earn a certificate of individual achievement. The certificate may be earned using multiple ways to demonstrate skills and abilities commensurate with their individual education programs. The determination of whether the high school assessment system is appropriate shall be made by the student's individual education program team. Except as provided in RCW 28A.655.0611, for these students, the certificate of individual achievement is required for graduation from a public high school, but need not be the only requirement for graduation. When measures other than the high school assessment system as defined in RCW 28A.655.061 are used, the measures shall be in agreement with the appropriate educational opportunity provided for the student as required by this chapter. The superintendent of public instruction shall develop the guidelines for determining which students should not be required to participate in the high school assessment system and which types of assessments are appropriate to use.

When measures other than the high school assessment system as defined in RCW 28A.655.061 are used for high school graduation purposes, the student's high school transcript shall note whether that student has earned a certificate of individual achievement.

Nothing in this section shall be construed to deny a student the right to participation in the high school assessment system as defined in RCW 28A.655.061, and, upon successfully meeting the high school standard, receipt of the certificate of academic achievement. [2007 c 354 § 3; 2004 c 19 § 104.]

Findings—Intent—2007 c 354: See note following RCW 28A.655.061.

Part headings and captions not law—Severability—Effective date—2004 c 19: See notes following RCW 28A.655.061.

28A.155.050 Services through special excess cost aid programs—Apportionment—Allocations from state excess funds. Any child who is eligible for special education services through special excess cost aid programs authorized under RCW 28A.155.010 through 28A.155.160 shall be given such services in the least restrictive environment as determined by the student's individualized education program (IEP) team in the school district in which such student resides. Any school district required to provide such services shall thereupon be granted regular apportionment of state and county school funds and, in addition, allocations from state excess funds made available for such special services for such period of time as such special education program is given: PROVIDED, That should such student or any other student with disabilities attend and participate in a special education program operated by another school district in

accordance with the provisions of RCW 28A.225.210, 28A.225.220, and/or 28A.225.250, such regular apportionment shall be granted to the receiving school district, and such receiving school district shall be reimbursed by the district in which such student resides in accordance with rules adopted by the superintendent of public instruction for the entire approved excess cost not reimbursed from such regular apportionment. [2007 c 115 § 5; 1995 c 77 § 11; 1990 c 33 § 124; 1971 ex.s. c 66 § 5; 1969 ex.s. c 223 § 28A.13.040. Prior: 1943 c 120 § 5; Rem. Supp. 1943 § 4679-29. Formerly RCW 28A.13.040, 28.13.040.]

Severability—Effective date—1971 ex.s. c 66: See notes following RCW 28A.155.010.

28A.155.060 District authority to contract with approved agencies—Approval standards. For the purpose of carrying out the provisions of RCW 28A.155.020 through 28A.155.050, the board of directors of every school district shall be authorized to contract with agencies approved by the superintendent of public instruction for operating special education programs for students with disabilities. Approval standards for such agencies shall conform substantially with those of special education programs in the common schools. [2007 c 115 § 6; 2006 c 263 § 915; 1995 c 77 § 12; 1990 c 33 § 125; 1971 ex.s. c 66 § 6. Formerly RCW 28A.13.045.]

Findings—Purpose—Part headings not law—2006 c 263: See notes following RCW 28A.150.230.

Severability—Effective date—1971 ex.s. c 66: See notes following RCW 28A.155.010.

28A.155.065 Early intervention services. (1) By September 1, 2009, each school district shall provide or contract for early intervention services to all eligible children with disabilities from birth to three years of age. Eligibility shall be determined according to Part C of the federal individuals with disabilities education improvement act or other applicable federal and state laws, and as specified in the Washington Administrative Code adopted by the state lead agency. School districts shall provide or contract for early intervention services in partnership with local birth-to-three lead agencies and birth-to-three providers. Services provided under this section shall not supplant services or funding currently provided in the state for early intervention services to eligible children with disabilities from birth to three years of age. The state-designated birth-to-three lead agency shall be payor of last resort for birth-to-three early intervention services provided under this section.

(2) The services in this section are not part of the state's program of basic education pursuant to Article IX of the state Constitution. [2007 c 115 § 7; 2006 c 269 § 2.]

Finding—2006 c 269: "The legislature finds an urgent and substantial need to enhance the development of all infants and toddlers with disabilities in Washington in order to minimize developmental delays and to maximize individual potential for learning and functioning." [2006 c 269 § 1.]

28A.155.070 Services to students of preschool age with disabilities—Apportionment—Allocations from state excess cost funds. (Effective until September 1, 2009.) Special educational programs provided by the state and the school districts thereof for students with disabilities may be extended to include students of preschool age. School dis-

tricts which extend such special programs to children of preschool age shall be entitled to the regular apportionments from state and county school funds, as provided by law, and in addition to allocations from state excess cost funds made available for such special services for those children with disabilities who are given such special services. [2007 c 115 § 8; 1995 c 77 § 13; 1971 ex.s. c 66 § 7; 1969 ex.s. c 223 § 28A.13.050. Prior: 1951 c 92 § 2; 1949 c 186 § 1; Rem. Supp. 1949 § 4901-3. Formerly RCW 28A.13.050, 28.13.050.]

Expiration date—2007 c 115 § 8: "Section 8 of this act expires September 1, 2009." [2007 c 115 § 16.]

Severability—Effective date—1971 ex.s. c 66: See notes following RCW 28A.155.010.

28A.155.070 Services to students of preschool age with disabilities—Apportionment—Allocations from state excess cost funds. (Effective September 1, 2009.) Special educational programs provided by the state and the school districts thereof for students with disabilities shall be extended to include students of preschool age. School districts shall be entitled to the regular apportionments from state and county school funds, as provided by law, and in addition to allocations from state excess cost funds made available for such special services for those students with disabilities who are given such special services. [2007 c 115 § 9; 2006 c 269 § 3; 1995 c 77 § 13; 1971 ex.s. c 66 § 7; 1969 ex.s. c 223 § 28A.13.050. Prior: 1951 c 92 § 2; 1949 c 186 § 1; Rem. Supp. 1949 § 4901-3. Formerly RCW 28A.13.050, 28.13.050.]

Effective date—2007 c 115 § 9: "Section 9 of this act takes effect September 1, 2009." [2007 c 115 § 17.]

Effective date—2006 c 269 § 3: "Section 3 of this act takes effect September 1, 2009." [2006 c 269 § 4.]

Finding—2006 c 269: See note following RCW 28A.155.065.

Severability—Effective date—1971 ex.s. c 66: See notes following RCW 28A.155.010.

28A.155.080 Appeal from denial of educational program. Where a child with disabilities as defined in RCW 28A.155.020 has been denied the opportunity of a special educational program by a local school district there shall be a right of appeal by the parent or guardian of such child to the superintendent of public instruction pursuant to procedures established by the superintendent and in accordance with RCW 28A.155.090 and part B of the federal individuals with disabilities education improvement act. [2007 c 115 § 10; 1995 c 77 § 14; 1990 c 33 § 126; 1971 ex.s. c 66 § 8. Formerly RCW 28A.13.060.]

Severability—Effective date—1971 ex.s. c 66: See notes following RCW 28A.155.010.

28A.155.090 Superintendent of public instruction's duty and authority. The superintendent of public instruction shall have the duty and authority, through the administrative section or unit for the education of children with disabling conditions, to:

- (1) Assist school districts in the formation of programs to meet the needs of children with disabilities;
- (2) Develop interdistrict cooperation programs for children with disabilities as authorized in RCW 28A.225.250;

(3) Provide, upon request, to parents or guardians of children with disabilities, information as to the special education programs for students with disabilities offered within the state;

(4) Assist, upon request, the parent or guardian of any child with disabilities in the placement of any child with disabilities who is eligible for but not receiving special educational services for children with disabilities;

(5) Approve school district and agency programs as being eligible for special excess cost financial aid to students with disabilities;

(6) Consistent with the provisions of RCW 28A.150.390, 28A.160.030, and 28A.155.010 through 28A.155.160, and part B of the federal individuals with disabilities education improvement act, administer administrative hearings and other procedures to ensure procedural safeguards of children with disabilities; and

(7) Promulgate such rules as are necessary to implement part B of the federal individuals with disabilities education improvement act or other federal law providing for special education services for children with disabilities and the several provisions of RCW 28A.150.390, 28A.160.030, and 28A.155.010 through 28A.155.160 and to ensure appropriate access to and participation in the general education curriculum and participation in statewide assessments for all students with disabilities. [2007 c 115 § 11; 1995 c 77 § 15; 1990 c 33 § 127; 1985 c 341 § 5; 1971 ex.s. c 66 § 9. Formerly RCW 28A.13.070.]

Severability—Effective date—1971 ex.s. c 66: See notes following RCW 28A.155.010.

28A.155.100 Sanctions applied to noncomplying districts. The superintendent of public instruction is hereby authorized and directed to establish appropriate sanctions to be applied to any school district of the state failing to comply with the provisions of RCW 28A.150.390, 28A.160.030, and 28A.155.010 through 28A.155.060 and 28A.155.080 through 28A.155.160 to be applied beginning upon the effective date thereof, which sanctions shall include withholding of any portion of state aid to such district until such time as compliance is assured. [2007 c 115 § 12; 1990 c 33 § 128; 1971 ex.s. c 66 § 12. Formerly RCW 28A.13.080.]

Severability—Effective date—1971 ex.s. c 66: See notes following RCW 28A.155.010.

28A.155.115 Braille instruction—Assessment—Provision in student's curriculum. (1) Each student shall be assessed individually to determine the appropriate learning media for the student including but not limited to Braille.

(2) No student may be denied the opportunity for instruction in Braille reading and writing solely because the student has some remaining vision.

(3) This section does not require the exclusive use of Braille if there are other special education services to meet the student's educational needs. The provision of special education or other services does not preclude Braille use or instruction.

(4) If a student's individualized learning media assessment indicates that Braille is an appropriate learning medium, instruction in Braille shall be provided as a part of such student's educational curriculum and if such student has an indi-

vidualized education program, such instruction shall be provided as part of that program.

(5) If Braille will not be provided to a student, the reason for not incorporating it in the student's individualized education program shall be documented in writing and provided to the parent or guardian. If no individualized education program exists, such documentation, signed by the parent or guardian, shall be placed in the student's file. [2007 c 115 § 13; 1996 c 135 § 3.]

Findings—1996 c 135: See note following RCW 28A.155.105.

28A.155.140 Curriculum-based assessment procedures for early intervening services. School districts may use curriculum-based assessment procedures as measures for developing academic early intervening services, as defined under part B of the federal individuals with disabilities education improvement act, and curriculum planning: PROVIDED, That the use of curriculum-based assessment procedures shall not deny a student the right to use of other assessments to determine eligibility or participation in special education programs as provided by RCW 28A.155.010 through 28A.155.160. [2007 c 115 § 14; 1991 c 116 § 4; 1990 c 33 § 131; 1987 c 398 § 1. Formerly RCW 28A.03.367.]

28A.155.160 Assistive devices and services—Interagency cooperative agreements—Definitions. Notwithstanding any other provision of law, the office of the superintendent of public instruction, the department of early learning, the Washington state school for the deaf, the Washington state school for the blind, school districts, educational service districts, and all other state and local government educational agencies and the department of services for the blind, the department of social and health services, and all other state and local government agencies concerned with the care, education, or habilitation or rehabilitation of children with disabilities may enter into interagency cooperative agreements for the purpose of providing assistive technology devices and services to children with disabilities. Such arrangements may include but are not limited to interagency agreements for the acquisition, including joint funding, maintenance, loan, sale, lease, or transfer of assistive technology devices and for the provision of assistive technology services including but not limited to assistive technology assessments and training.

For the purposes of this section, "assistive device" means any item, piece of equipment, or product system, whether acquired commercially off-the-shelf, modified, or customized, that is used to increase, maintain, or improve functional capabilities of children with disabilities. The term "assistive technology service" means any service that directly assists a child with a disability in the selection, acquisition, or use of an assistive technology device. Assistive technology service includes:

(1) The evaluation of the needs of a child with a disability, including a functional evaluation of the child in the child's customary environment;

(2) Purchasing, leasing, or otherwise providing for the acquisition of assistive technology devices by children with disabilities;

(3) Selecting, designing, fitting, customizing, adapting, applying, retaining, repairing, or replacing of assistive technology devices;

(4) Coordinating and using other therapies, interventions, or services with assistive technology devices, such as those associated with existing education and rehabilitation plans and programs;

(5) Training or technical assistance for a child with a disability or if appropriate, the child's family; and

(6) Training or technical assistance for professionals, including individuals providing education and rehabilitation services, employers, or other individuals who provide services to, employ, or are otherwise substantially involved in the major life functions of children with disabilities. [2007 c 115 § 15; 1997 c 104 § 3.]

28A.155.170 Graduation ceremony—Certificate of attendance—Students with individualized education programs. (1) Beginning July 1, 2007, each school district that operates a high school shall establish a policy and procedures that permit any student who is receiving special education or related services under an individualized education program pursuant to state and federal law and who will continue to receive such services between the ages of eighteen and twenty-one to participate in the graduation ceremony and activities after four years of high school attendance with his or her age-appropriate peers and receive a certificate of attendance.

(2) Participation in a graduation ceremony and receipt of a certificate of attendance under this section does not preclude a student from continuing to receive special education and related services under an individualized education program beyond the graduation ceremony.

(3) A student's participation in a graduation ceremony and receipt of a certificate of attendance under this section shall not be construed as the student's receipt of either:

(a) A high school diploma pursuant to RCW 28A.230.120; or

(b) A certificate of individual achievement pursuant to RCW 28A.155.045. [2007 c 318 § 2.]

Findings—2007 c 318: "The legislature finds:

(1) There are students with disabilities throughout the state of Washington who have attended four years of high school, but whose individualized education programs prescribe the continuation of special education and related services beyond the fourth year of high school;

(2) Through their participation in the public schools and the community, students with disabilities have frequently become identified with and connected to a class of typically developing, age-appropriate peers who will graduate in four years and participate in a high school graduation ceremony;

(3) A high school graduation ceremony is an important rite of passage for students regardless of their abilities or limitations; and

(4) There is significant value in recognizing students' attendance and accomplishments in their individualized education programs and in allowing students with disabilities to participate in high school graduation ceremonies and activities with their age-appropriate peers without the forfeiture of their continuing special education and related services." [2007 c 318 § 1.]

Short title—2007 c 318: "This act may be known and cited as Kevin's law." [2007 c 318 § 3.]

Effective date—2007 c 318: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately [May 4, 2007]." [2007 c 318 § 4.]

28A.155.180 Safety net funds—Application—Technical assistance—Annual survey. The office of the superintendent of public instruction shall review and streamline the application process to access special education safety net funds, provide technical assistance to school districts, and annually survey school districts regarding improvements to the process. [2007 c 400 § 8.]

Captions not law—2007 c 400: See note following RCW 28A.150.210.

Chapter 28A.160 RCW STUDENT TRANSPORTATION

Sections

- 28A.160.170 Student transportation allocation—District's annual report to superintendent.
28A.160.205 School bus replacement incentive program—Rules.

28A.160.170 Student transportation allocation—District's annual report to superintendent. Each district shall submit to the superintendent of public instruction during October of each year a report containing the following:

(1)(a) The number of eligible students transported to and from school as provided for in RCW 28A.160.150 for the current school year and the number of miles estimated to be driven for pupil transportation services, along with a map describing student route stop locations and school locations, and (b) the number of miles driven for pupil transportation services as authorized in RCW 28A.160.150 the previous school year; and

(2) Other operational data and descriptions as required by the superintendent to determine allocation requirements for each district. The superintendent shall require that districts separate the costs of operating the program for the transportation of eligible students to and from school as defined by RCW 28A.160.160(3) from non-to-and-from-school pupil transportation costs in the annual financial statement.

Each district shall submit the information required in this section on a timely basis as a condition of the continuing receipt of school transportation moneys. [2007 c 139 § 1; 1990 c 33 § 143; 1983 1st ex.s. c 61 § 4; 1981 c 265 § 3. Formerly RCW 28A.41.515.]

Effective date—2007 c 139 § 1: "Section 1 of this act takes effect September 1, 2007." [2007 c 139 § 3.]

Severability—1983 1st ex.s. c 61: See note following RCW 28A.160.010.

Effective date—Severability—1981 c 265: See notes following RCW 28A.160.150.

28A.160.205 School bus replacement incentive program—Rules. (1) The office of the superintendent of public instruction shall implement a school bus replacement incentive program. As part of the program, the office shall fund up to ten percent of the cost of a new 2007 or later model year school bus that meets the 2007 federal motor vehicle emission control standards and is purchased by a school district by no later than June 30, 2009, provided that the new bus is replacing a 1994 or older school bus in the school district's fleet. Replacement of the oldest buses must be given highest priority.

(2) The office of the superintendent of public instruction shall ensure that buses being replaced through this program are surplus under RCW 28A.335.180. As part of the surplus process, school districts must provide written documentation to the office of the superintendent of public instruction demonstrating that buses being replaced are scrapped and not purchased for road use. The documentation must include bus make, model, year, vehicle identification number, engine make, engine serial number, and salvage yard receipts; and must demonstrate that the engine and body of the bus being replaced has been rendered unusable.

(3) The office of the superintendent of public instruction may adopt any rules necessary for the implementation of chapter 348, Laws of 2007. [2007 c 348 § 101.]

Reviser's note: 2007 c 348 directed that this section be added to chapter 28A.300 RCW. This section has been added to chapter 28A.160 RCW, which relates more directly to school bus acquisition.

Findings—Part headings not law—2007 c 348: See RCW 43.325.005 and 43.325.903.

Chapter 28A.175 RCW

DROPOUT PREVENTION, INTERVENTION, AND RETRIEVAL SYSTEM

(Formerly: Dropout prevention and retrieval program)

Sections

28A.175.025	Building bridges program—Grants.
28A.175.035	Grants—Criteria and requirements—Data collection—Third-party evaluator—Report.
28A.175.045	Grant awards—Recipients.
28A.175.055	Grant awards—Eligibility.
28A.175.065	Duties of educational service districts—Collaboration with workforce development councils.
28A.175.075	Work group—Duties—Reports.

28A.175.025 Building bridges program—Grants.

Subject to the availability of funds appropriated for this purpose, the office of the superintendent of public instruction shall create a grant program and award grants to local partnerships of schools, families, and communities to begin the phase in of a statewide comprehensive dropout prevention, intervention, and retrieval system. This program shall be known as the building bridges program.

(1) For purposes of RCW 28A.175.025 through 28A.175.075, a "building bridges program" means a local partnership of schools, families, and communities that provides all of the following programs or activities:

(a) A system that identifies individual students at risk of dropping out from middle through high school based on local predictive data, including state assessment data starting in the fourth grade, and provides timely interventions for such students and for dropouts, including a plan for educational success as already required by the student learning plan as defined under RCW 28A.655.061. Students identified shall include foster care youth, youth involved in the juvenile justice system, and students receiving special education services under chapter 28A.155 RCW;

(b) Coaches or mentors for students as necessary;

(c) Staff responsible for coordination of community partners that provide a seamless continuum of academic and non-academic support in schools and communities;

(d) Retrieval or reentry activities; and

(e) Alternative educational programming, including, but not limited to, career and technical education exploratory and preparatory programs and online learning opportunities.

(2) One of the grants awarded under this section shall be for a two-year demonstration project focusing on providing fifth through twelfth grade students with a program that utilizes technology and is integrated with state standards, basic academics, cross-cultural exposures, and age-appropriate preemployment training. The project shall:

(a) Establish programs in two western Washington and one eastern Washington urban areas;

(b) Identify at-risk students in each of the distinct communities and populations and implement strategies to close the achievement gap;

(c) Collect and report data on participant characteristics and outcomes of the project, including the characteristics and outcomes specified under RCW 28A.175.035(1)(e); and

(d) Submit a report to the legislature by December 1, 2009. [2007 c 408 § 2.]

Intent—Findings—2007 c 408: "It is the intent of the legislature that increasing academic success and increasing graduation rates be dual goals for the K-12 system. The legislature finds that only seventy-four percent of the class of 2005 graduated on time. Students of color, students living in poverty, students in foster care, students in the juvenile justice system, students who are homeless, students for whom English is not their primary language, and students with disabilities have lower graduation rates than the average. The legislature further finds that students who drop out experience more frequent occurrences of early pregnancy, delinquency, substance abuse, and mental health issues, and have greater need of publicly funded health and social services. The legislature further finds that helping all students be successful in school requires active participation in coordinating services from schools, parents, and other stakeholders and agencies in the local community. The legislature finds that existing resources to vulnerable youth are used more efficiently and effectively when there is significant coordination across local and state entities. The legislature further finds that efficiency and accountability of the K-12 system would be improved by creating a dropout prevention and intervention grant program that implements research-based and emerging best practices and evaluates results." [2007 c 408 § 1.]

28A.175.035 Grants—Criteria and requirements—Data collection—Third-party evaluator—Report. (1) The office of the superintendent of public instruction shall:

(a) Identify criteria for grants and evaluate proposals for funding in consultation with the workforce training and education coordinating board;

(b) Develop and monitor requirements for grant recipients to:

(i) Identify students who both fail the Washington assessment of student learning and drop out of school;

(ii) Identify their own strengths and gaps in services provided to youth;

(iii) Set their own local goals for program outcomes;

(iv) Use research-based and emerging best practices that lead to positive outcomes in implementing the building bridges program; and

(v) Coordinate an outreach campaign to bring public and private organizations together and to provide information about the building bridges program to the local community;

(c) In setting the requirements under (b) of this subsection, encourage creativity and provide for flexibility in implementing the local building bridges program;

(d) Identify and disseminate successful practices;

(e) Develop requirements for grant recipients to collect and report data, including, but not limited to:

(i) The number of and demographics of students served including, but not limited to, information regarding a student's race and ethnicity, a student's household income, a student's housing status, whether a student is a foster youth or youth involved in the juvenile justice system, whether a student is disabled, and the primary language spoken at a student's home;

(ii) Washington assessment of student learning scores;

(iii) Dropout rates;

(iv) On-time graduation rates;

(v) Extended graduation rates;

(vi) Credentials obtained;

(vii) Absenteeism rates;

(viii) Truancy rates; and

(ix) Credit retrieval;

(f) Contract with a third party to evaluate the infrastructure and implementation of the partnership including the leveraging of outside resources that relate to the goal of the partnership. The third-party contractor shall also evaluate the performance and effectiveness of the partnerships relative to the type of entity, as identified in RCW 28A.175.045, serving as the lead agency for the partnership; and

(g) Report to the legislature by December 1, 2008.

(2) In performing its duties under this section, the office of the superintendent of public instruction is encouraged to consult with the work group identified in RCW 28A.175.075. [2007 c 408 § 3.]

Intent—Findings—2007 c 408: See note following RCW 28A.175.025.

28A.175.045 Grant awards—Recipients. In awarding the grants under RCW 28A.175.025, the office of the superintendent of public instruction shall prioritize schools or districts with dropout rates above the statewide average and shall attempt to award building bridges program grants to different geographic regions of the state. Eligible recipients shall be one of the following entities acting as a lead agency for the local partnership: A school district, a tribal school, an area workforce development council, an educational service district, an accredited institution of higher education, a vocational skills center, a federally recognized tribe, a community organization, or a nonprofit 501(c)(3) corporation. If the recipient is not a school district, at least one school district must be identified within the partnership. The superintendent of public instruction shall ensure that grants are distributed proportionately between school districts and other recipients. This requirement may be waived if the superintendent of public instruction finds that the quality of the programs or applications from these entities does not warrant the awarding of the grants proportionately. [2007 c 408 § 4.]

Intent—Findings—2007 c 408: See note following RCW 28A.175.025.

28A.175.055 Grant awards—Eligibility. To be eligible for a grant under RCW 28A.175.025, grant applicants shall:

(1) Build or demonstrate a commitment to building a broad-based partnership of schools, families, and community members to provide an effective and efficient building

bridges program. The partnership shall consider an effective model for school-community partnerships and include local membership from, but not limited to, school districts, tribal schools, secondary career and technical education programs, skill centers that serve the local community, an educational service district, the area workforce development council, accredited institutions of higher education, tribes or other cultural organizations, the parent teacher association, the juvenile court, prosecutors and defenders, the local health department, health care agencies, public transportation agencies, local division representatives of the department of social and health services, businesses, city or county government agencies, civic organizations, and appropriate youth-serving community-based organizations. Interested parents and students shall be actively included whenever possible;

(2) Demonstrate how the grant will enhance any dropout prevention and intervention programs and services already in place in the district;

(3) Provide a twenty-five percent match that may include in-kind resources from within the partnership;

(4) Track and report data required by the grant; and

(5) Describe how the dropout prevention, intervention, and retrieval system will be sustained after initial funding, including roles of each of the partners. [2007 c 408 § 5.]

Intent—Findings—2007 c 408: See note following RCW 28A.175.025.

28A.175.065 Duties of educational service districts—Collaboration with workforce development councils. (1) Educational service districts, in collaboration with area workforce development councils, shall:

(a) Provide technical assistance to local partnerships established under a grant awarded under RCW 28A.175.025 in collecting and using performance data; and

(b) At the request of a local partnership established under a grant awarded under RCW 28A.175.025, provide assistance in the development of a functional sustainability plan, including the identification of potential funding sources for future operation.

(2) Local partnerships established under a grant awarded under RCW 28A.175.025 may contract with an educational service district, workforce development council, or a private agency for specialized training in such areas as cultural competency, identifying diverse learning styles, and intervention strategies for students at risk of dropping out of school. [2007 c 408 § 6.]

Intent—Findings—2007 c 408: See note following RCW 28A.175.025.

28A.175.075 Work group—Duties—Reports. (1) The office of the superintendent of public instruction shall establish a state-level work group that includes K-12 and state agencies that work with youth who have dropped out or are at risk of dropping out of school. The state-level leadership group shall consist of one representative from each of the following agencies and organizations: The workforce training and education coordinating board; career and technical education including skill centers; relevant divisions of the department of social and health services; the juvenile courts; the Washington association of prosecuting attorneys; the Washington state office of public defense; the employment

security department; accredited institutions of higher education; the educational service districts; the area workforce development councils; parent and educator associations; the department of health; local school districts; agencies or organizations that provide services to special education students; community organizations serving youth; federally recognized tribes and urban tribal centers; each of the major political caucuses of the senate and house of representatives; and the minority commissions.

(2) To assist and enhance the work of the building bridges programs established in RCW 28A.175.055, the state-level work group shall:

(a) Identify and make recommendations to the legislature for the reduction of fiscal, legal, and regulatory barriers that prevent coordination of program resources across agencies at the state and local level;

(b) Develop and track performance measures and benchmarks for each partner agency or organization across the state including performance measures and benchmarks based on student characteristics and outcomes specified in RCW 28A.175.035(1)(e); and

(c) Identify research-based and emerging best practices regarding prevention, intervention, and retrieval programs.

(3) The work group shall report to the legislature and the governor on an annual basis beginning December 1, 2007, with recommendations for implementing emerging best practices, needed additional resources, and eliminating barriers. [2007 c 408 § 7.]

Intent—Findings—2007 c 408: See note following RCW 28A.175.025.

Chapter 28A.210 RCW

HEALTH—SCREENING AND REQUIREMENTS

Sections

- 28A.210.080 Immunization program—Attendance of child conditioned upon presentation of alternative proofs—Information regarding meningococcal disease—Information regarding human papillomavirus disease.
- 28A.210.365 Food choice, physical activity, childhood fitness—Minimum standards—District waiver or exemption policy.

28A.210.080 Immunization program—Attendance of child conditioned upon presentation of alternative proofs—Information regarding meningococcal disease—Information regarding human papillomavirus disease.

(1) The attendance of every child at every public and private school in the state and licensed day care center shall be conditioned upon the presentation before or on each child's first day of attendance at a particular school or center, of proof of either (a) full immunization, (b) the initiation of and compliance with a schedule of immunization, as required by rules of the state board of health, or (c) a certificate of exemption as provided for in RCW 28A.210.090. The attendance at the school or the day care center during any subsequent school year of a child who has initiated a schedule of immunization shall be conditioned upon the presentation of proof of compliance with the schedule on the child's first day of attendance during the subsequent school year. Once proof of full immunization or proof of completion of an approved schedule has been presented, no further proof shall be required as a condition to attendance at the particular school or center.

[2007 RCW Supp—page 220]

(2)(a) Beginning with sixth grade entry, every public and private school in the state shall provide parents and guardians with information about meningococcal disease and its vaccine at the beginning of every school year. The information about meningococcal disease shall include:

(i) Its causes and symptoms, how meningococcal disease is spread, and the places where parents and guardians may obtain additional information and vaccinations for their children; and

(ii) Current recommendations from the United States centers for disease control and prevention regarding the receipt of vaccines for meningococcal disease and where the vaccination can be received.

(b) This subsection shall not be construed to require the department of health or the school to provide meningococcal vaccination to students.

(c) The department of health shall prepare the informational materials and shall consult with the office of superintendent of public instruction.

(d) This subsection does not create a private right of action.

(3)(a) Beginning with sixth grade entry, every public school in the state shall provide parents and guardians with information about human papillomavirus disease and its vaccine at the beginning of every school year. The information about human papillomavirus disease shall include:

(i) Its causes and symptoms, how human papillomavirus disease is spread, and the places where parents and guardians may obtain additional information and vaccinations for their children; and

(ii) Current recommendations from the United States centers for disease control and prevention regarding the receipt of vaccines for human papillomavirus disease and where the vaccination can be received.

(b) This subsection shall not be construed to require the department of health or the school to provide human papillomavirus vaccination to students.

(c) The department of health shall prepare the informational materials and shall consult with the office of the superintendent of public instruction.

(d) This subsection does not create a private right of action.

(4) Private schools are required by state law to notify parents that information on the human papillomavirus disease prepared by the department of health is available. [2007 c 276 § 1; 2005 c 404 § 1; 1990 c 33 § 192; 1985 c 49 § 1; 1979 ex.s. c 118 § 3. Formerly RCW 28A.31.104.]

Effective date—Severability—1979 ex.s. c 118: See notes following RCW 28A.210.060.

28A.210.365 Food choice, physical activity, childhood fitness—Minimum standards—District waiver or exemption policy. It is the goal of Washington state to ensure that:

(1) By 2010, all K-12 districts have school health advisory committees that advise school administration and school board members on policies, environmental changes, and programs needed to support healthy food choice and physical activity and childhood fitness. Districts shall include school nurses or other school personnel as advisory committee members.

(2) By 2010, only healthy food and beverages provided by schools during school hours or for school-sponsored activities shall be available on school campuses. Minimum standards for available food and beverages, except food served as part of a United States department of agriculture meal program, are:

(a) Not more than thirty-five percent of its total calories shall be from fat. This restriction does not apply to nuts, nut butters, seeds, eggs, fresh or dried fruits, vegetables that have not been deep-fried, legumes, reduced-fat cheese, part-skim cheese, nonfat dairy products, or low-fat dairy products;

(b) Not more than ten percent of its total calories shall be from saturated fat. This restriction does not apply to eggs, reduced-fat cheese, part-skim cheese, nonfat dairy products, or low-fat dairy products;

(c) Not more than thirty-five percent of its total weight or fifteen grams per food item shall be composed of sugar, including naturally occurring and added sugar. This restriction does not apply to the availability of fresh or dried fruits and vegetables that have not been deep-fried; and

(d) The standards for food and beverages in this subsection do not apply to:

(i) Low-fat and nonfat flavored milk with up to thirty grams of sugar per serving;

(ii) Nonfat or low-fat rice or soy beverages; or

(iii) One hundred percent fruit or vegetable juice.

(3) By 2010, all students in grades one through eight should have at least one hundred fifty minutes of quality physical education every week.

(4) By 2010, all student health and fitness instruction shall be conducted by appropriately certified instructors.

(5) Beginning with the 2011-2012 school year, any district waiver or exemption policy from physical education requirements for high school students should be based upon meeting both health and fitness curricula concepts as well as alternative means of engaging in physical activity, but should acknowledge students' interest in pursuing their academic interests. [2007 c 5 § 5.]

Chapter 28A.215 RCW

EARLY CHILDHOOD, PRESCHOOLS, AND BEFORE-AND-AFTER SCHOOL CARE

Sections

28A.215.060 Community learning center program—Purpose—Grants—Reports.

28A.215.060 Community learning center program—Purpose—Grants—Reports. (1) The Washington community learning center program is established. The program shall be administered by the office of the superintendent of public instruction. The purposes of the program include:

(a) Supporting the creation or expansion of community learning centers that provide students with tutoring and educational enrichment when school is not in session;

(b) Providing training and professional development for community learning center program staff;

(c) Increasing public awareness of the availability and benefits of after-school programs; and

(d) Supporting statewide after-school intermediary organizations in their efforts to provide leadership, coordination,

technical assistance, advocacy, and programmatic support to after-school programs throughout the state.

(2)(a) Subject to funds appropriated for this purpose, the office of the superintendent of public instruction may provide community learning center grants to any public or private organization that meets the eligibility criteria of the federal twenty-first century community learning centers program.

(b) Priority may be given to grant requests submitted jointly by one or more schools or school districts and one or more community-based organizations or other nonschool partners.

(c) Priority may also be given to grant requests for after-school programs focusing on improving mathematics achievement, particularly for middle and junior high school students.

(d) Priority shall be given to grant requests that:

(i) Focus on improving reading and mathematics proficiency for students who attend schools that have been identified as being in need of improvement under section 1116 of Title I of the federal no child left behind act of 2001; and

(ii) Include a public/private partnership agreement or proposal for how to provide free transportation for those students in need that are involved in the program.

(3) Community learning center grant funds may be used to carry out a broad array of out-of-school activities that support and enhance academic achievement. The activities may include but need not be limited to:

(a) Remedial and academic enrichment;

(b) Mathematics, reading, and science education;

(c) Arts and music education;

(d) Entrepreneurial education;

(e) Community service;

(f) Tutoring and mentoring programs;

(g) Programs enhancing the language skills and academic achievement of limited English proficient students;

(h) Recreational and athletic activities;

(i) Telecommunications and technology education;

(j) Programs that promote parental involvement and family literacy;

(k) Drug and violence prevention, counseling, and character education programs; and

(l) Programs that assist students who have been truant, suspended, or expelled, to improve their academic achievement.

(4) Each community learning center grant may be made for a maximum of five years. Each grant recipient shall report annually to the office of the superintendent of public instruction on what transportation services are being used to assist students in accessing the program and how those services are being funded. Based on this information, the office of the superintendent of public instruction shall compile a list of transportation service options being used and make that list available to all after-school program providers that were eligible for the community learning center program grants.

(5) To the extent that funding is available for this purpose, the office of the superintendent of public instruction may provide grants or other support for the training and professional development of community learning center staff, the activities of intermediary after-school organizations, and efforts to increase public awareness of the availability and benefits of after-school programs.

(6) Schools or school districts that receive a community learning center grant under this section may seek approval from the office of the superintendent of public instruction for flexibility to use a portion of their state transportation funds for the costs of transporting students to and from the community learning center program.

(7) The office of the superintendent of public instruction shall evaluate program outcomes and report to the governor and the education committees of the legislature on the outcomes of the grants and make recommendations related to program modification, sustainability, and possible expansion. An interim report is due November 1, 2008. A final report is due December 1, 2009. [2007 c 400 § 5.]

Captions not law—2007 c 400: See note following RCW 28A.150.210.

Chapter 28A.220 RCW TRAFFIC SAFETY

Sections

28A.220.080 Information on motorcycle awareness.

28A.220.080 Information on motorcycle awareness.

The superintendent of public instruction shall include information on motorcycle awareness, approved by the director of licensing, in instructional material used in traffic safety education courses, to ensure new operators of motor vehicles have been instructed in the importance of safely sharing the road with motorcyclists. [2007 c 97 § 4; 2004 c 126 § 1.]

Chapter 28A.230 RCW

COMPULSORY COURSE WORK AND ACTIVITIES

Sections

- 28A.230.130 Program to help students meet minimum entrance requirements at baccalaureate-granting institutions or to pursue career or other opportunities—Exceptions. (*Effective until September 1, 2009.*)
- 28A.230.130 Program to help students meet minimum entrance requirements at baccalaureate-granting institutions or to pursue career or other opportunities. (*Effective September 1, 2009.*)
- 28A.230.205 Financial literacy skills—Duties of the superintendent of public instruction and of school districts.

28A.230.130 Program to help students meet minimum entrance requirements at baccalaureate-granting institutions or to pursue career or other opportunities—Exceptions. (*Effective until September 1, 2009.*) (1) All public high schools of the state shall provide a program, directly or in cooperation with a community college or another school district, for students whose educational plans include application for entrance to a baccalaureate-granting institution after being granted a high school diploma. The program shall help these students to meet at least the minimum entrance requirements under RCW 28B.10.050.

(2) All public high schools of the state shall provide a program, directly or in cooperation with a community or technical college, a skills center, an apprenticeship committee, or another school district, for students who plan to pursue career or work opportunities other than entrance to a bacca-

laureate-granting institution after being granted a high school diploma. These programs may:

(a) Help students demonstrate the application of essential academic learning requirements to the world of work, occupation-specific skills, knowledge of more than one career in a chosen pathway, and employability and leadership skills; and

(b) Help students demonstrate the knowledge and skill needed to prepare for industry certification, and/or have the opportunity to articulate to postsecondary education and training programs.

(3) Within funds specifically appropriated therefor, a middle school that receives approval from the office of the superintendent of public instruction to provide a career and technical program directly to students shall receive funding at the same rate as a high school operating a similar program. Additionally, a middle school that provides a hands-on experience in math and science with an integrated curriculum of academic content and career and technical education, and includes a career and technical education exploratory component shall also qualify for the career and technical education funding.

(4) The state board of education, upon request from local school districts, may grant waivers from the requirements to provide the program described in subsections (1) and (2) of this section for reasons relating to school district size and the availability of staff authorized to teach subjects which must be provided. In considering waiver requests related to programs in subsection (2) of this section, the state board of education shall consider the extent to which the school district has offered such programs before the 2003-04 school year. [2007 c 396 § 13; 2003 c 49 § 2; 1991 c 116 § 9; 1988 c 172 § 2; 1984 c 278 § 16. Formerly RCW 28A.05.070.]

Expiration date—2007 c 396 § 13: "Section 13 of this act expires September 1, 2009." [2007 c 396 § 20.]

Captions not law—2007 c 396: See note following RCW 28A.305.215.

Finding—Intent—2007 c 396: See note following RCW 28A.300.515.

Effective date—1984 c 278: "Sections 16, 18, and 19 of this act shall take effect July 1, 1986." [1984 c 278 § 23.]

Severability—1984 c 278: See note following RCW 28A.185.010.

28A.230.130 Program to help students meet minimum entrance requirements at baccalaureate-granting institutions or to pursue career or other opportunities. (*Effective September 1, 2009.*) (1) All public high schools of the state shall provide a program, directly or in cooperation with a community college or another school district, for students whose educational plans include application for entrance to a baccalaureate-granting institution after being granted a high school diploma. The program shall help these students to meet at least the minimum entrance requirements under RCW 28B.10.050.

(2) All public high schools of the state shall provide a program, directly or in cooperation with a community or technical college, a skills center, an apprenticeship committee, or another school district, for students who plan to pursue career or work opportunities other than entrance to a baccalaureate-granting institution after being granted a high school diploma. These programs may:

(a) Help students demonstrate the application of essential academic learning requirements to the world of work, occupation-specific skills, knowledge of more than one career in a chosen pathway, and employability and leadership skills; and

(b) Help students demonstrate the knowledge and skill needed to prepare for industry certification, and/or have the opportunity to articulate to postsecondary education and training programs.

(3) Within funds specifically appropriated therefor, a middle school that receives approval from the office of the superintendent of public instruction to provide a career and technical program directly to students shall receive funding at the same rate as a high school operating a similar program. Additionally, a middle school that provides a hands-on experience in math and science with an integrated curriculum of academic content and career and technical education, and includes a career and technical education exploratory component shall also qualify for the career and technical education funding. [2007 c 396 § 14; 2006 c 263 § 407; 2003 c 49 § 2; 1991 c 116 § 9; 1988 c 172 § 2; 1984 c 278 § 16. Formerly RCW 28A.05.070.]

Effective date—2007 c 396 § 14: "Section 14 of this act takes effect September 1, 2009." [2007 c 396 § 21.]

Captions not law—2007 c 396: See note following RCW 28A.305.215.

Finding—Intent—2007 c 396: See note following RCW 28A.300.515.

Effective date—2006 c 263 § 407: "Section 407 of this act takes effect September 1, 2009." [2006 c 263 § 1002.]

Findings—Purpose—Part headings not law—2006 c 263: See notes following RCW 28A.150.230.

Effective date—1984 c 278: "Sections 16, 18, and 19 of this act shall take effect July 1, 1986." [1984 c 278 § 23.]

Severability—1984 c 278: See note following RCW 28A.185.010.

28A.230.205 Financial literacy skills—Duties of the superintendent of public instruction and of school districts.

(1) To the extent funds are appropriated or are available for this purpose, the superintendent of public instruction and other members of the partnership created in RCW 28A.300.455 shall make available to school districts the list of identified financial literacy skills and knowledge, instructional materials, assessments, and other relevant information.

(2) Each school district is encouraged to provide its students with an opportunity to master the financial literacy skills and knowledge developed under RCW 28A.300.460.

(3) For the purposes of RCW 28A.300.455, 28A.300.460, and this section, it is not necessary to evaluate and apply the office of the superintendent of public instruction essential academic learning requirements or to develop grade level expectations. [2007 c 459 § 3.]

Effective date—2007 c 459: See note following RCW 28A.300.455.

Chapter 28A.245 RCW SKILL CENTERS

Sections

- 28A.245.005 Findings.
- 28A.245.010 Skill centers—Purpose—Operation.
- 28A.245.020 Funding—Equivalency and apportionment.

28A.245.030 Revised guidelines for skill centers—Satellite and branch campus programs—Capital plan—Studies—Master plan—Rules.

28A.245.040 Expanded access—Targeted populations—Evaluation.

28A.245.050 Skill centers of excellence—Running start for career and technical education grant program—Career and technical programs of study.

28A.245.060 Director of skill centers.

28A.245.005 Findings. The legislature finds that student access to programs offered at skill centers can help prepare them for careers, apprenticeships, and postsecondary education. The legislature further finds that current limits on how school districts and skill centers report full-time equivalent students and the time students are served provide a disincentive for school districts to send their students to skill centers. The legislature further finds that there are barriers to providing access to students in rural and remote areas but that there are opportunities to do so with satellite and branch campus programs, distance and online learning programs, and collaboration with higher education, business, and labor. The legislature further finds that skill centers provide opportunities for dropout prevention and retrieval programs by offering programs that accommodate students' work schedules and provide credit retrieval opportunities. The legislature further finds that implementing the recommendations from the study by the workforce training and education coordinating board will enhance skill center programs and student access to those programs. [2007 c 463 § 1.]

28A.245.010 Skill centers—Purpose—Operation. A skill center is a regional career and technical education partnership established to provide access to comprehensive industry-defined career and technical programs of study that prepare students for careers, employment, apprenticeships, and postsecondary education. A skill center is operated by a host school district and governed by an administrative council in accordance with a cooperative agreement. [2007 c 463 § 2.]

28A.245.020 Funding—Equivalency and apportionment. Beginning in the 2007-08 school year and thereafter, students attending skill centers shall be funded for all classes at the skill center and the sending districts, up to one and six-tenths full-time equivalents or as determined in the omnibus appropriations act. The office of the superintendent of public instruction shall develop procedures to ensure that the school district and the skill center report no student for more than one and six-tenths full-time equivalent students combining both their high school enrollment and skill center enrollment. Additionally, the office of the superintendent of public instruction shall develop procedures for determining the appropriate share of the full-time equivalent enrollment count between the resident high school and skill center. [2007 c 463 § 3.]

28A.245.030 Revised guidelines for skill centers—Satellite and branch campus programs—Capital plan—Studies—Master plan—Rules. (1) The office of the superintendent of public instruction shall review and revise the guidelines for skill centers to encourage skill center programs. The superintendent, in cooperation with the work-

force training and education coordinating board, skill center directors, and the Washington association for career and technical education, shall review and revise the existing skill centers' policy guidelines and create and adopt rules governing skill centers as follows:

(a) The threshold enrollment at a skill center shall be revised so that a skill center program need not have a minimum of seventy percent of its students enrolled on the skill center core campus in order to facilitate serving rural students through expansion of skill center programs by means of satellite programs or branch campuses;

(b) The developmental planning for branch campuses shall be encouraged. Underserved rural areas or high-density areas may partner with an existing skill center to create satellite programs or a branch campus. Once a branch campus reaches sufficient enrollment to become self-sustaining, it may become a separate skill center or remain an extension of the founding skill center; and

(c) Satellite and branch campus programs shall be encouraged to address high-demand fields.

(2) Rules adopted under this section shall allow for innovative models of satellite and branch campus programs, and such programs shall not be limited to those housed in physical buildings.

(3) The superintendent of public instruction shall develop and deliver a ten-year capital plan for legislative review before implementation.

(4) Subject to available funding, the superintendent shall:

(a) Conduct approved feasibility studies for serving non-cooperative rural and high-density area students in their geographic areas; and

(b) Develop a statewide master plan that identifies standards and resources needed to create a technology infrastructure for connecting all skill centers to the K-20 network. [2007 c 463 § 4.]

28A.245.040 Expanded access—Targeted populations—Evaluation. Subject to available funding, skill centers shall provide access to late afternoon and evening sessions and summer school programs, to rural and high-density area students aligned with regionally identified high-demand occupations. When possible, the programs shall be specifically targeted for credit retrieval, dropout prevention and intervention for at-risk students, and retrieval of dropouts. Skill centers that receive funding for these activities must participate in an evaluation that is designed to quantify results and identify best practices, collaborate with local community partners in providing a comprehensive program, and provide matching funds. [2007 c 463 § 5.]

28A.245.050 Skill centers of excellence—Running start for career and technical education grant program—Career and technical programs of study. (1) The superintendent of public instruction shall establish and support skill centers of excellence in key economic sectors of regional significance. The superintendent shall broker the development of skill centers of excellence and identify their roles in developing curriculum and methodologies for reporting skill cen-

ter course equivalencies for purposes of high school graduation.

(2) Once the skill centers of excellence are established, the superintendent of public instruction shall develop and seek funding for a running start for career and technical education grant program to develop and implement career and technical programs of study targeted to regionally determined high-demand occupations. Grant recipients should be partnerships of skill centers of excellence, community college centers of excellence, tech-prep programs, industry advisory committees, area workforce development councils, and skill panels in the related industry. Grant recipients should be expected to develop and assist in the replication of model career and technical education programs of study. The career and technical education programs of study developed should be consistent with the expectations in the applicable federal law. [2007 c 463 § 6.]

28A.245.060 Director of skill centers. The superintendent of public instruction shall assign at least one full-time equivalent staff position within the office of the superintendent of public instruction to serve as the director of skill centers. [2007 c 463 § 7.]

Chapter 28A.300 RCW

SUPERINTENDENT OF PUBLIC INSTRUCTION

Sections

28A.300.285	Harassment, intimidation, and bullying prevention policies—Model policy and training materials—Posting on web site—Advisory committee.
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28A.300.455	Financial literacy public-private partnership responsibilities—Definition of financial literacy—Strategies—Reports.
28A.300.460	Financial literacy public-private partnership responsibilities.
28A.300.470	Financial literacy public-private partnership—Expiration.
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28A.300.505	School data systems—Standards—Reporting format.
28A.300.510	After-school mathematics support program—Reports.
28A.300.515	Statewide director for math, science, and technology—Duties—Reporting.
28A.300.520	Policies to support children of incarcerated parents.
28A.300.801	Legislative youth advisory council. (<i>Expires June 30, 2009.</i>)

Duties with regard to the GET ready for math and science scholarship program: RCW 28B.105.060.

28A.300.285 Harassment, intimidation, and bullying prevention policies—Model policy and training materials—Posting on web site—Advisory committee. (1) By August 1, 2003, each school district shall adopt or amend if necessary a policy, within the scope of its authority, that prohibits the harassment, intimidation, or bullying of any student. It is the responsibility of each school district to share this policy with parents or guardians, students, volunteers, and school employees.

(2) "Harassment, intimidation, or bullying" means any intentional electronic, written, verbal, or physical act, including but not limited to one shown to be motivated by any characteristic in RCW 9A.36.080(3), or other distinguishing characteristics, when the intentional electronic, written, verbal, or physical act:

(a) Physically harms a student or damages the student's property; or

(b) Has the effect of substantially interfering with a student's education; or

(c) Is so severe, persistent, or pervasive that it creates an intimidating or threatening educational environment; or

(d) Has the effect of substantially disrupting the orderly operation of the school.

Nothing in this section requires the affected student to actually possess a characteristic that is a basis for the harassment, intimidation, or bullying.

(3) The policy should be adopted or amended through a process that includes representation of parents or guardians, school employees, volunteers, students, administrators, and community representatives. It is recommended that each such policy emphasize positive character traits and values, including the importance of civil and respectful speech and conduct, and the responsibility of students to comply with the district's policy prohibiting harassment, intimidation, or bullying.

(4) By August 1, 2002, the superintendent of public instruction, in consultation with representatives of parents, school personnel, and other interested parties, shall provide to school districts and educational service districts a model harassment, intimidation, and bullying prevention policy and training materials on the components that should be included in any district policy. Training materials shall be disseminated in a variety of ways, including workshops and other staff developmental activities, and through the office of the superintendent of public instruction's web site, with a link to the safety center web page. On the web site:

(a) The office of the superintendent of public instruction shall post its model policy, recommended training materials, and instructional materials;

(b) The office of the superintendent of public instruction has the authority to update with new technologies access to this information in the safety center, to the extent resources are made available; and

(c) Individual school districts shall have direct access to the safety center web site to post a brief summary of their policies, programs, partnerships, vendors, and instructional and training materials, and to provide a link to the school district's web site for further information.

(5) The Washington state school directors association, with the assistance of the office of the superintendent of public instruction, shall convene an advisory committee to develop a model policy prohibiting acts of harassment, intimidation, or bullying that are conducted via electronic means by a student while on school grounds and during the school day. The policy shall include a requirement that materials meant to educate parents and students about the seriousness of cyberbullying be disseminated to parents or made available on the school district's web site. The school directors association and the advisory committee shall develop sample materials for school districts to disseminate, which shall also include information on responsible and safe internet use as well as what options are available if a student is being bullied via electronic means, including but not limited to, reporting threats to local police and when to involve school officials, the internet service provider, or phone service provider. The school directors association shall submit the model policy

and sample materials, along with a recommendation for local adoption, to the governor and the legislature and shall post the model policy and sample materials on its web site by January 1, 2008. Each school district board of directors shall establish its own policy by August 1, 2008.

(6) As used in this section, "electronic" or "electronic means" means any communication where there is the transmission of information by wire, radio, optical cable, electromagnetic, or other similar means. [2007 c 407 § 1; 2002 c 207 § 2.]

Findings—2002 c 207: "The legislature declares that a safe and civil environment in school is necessary for students to learn and achieve high academic standards. The legislature finds that harassment, intimidation, or bullying, like other disruptive or violent behavior, is conduct that disrupts both a student's ability to learn and a school's ability to educate its students in a safe environment.

Furthermore, the legislature finds that students learn by example. The legislature commends school administrators, faculty, staff, and volunteers for demonstrating appropriate behavior, treating others with civility and respect, and refusing to tolerate harassment, intimidation, or bullying." [2002 c 207 § 1.]

28A.300.350 Repealed. See Supplementary Table of Disposition of Former RCW Sections, this volume.

28A.300.455 Financial literacy public-private partnership responsibilities—Definition of financial literacy—Strategies—Reports. (1) By September 30, 2004, the financial literacy public-private partnership shall adopt a definition of financial literacy to be used in educational efforts.

(2) By June 30, 2009, the financial literacy public-private partnership shall identify strategies to increase the financial literacy of public school students in our state. To the extent funds are available, strategies to be considered by the partnership shall include, but not be limited to:

(a) Identifying and making available to school districts:

(i) Important financial literacy skills and knowledge;

(ii) Ways in which teachers at different grade levels may integrate financial literacy in mathematics, social studies, and other course content areas;

(iii) Instructional materials and programs, including schoolwide programs, that include the important financial literacy skills and knowledge;

(iv) Assessments and other outcome measures that schools and communities may use to determine whether students are financially literate; and

(v) Other strategies for expanding and increasing the quality of financial literacy instruction in public schools, including professional development for teachers;

(b) Developing a structure and set of operating principles for the financial literacy public-private partnership to assist interested school districts in improving the financial literacy of their students by providing such things as financial literacy instructional materials and professional development; and

(c) Providing a report to the governor, the house and senate financial institutions and education committees of the legislature, the superintendent of public instruction, the state board of education, and education stakeholder groups, on the results of work of the financial literacy public-private partnership. An interim report shall be submitted to the same parties by June 30, 2007, with a final report by June 30, 2009. [2007 c 459 § 1; 2005 c 277 § 2; 2004 c 247 § 3.]

Effective date—2007 c 459: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately [May 14, 2007]." [2007 c 459 § 5.]

Intent—2005 c 277: "The legislature has directed the financial literacy public-private partnership to complete certain tasks to support efforts to increase the level of financial literacy in the common schools. In order to promote a greater understanding by students of the consequences of a dishonored check, the legislature intends to extend by one year the date by which the financial literacy public-private partnership must identify strategies to increase the financial literacy of public school students in Washington." [2005 c 277 § 1.]

Findings—Intent—2004 c 247: See note following RCW 28A.300.450.

28A.300.460 Financial literacy public-private partnership responsibilities. The task of the financial literacy public-private partnership is to seek out and determine the best methods of equipping students with the knowledge and skills they need, before they become self-supporting, in order for them to make critical decisions regarding their personal finances. The components of personal financial literacy examined shall include, at a minimum, consumer financial education, personal finance, and personal credit. The partnership shall identify the types of outcome measures expected from participating districts and students, in accordance with the definitions and outcomes developed under RCW 28A.300.455. [2007 c 459 § 2; 2004 c 247 § 5.]

Effective date—2007 c 459: See note following RCW 28A.300.455.

Findings—Intent—2004 c 247: See note following RCW 28A.300.450.

28A.300.470 Financial literacy public-private partnership—Expiration. The financial literacy public-private partnership expires June 30, 2009. [2007 c 459 § 4; 2004 c 247 § 7.]

Effective date—2007 c 459: See note following RCW 28A.300.455.

Findings—Intent—2004 c 247: See note following RCW 28A.300.450.

28A.300.475 Medically accurate sexual health education—Curricula—Participation excused—Parental review. (1) By September 1, 2008, every public school that offers sexual health education must assure that sexual health education is medically and scientifically accurate, age-appropriate, appropriate for students regardless of gender, race, disability status, or sexual orientation, and includes information about abstinence and other methods of preventing unintended pregnancy and sexually transmitted diseases. All sexual health information, instruction, and materials must be medically and scientifically accurate. Abstinence may not be taught to the exclusion of other materials and instruction on contraceptives and disease prevention. A school may choose to use separate, outside speakers or prepared curriculum to teach different content areas or units within the comprehensive sexual health program as long as all speakers, curriculum, and materials used are in compliance with this section. Sexual health education must be consistent with the January 2005 guidelines for sexual health information and disease prevention developed by the department of health and the office of the superintendent of public instruction.

(2) As used in chapter 265, Laws of 2007, "medically and scientifically accurate" means information that is verified

or supported by research in compliance with scientific methods, is published in peer-review journals, where appropriate, and is recognized as accurate and objective by professional organizations and agencies with expertise in the field of sexual health including but not limited to the American college of obstetricians and gynecologists, the Washington state department of health, and the federal centers for disease control and prevention.

(3) The superintendent of public instruction and the department of health shall make the January 2005 guidelines for sexual health information and disease prevention available to school districts, teachers, and guest speakers on their web sites. Within available resources, the superintendent of public instruction and the department of health shall make any related information, model policies, curricula, or other resources available as well.

(4) The superintendent of public instruction, in consultation with the department of health, shall develop a list of sexual health education curricula that are consistent with the 2005 guidelines for sexual health information and disease prevention. This list shall be intended to serve as a resource for schools, teachers, or any other organization or community group, and shall be updated no less frequently than annually and made available on the web sites of the office of the superintendent of public instruction and the department of health.

(5) Public schools that offer sexual health education are encouraged to review their sexual health curricula and choose a curriculum from the list developed under subsection (4) of this section. Any public school that offers sexual health education may identify, choose, or develop any other curriculum, if the curriculum chosen or developed complies with the requirements of this section.

(6) Any parent or legal guardian who wishes to have his or her child excused from any planned instruction in sexual health education may do so upon filing a written request with the school district board of directors or its designee, or the principal of the school his or her child attends, or the principal's designee. In addition, any parent or legal guardian may review the sexual health education curriculum offered in his or her child's school by filing a written request with the school district board of directors, the principal of the school his or her child attends, or the principal's designee.

(7) The office of the superintendent of public instruction shall, through its Washington state school health profiles survey or other existing reporting mechanism, ask public schools to identify any curricula used to provide sexual health education, and shall report the results of this inquiry to the legislature on a biennial basis, beginning with the 2008-09 school year.

(8) The requirement to report harassment, intimidation, or bullying under RCW 28A.600.480(2) applies to this section. [2007 c 265 § 2.]

Finding—Intent—2007 c 265: "(1) The legislature finds that young people should have the knowledge and skills necessary to build healthy relationships, and to protect themselves from unintended pregnancy and sexually transmitted diseases, including HIV infection. The primary responsibility for sexual health education is with parents and guardians. However, this responsibility also extends to schools and other community groups. It is in the public's best interest to ensure that young people are equipped with medically and scientifically accurate, age-appropriate information that will help them avoid unintended pregnancies, remain free of sexually transmitted diseases, and make informed, responsible decisions throughout their lives.

(2) The legislature intends to support and advance the standards estab-

lished in the January 2005 guidelines for sexual health information and disease prevention developed by the office of the superintendent of public instruction and the department of health. These guidelines are a fundamental tool to help school districts, teachers, guest speakers, health and counseling providers, community groups, parents, and guardians choose, develop, and evaluate sexual health curricula to better meet the health and safety needs of adolescents and young adults in their communities." [2007 c 265 § 1.]

Short title—2007 c 265: "This act may be known and cited as the healthy youth act." [2007 c 265 § 3.]

28A.300.480 Civic education travel grant program.

(1) The civic education travel grant program is created to provide travel grants to students participating in statewide, regional, national, or international civic education competitions or events.

(2) The superintendent of public instruction shall allocate grants under the program established in this section from private donations or with amounts appropriated for this specific purpose. The grants shall be awarded on a competitive basis.

(3) The superintendent of public instruction may contract with independent review panelists and establish an advisory panel to evaluate and make recommendations to the superintendent of public instruction based on grant applications.

(4) The superintendent of public instruction shall select grant recipients from student applicants that meet all of the following criteria:

(a) Students must be residents of the state of Washington;

(b) Students must use the grants to fund travel to civic education-based competitions or events;

(c) Students must be participants in the civic education competition or event; and

(d) Students must be under the age of twenty-one and not yet have received their high school diploma.

(5) Students are encouraged to seek matching funds, in-kind contributions, or other sources of support to supplement their travel expenses.

(6) Applicants must include in the grant application the following:

(a) A brief description of the civic education competition or event;

(b) A brief description of what the applicant expects to learn from the competition or event;

(c) The total travel costs and how much the applicant is requesting from the program; and

(d) The total amount of matching funds the applicant has already secured or expects to secure.

(7) The superintendent of public instruction may adopt other criteria as appropriate for the review of grant proposals. In reviewing student applications for funding, scoring shall be based on an evaluation of all application materials that may be requested of applicants. The superintendent of public instruction shall consider the overall breadth and variety of the field of applicants to determine the projects that would best fulfill the program's goal. Final grant awards may be for the full amount of the grant request or for a portion of the grant request.

(8) The office of the superintendent of public instruction may accept gifts, grants, or endowments from public or private sources for the program and may spend any gifts, grants,

or endowments or income from public or private sources according to their terms. [2007 c 291 § 3.]

Finding—Effective date—2007 c 291: See notes following RCW 28A.300.801.

28A.300.490 Task force on gangs in schools—

Reports. (1) A task force on gangs in schools is created to examine current adult and youth gang activities that are affecting school safety. The task force shall work under the guidance of the superintendent of public instruction school safety center, the school safety center advisory committee, and the Washington association of sheriffs and police chiefs.

(2) The task force shall be comprised of representatives, selected by the superintendent of public instruction, who possess expertise relevant to gang activity in schools. The task force shall outline methods for preventing new gangs, eliminating existing gangs, gathering intelligence, and sharing information about gang activities.

(3) Beginning December 1, 2007, the task force shall annually report its findings and recommendations to the education committees of the legislature. [2007 c 406 § 2.]

28A.300.500 Longitudinal student data system. (1)

The office of the superintendent of public instruction is authorized to establish a longitudinal student data system for and on behalf of school districts in the state. The primary purpose of the data system is to better aid research into programs and interventions that are most effective in improving student performance, better understand the state's public educator workforce, and provide information on areas within the educational system that need improvement.

(2) The confidentiality of personally identifiable student data shall be safeguarded consistent with the requirements of the federal family educational rights privacy act and applicable state laws. Consistent with the provisions of these federal and state laws, data may be disclosed for educational purposes and studies, including but not limited to:

(a) Educational studies authorized or mandated by the state legislature;

(b) Studies initiated by other state educational authorities and authorized by the office of the superintendent of public instruction, including analysis conducted by the education data center established under RCW 43.41.400; and

(c) Studies initiated by other public or private agencies and organizations and authorized by the office of the superintendent of public instruction.

(3) Any agency or organization that is authorized by the office of the superintendent of public instruction to access student-level data shall adhere to all federal and state laws protecting student data and safeguarding the confidentiality and privacy of student records.

(4) Nothing in this section precludes the office of the superintendent of public instruction from collecting and distributing aggregate data about students or student-level data without personally identifiable information. [2007 c 401 § 2.]

Feasibility study—2007 c 401: "(1) To the extent funds are appropriated for this purpose, the office of the superintendent of public instruction shall conduct a feasibility study on expanding the longitudinal student data system beyond the elements currently collected and those required under RCW 28A.320.175.

(2) The office of the superintendent of public instruction, in consulta-

tion with the work group established under subsection (5) of this section, shall identify a preliminary set of additional data elements whose collection shall be field tested on a pilot basis in at least two school districts, with at least one with over twenty thousand in full-time equivalent enrollment and at least one with less than two thousand in full-time equivalent enrollment. Among the data elements to be field tested shall be course codes for a limited set of core high school mathematics courses, based on the classification of secondary school courses by the national center for education statistics.

(3) Additional topics addressed by the feasibility study shall include, but are not limited to:

(a) Detailed estimates on the cost of the development and implementation of the expanded data system;

(b) A final list of specific data elements that are necessary to allow effective and efficient research on an individual school, district, and state-wide basis, and of those data elements, identification of what data is currently reported by schools and school districts and what is not reported;

(c) An implementation plan for consistent coding of secondary courses in subjects other than mathematics that is based on a national classification system;

(d) A phased-in implementation of a comprehensive data system with school-level financial, student, teacher, and community variables consistent with recommendations of the joint legislative audit and review committee; and

(e) The staffing and related impacts on schools and school districts from the collection of the recommended data elements and consideration of ways to reduce duplicate reporting of data.

(4) By November 1, 2008, the office of the superintendent of public instruction shall provide a final report on the results of the feasibility study, including the results from the field tests, to the appropriate policy and fiscal committees of the legislature.

(5) To assist in conducting the feasibility study and field tests and in carrying out the responsibilities assigned under RCW 28A.300.505, the office of the superintendent of public instruction shall convene a work group comprised of representatives of the following agencies and organizations: The education data center established under RCW 43.41.400, the Washington state institute for public policy, the professional educator standards board, the state board of education, the joint legislative audit and review committee, the center for analysis of longitudinal data in education research, other research organizations as appropriate, school districts of varying sizes and geographic locations, educational service districts, the Washington school information processing cooperative, at least one additional school information system vendor, the association of Washington school principals, the Washington association of school administrators, the Washington education association, the Washington association of school business officials, the Washington association of colleges for teacher education, and the Washington state school directors' association." [2007 c 401 § 6.]

Findings—2007 c 401: "The legislature finds that:

(1) Reliable data on student progress, characteristics of students and schools, and teacher qualifications and mobility is critical for accountability to the state and to the public;

(2) Educational data should be made available as widely as possible while appropriately protecting the privacy of individuals as provided by law;

(3) Having a single, comprehensive, and technically compatible student and school-level data system will streamline data collection for school districts, reduce inefficiencies caused by the lack of connectivity, and minimize or eliminate multiple data entry; and

(4) Schools and districts should be supported in their management of educational data and should have access to user-friendly programs and reports that can be readily used by classroom teachers and building principals to improve instruction." [2007 c 401 § 1.]

28A.300.505 School data systems—Standards—Reporting format. (1) The office of the superintendent of public instruction shall develop standards for school data systems that focus on validation and verification of data entered into the systems to ensure accuracy and compatibility of data. The standards shall address but are not limited to the following topics:

(a) Date validation;

(b) Code validation, which includes gender, race or ethnicity, and other code elements;

(c) Decimal and integer validation; and

(d) Required field validation as defined by state and federal requirements.

(2) The superintendent of public instruction shall develop a reporting format and instructions for school districts to collect and submit data on student demographics that is disaggregated by distinct ethnic categories within racial subgroups so that analyses may be conducted on student achievement using the disaggregated data. [2007 c 401 § 5.]

Findings—2007 c 401: See note following RCW 28A.300.500.

28A.300.510 After-school mathematics support program—Reports. (1) The after-school mathematics support program is created to study the effects of intentional, skilled mathematics support included as part of an existing after-school activity program.

(2) The office of the superintendent of public instruction shall provide grants to selected community-based, nonprofit organizations that provide after-school programs and include support for students to learn mathematics.

(3) Grant applicants must demonstrate the capacity to provide assistance in mathematics learning in the following ways:

(a) Identifying the mathematics content and instructional skill of the staff or volunteers assisting students;

(b) Identifying proposed learning strategies to be used, which could include computer-based instructional and skill practice programs and tutoring by adults or other students;

(c) Articulating the plan for connection with school mathematics teachers to coordinate student assistance; and

(d) Articulating the plan for assessing student and program success.

(4) Priority will be given to applicants that propose programs to serve middle school and junior high school students.

(5) The office of the superintendent of public instruction shall evaluate program outcomes and report to the governor and the education committees of the legislature on the outcomes of the grants and make recommendations related to program continuation, program modification, and issues related to program sustainability and possible program expansion. An interim report is due November 1, 2008. The final report is due December 1, 2009. [2007 c 396 § 3.]

Captions not law—2007 c 396: See note following RCW 28A.305.215.

Finding—Intent—2007 c 396: See note following RCW 28A.300.515.

28A.300.515 Statewide director for math, science, and technology—Duties—Reporting. The superintendent of public instruction shall provide support for statewide coordination for math, science, and technology, including employing a statewide director for math, science, and technology. The duties of the director shall include, but not be limited to:

(1) Within funds specifically appropriated therefor, obtain a statewide license, or otherwise obtain and disseminate, an interactive, project-based high school and middle school technology curriculum that includes a comprehensive professional development component for teachers and, if possible, counselors, and also includes a systematic program evaluation. The curriculum must be distributed to all school districts, or as many as feasible, by the 2007-08 school year;

(2) Within funds specifically appropriated therefor, supporting a public-private partnership to assist school districts with implementing an ongoing, inquiry-based science program that is based on a research-based model of systemic reform and aligned with the Washington state science grade level expectations;

(3) Within funds specifically appropriated therefor, supporting a public-private partnership to provide enriching opportunities in mathematics, engineering, and science for underrepresented students in grades kindergarten through twelve using exemplary materials and instructional approaches;

(4) In an effort to increase precollege and prework interest in math, science, and technology fields, in collaboration with the community and technical colleges, the four-year institutions of higher education, and the workforce training and education coordinating board, conducting outreach efforts to attract middle and high school students to careers in math, science, and technology and to educate students about the coursework that is necessary to be adequately prepared to succeed in these fields;

(5) Coordinating youth opportunities in math, science, and technology, including facilitating student participation in school clubs, state-level fairs, national competitions, and encouraging partnerships between students and university faculty or industry to facilitate such student participation;

(6) Developing and maintaining public-private partnerships to generate business and industry assistance to accomplish the following:

(a) Increasing student engagement and career awareness, including increasing student participation in the youth opportunities in subsection (5) of this section;

(b) Creation and promotion of student scholarships, internships, and apprenticeships;

(c) Provision of relevant teacher experience and training, including on-the-job professional development opportunities;

(d) Upgrading kindergarten through twelfth grade school equipment and facilities to support high quality math, science, and technology programs;

(7) Assembling a cadre of inspiring speakers employed or experienced in the relevant fields to speak to kindergarten through twelfth grade students to demonstrate the breadth of the opportunities in the relevant fields as well as share the types of coursework that is [are] necessary for someone to be successful in the relevant field;

(8) Providing technical assistance to schools and school districts, including working with counselors in support of the math, science, and technology programs; and

(9) Reporting annually to the legislature about the actions taken to provide statewide coordination for math, science, and technology. [2007 c 396 § 15.]

Finding—Intent—2007 c 396: "The legislature finds that knowledge, skills, and opportunities in mathematics, science, and technology should be increased for all students in Washington. The legislature intends to foster capacity between and among the educational sectors to enable continuous and sustainable growth of the learning and teaching of mathematics, science, and technologies. The legislature intends to foster high quality mathematics, science, and technology programs to increase the number of students in the kindergarten through twelfth grade pipeline who are prepared and aspire to continue in the areas of mathematics, science, and technology, whether it be at a college, university, or in the workforce." [2007 c 396 § 12.]

Captions not law—2007 c 396: See note following RCW 28A.305.215.

28A.300.520 Policies to support children of incarcerated parents. (1) The superintendent of public instruction shall review current policies and assess the adequacy and availability of programs targeted at children who have a parent who is incarcerated in a department of corrections facility. The superintendent of public instruction shall adopt policies that support the children of incarcerated parents and meet their needs with the goal of facilitating normal child development, including maintaining adequate academic progress, while reducing intergenerational incarceration.

(2) The superintendent shall conduct the following activities to assist in implementing the requirements of subsection (1) of this section:

(a) Gather information and data on the students who are the children of inmates incarcerated in department of corrections facilities; and

(b) Participate in the children of incarcerated parents advisory committee and report information obtained under this section to the advisory committee. [2007 c 384 § 5.]

Intent—Finding—2007 c 384: See note following RCW 72.09.495.

28A.300.801 Legislative youth advisory council. (Expires June 30, 2009.) (1) The legislative youth advisory council is established to examine issues of importance to youth, including but not limited to education, employment, strategies to increase youth participation in state and municipal government, safe environments for youth, substance abuse, emotional and physical health, foster care, poverty, homelessness, and youth access to services on a statewide and municipal basis.

(2) The council consists of twenty-two members as provided in this subsection who, at the time of appointment, are aged fourteen to eighteen. The council shall select a chair from among its members.

(3) Except for initial members, members shall serve two-year terms, and if eligible, may be reappointed for subsequent two-year terms. One-half of the initial members shall be appointed to one-year terms, and these appointments shall be made in such a way as to preserve overall representation on the committee.

(4)(a) By July 2, 2007, and annually thereafter, students may apply to be considered for participation in the program by completing an online application form and submitting the application to the legislative youth advisory council. The council may develop selection criteria and an application review process. The council shall recommend candidates whose names will be submitted to the office of the lieutenant governor for final selection. The office of the lieutenant governor shall notify all applicants of the final selections.

(b) The office of the lieutenant governor shall make the application available on the lieutenant governor's web site.

(5) The council shall have the following duties:

(a) Advising the legislature on proposed and pending legislation, including state budget expenditures and policy matters relating to youth;

(b) Advising the standing committees of the legislature and study commissions, committees, and task forces regarding issues relating to youth;

(c) Conducting periodic seminars for its members regarding leadership, government, and the legislature;

(d) Accepting grants and donations from public and private sources to support the activities of the council; and

(e) Reporting annually by December 1st to the legislature on its activities, including proposed legislation that implements recommendations of the council.

(6) In carrying out its duties under this section, the council may meet at least three times but not more than six times per year. The council shall consider conducting at least some of the meetings via the K-20 telecommunications network. Councils are encouraged to invite local state legislators to participate in the meetings. The council is encouraged to poll other students in order to get a broad perspective on the various issues. The council is encouraged to use technology to conduct the polling, including the council's web site, if the council has a web site.

(7) Members shall be reimbursed as provided in RCW 43.03.050 and 43.03.060.

(8) The office of superintendent of public instruction shall provide administration, coordination, and facilitation assistance to the council. The senate and house of representatives may provide policy and fiscal briefings and assistance with drafting proposed legislation. The senate and the house of representatives shall each develop internal policies relating to staff assistance provided to the council. Such policies may include applicable internal personnel and practices guidelines, resource use and expense reimbursement guidelines, and applicable ethics mandates. Provision of funds, resources, and staff, as well as the assignment and direction of staff, remains at all times within the sole discretion of the chamber making the provision.

(9) The office of the lieutenant governor, the office of [the] superintendent of public instruction, the legislature, any agency of the legislature, and any official or employee of such office or agency are immune from liability for any injury that is incurred by or caused by a member of the youth advisory council and that occurs while the member of the council is performing duties of the council or is otherwise engaged in activities or receiving services for which reimbursement is allowed under subsection (7) of this section. The immunity provided by this subsection does not apply to an injury intentionally caused by the act or omission of an employee or official of the superintendent of public instruction or the legislature or any agency of the legislature.

(10) This section expires June 30, 2009. [2007 c 291 § 2; 2005 c 355 § 1.]

Finding—2007 c 291: "The legislature finds that the legislative youth advisory council provides a unique opportunity for middle and high school students to be actively involved in government. Councilmembers not only learn about, but exercise, the core values and democratic principles of our state and nation, along with the rights and responsibilities of citizenship and democratic civic involvement. As such, they are engaged in authentic practice of the essential academic learning requirements in civics. In the short time since its creation, the legislative youth advisory council has studied, debated, and begun to formulate positions and recommendations on such important topics as education reform, school finance, public school learning environments, health and fitness education, and standardized testing. The legislature continues to stress the importance of civics education and support the type of civic involvement by students exemplified by the legislative youth advisory council." [2007 c 291 § 1.]

Effective date—2007 c 291: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state gov-

ernment and its existing public institutions, and takes effect immediately [May 2, 2007]." [2007 c 291 § 4.]

Chapter 28A.305 RCW STATE BOARD OF EDUCATION

Sections

- 28A.305.215 Essential academic learning requirements and grade level expectations—Revised standards and curricula for mathematics and science—Duties of the state board of education and the superintendent of public instruction—Revised graduation requirements.
- 28A.305.219 Mathematics advisory panel—Science advisory panel.
(Expires June 30, 2012.)

28A.305.215 Essential academic learning requirements and grade level expectations—Revised standards and curricula for mathematics and science—Duties of the state board of education and the superintendent of public instruction—Revised graduation requirements. (1) The activities in this section revise and strengthen the state learning standards that implement the goals of RCW 28A.150.210, known as the essential academic learning requirements, and improve alignment of school district curriculum to the standards.

(2) The state board of education shall be assisted in its work under subsections (3) and (5) of this section by: (a) An expert national consultant in each of mathematics and science retained by the state board; and (b) the mathematics and science advisory panels created under RCW 28A.305.219, as appropriate, which shall provide review and formal comment on proposed recommendations to the superintendent of public instruction and the state board of education on new revised standards and curricula.

(3) By September 30, 2007, the state board of education shall recommend to the superintendent of public instruction revised essential academic learning requirements and grade level expectations in mathematics. The recommendations shall be based on:

(a) Considerations of clarity, rigor, content, depth, coherence from grade to grade, specificity, accessibility, and measurability;

(b) Study of:

(i) Standards used in countries whose students demonstrate high performance on the trends in international mathematics and science study and the programme for international student assessment;

(ii) College readiness standards;

(iii) The national council of teachers of mathematics focal points and the national assessment of educational progress content frameworks; and

(iv) Standards used by three to five other states, including California, and the nation of Singapore; and

(c) Consideration of information presented during public comment periods.

(4) By January 31, 2008, the superintendent of public instruction shall revise the essential academic learning requirements and the grade level expectations for mathematics and present the revised standards to the state board of education and the education committees of the senate and the house of representatives as required by RCW 28A.655.070(4). The superintendent shall adopt the revised

essential academic learning requirements and grade level expectations unless otherwise directed by the legislature during the 2008 legislative session.

(5) By June 30, 2008, the state board of education shall recommend to the superintendent of public instruction revised essential academic learning requirements and grade level expectations in science. The recommendations shall be based on:

(a) Considerations of clarity, rigor, content, depth, coherence from grade to grade, specificity, accessibility, and measurability;

(b) Study of standards used by three to five other states and in countries whose students demonstrate high performance on the trends in international mathematics and science study and the programme for international student assessment; and

(c) Consideration of information presented during public comment periods.

(6) By December 1, 2008, the superintendent of public instruction shall revise the essential academic learning requirements and the grade level expectations for science and present the revised standards to the state board of education and the education committees of the senate and the house of representatives as required by RCW 28A.655.070(4). The superintendent shall adopt the revised essential academic learning requirements and grade level expectations unless otherwise directed by the legislature during the 2009 legislative session.

(7)(a) By May 15, 2008, the superintendent of public instruction shall present to the state board of education recommendations for no more than three basic mathematics curricula each for elementary, middle, and high school grade spans.

(b) By June 30, 2008, the state board of education shall provide official comment and recommendations to the superintendent of public instruction regarding the recommended mathematics curricula. The superintendent of public instruction shall make any changes based on the comment and recommendations from the state board of education and adopt the recommended curricula.

(c) By May 15, 2009, the superintendent of public instruction shall present to the state board of education recommendations for no more than three basic science curricula each for elementary, middle, and high school grade spans.

(d) By June 30, 2009, the state board of education shall provide official comment and recommendations to the superintendent of public instruction regarding the recommended science curricula. The superintendent of public instruction shall make any changes based on the comment and recommendations from the state board of education and adopt the recommended curricula.

(e) In selecting the recommended curricula under this subsection (7), the superintendent of public instruction shall provide information to the mathematics and science advisory panels created under RCW 28A.305.219, as appropriate, and seek the advice of the appropriate panel regarding the curricula that shall be included in the recommendations.

(f) The recommended curricula under this subsection (7) shall align with the revised essential academic learning requirements and grade level expectations. In addition to the recommended basic curricula, appropriate diagnostic and

supplemental materials shall be identified as necessary to support each curricula.

(g) Subject to funds appropriated for this purpose and availability of the curricula, at least one of the curricula in each grade span and in each of mathematics and science shall be available to schools and parents online at no cost to the school or parent.

(8) By December 1, 2007, the state board of education shall revise the high school graduation requirements under RCW 28A.230.090 to include a minimum of three credits of mathematics, one of which may be a career and technical course equivalent in mathematics, and prescribe the mathematics content in the three required credits.

(9) Nothing in this section requires a school district to use one of the recommended curricula under subsection (7) of this section. However, the statewide accountability plan adopted by the state board of education under RCW 28A.305.130 shall recommend conditions under which school districts should be required to use one of the recommended curricula. The plan shall also describe the conditions for exception to the curriculum requirement, such as the use of integrated academic and career and technical education curriculum. Required use of the recommended curricula as an intervention strategy must be authorized by the legislature as required by RCW 28A.305.130(4)(e) before implementation. [2007 c 396 § 1.]

Effective date—2007 c 396 §§ 1 and 2: "Sections 1 and 2 of this act are necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and take effect immediately [May 9, 2007]." [2007 c 396 § 22.]

Captions not law—2007 c 396: "Captions used in this act are not any part of the law." [2007 c 396 § 19.]

Finding—Intent—2007 c 396: See note following RCW 28A.300.515.

28A.305.219 Mathematics advisory panel—Science advisory panel. (Expires June 30, 2012.) (1) The state board of education shall appoint a mathematics advisory panel and a science advisory panel to advise the board regarding essential academic learning requirements, grade level expectations, and recommended curricula in mathematics and science and to monitor implementation of these activities. In conducting their work, the panels shall provide objective reviews of materials and information provided by any expert national consultants retained by the board and shall provide a public and transparent forum for consideration of mathematics and science learning standards and curricula.

(2) Each panel shall include no more than sixteen members with representation from individuals from academia in mathematics and science-related fields, individuals from business and industry in mathematics and science-related fields, mathematics and science educators, parents, and other individuals who could contribute to the work of the panel based on their experiences.

(3) Each member of each panel shall be compensated in accordance with RCW 43.03.220 and reimbursed for travel expenses in accordance with RCW 43.03.050 and 43.03.060. School districts shall be reimbursed for the cost of substitutes for the mathematics and science educators on the panels as required under RCW 28A.300.035. Members of the panels who are employed by a public institution of higher education shall be provided sufficient time away from their regular

duties, without loss of benefits or privileges, to fulfill the responsibilities of being a panel member.

(4) Panel members shall not have conflicts of interest with regard to association with any publisher, distributor, or provider of curriculum, assessment, or test materials and services purchased by or contracted through the office of the superintendent of public instruction, educational service districts, or school districts.

(5) This section expires June 30, 2012. [2007 c 396 § 2.]

Effective date—2007 c 396 §§ 1 and 2: See note following RCW 28A.305.215.

Captions not law—2007 c 396: See note following RCW 28A.305.215.

Finding—Intent—2007 c 396: See note following RCW 28A.300.515.

Chapter 28A.310 RCW

EDUCATIONAL SERVICE DISTRICTS

Sections

- 28A.310.080 ESD board—Members—Elections, calling and notice.
 28A.310.202 ESD board—Partnership with regional support network to operate a wraparound model site.
 28A.310.350 Identification of core services for budget purposes—Specific services listed.

28A.310.080 ESD board—Members—Elections, calling and notice. Not later than the twenty-fifth day of August of every odd-numbered year, the superintendent of public instruction shall call an election to be held in each educational service district within which resides a member of the board of the educational service district whose term of office expires on the second Monday of January next following, and shall give written notice thereof to each member of the board of directors of each school district in such educational service district. Such notice shall include instructions and rules established by the superintendent of public instruction for the conduct of the election. [2007 c 460 § 1; 2006 c 263 § 602; 1977 ex.s. c 283 § 15. Formerly RCW 28A.21.031.]

Findings—Purpose—Part headings not law—2006 c 263: See notes following RCW 28A.150.230.

Severability—1977 ex.s. c 283: See note following RCW 28A.310.010.

28A.310.202 ESD board—Partnership with regional support network to operate a wraparound model site. Educational service district boards may partner with regional support networks to respond to a request for proposal for operation of a wraparound model site under chapter 359, Laws of 2007 and, if selected, may contract for the provision of services to coordinate care and facilitate the delivery of services and other supports under a wraparound model. [2007 c 359 § 9.]

Captions not law—2007 c 359: See note following RCW 71.36.005.

28A.310.350 Identification of core services for budget purposes—Specific services listed. The basic core services and cost upon which educational service districts are budgeted shall include, but not be limited to, the following:

(1) Educational service district administration and facilities such as office space, maintenance and utilities;

(2) Cooperative administrative services such as assistance in carrying out procedures to abolish sex and race bias in school programs, fiscal services, grants management services, special education services and transportation services;

(3) Personnel services such as certification/registration services;

(4) Learning resource services such as audio visual aids;

(5) Cooperative curriculum services such as health promotion and health education services, in-service training, workshops and assessment;

(6) Professional development services identified by statute or the omnibus appropriations act; and

(7) Special needs of local education agencies. [2007 c 402 § 8; 1977 ex.s. c 283 § 10. Formerly RCW 28A.21.137.]

Captions not law—2007 c 402: See note following RCW 28A.415.340.

Severability—1977 ex.s. c 283: See note following RCW 28A.310.010.

Chapter 28A.320 RCW

PROVISIONS APPLICABLE TO ALL DISTRICTS

Sections

- 28A.320.125 Safe school plans—Requirements—Duties of school districts, schools, and educational service districts—Reports—Drills—Rules.
 28A.320.175 School data—Collection and submission to the office of the superintendent of public instruction.
 28A.320.180 Mathematics college readiness test—Costs.
 28A.320.330 School funds enumerated—Deposits—Uses.

Duties with regard to the GET ready for math and science scholarship program: RCW 28B.105.080.

28A.320.125 Safe school plans—Requirements—Duties of school districts, schools, and educational service districts—Reports—Drills—Rules. (1) The legislature considers it to be a matter of public safety for public schools and staff to have current safe school plans and procedures in place, fully consistent with federal law. The legislature further finds and intends, by requiring safe school plans to be in place, that school districts will become eligible for federal assistance. The legislature further finds that schools are in a position to serve the community in the event of an emergency resulting from natural disasters or man-made disasters.

(2) Schools and school districts shall consider the guidance provided by the superintendent of public instruction, including the comprehensive school safety checklist and the model comprehensive safe school plans that include prevention, intervention, all hazard/crisis response, and postcrisis recovery, when developing their own individual comprehensive safe school plans. Each school district shall adopt, no later than September 1, 2008, and implement a safe school plan consistent with the school mapping information system pursuant to RCW 36.28A.060. The plan shall:

(a) Include required school safety policies and procedures;

(b) Address emergency mitigation, preparedness, response, and recovery;

(c) Include provisions for assisting and communicating with students and staff, including those with special needs or disabilities;

(d) Use the training guidance provided by the Washington emergency management division of the state military department in collaboration with the Washington state office of the superintendent of public instruction school safety center and the school safety center advisory committee;

(e) Require the building principal to be certified on the incident command system;

(f) Take into account the manner in which the school facilities may be used as a community asset in the event of a community-wide emergency; and

(g) Set guidelines for requesting city or county law enforcement agencies, local fire departments, emergency service providers, and county emergency management agencies to meet with school districts and participate in safety-related drills annually.

(3) School districts shall annually:

(a) Review and update safe school plans in collaboration with local emergency response agencies;

(b) Conduct an inventory of all hazardous materials;

(c) Update information on the school mapping information system to reflect current staffing and updated plans, including:

(i) Identifying all staff members who are trained on the national incident management system, trained on the incident command system, or are certified on the incident command system; and

(ii) Identifying school transportation procedures for evacuation, to include bus staging areas, evacuation routes, communication systems, parent-student reunification sites, and secondary transportation agreements consistent with the school mapping information system; and

(d) Provide information to all staff on the use of emergency supplies and notification and alert procedures.

(4) School districts are required to annually record and report on the information and activities required in subsection (3) of this section to the Washington association of sheriffs and police chiefs.

(5) School districts are encouraged to work with local emergency management agencies and other emergency responders to conduct one tabletop exercise, one functional exercise, and two full-scale exercises within a four-year period.

(6) Schools shall conduct no less than one safety-related drill each month that school is in session. Schools shall complete no less than one drill using the school mapping information system, one drill for lockdowns, one drill for shelter-in-place, and six drills for fire evacuation in accordance with the state fire code. Schools should consider drills for earthquakes, tsunamis, or other high-risk local events. Schools shall document the date and time of such drills. This subsection is intended to satisfy all federal requirements for comprehensive school emergency drills and evacuations.

(7) Educational service districts are encouraged to apply for federal emergency response and crisis management grants with the assistance of the superintendent of public instruction and the Washington emergency management division of the state military department.

(8) The superintendent of public instruction may adopt rules to implement provisions of this section. These rules may include, but are not limited to, provisions for evacua-

tions, lockdowns, or other components of a comprehensive safe school plan. [2007 c 406 § 1; 2002 c 205 § 2.]

Findings—2002 c 205: "Following the tragic events of September 11, 2001, the government's primary role in protecting the health, safety, and well-being of its citizens has been underscored. The legislature recognizes that there is a need to focus on the development and implementation of comprehensive safe school plans for each public school. The legislature recognizes that comprehensive safe school plans for each public school are an integral part of rebuilding public confidence. In developing these plans, the legislature finds that a coordinated effort is essential to ensure the most effective response to any type of emergency. Further, the legislature recognizes that comprehensive safe school plans for each public school are of paramount importance and will help to assure students, parents, guardians, school employees, and school administrators that our schools provide the safest possible learning environment." [2002 c 205 § 1.]

Severability—2002 c 205: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [2002 c 205 § 5.]

Effective dates—2002 c 205 §§ 2, 3, and 4: "(1) Sections 2 and 4 of this act are necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and take effect immediately [March 27, 2002].

(2) Section 3 of this act takes effect September 1, 2002." [2002 c 205 § 6.]

28A.320.175 School data—Collection and submission to the office of the superintendent of public instruction. No later than the beginning of the 2008-09 school year and thereafter, each school district shall collect and electronically submit to the office of the superintendent of public instruction, in a format and according to a schedule prescribed by the office, the following data for each class or course offered in each school:

(1) The certification number or other unique identifier associated with the teacher's certificate for each teacher assigned to teach the class or course, including reassignments that may occur during the school year; and

(2) The statewide student identifier for each student enrolled in or being provided services through the class or course. [2007 c 401 § 4.]

Findings—2007 c 401: See note following RCW 28A.300.500.

28A.320.180 Mathematics college readiness test—Costs. (1) Subject to funding appropriated for this purpose and beginning in the fall of 2009, school districts shall provide all high school students enrolled in the district the option of taking the mathematics college readiness test developed under RCW 28B.10.679 once at no cost to the students. Districts shall encourage, but not require, students to take the test in their junior or senior year of high school.

(2) Subject to funding appropriated for this purpose, the office of the superintendent of public instruction shall reimburse each district for the costs incurred by the district in providing students the opportunity to take the mathematics placement test. [2007 c 396 § 11.]

Captions not law—2007 c 396: See note following RCW 28A.305.215.

Finding—Intent—2007 c 396: See note following RCW 28A.300.515.

28A.320.330 School funds enumerated—Deposits—Uses. School districts shall establish the following funds in addition to those provided elsewhere by law:

(1) A general fund for maintenance and operation of the school district to account for all financial operations of the school district except those required to be accounted for in another fund.

(2) A capital projects fund shall be established for major capital purposes. All statutory references to a "building fund" shall mean the capital projects fund so established. Money to be deposited into the capital projects fund shall include, but not be limited to, bond proceeds, proceeds from excess levies authorized by RCW 84.52.053, state apportionment proceeds as authorized by RCW 28A.150.270, earnings from capital projects fund investments as authorized by RCW 28A.320.310 and 28A.320.320, and state forest revenues transferred pursuant to subsection (3) of this section.

Money derived from the sale of bonds, including interest earnings thereof, may only be used for those purposes described in RCW 28A.530.010, except that accrued interest paid on bonds shall be deposited in the debt service fund.

Money to be deposited into the capital projects fund shall include but not be limited to rental and lease proceeds as authorized by RCW 28A.335.060, and proceeds from the sale of real property as authorized by RCW 28A.335.130.

Money legally deposited into the capital projects fund from other sources may be used for the purposes described in RCW 28A.530.010, and for the purposes of:

(a) Major renovation, including the replacement of facilities and systems where periodical repairs are no longer economical. Major renovation and replacement shall include, but shall not be limited to, roofing, heating and ventilating systems, floor covering, and electrical systems.

(b) Renovation and rehabilitation of playfields, athletic fields, and other district real property.

(c) The conduct of preliminary energy audits and energy audits of school district buildings. For the purpose of this section:

(i) "Preliminary energy audits" means a determination of the energy consumption characteristics of a building, including the size, type, rate of energy consumption, and major energy using systems of the building.

(ii) "Energy audit" means a survey of a building or complex which identifies the type, size, energy use level, and major energy using systems; which determines appropriate energy conservation maintenance or operating procedures and assesses any need for the acquisition and installation of energy conservation measures, including solar energy and renewable resource measures.

(iii) "Energy capital improvement" means the installation, or modification of the installation, of energy conservation measures in a building which measures are primarily intended to reduce energy consumption or allow the use of an alternative energy source.

(d) Those energy capital improvements which are identified as being cost-effective in the audits authorized by this section.

(e) Purchase or installation of additional major items of equipment and furniture: PROVIDED, That vehicles shall not be purchased with capital projects fund money.

(f)(i) Costs associated with implementing technology systems, facilities, and projects, including acquiring hardware, licensing software, and on-line applications and training related to the installation of the foregoing. However, the

software or applications must be an integral part of the district's technology systems, facilities, or projects.

(ii) Costs associated with the application and modernization of technology systems for operations and instruction including, but not limited to, the ongoing fees for online applications, subscriptions, or software licenses, including upgrades and incidental services, and ongoing training related to the installation and integration of these products and services. However, to the extent the funds are used for the purpose under this subsection (2)(f)(ii), the school district shall transfer to the district's general fund the portion of the capital projects fund used for this purpose. The office of the superintendent of public instruction shall develop accounting guidelines for these transfers in accordance with internal revenue service regulations.

(3) A debt service fund to provide for tax proceeds, other revenues, and disbursements as authorized in chapter 39.44 RCW. State forest land revenues that are deposited in a school district's debt service fund pursuant to RCW 79.64.110 and to the extent not necessary for payment of debt service on school district bonds may be transferred by the school district into the district's capital projects fund.

(4) An associated student body fund as authorized by RCW 28A.325.030.

(5) Advance refunding bond funds and refunded bond funds to provide for the proceeds and disbursements as authorized in chapter 39.53 RCW. [2007 c 503 § 2; 2007 c 129 § 2; 2002 c 275 § 2; 1990 c 33 § 337; 1983 c 59 § 13; 1982 c 191 § 6; 1981 c 250 § 2. Formerly RCW 28A.58.441.]

Reviser's note: This section was amended by 2007 c 129 § 2 and by 2007 c 503 § 2, each without reference to the other. Both amendments are incorporated in the publication of this section under RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

Intent—2007 c 129: "The legislature recognizes that technology has become an integral part of the facilities and educational delivery systems in our schools. In order to prepare our state's students to participate fully in our state's economy, school districts are making substantial capital investments in their technology systems, facilities, and projects. Districts are implementing, applying, and modernizing their technology systems. Software companies are shifting from selling software as a one-time package to a license or an extended contractual relationship requiring a subscription and ongoing payments. School districts must be empowered to respond to the changing business models in the software industry and be given flexibility and authority to use capital projects funds to pay for licenses or online application fees. It is the intent of the legislature that these investments be deemed major capital purpose and are also permitted uses of the district's two to six-year levies authorized by RCW 84.52.053." [2007 c 129 § 1.]

Declaration—2002 c 275: "The legislature recognizes and acknowledges that technology has become an integral part of the facilities and educational delivery systems in our schools. In order to prepare our state's students to participate fully in our state's economy, substantial capital investments must continue to be made in our schools' comprehensive technology systems, facilities, and projects. These investments are declared to be a major capital purpose." [2002 c 275 § 1.]

Application—Effective date—Severability—1983 c 59: See notes following RCW 28A.505.010.

Severability—1982 c 191: See note following RCW 28A.335.210.

Effective date—1981 c 250: See note following RCW 28A.335.060.

Chapter 28A.400 RCW EMPLOYEES

Sections

- 28A.400.303 Record checks for employees.
28A.400.305 Record check information—Access—Rules.

28A.400.303 Record checks for employees. (1) School districts, educational service districts, the state school for the deaf, the state school for the blind, and their contractors hiring employees who will have regularly scheduled unsupervised access to children shall require a record check through the Washington state patrol criminal identification system under RCW 43.43.830 through 43.43.834, 10.97.030, and 10.97.050 and through the federal bureau of investigation before hiring an employee. The record check shall include a fingerprint check using a complete Washington state criminal identification fingerprint card. The requesting entity shall provide a copy of the record report to the applicant. When necessary, applicants may be employed on a conditional basis pending completion of the investigation. If the applicant has had a record check within the previous two years, the district, the state school for the deaf, the state school for the blind, or contractor may waive the requirement. Except as provided in subsection (2) of this section, the district, pursuant to chapter 41.59 or 41.56 RCW, the state school for the deaf, the state school for the blind, or contractor hiring the employee shall determine who shall pay costs associated with the record check.

(2) Federal bureau of Indian affairs-funded schools may use the process in subsection (1) of this section to perform record checks for their employees and applicants for employment. [2007 c 35 § 1; 2001 c 296 § 3; 1992 c 159 § 2.]

Intent—2001 c 296: See note following RCW 9.96A.060.

Findings—1992 c 159: "The legislature finds that additional safeguards are necessary to ensure the safety of Washington's school children. The legislature further finds that the results from state patrol record checks are more complete when fingerprints of individuals are provided, and that information from the federal bureau of investigation also is necessary to obtain information on out-of-state criminal records. The legislature further finds that confidentiality safeguards in state law are in place to ensure that the rights of applicants for certification or jobs and newly hired employees are protected." [1992 c 159 § 1.]

Criminal history record information—School volunteers: RCW 28A.320.155.

28A.400.305 Record check information—Access—Rules. The superintendent of public instruction shall adopt rules as necessary under chapter 34.05 RCW on record check information. The rules shall include, but not be limited to the following:

(1) Written procedures providing a school district, state school for the deaf, state school for the blind, or federal bureau of Indian affairs-funded school employee or applicant for certification or employment access to and review of information obtained based on the record check required under RCW 28A.400.303; and

(2) Written procedures limiting access to the superintendent of public instruction record check data base to only those individuals processing record check information at the office of the superintendent of public instruction, the appropriate school district or districts, the state school for the deaf, the state school for the blind, the appropriate educational service district or districts, and the appropriate federal bureau of Indian affairs-funded schools. [2007 c 35 § 2; 2001 c 296 § 4; 1996 c 126 § 5.]

Intent—2001 c 296: See note following RCW 9.96A.060.

Effective date—1996 c 126: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state gov-

ernment and its existing public institutions, and shall take effect immediately [March 21, 1996]." [1996 c 126 § 7.]

**Chapter 28A.405 RCW
CERTIFICATED EMPLOYEES**

Sections

28A.405.415 Bonuses—National board for professional standards certification.

28A.405.415 Bonuses—National board for professional standards certification. (1) Certificated instructional staff who have attained certification from the national board for professional teaching standards shall receive a bonus each year in which they maintain the certification. The bonus shall be calculated as follows: The annual bonus shall be five thousand dollars in the 2007-08 school year. Thereafter, the annual bonus shall increase by inflation.

(2) Certificated instructional staff who have attained certification from the national board for professional teaching standards shall be eligible for bonuses in addition to that provided by subsection (1) of this section if the individual is in an instructional assignment in a school in which at least seventy percent of the students qualify for the free and reduced-price lunch program.

(3) The amount of the additional bonus under subsection (2) of this section for those meeting the qualifications of subsection (2) of this section is five thousand dollars.

(4) The bonuses provided under this section are in addition to compensation received under a district's salary schedule adopted in accordance with RCW 28A.405.200 and shall not be included in calculations of a district's average salary and associated salary limitations under RCW 28A.400.200.

(5) The bonuses provided under this section shall be paid in a lump sum amount and shall not be included in the definition of "earnable compensation" under RCW 41.32.010(10). [2007 c 398 § 2.]

Findings—2007 c 398: "The legislature finds and declares:

(1) The national board for professional teaching standards has established high and rigorous standards for what highly accomplished teachers should know and be able to do in order to increase student learning results;

(2) The national board certifies teachers who meet these standards through a rigorous, performance-based assessment process;

(3) A certificate awarded by the national board attests that a teacher has met high and rigorous standards and has demonstrated the ability to make sound professional judgments about how to best meet students' learning needs and effectively help students meet challenging academic standards; and

(4) Teachers who attain national board certification should be acknowledged and rewarded in order to encourage more teachers to pursue certification for the benefit of Washington students." [2007 c 398 § 1.]

**Chapter 28A.410 RCW
CERTIFICATION**

Sections

28A.410.043 School counselor certification.

28A.410.045 First peoples' language, culture, and oral tribal traditions teacher certification program—Established—Rules.

28A.410.070 Registration of certificates.

28A.410.043 School counselor certification. A school counselor is a professional educator who holds a valid school counselor certification as defined by the professional educa-

tor standards board. The purpose and role of the school counselor is to plan, organize, and deliver a comprehensive school guidance and counseling program that personalizes education and supports, promotes, and enhances the academic, personal, social, and career development of all students, based on the national standards for school counseling programs of the American school counselor association. [2007 c 175 § 2.]

Findings—Intent—2007 c 175: "The legislature finds that the professional school counselor is a certificated educator with unique qualifications and skills to address all students' academic, personal, social, and career development needs. School counselors serve a vital role in maximizing student achievement, supporting a safe learning environment, and addressing the needs of all students through prevention and intervention programs that are part of a comprehensive school counseling program. The legislature further finds that current state statutes fail to mention anything about school counselors. Therefore, the legislature intends to codify into law the importance and the role of school counselors in public schools." [2007 c 175 § 1.]

28A.410.045 First peoples' language, culture, and oral tribal traditions teacher certification program—Established—Rules. (1) The Washington state first peoples' language, culture, and oral tribal traditions teacher certification program is established. The professional educator standards board shall adopt rules to implement the program in collaboration with the sovereign tribal governments whose traditional lands and territories lie within the borders of the state of Washington, including the tribal leader congress on education and the first peoples' language and culture committee. The collaboration required under this section shall be defined by a protocol for cogovernance in first peoples' language, culture, and oral tribal traditions education developed by the professional educator standards board, the office of the superintendent of public instruction, and the sovereign tribal governments whose traditional lands and territories lie within the borders of the state of Washington.

(2) Any sovereign tribal government whose traditional lands and territories lie within the borders of the state of Washington may participate individually on a government-to-government basis in the program.

(3) Under the first peoples' language, culture, and oral tribal traditions teacher certification program:

(a) Only a participating sovereign tribal government may certify individuals who meet the tribe's criteria for certification as a teacher in the Washington state first peoples' language, culture, and oral tribal traditions teacher certification program. Tribal law enforcement agencies and the Washington state patrol shall enter into government-to-government negotiations regarding the exchange of background information on applicants for certification. The office of the superintendent of public instruction shall not authorize or accept a certificate or endorsement in Washington state first peoples' language, culture, and oral tribal traditions without certification from a participating sovereign tribal government and without conducting a record check of an individual applying for certification as required under RCW 28A.410.010;

(b) For each teacher to be certified in the program, the participating sovereign tribal government shall submit information and documentation necessary for the issuance of a state certificate, as defined by rule, to the office of the superintendent of public instruction;

(c) A Washington state first peoples' language, culture, and oral tribal traditions teacher certificate serves as a subject

area endorsement in first peoples' language, culture, and oral tribal traditions. The holder of a Washington state first peoples' language, culture, and oral tribal traditions teacher certificate who does not also hold an initial, residency, continuing, or professional teaching certificate authorized by the professional educator standards board may be assigned to teach only the languages, cultures, and oral tribal traditions designated on the certificate and no other subject;

(d) In order to teach first peoples' language, culture, and oral tribal traditions, teachers must hold certificates from both the office of the superintendent of public instruction and from the sovereign tribal government; and

(e) The holder of a Washington state first peoples' language, culture, and oral tribal traditions teacher certificate meets Washington state's definition of a highly qualified teacher under the no child left behind act of 2001 (P.L. 107-110) for the purposes of teaching first peoples' language, culture, and oral tribal traditions, subject to approval by the United States department of education.

(4) First peoples' language/culture teacher certificates issued before July 22, 2007, under rules approved by the state board of education or the professional educator standards board under a pilot program remain valid as certificates under this section, subject to the provisions of this chapter.

(5) Schools and school districts on or near tribal reservations are encouraged to contract with sovereign tribal governments whose traditional lands and territories lie within the borders of the state of Washington and with first peoples' language, culture, and oral tribal traditions teacher certification programs for in-service teacher training and continuing education in the culture and history appropriate for their geographic area, as well as suggested pedagogy and instructional strategies. [2007 c 319 § 2.]

Findings—2007 c 319: "The legislature finds that:

(1) Teaching first peoples' languages, cultures, and oral tribal traditions is a critical factor in fostering successful educational experiences and promoting cultural sensitivity for all students. Experience shows that such teaching dramatically raises student achievement and that the effect is particularly strong for Native American students;

(2) Native American students have the highest high school dropout rate among all groups of students. Less than one-fourth of Native American students in the class of 2008 are on track to graduate based on the results of the Washington assessment of student learning. Positive and supportive educational experiences are critical for the success of Native American students;

(3) The sole expertise of sovereign tribal governments whose traditional lands and territories lie within the borders of the state of Washington in the transmission of their indigenous languages, heritage, cultural knowledge, histories, customs, and traditions should be honored;

(4) Government-to-government collaboration between the state and the sovereign tribal governments whose traditional lands and territories lie within the borders of the state of Washington serves to implement the spirit of the 1989 centennial accord and other similar government-to-government agreements, including the 2004 accord between the federally recognized Indian tribes with treaty reserved rights in the state of Washington;

(5) Establishing a first peoples' language, culture, and oral tribal traditions teacher certification program both achieves educational objectives and models effective government-to-government relationships;

(6) Establishing a first peoples' language, culture, and oral tribal traditions certification program implements the following policy objectives of the federal Native American languages act of 1990 (P.L. 101-477) in a tangible way:

(a) To preserve, protect, and promote the rights and freedom of Native Americans to use, practice, and develop Native American languages;

(b) To allow exceptions to teacher certification requirements for federal programs and programs funded in whole or in part by the federal government, for instruction in Native American languages when such teacher certification requirements hinder the employment of qualified teachers who teach

in Native American languages, and to encourage state and territorial governments to make similar exceptions;

(c) To encourage and support the use of Native American languages as a medium of instruction in order to encourage and support Native American language survival, educational opportunity, increased student success and performance, increased student awareness and knowledge of their culture and history, and increased student and community pride;

(d) To encourage state and local education programs to work with Native American parents, educators, Indian tribes, and other Native American governing bodies in the implementation of programs to put this policy into effect; and

(e) To encourage all institutions of elementary, secondary, and higher education, where appropriate, to include Native American languages in the curriculum in the same manner as foreign languages and to grant proficiency in Native American languages the same full academic credit as proficiency in foreign languages;

(7) Establishing a first peoples' language, culture, and oral tribal traditions certification program is consistent with the intent of presidential executive order number 13336 from 2004, entitled "American Indian and Alaska native education," to assist students in meeting the challenging student academic standards of the no child left behind act of 2001 (P.L. 107-110) in a manner that is consistent with tribal traditions, languages, and cultures." [2007 c 319 § 1.]

Short title—2007 c 319: "This act may be known and cited as the "First peoples' language, culture, and oral tribal traditions teacher certification act: Honoring our ancestors."" [2007 c 319 § 4.]

28A.410.070 Registration of certificates. (1) All certificates issued by the superintendent of public instruction shall be valid and entitle the holder thereof to employment in any school district of the state upon being registered by the school district if designated to do so by the school district, which fact shall be evidenced on the certificate in the words, "Registered for use in district," together with the date of registry, and an official signature of the person registering the same: PROVIDED, That a copy of the original certificate duly certified by the superintendent of public instruction may be used for the purpose of registry and endorsement in lieu of the original.

(2) The superintendent of public instruction may accept applications for educator certification that are submitted using an electronic signature from the applicant. [2007 c 401 § 7; 1983 c 56 § 12; 1975-'76 2nd ex.s. c 92 § 4; 1975 1st ex.s. c 275 § 135; 1971 c 48 § 50; 1969 ex.s. c 223 § 28A.70.130. Prior: 1909 c 97 p 338 § 11; RRS § 4976; prior: 1897 c 118 § 147. Formerly RCW 28A.70.130, 28.70.130.]

Findings—2007 c 401: See note following RCW 28A.300.500.

Severability—1983 c 56: See note following RCW 28A.195.010.

Severability—1975-'76 2nd ex.s. c 92: See note following RCW 28A.305.130.

Severability—1971 c 48: See note following RCW 28A.310.250.

Chapter 28A.415 RCW

INSTITUTES, WORKSHOPS, AND TRAINING

Sections

28A.415.020	Credit on salary schedule for approved in-service training, continuing education, and internship.
28A.415.200	Repealed.
28A.415.205	Repealed.
28A.415.340	State leadership academy—Public-private partnership—Reports.
28A.415.350	Professional development learning opportunities—Partnerships.
28A.415.360	Learning improvement days—Expected outcomes—Reports.
28A.415.370	Recruiting Washington teachers program.
28A.415.380	Mathematics and science instructional coach program—Evaluation—Reports.

28A.415.020 Credit on salary schedule for approved in-service training, continuing education, and internship.

(1) Certificated personnel shall receive for each ten clock hours of approved in-service training attended the equivalent of a one credit college quarter course on the salary schedule developed by the legislative evaluation and accountability program committee.

(2) Certificated personnel shall receive for each ten clock hours of approved continuing education earned, as continuing education is defined by rule adopted by the professional educator standards board, the equivalent of a one credit college quarter course on the salary schedule developed by the legislative evaluation and accountability program committee.

(3) Certificated personnel shall receive for each forty clock hours of participation in an approved internship with a business, an industry, or government, as an internship is defined by rule of the professional educator standards board in accordance with RCW 28A.415.025, the equivalent of a one credit college quarter course on the salary schedule developed by the legislative evaluation and accountability program committee.

(4) An approved in-service training program shall be a program approved by a school district board of directors, which meet standards adopted by the professional educator standards board, and the development of said program has been participated in by an in-service training task force whose membership is the same as provided under RCW 28A.415.040, or a program offered by an education agency approved to provide in-service for the purposes of continuing education as provided for under rules adopted by the professional educator standards board, or both.

(5) Clock hours eligible for application to the salary schedule developed by the legislative evaluation and accountability program committee as described in subsections (1) and (2) of this section, shall be those hours acquired after August 31, 1987. Clock hours eligible for application to the salary schedule as described in subsection (3) of this section shall be those hours acquired after December 31, 1995.

(6) In-service training or continuing education in first peoples' language, culture, or oral tribal traditions provided by a sovereign tribal government participating in the Washington state first peoples' language, culture, and oral tribal traditions teacher certification program authorized under RCW 28A.410.045 shall be considered approved in-service training or approved continuing education under this section and RCW 28A.415.023. [2007 c 319 § 3; 2006 c 263 § 808; 1995 c 284 § 2; 1990 c 33 § 415; 1987 c 519 § 1. Formerly RCW 28A.71.110.]

Findings—Short title—2007 c 319: See notes following RCW 28A.410.045.

Findings—Purpose—Part headings not law—2006 c 263: See notes following RCW 28A.150.230.

Findings—1995 c 284: "The legislature finds that if students are to succeed in an increasingly competitive economy, they will need to be taught by teachers who are aware of the technological innovations and changes that are occurring throughout business, industry, and government. Having teachers who are more aware of these changes will lead to improvements in curriculum and instruction, thereby making public schools more relevant to the future career and personal needs of our students." [1995 c 284 § 1.]

28A.415.200 Repealed. See Supplementary Table of Disposition of Former RCW Sections, this volume.

28A.415.205 Repealed. See Supplementary Table of Disposition of Former RCW Sections, this volume.

28A.415.340 State leadership academy—Public-private partnership—Reports. (1) Research supports the value of quality school and school district leadership. Effective leadership is critical to improving student learning and transforming underperforming schools and school districts into world-class learning centers.

(2) A public-private partnership is established to develop, pilot, and implement the Washington state leadership academy to focus on the development and enhancement of personal leadership characteristics and the teaching of effective practices and skills demonstrated by school and district administrators who are successful managers and instructional leaders. It is the goal of the academy to provide state-of-the-art programs and services across the state.

(3) Academy partners include the state superintendent and principal professional associations, private nonprofit foundations, institutions of higher education with approved educator preparation programs, the professional educator standards board, the office of the superintendent of public instruction, educational service districts, the state school business officers' association, and other entities identified by the partners. The partners shall designate an independent organization to act as the fiscal agent for the academy and shall establish a board of directors to oversee and direct the academy's finances, services, and programs. The academy shall be supported by a national research institution with demonstrated expertise in educational leadership.

(4) Initial development of academy course content and activities shall be supported by private funds. Initial tasks of the academy are to:

(a) Finalize a comprehensive design of the academy and the development of the curriculum frameworks for a comprehensive leadership development program that includes coursework, practicum, mentoring, and evaluation components;

(b) Develop curriculum for individual leadership topics;

(c) Pilot the curriculum and all program components; and

(d) Modify the comprehensive design, curriculum coursework, practicum, and mentoring programs based on the research results gained from pilot activities.

(5) The board of directors shall report semiannually to the superintendent of public instruction on the financial contributions provided by foundations and other organizations to support the work of the academy. The board of directors shall report by December 31st each year to the superintendent of public instruction on the programs and services provided, numbers of participants in the various academy activities, evaluation activities regarding program and participant outcomes, and plans for the academy's future development.

(6) The board of directors shall make recommendations for changes in superintendent and principal preparation programs, the administrator licensure system, and continuing education requirements. [2007 c 402 § 1.]

Captions not law—2007 c 402: "Captions used in this act are not any part of the law." [2007 c 402 § 12.]

[2007 RCW Supp—page 238]

28A.415.350 Professional development learning opportunities—Partnerships. The office of the superintendent of public instruction shall:

(1) Create partnerships with the educational service districts or public or private institutions of higher education with approved educator preparation programs to develop and deliver professional development learning opportunities for educators that fulfill the goals and address the activities described in *sections 3 through 6 of this act and RCW 28A.415.360. The partnerships shall:

(a) Support school districts by providing professional development leadership, courses, and consultation services to school districts in their implementation of professional development activities, including the activities described in *sections 3 through 6 of this act and RCW 28A.415.360; and

(b) Support one another in the delivery of state-level and regional-level professional development activities such as state conferences and regional accountability institutes; and

(2) Enter into a performance agreement with each educational service district to clearly articulate partner responsibilities and assure fidelity for the delivery of professional development initiatives including job-embedded practices. Components of such performance agreements shall include:

(a) Participation in the development of various professional development workshops, programs, and activities;

(b) Characteristics and qualifications of professional development staff supported by the program;

(c) Methods to ensure consistent delivery of professional development services; and

(d) Reporting responsibilities related to services provided, program participation, outcomes, and recommendations for service improvement. [2007 c 402 § 7.]

***Reviser's note:** Sections 3 through 6 of this act were vetoed.

Captions not law—2007 c 402: See note following RCW 28A.415.340.

28A.415.360 Learning improvement days—Expected outcomes—Reports. (1) Subject to funds appropriated for this purpose, targeted professional development programs, to be known as learning improvement days, are authorized to further the development of outstanding mathematics, science, and reading teaching and learning opportunities in the state of Washington. The intent of this section is to provide guidance for the learning improvement days in the omnibus appropriations act. The learning improvement days authorized in this section shall not be considered part of the definition of basic education.

(2) The expected outcomes of these programs are:

(a) Provision of meaningful, targeted professional development for all teachers in mathematics, science, or reading;

(b) Increased knowledge and instructional skill for mathematics, science, or reading teachers;

(c) Increased use of curriculum materials with supporting diagnostic and supplemental materials that align with state standards;

(d) Skillful guidance for students participating in alternative assessment activities;

(e) Increased rigor of course offerings especially in mathematics, science, and reading;

(f) Increased student opportunities for focused, applied mathematics and science classes;

(g) Increased student success on state achievement measures; and

(h) Increased student appreciation of the value and uses of mathematics, science, and reading knowledge and exploration of related careers.

(3) School districts receiving resources under this section shall submit reports to the superintendent of public instruction regarding the use of the funds; how the use of the funds is associated with measurable improvement in the expected outcomes described under subsection (2) of this section; and how other professional development resources and programs authorized in statute or in the omnibus appropriations act contribute to the expected outcomes. The superintendent of public instruction and the office of financial management shall collaborate on required report content and format. [2007 c 402 § 9.]

Captions not law—2007 c 402: See note following RCW 28A.415.340.

28A.415.370 Recruiting Washington teachers program. (1) The recruiting Washington teachers program is established to recruit and provide training and support for high school students to enter the teaching profession, especially in teacher shortage areas and among underrepresented groups and multilingual, multicultural students. The program shall be administered by the professional educator standards board.

(2) The program shall consist of the following components:

(a) Targeted recruitment of diverse students, including but not limited to students from underrepresented groups and multilingual, multicultural students in grades nine through twelve through outreach and communication strategies. The focus of recruitment efforts shall be on encouraging students to consider and explore becoming future teachers in mathematics, science, bilingual education, special education, and English as a second language. Program enrollment is not limited to students from underrepresented groups or multilingual, multicultural students;

(b) A curriculum that provides future teachers with opportunities to observe classroom instruction at all grade levels; includes preteaching internships at all grade levels with a focus on shortage areas; and covers such topics as lesson planning, learning styles, student learning data and information, the achievement gap, cultural competency, and education policy;

(c) Academic and community support services for students to help them overcome possible barriers to becoming future teachers, such as supplemental tutoring; advising on college readiness, applications, and financial aid processes; and mentoring; and

(d) Future teacher camps held on college campuses where students can attend workshops and interact with college faculty and current teachers.

(3) As part of its administration of the program, the professional educator standards board shall:

(a) Develop the curriculum and program guidelines in consultation with an advisory group of teachers, representatives of teacher preparation programs, teacher candidates, students, and representatives of diverse communities;

(b) Subject to funds appropriated for this purpose, allocate grant funds through a competitive process to partnerships of high schools, teacher preparation programs, and community-based organizations to design and deliver programs that include the components under subsection (2) of this section; and

(c) Conduct an evaluation of the effectiveness of current strategies and programs for recruiting teachers, especially multilingual, multicultural teachers, in Washington and in other states. The board shall use the findings from the evaluation to revise the recruiting Washington teachers program as necessary and make other recommendations to teacher preparation programs or the legislature. [2007 c 402 § 10.]

Captions not law—2007 c 402: See note following RCW 28A.415.340.

28A.415.380 Mathematics and science instructional coach program—Evaluation—Reports. (1) A mathematics and science instructional coach program is authorized, which shall consist of a coach development institute, coaching seminars, coaching activities in schools, and program evaluation.

(2) The office of the superintendent of public instruction shall develop a mathematics and science instructional coach program that includes an initial coach development experience for new coaches provided through an institute setting, coaching support seminars, and additional coach development services. The office shall draw upon the experiences of coaches in federally supported elementary literacy programs and other successful programs, research and policy briefs on adult professional development, and research that specifically addresses the instructional environments of middle, junior high, and high schools as well as the unique aspects of the fields of mathematics and science.

(3) The office of the superintendent of public instruction shall design the application process and select the program participants.

(4) Schools and school districts participating in the program shall carefully select the individuals to perform the role of mathematics or science instructional coach. Characteristics to be considered for a successful coach include:

(a) Expertise in content area;

(b) Expertise in various instructional methodologies and personalizing learning;

(c) Personal skills that include skilled listening, questioning, trust-building, and problem-solving;

(d) Understanding and appreciation for the differences in adult learners and student learners; and

(e) Capacity for strategic planning and quality program implementation.

(5) The role of the mathematics or science instructional coach is focused on supporting teachers as they apply knowledge, develop skills, polish techniques, and deepen their understanding of content and instructional practices. This work takes a number of forms including: Individualized professional development, department-wide and school-wide professional development, guidance in student data interpretation, and using assessment to guide instruction. Each coach shall be assigned to two schools as part of the program.

(6) Program participants have the following responsibilities:

(a) Mathematics and science coaches shall participate in the coach development institute as well as in coaching support seminars that take place throughout the school year, practice coaching activities as guided by those articulated in the role of the coach in subsection (5) of this section, collect data, and participate in program evaluation activities as requested by the institute pursuant to subsection (7) of this section.

(b) School and district administrators in districts in which the mathematics and science coaches are practicing shall participate in program evaluation activities.

(7)(a) The Washington State University social and economic sciences research center shall conduct an evaluation of the mathematics and science instructional coach program in this section. Data shall be collected through various instruments including surveys, program and activity reports, student performance measures, observations, interviews, and other processes. Findings shall include an evaluation of the coach development institute, coaching support seminars, and other coach support activities; recommendations with regard to the characteristics required of the coaches; identification of changes in teacher instruction related to coaching activities; and identification of the satisfaction level with coaching activities as experienced by classroom teachers and administrators.

(b) The Washington State University social and economic sciences research center shall report its findings to the governor, the office of the superintendent of public instruction, and the education and fiscal committees of the legislature. An interim report is due November 1, 2008. The final report is due December 1, 2009. [2007 c 396 § 4.]

Captions not law—2007 c 396: See note following RCW 28A.305.215.

Finding—Intent—2007 c 396: See note following RCW 28A.300.515.

Chapter 28A.515 RCW

COMMON SCHOOL CONSTRUCTION FUND

Sections

28A.515.300 Permanent common school fund—Sources—Use.
28A.515.330 Permanent common school fund—Allowable investments—Irreducible principal.

28A.515.300 Permanent common school fund—Sources—Use. (1) The principal of the common school fund as the same existed on June 30, 1965, shall remain permanent and irreducible. The said fund shall consist of the principal amount thereof existing on June 30, 1965, and such additions thereto as may be derived after June 30, 1965, from the following named sources, to wit: Appropriations and donations by the state to this fund; donations and bequests by individuals to the state or public for common schools; the proceeds of lands and other property which revert to the state by escheat and forfeiture; the proceeds of all property granted to the state, when the purpose of the grant is not specified, or is uncertain; funds accumulated in the treasury of the state for the disbursement of which provision has not been made by law; the proceeds of the sale of stone, minerals or property other than timber and other crops from school and state lands, other than those granted for specific purposes; all moneys received from persons appropriating stone, minerals or prop-

erty other than timber and other crops from school and state lands other than those granted for specific purposes, and all moneys other than rental, recovered from persons trespassing on said lands; five percent of the proceeds of the sale of public lands lying within the state, which shall be sold by the United States subsequent to the admission of the state into the Union as approved by section 13 of the act of congress enabling the admission of the state into the Union; the principal of all funds arising from the sale of lands and other property which have been, and hereafter may be, granted to the state for the support of common schools and such other funds as may be provided by legislative enactment.

(2) Consistent with Article XVI, section 5 and Article IX, sections 3 and 5 of the state Constitution, the state investment board may invest the fund as authorized in RCW 28A.515.330. [2007 c 505 § 2; 1969 ex.s. c 223 § 28A.40.010. Prior: 1967 c 29 § 1; 1909 c 97 p 320 § 1; RRS § 4932; prior: 1897 c 118 § 109; 1890 p 373 § 50; 1886 p 20 § 57, part; Code 1881 § 3210, part; 1873 p 421 § 1. Formerly RCW 28A.40.010, 28.40.010.]

Intent—Finding—2007 c 505: See note following RCW 28A.515.330.

Banks and trust companies, liquidation and winding up dividends unclaimed deposited in: RCW 30.44.150, 30.44.180.
personal property, proceeds deposited in: RCW 30.44.220.

Enlargement of, legislature may provide: State Constitution Art. 9 § 3 (Amendment 43).

Escheated estates deposited in: RCW 11.08.210.

Game and game fish lands

payments to in lieu of property taxes: RCW 77.12.203.

withdrawn from lease, payment of amount of lease into: RCW 77.12.360.

Interest deposited in current state school fund used for current expenses: State Constitution Art. 9 § 3 (Amendment 43).

Investment of permanent common school fund: State Constitution Art. 16 § 5 (Amendment 44).

Lands set aside and permanent funds established: Enabling act §§ 10 through 25.

Losses occasioned by default, fraud, etc., to become permanent debt against state: State Constitution Art. 9 § 5.

Permanent and irreducible: State Constitution Art. 9 § 3 (Amendment 43), RCW 28A.515.300.

Safe deposit box contents

rent unpaid, sale, proceeds deposited in: RCW 22.28.040.

unclaimed after liquidation and winding up of bank or trust company, proceeds from sale deposited in: RCW 30.44.220.

School funds enumerated—Deposits—Uses: RCW 28A.320.330.

State land

acquired, lease and sale of, disposition of proceeds: RCW 79.10.030.

withdrawn for game purposes, payment of amount of lease into: RCW 77.12.360.

28A.515.330 Permanent common school fund—Allowable investments—Irreducible principal. The state investment board may invest the permanent common school fund in various types of allowable investments in order to achieve a balance of long-term growth and current income, when consistent with the best interest of the state and the permanent common school fund, and in conformance with RCW 43.84.150. The state treasurer shall calculate the irreducible principal amount of the fund in accordance with the state Constitution and state law. The irreducible principal shall not include investment gains on the principal, and the fund may retain or distribute income and investment earnings in order

to achieve the appropriate balance between growth and income. [2007 c 505 § 3.]

Intent—Finding—2007 c 505: "Consistent with Article XVI, section 5 and Article IX, sections 3 and 5 of the state Constitution, it is the intent of the legislature to clarify state law to permit the permanent common school fund to be invested in equities when such investment is in the best interest of the state and the permanent common school fund.

A 1999 opinion of the attorney general concluded that the constitutional language does not prohibit investment of the permanent common school fund, as long as the investment is authorized by law and is consistent with applicable trust principles. This opinion further reasoned that the constitutional phrase "permanent and irreducible" bars the legislature from abolishing the fund or expending its principal for purposes other than those for which the fund was established, but does not prohibit the legislature from specifying permissible investments, particularly in light of Article IX, section 5 of the state Constitution, which specifies that only losses resulting from "defalcation, mismanagement or fraud" constitute state debts to the permanent common school fund.

The legislature finds that permanent fund common school fund income as a percentage of total school construction budgets has declined while school construction budgets have grown, and that other state revenues have filled the gap between income from state lands and the total school construction budget. For this reason, the fund may tolerate higher risk and volatility in favor of growth, and therefore a balance of long-term growth and current income is in the best interest of the state and the fund's beneficiaries. The legislature recognizes that by investing in equities, the value of the permanent fund may fluctuate over time due to market changes even if no disposition of the fund principal is made.

It is the intent of the legislature to clarify state law to permit equity investment of the permanent common school fund even if there is a decline in the value of the permanent fund due to market changes. The legislature recognizes that the irreducible portion of the principal amount in the permanent fund must be held in perpetuity for the benefit of the fund and future generations, and that only the earnings from the permanent fund may be appropriated to the common school construction fund." [2007 c 505 § 1.]

Chapter 28A.600 RCW

STUDENTS

Sections

28A.600.405 Participation in high school completion pilot program—Eligible students—Funding allocations—Rules—Information for students and parents.

28A.600.405 Participation in high school completion pilot program—Eligible students—Funding allocations—Rules—Information for students and parents. (1) For purposes of this section and RCW 28B.50.534, "eligible student" means a student who has completed all state and local high school graduation requirements except the certificate of academic achievement under RCW 28A.655.061 or the certificate of individual achievement under RCW 28A.155.045, who is less than age twenty-one as of September 1st of the academic year the student enrolls at a community and technical college under this section, and who meets the following criteria:

(a) Receives a level 2 (basic) score on the reading and writing content areas of the high school Washington assessment of student learning;

(b) Has not successfully met state standards on a retake of the assessment or an alternative assessment;

(c) Has participated in assessment remediation; and

(d) Receives a recommendation to enroll in courses or a program of study made available under RCW 28B.50.534 from his or her high school principal.

(2) An eligible student may enroll in courses or a program of study made available by a community or technical

college participating in the pilot program created under RCW 28B.50.534 for the purpose of obtaining a high school diploma.

(3) For eligible students in courses or programs delivered directly by the community or technical college participating in the pilot program under RCW 28B.50.534 and only for enrollment in courses that lead to a high school diploma, the superintendent of public instruction shall transmit to the colleges participating in the pilot program an amount per each full-time equivalent college student at statewide uniform rates. The amount shall be the sum of (a), (b), (c), and (d) of this subsection, as applicable.

(a) The superintendent shall separately calculate and allocate moneys appropriated for basic education under RCW 28A.150.260 for purposes of making payments under this section. The calculations and allocations shall be based upon the estimated statewide annual average per full-time equivalent high school student allocations under RCW 28A.150.260, excluding small high school enhancements, and applicable rules adopted under chapter 34.05 RCW.

(b) The superintendent shall allocate an amount equal to the per funded student state allocation for the learning assistance program under chapter 28A.165 RCW for each full-time equivalent college student or a pro rata amount for less than full-time enrollment.

(c) The superintendent shall allocate an amount equal to the per full-time equivalent student allocation for the student achievement program under RCW 28A.505.210 for each full-time equivalent college student or a pro rata amount for less than full-time enrollment.

(d) For eligible students who meet eligibility criteria for the state transitional bilingual instruction program under chapter 28A.180 RCW, the superintendent shall allocate an amount equal to the per student state allocation for the transitional bilingual instruction program or a pro rata amount for less than full-time enrollment.

(4) The superintendent may adopt rules establishing enrollment reporting, recordkeeping, and accounting requirements necessary to ensure accountability for the use of basic education, learning assistance, and transitional bilingual program funds under this section for the pilot program created under RCW 28B.50.534.

(5) All school districts in the geographic area of the two community and technical colleges selected pursuant to section 8, chapter 355, Laws of 2007 to participate in the pilot program shall provide information about the high school completion option under RCW 28B.50.534 to students in grades ten, eleven, and twelve and the parents or guardians of those students. [2007 c 355 § 4.]

Finding—Intent—2007 c 355: See note following RCW 28B.50.534.

Chapter 28A.630 RCW

TEMPORARY PROVISIONS—SPECIAL PROJECTS

Sections

SPECIAL SERVICES PILOT PROGRAM

28A.630.016 Special services pilot program—Requirements for participation—Duties of superintendent of public instruction—Funding—Reports. (*Expires June 30, 2011.*)

COMPREHENSIVE K-3 FOUNDATIONS PROGRAM
DEMONSTRATION PROJECTS

28A.630.055 Comprehensive K-3 foundations program—Demonstration projects—Evaluation—Reports. *(Expires September 1, 2010.)*

ENGLISH AS A SECOND LANGUAGE DEMONSTRATION PROJECT

28A.630.058 English as a second language demonstration project—Reports. *(Expires September 1, 2010.)*

SPECIAL SERVICES PILOT PROGRAM

28A.630.016 Special services pilot program—Requirements for participation—Duties of superintendent of public instruction—Funding—Reports. *(Expires June 30, 2011.)* (1)(a) Research has shown that early, intensive interventions can significantly improve reading, written language, and mathematics skills for children who are struggling academically. This early research-based assistance has been successful in reducing the number of children who require specialized programs. Research further suggests that the disabilities of many students with mild and moderate disabilities are correctable through strategic early intervention and the students do not necessitate special education eligibility. However, by being effective in reducing the number of students eligible for these programs, school district funding is reduced.

(b) The purpose of the program in this section is to continue support to the existing pilot districts and to encourage other school districts to participate as pilot districts to improve the implementation of high quality general education research-based core instructional programs to meet the needs of students struggling academically, while reducing the number of students inappropriately referred and placed in special education under the specific learning disability eligibility category because of ineffective instructional practices. This will allow special education programs to concentrate specially designed instruction on students who truly require special education services. The goal of this assistance is to effectively address reading, written language, and mathematics difficulties resulting in a substantially greater proportion of students meeting the progressively increasing performance standards for both the aggregate and disaggregated subgroups under federal law.

(c) The participating pilot districts implementing the special services pilot program have met the goals of the pilot program resulting in (i) a substantial number of underachieving students meeting the progressively increasing reading performance standards and (ii) a reduction in the number of children who require special education.

(2) Seven school districts may participate in the special services pilot program, including two school districts already participating and five additional school districts. The special services pilot program shall begin in the 2007-08 school year and conclude in the 2010-11 school year.

(3) School districts participating in the pilot program shall receive state special education funding in accordance with state special education funding formulas and a separate pilot program appropriation from sources other than special education funds. The separate appropriation shall be: (a) The school district's estimated state special education funding for the current year based on the school district's average

percentage of students age three through twenty-one who were eligible for special education services for the school year before participation as a pilot program as reported to the office of the superintendent of public instruction; minus (b) the school district's actual state special education funding based on the district's current percentage of students age three through twenty-one eligible for special education services as reported to [the office of] the superintendent of public instruction.

The superintendent shall adjust the factors in (a) of this subsection for one or more participating school districts, where legislative changes to the special education funding formula impact the funding mechanism of this program.

(4) Participation in the pilot program shall not increase or decrease a district's ability to access the safety net for high-cost students by virtue of the district's participation in the program. Districts participating in the pilot program shall have access to the special education safety net using a modified application approach for the office of the superintendent of public instruction demonstration of financial need. The superintendent shall create a modified application to include all special education revenues received by the district, all pilot program funding, expenditures for students with individual education programs, and expenditures for students generating pilot program revenue. Districts participating in the pilot program that seek safety net funding shall convincingly demonstrate to the safety net committee that any change in demonstrated need is not attributable to their participation in this pilot program.

(5) School districts participating in the program must agree to:

(a) Implement the program as part of the school district's general education curriculum for all students;

(b) Use a multitiered service delivery system to provide scientific research-based instructional interventions addressing individual student needs in the areas of reading, written language, or mathematics;

(c) Develop and implement an assessment system to conduct universal screening, progress monitoring, targeted assessments, and outcome assessments to identify the reading, written language, or mathematics needs of each student and to monitor student progress;

(d) Incorporate student-specific data obtained through the pilot program when conducting an evaluation to determine if the student has a disability;

(e) Assure that parents are informed of: The amount and nature of student performance data that is collected and the general education services that are provided; the strategies for increasing the student's rate of learning; the parents' right to make a referral for special education evaluation if they suspect the student has a disability; and the parents' right to have input into designed interventions;

(f) Assure that parents are provided assessments of achievement at reasonable intervals addressing student progress during instruction;

(g) Actively engage parents as partners in the learning process;

(h) Comply with state special education requirements; and

(i) Participate and provide staff expertise in the design and implementation of an evaluation of the program as deter-

mined by the superintendent of public instruction. Districts shall annually review and report progress, including objective measures or indicators that show the progress towards achieving the purpose and goal of the program, to the office of the superintendent of public instruction.

(6) By December 15, 2010, the superintendent of public instruction shall submit a report to the governor and appropriate committees of the legislature that summarizes the effectiveness of the pilot program in this section. The report shall also include a recommendation as to whether or not the pilot program should be continued, expanded, or otherwise modified.

(7) This section expires June 30, 2011. [2007 c 522 § 959.]

Severability—Effective date—2007 c 522: See notes following RCW 15.64.050.

COMPREHENSIVE K-3 FOUNDATIONS PROGRAM DEMONSTRATION PROJECTS

28A.630.055 Comprehensive K-3 foundations program—Demonstration projects—Evaluation—Reports. (Expires September 1, 2010.) Subject to funds appropriated for the purposes of this section:

(1) Four demonstration projects are authorized for schools serving kindergarten through third grade students to develop, implement, and document the effects of a comprehensive K-3 foundations program. At least two demonstration projects shall be in schools that are participating in the public-private early learning partnerships in the Highline and Yakima school districts. A third demonstration project shall be in the Spokane school district.

(2) The superintendent of public instruction shall select project participants based on the criteria in this section, the commitment to a school-wide program, and the degree to which applicants articulate an understanding of development and implementation of a comprehensive K-3 foundations program.

(3) Successful school applicants shall:

(a) Demonstrate that there is engaged and committed school and district leadership and support for the project;

(b) Demonstrate that school staff is engaged and committed and believes in high expectations for all students;

(c) Have a history of successfully using data to guide decision making for students and the program;

(d) Plan for the use of staff learning improvement days to support project implementation;

(e) Demonstrate successful linkages with the early learning providers in their communities;

(f) Outline the steps taken to develop this application and the general plan for implementation of a comprehensive K-3 foundations program; and

(g) Commit to individualized learning opportunities in early grades by using district resources, such as funding under RCW 28A.505.210, to reduce class sizes in grades kindergarten through three.

(4) Program resources provided to demonstration projects are:

(a) Support to implement an all-day kindergarten program;

(b) Support for class sizes at a ratio of one teacher to eighteen students, and the additional resources for materials generated by that ratio through associated nonemployee-related costs;

(c) Support for a one-half full-time equivalent instructional coach; and

(d) Support for professional development time related to program implementation.

(5) Demonstration projects shall provide:

(a) A program that implements an educational philosophy that supports child-centered learning;

(b) Learning opportunities through personal exploration and discovery, hands-on experiences, and by working independently, in small groups and in large groups;

(c) Rich and varied subject matter that includes: Reading, writing, mathematics, science, social studies, a world language other than English, the arts, and health and physical education;

(d) Opportunities to learn and feel accomplishment, diligence, creativity, and confidence;

(e) Social and emotional development opportunities;

(f) Personalized assessment for each student that addresses academic knowledge and skill development, social and emotional skill development, critical thinking and decision-making skills, large and fine motor skill development, and knowledge of personal interests, strengths, and goals;

(g) For students to progress to the upper elementary grades when a solid foundation is in place and reading and mathematics primary skills have been mastered;

(h) Class sizes that do not exceed one certificated instructional staff to eighteen students; and

(i) Cooperation with project evaluators in an evaluation of the demonstration projects, including providing the data necessary to complete the work.

(6) The office of the superintendent of public instruction shall contract with the Northwest regional educational laboratory to conduct an evaluation of the demonstration projects under this section. Student, staff, program, and parent data shall be collected using various instruments including surveys, program and activity descriptions, student performance measures, observations, and other processes.

(7) Within available funding, findings from the evaluation under this section shall include conclusions regarding the degree to which students thrive in the education environment; student progress in academic, social, and emotional areas; the program components that have been most important to student success; the degree to which educational staff feel accomplished in their work and satisfied with student progress; and recommendations for continued implementation and expansion of the program.

(8) Findings shall be reported to the governor, the office of the superintendent of public instruction, and the appropriate early learning, education, and fiscal committees of the legislature. An interim report is due November 1, 2008. The final report is due December 1, 2009.

(9) This section expires September 1, 2010. [2007 c 400 § 3.]

Captions not law—2007 c 400: See note following RCW 28A.150.210.

ENGLISH AS A SECOND LANGUAGE
DEMONSTRATION PROJECT

28A.630.058 English as a second language demonstration project—Reports. (*Expires September 1, 2010.*)

(1) The goals of the English as a second language demonstration project are to develop recommendations:

(a) Identifying foundational competencies for developing academic English skills in English language learner students that all teachers should acquire in initial teacher preparation programs;

(b) Identifying components of a professional development program that builds classroom teacher competence for developing academic English skills in English language learner students; and

(c) Identifying job-embedded practices that connect the English language learner teacher and classroom teachers to coordinate instruction to support the work of the student.

(2) The English as a second language demonstration project shall use two field strategies in the development of recommendations.

(a) The first strategy is to conduct a field study of an ongoing project in a number of schools and school districts in which Spanish is the predominate language other than English.

(b) The second strategy is to conduct a project that provides professional development and planning time resources to approximately three large schools in which there are many first languages among the students. The participants of this project shall partner with an institution of higher education or a professional development provider with expertise in supporting student acquisition of academic English. The superintendent of public instruction shall select the participants in the project under this subsection (2)(b).

(3)(a) The office of the superintendent of public instruction shall contract with the Northwest regional educational laboratory to conduct the field study work and collect additional information from the project schools. In conducting its work, the laboratory shall review current literature regarding best practices and consult with state and national experts as appropriate.

(b) The laboratory shall report its findings to the governor, the office of the superintendent of public instruction, and the education and fiscal committees of the legislature. An interim report is due November 1, 2008. The final report is due December 1, 2009.

(4) This section expires September 1, 2010. [2007 c 400 § 4.]

Captions not law—2007 c 400: See note following RCW 28A.150.210.

Chapter 28A.655 RCW

**ACADEMIC ACHIEVEMENT AND
ACCOUNTABILITY**

Sections

28A.655.061 High school assessment system—Certificate of academic achievement requirements—Exemptions—Options to retake high school assessment—Objective alternative assessment—Student learning plans.

28A.655.061 Graduation without certificate of academic achievement or certificate of individual achievement. (*Expires August 31, 2013.*)

28A.655.063 Objective alternative assessments—Reimbursement of costs—Testing fee waivers.

28A.655.065 Objective alternative assessment methods—Appeals from assessment scores—Waivers and appeals from assessment requirements—Rules.

28A.655.070 Essential academic learning requirements and assessments—Duties of the superintendent of public instruction.

28A.655.075 Essential academic learning requirements and grade level expectations for educational technology literacy and technology fluency—Assessments—Reports.

28A.655.200 Norm-referenced assessments—Diagnostic assessments.

28A.655.061 High school assessment system—Certificate of academic achievement requirements—Exemptions—Options to retake high school assessment—Objective alternative assessment—Student learning plans. (1)

The high school assessment system shall include but need not be limited to the Washington assessment of student learning, opportunities for a student to retake the content areas of the assessment in which the student was not successful, and if approved by the legislature pursuant to subsection (10) of this section, one or more objective alternative assessments for a student to demonstrate achievement of state academic standards. The objective alternative assessments for each content area shall be comparable in rigor to the skills and knowledge that the student must demonstrate on the Washington assessment of student learning for each content area.

(2) Subject to the conditions in this section, a certificate of academic achievement shall be obtained by most students at about the age of sixteen, and is evidence that the students have successfully met the state standard in the content areas included in the certificate. With the exception of students satisfying the provisions of RCW 28A.155.045 or 28A.655.0611, acquisition of the certificate is required for graduation from a public high school but is not the only requirement for graduation.

(3) Beginning with the graduating class of 2008, with the exception of students satisfying the provisions of RCW 28A.155.045, a student who meets the state standards on the reading, writing, and mathematics content areas of the high school Washington assessment of student learning shall earn a certificate of academic achievement. If a student does not successfully meet the state standards in one or more content areas required for the certificate of academic achievement, then the student may retake the assessment in the content area up to four times at no cost to the student. If the student successfully meets the state standards on a retake of the assessment then the student shall earn a certificate of academic achievement. Once objective alternative assessments are authorized pursuant to subsection (10) of this section, a student may use the objective alternative assessments to demonstrate that the student successfully meets the state standards for that content area if the student has taken the Washington assessment of student learning at least once. If the student successfully meets the state standards on the objective alternative assessments then the student shall earn a certificate of academic achievement.

(4) Beginning no later than with the graduating class of 2013, a student must meet the state standards in science in addition to the other content areas required under subsection (3) of this section on the Washington assessment of student

learning or the objective alternative assessments in order to earn a certificate of academic achievement. The state board of education may adopt a rule that implements the requirements of this subsection (4) beginning with a graduating class before the graduating class of 2013, if the state board of education adopts the rule by September 1st of the freshman school year of the graduating class to which the requirements of this subsection (4) apply. The state board of education's authority under this subsection (4) does not alter the requirement that any change in performance standards for the tenth grade assessment must comply with RCW 28A.305.130.

(5) The state board of education may not require the acquisition of the certificate of academic achievement for students in home-based instruction under chapter 28A.200 RCW, for students enrolled in private schools under chapter 28A.195 RCW, or for students satisfying the provisions of RCW 28A.155.045.

(6) A student may retain and use the highest result from each successfully completed content area of the high school assessment.

(7) School districts must make available to students the following options:

(a) To retake the Washington assessment of student learning up to four times in the content areas in which the student did not meet the state standards if the student is enrolled in a public school; or

(b) To retake the Washington assessment of student learning up to four times in the content areas in which the student did not meet the state standards if the student is enrolled in a high school completion program at a community or technical college. The superintendent of public instruction and the state board for community and technical colleges shall jointly identify means by which students in these programs can be assessed.

(8) Students who achieve the standard in a content area of the high school assessment but who wish to improve their results shall pay for retaking the assessment, using a uniform cost determined by the superintendent of public instruction.

(9) Opportunities to retake the assessment at least twice a year shall be available to each school district.

(10)(a) The office of the superintendent of public instruction shall develop options for implementing objective alternative assessments, which may include an appeals process for students' scores, for students to demonstrate achievement of the state academic standards. The objective alternative assessments shall be comparable in rigor to the skills and knowledge that the student must demonstrate on the Washington assessment of student learning and be objective in its determination of student achievement of the state standards. Before any objective alternative assessments in addition to those authorized in RCW 28A.655.065 or (b) of this subsection are used by a student to demonstrate that the student has met the state standards in a content area required to obtain a certificate, the legislature shall formally approve the use of any objective alternative assessments through the omnibus appropriations act or by statute or concurrent resolution.

(b)(i) A student's score on the mathematics, reading or English, or writing portion of the scholastic assessment test (SAT) or the American college test (ACT) may be used as an objective alternative assessment under this section for demonstrating that a student has met or exceeded the state stan-

dards for the certificate of academic achievement. The state board of education shall identify the scores students must achieve on the relevant portion of the SAT or ACT to meet or exceed the state standard in the relevant content area on the Washington assessment of student learning. The state board of education shall identify the first scores by December 1, 2007. After the first scores are established, the state board may increase but not decrease the scores required for students to meet or exceed the state standards.

(ii) Until August 31, 2008, a student's score on the mathematics portion of the preliminary scholastic assessment test (PSAT) may be used as an objective alternative assessment under this section for demonstrating that a student has met or exceeded the state standard for the certificate of academic achievement. The state board of education shall identify the score students must achieve on the mathematics portion of the PSAT to meet or exceed the state standard in that content area on the Washington assessment of student learning.

(iii) A student who scores at least a three on the grading scale of one to five for selected advance placement examinations may use the score as an objective alternative assessment under this section for demonstrating that a student has met or exceeded state standards for the certificate of academic achievement. A score of three on the advance placement examinations in calculus or statistics may be used as an alternative assessment for the mathematics portion of the Washington assessment of student learning. A score of three on the advance placement examinations in English language and composition may be used as an alternative assessment for the writing portion of the Washington assessment of student learning. A score of three on the advance placement examinations in English literature and composition, macroeconomics, microeconomics, psychology, United States history, world history, United States government and politics, or comparative government and politics may be used as an alternative assessment for the reading portion of the Washington assessment of student learning.

(11) By December 15, 2004, the house of representatives and senate education committees shall obtain information and conclusions from recognized, independent, national assessment experts regarding the validity and reliability of the high school Washington assessment of student learning for making individual student high school graduation determinations.

(12) To help assure continued progress in academic achievement as a foundation for high school graduation and to assure that students are on track for high school graduation, each school district shall prepare plans for students as provided in this subsection (12).

(a) Student learning plans are required for eighth through twelfth grade students who were not successful on any or all of the content areas of the Washington assessment for student learning during the previous school year. The plan shall include the courses, competencies, and other steps needed to be taken by the student to meet state academic standards and stay on track for graduation. If applicable, the plan shall also include the high school completion pilot program created under RCW 28B.50.534.

(i) The parent or guardian shall be notified, preferably through a parent conference, of the student's results on the Washington assessment of student learning, actions the

school intends to take to improve the student's skills in any content area in which the student was unsuccessful, strategies to help them improve their student's skills, and the content of the student's plan.

(ii) Progress made on the student plan shall be reported to the student's parents or guardian at least annually and adjustments to the plan made as necessary.

(b) All fifth grade students who were not successful in one or more of the content areas of the fourth grade Washington assessment of student learning shall have a student learning plan.

(i) The parent or guardian of the student shall be notified, preferably through a parent conference, of the student's results on the Washington assessment of student learning, actions the school intends to take to improve the student's skills in any content area in which the student was unsuccessful, and provide strategies to help them improve their student's skills.

(ii) Progress made on the student plan shall be reported to the student's parents or guardian at least annually and adjustments to the plan made as necessary. [2007 c 355 § 5; 2007 c 354 § 2; 2006 c 115 § 4; 2004 c 19 § 101.]

Reviser's note: This section was amended by 2007 c 354 § 2 and by 2007 c 355 § 5, each without reference to the other. Both amendments are incorporated in the publication of this section under RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

Finding—Intent—2007 c 355: See note following RCW 28B.50.534.

Findings—Intent—2007 c 354: "(1) The legislature maintains a strong commitment to high expectations and high academic achievement for all students. The legislature finds that Washington schools and students are making significant progress in improving achievement in reading and writing. Schools are adapting instruction and providing remediation for students who need additional assistance. Reading and writing are being taught across the curriculum. Therefore, the legislature does not intend to make changes to the Washington assessment of student learning or high school graduation requirements in reading and writing.

(2) However, students are having difficulty improving their academic achievement in mathematics and science, particularly as measured by the high school Washington assessment of student learning. The legislature finds that corrections are needed in the state's high school assessment system that will improve alignment between learning standards, instruction, diagnosis, and assessment of students' knowledge and skills in high school mathematics and science. The legislature further finds there is a sense of urgency to make these corrections and intends to revise high school graduation requirements in mathematics and science only for the minimum period for corrections to be fully implemented." [2007 c 354 § 1.]

Alternative assessments—Reports—Evaluation—2006 c 115: See note following RCW 28A.655.065.

Part headings and captions not law—2004 c 19: "Part headings and captions used in this act are not any part of the law." [2004 c 19 § 301.]

Severability—2004 c 19: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [2004 c 19 § 302.]

Effective date—2004 c 19: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately [March 18, 2004]." [2004 c 19 § 303.]

28A.655.0611 Graduation without certificate of academic achievement or certificate of individual achievement. (Expires August 31, 2013.) (1) Beginning with the graduating class of 2008 and through no later than the graduating class of 2012, students may graduate from high school without earning a certificate of academic achievement or a certificate of individual achievement if they:

(a) Have not successfully met the mathematics standard on the high school Washington assessment of student learning, an approved objective alternative assessment, or an alternate assessment developed for eligible special education students;

(b) Have successfully met the state standard in the other content areas required for a certificate under RCW 28A.655.061 or 28A.155.045;

(c) Have met all other state and school district graduation requirements; and

(d)(i) For the graduating class of 2008, successfully earn one additional high school mathematics credit or career and technical course equivalent, including courses offered at skill centers, after the student's eleventh grade year intended to increase the student's mathematics proficiency toward meeting or exceeding the mathematics standards assessed on the high school Washington assessment of student learning and continue to take the appropriate mathematics assessment at least once annually until graduation; and

(ii) For the remaining graduating classes under this section, successfully earn two additional mathematics credits or career and technical course equivalent, including courses offered at skill centers, after the student's tenth grade year intended to increase the student's mathematics proficiency toward meeting or exceeding the mathematics standards assessed on the high school Washington assessment of student learning and continue to take the appropriate mathematics assessment at least once annually until graduation.

(2) The state board of education may adopt a rule that ends the application of this section with a graduating class before the graduating class of 2012, if the state board of education adopts the rule by September 1st of the freshman school year of the graduating class to which the provisions of this section no longer apply. The state board of education's authority under this section does not alter the requirement that any change in performance standards for the tenth grade assessment must comply with RCW 28A.305.130.

(3) This section expires August 31, 2013. [2007 c 354 § 4.]

Findings—Intent—2007 c 354: See note following RCW 28A.655.061.

28A.655.063 Objective alternative assessments—Reimbursement of costs—Testing fee waivers. Subject to the availability of funds appropriated for this purpose, the office of the superintendent of public instruction shall provide funds to school districts to reimburse students for the cost of taking the tests in RCW 28A.655.061(10)(b) when the students take the tests for the purpose of using the results as an objective alternative assessment. The office of the superintendent of public instruction may, as an alternative to providing funds to school districts, arrange for students to receive a testing fee waiver or make other arrangements to compensate the students. [2007 c 354 § 7; 2006 c 115 § 5.]

Findings—Intent—2007 c 354: See note following RCW 28A.655.061.

28A.655.065 Objective alternative assessment methods—Appeals from assessment scores—Waivers and appeals from assessment requirements—Rules. (1) The legislature has made a commitment to rigorous academic

standards for receipt of a high school diploma. The primary way that students will demonstrate that they meet the standards in reading, writing, mathematics, and science is through the Washington assessment of student learning. Only objective assessments that are comparable in rigor to the state assessment are authorized as an alternative assessment. Before seeking an alternative assessment, the legislature expects students to make a genuine effort to meet state standards, through regular and consistent attendance at school and participation in extended learning and other assistance programs.

(2) Under RCW 28A.655.061, beginning in the 2006-07 school year, the superintendent of public instruction shall implement objective alternative assessment methods as provided in this section for students to demonstrate achievement of the state standards in content areas in which the student has not yet met the standard on the high school Washington assessment of student learning. A student may access an alternative if the student meets applicable eligibility criteria in RCW 28A.655.061 and this section and other eligibility criteria established by the superintendent of public instruction, including but not limited to attendance criteria and participation in the remediation or supplemental instruction contained in the student learning plan developed under RCW 28A.655.061. A school district may waive attendance and/or remediation criteria for special, unavoidable circumstances.

(3) For the purposes of this section, "applicant" means a student seeking to use one of the alternative assessment methods in this section.

(4) One alternative assessment method shall be a combination of the applicant's grades in applicable courses and the applicant's highest score on the high school Washington assessment of student learning, as provided in this subsection. A student is eligible to apply for the alternative assessment method under this subsection (4) if the student has a cumulative grade point average of at least 3.2 on a four point grading scale. The superintendent of public instruction shall determine which high school courses are applicable to the alternative assessment method and shall issue guidelines to school districts.

(a) Using guidelines prepared by the superintendent of public instruction, a school district shall identify the group of students in the same school as the applicant who took the same high school courses as the applicant in the applicable content area. From the group of students identified in this manner, the district shall select the comparison cohort that shall be those students who met or slightly exceeded the state standard on the Washington assessment of student learning.

(b) The district shall compare the applicant's grades in high school courses in the applicable content area to the grades of students in the comparison cohort for the same high school courses. If the applicant's grades are equal to or above the mean grades of the comparison cohort, the applicant shall be deemed to have met the state standard on the alternative assessment.

(c) An applicant may not use the alternative assessment under this subsection (4) if there are fewer than six students in the comparison cohort.

(5) The superintendent of public instruction shall develop an alternative assessment method that shall be an evaluation of a collection of work samples prepared and sub-

mitted by the applicant, as provided in this subsection and, for career and technical applicants, the additional requirements of subsection (6) of this section.

(a) The superintendent of public instruction shall develop guidelines for the types and number of work samples in each content area that may be submitted as a collection of evidence that the applicant has met the state standard in that content area. Work samples may be collected from academic, career and technical, or remedial courses and may include performance tasks as well as written products. The superintendent shall submit the guidelines for approval by the state board of education.

(b) The superintendent shall develop protocols for submission of the collection of work samples that include affidavits from the applicant's teachers and school district that the samples are the work of the applicant and a requirement that a portion of the samples be prepared under the direct supervision of a classroom teacher. The superintendent shall submit the protocols for approval by the state board of education.

(c) The superintendent shall develop uniform scoring criteria for evaluating the collection of work samples and submit the scoring criteria for approval by the state board of education. Collections shall be scored at the state level or regionally by a panel of educators selected and trained by the superintendent to ensure objectivity, reliability, and rigor in the evaluation. An educator may not score work samples submitted by applicants from the educator's school district. If the panel awards an applicant's collection of work samples the minimum required score, the applicant shall be deemed to have met the state standard on the alternative assessment.

(d) Using an open and public process that includes consultation with district superintendents, school principals, and other educators, the state board of education shall consider the guidelines, protocols, scoring criteria, and other information regarding the collection of work samples submitted by the superintendent of public instruction. The collection of work samples may be implemented as an alternative assessment after the state board of education has approved the guidelines, protocols, and scoring criteria and determined that the collection of work samples: (i) Will meet professionally accepted standards for a valid and reliable measure of the grade level expectations and the essential academic learning requirements; and (ii) is comparable to or exceeds the rigor of the skills and knowledge that a student must demonstrate on the Washington assessment of student learning in the applicable content area. The state board shall make an approval decision and determination no later than December 1, 2006, and thereafter may increase the required rigor of the collection of work samples.

(e) By September of 2006, the superintendent of public instruction shall develop informational materials for parents, teachers, and students regarding the collection of work samples and the status of its development as an alternative assessment method. The materials shall provide specific guidance regarding the type and number of work samples likely to be required, include examples of work that meets the state learning standards, and describe the scoring criteria and process for the collection. The materials shall also encourage students in the graduating class of 2008 to begin creating a collection if they believe they may seek to use the collection once it is implemented as an alternative assessment.

(6)(a) For students enrolled in a career and technical education program approved under RCW 28C.04.110, the superintendent of public instruction shall develop additional guidelines for a collection of work samples that evidences that the collection:

- (i) Is relevant to the student's particular career and technical program;
- (ii) Focuses on the application of academic knowledge and skills within the program;
- (iii) Includes completed activities or projects where demonstration of academic knowledge is inferred; and
- (iv) Is related to the essential academic learning requirements and state standards that students must meet to earn a certificate of academic achievement or certificate of individual achievement, but also represents the knowledge and skills that successful individuals in the career and technical field of the approved program are expected to possess.

(b) To meet the state standard on the alternative assessment under this subsection (6), an applicant must also attain the state or nationally recognized certificate or credential associated with the approved career and technical program.

(c) The superintendent shall consult with community and technical colleges, employers, the work force training and education coordinating board, apprenticeship programs, and other regional and national experts in career and technical education to create an appropriate collection of work samples and other evidence of a career and technical student's knowledge and skills on the state academic standards.

(7) The superintendent of public instruction shall study the feasibility of using existing mathematics assessments in languages other than English as an additional alternative assessment option. The study shall include an estimation of the cost of translating the tenth grade mathematics assessment into other languages and scoring the assessments should they be implemented.

(8) The superintendent of public instruction shall implement:

(a) By June 1, 2006, a process for students to appeal the score they received on the high school assessments; and

(b) By January 1, 2007, guidelines and appeal processes for waiving specific requirements in RCW 28A.655.061 pertaining to the certificate of academic achievement and to the certificate of individual achievement for students who: (i) Transfer to a Washington public school in their junior or senior year with the intent of obtaining a public high school diploma, or (ii) have special, unavoidable circumstances.

(9) The state board of education shall examine opportunities for additional alternative assessments, including the possible use of one or more standardized norm-referenced student achievement tests and the possible use of the reading, writing, or mathematics portions of the ACT ASSET and ACT COMPASS test instruments as objective alternative assessments for demonstrating that a student has met the state standards for the certificate of academic achievement. The state board shall submit its findings and recommendations to the education committees of the legislature by January 10, 2008.

(10) The superintendent of public instruction shall adopt rules to implement this section. [2007 c 354 § 6; 2006 c 115 § 1.]

Findings—Intent—2007 c 354: See note following RCW 28A.655.061.

Alternative assessments—Reports—Evaluation—2006 c 115: "(1) By September 10, 2006, the superintendent of public instruction shall report the following, in detail, to the education committees of the legislature:

(a) Results of the pilot testing of the alternative assessments authorized under section 1 of this act, particularly the pilot testing of the collection of work samples or collection of evidence;

(b) The proposed guidelines, protocols, and procedures to be used by the superintendent in implementing the alternative assessments, particularly the collection of evidence;

(c) The proposed criteria, rubrics, and methodology for scoring the collection of evidence;

(d) A description of the training to be provided for school districts, educators serving on scoring panels, and teachers assisting students with collections of evidence;

(e) Preliminary results of the feasibility study in section 1(7) of this act; and

(f) Updated estimates of the number of students likely to be eligible or apply for an alternative assessment method.

(2) By December 1, 2006, and again by February 1, 2007, the superintendent of public instruction shall provide the education committees of the legislature with an update on the number of students eligible for or participating in an alternative assessment method.

(3) The Washington state institute for public policy shall conduct an independent and objective evaluation of the reliability, validity, and rigor of the alternative assessment methods authorized under section 1 of this act, including an examination of a representative sample of the collections of work samples submitted by the graduating classes of 2008 and 2009. The institute shall submit its findings to the education committees of the legislature by September 1, 2009, to enable the legislature to develop and consider statutory changes to the alternative assessment during the 2010 legislative session." [2006 c 115 § 3.]

28A.655.070 Essential academic learning requirements and assessments—Duties of the superintendent of public instruction. (1) The superintendent of public instruction shall develop essential academic learning requirements that identify the knowledge and skills all public school students need to know and be able to do based on the student learning goals in RCW 28A.150.210, develop student assessments, and implement the accountability recommendations and requests regarding assistance, rewards, and recognition of the state board of education.

(2) The superintendent of public instruction shall:

(a) Periodically revise the essential academic learning requirements, as needed, based on the student learning goals in RCW 28A.150.210. Goals one and two shall be considered primary. To the maximum extent possible, the superintendent shall integrate goal four and the knowledge and skill areas in the other goals in the essential academic learning requirements; and

(b) Review and prioritize the essential academic learning requirements and identify, with clear and concise descriptions, the grade level content expectations to be assessed on the Washington assessment of student learning and used for state or federal accountability purposes. The review, prioritization, and identification shall result in more focus and targeting with an emphasis on depth over breadth in the number of grade level content expectations assessed at each grade level. Grade level content expectations shall be articulated over the grades as a sequence of expectations and performances that are logical, build with increasing depth after foundational knowledge and skills are acquired, and reflect, where appropriate, the sequential nature of the discipline. The office of the superintendent of public instruction, within seven working days, shall post on its web site any grade level

content expectations provided to an assessment vendor for use in constructing the Washington assessment of student learning.

(3) In consultation with the state board of education, the superintendent of public instruction shall maintain and continue to develop and revise a statewide academic assessment system in the content areas of reading, writing, mathematics, and science for use in the elementary, middle, and high school years designed to determine if each student has mastered the essential academic learning requirements identified in subsection (1) of this section. School districts shall administer the assessments under guidelines adopted by the superintendent of public instruction. The academic assessment system may include a variety of assessment methods, including criterion-referenced and performance-based measures.

(4) If the superintendent proposes any modification to the essential academic learning requirements or the statewide assessments, then the superintendent shall, upon request, provide opportunities for the education committees of the house of representatives and the senate to review the assessments and proposed modifications to the essential academic learning requirements before the modifications are adopted.

(5) The assessment system shall be designed so that the results under the assessment system are used by educators as tools to evaluate instructional practices, and to initiate appropriate educational support for students who have not mastered the essential academic learning requirements at the appropriate periods in the student's educational development.

(6) By September 2007, the results for reading and mathematics shall be reported in a format that will allow parents and teachers to determine the academic gain a student has acquired in those content areas from one school year to the next.

(7) To assist parents and teachers in their efforts to provide educational support to individual students, the superintendent of public instruction shall provide as much individual student performance information as possible within the constraints of the assessment system's item bank. The superintendent shall also provide to school districts:

(a) Information on classroom-based and other assessments that may provide additional achievement information for individual students; and

(b) A collection of diagnostic tools that educators may use to evaluate the academic status of individual students. The tools shall be designed to be inexpensive, easily administered, and quickly and easily scored, with results provided in a format that may be easily shared with parents and students.

(8) To the maximum extent possible, the superintendent shall integrate knowledge and skill areas in development of the assessments.

(9) Assessments for goals three and four of RCW 28A.150.210 shall be integrated in the essential academic learning requirements and assessments for goals one and two.

(10) The superintendent shall develop assessments that are directly related to the essential academic learning requirements, and are not biased toward persons with different learning styles, racial or ethnic backgrounds, or on the basis of gender.

(11) The superintendent shall consider methods to address the unique needs of special education students when developing the assessments under this section.

(12) The superintendent shall consider methods to address the unique needs of highly capable students when developing the assessments under this section.

(13) The superintendent shall post on the superintendent's web site lists of resources and model assessments in social studies, the arts, and health and fitness. [2007 c 354 § 5; 2005 c 497 § 106; 2004 c 19 § 204; 1999 c 388 § 501.]

Findings—Intent—2007 c 354: See note following RCW 28A.655.061.

Intent—Part headings not law—Effective date—2005 c 497: See notes following RCW 28A.305.011.

Part headings and captions not law—Severability—Effective date—2004 c 19: See notes following RCW 28A.655.061.

28A.655.075 Essential academic learning requirements and grade level expectations for educational technology literacy and technology fluency—Assessments—Reports. (1) Within funds specifically appropriated therefor,

by December 1, 2008, the superintendent of public instruction shall develop essential academic learning requirements and grade level expectations for educational technology literacy and technology fluency that identify the knowledge and skills that all public school students need to know and be able to do in the areas of technology and technology literacy. The development process shall include a review of current standards that have been developed or are used by other states and national and international technology associations. To the maximum extent possible, the superintendent shall integrate goal four and the knowledge and skill areas in the other goals in the technology essential academic learning requirements.

(a) As used in this section, "technology literacy" means the ability to responsibly, creatively, and effectively use appropriate technology to communicate; access, collect, manage, integrate, and evaluate information; solve problems and create solutions; build and share knowledge; and improve and enhance learning in all subject areas and experiences.

(b) Technology fluency builds upon technology literacy and is demonstrated when students: Apply technology to real-world experiences; adapt to changing technologies; modify current and create new technologies; and personalize technology to meet personal needs, interests, and learning styles.

(2)(a) Within funds specifically appropriated therefor, the superintendent shall obtain or develop education technology assessments that may be administered in the elementary, middle, and high school grades to assess the essential academic learning requirements for technology. The assessments shall be designed to be classroom or project-based so that they can be embedded in classroom instruction and be administered and scored by school staff throughout the regular school year using consistent scoring criteria and procedures. By the 2010-11 school year, these assessments shall be made available to school districts for the districts' voluntary use. If a school district uses the assessments created under this section, then the school district shall notify the superintendent of public instruction of the use. The superin-

tendent shall report annually to the legislature on the number of school districts that use the assessments each school year.

(b) Beginning December 1, 2010, and annually thereafter, the superintendent of public instruction shall provide a report to the relevant legislative committees regarding the use of the assessments. [2007 c 396 § 16.]

Captions not law—2007 c 396: See note following RCW 28A.305.215.

Finding—Intent—2007 c 396: See note following RCW 28A.300.515.

Essential academic learning requirements and grade level expectations—Revised standards and curricula for mathematics and science—Duties of the state board of education and the superintendent of public instruction: RCW 28A.305.215.

28A.655.200 Norm-referenced assessments—Diagnostic assessments. (1) The legislature intends to permit school districts to offer norm-referenced assessments, make diagnostic tools available to school districts, and provide funding for diagnostic assessments to enhance student learning at all grade levels and provide early intervention before the high school Washington assessment of student learning.

(2) In addition to the diagnostic assessments provided under this section, school districts may, at their own expense, administer norm-referenced assessments to students.

(3) The office of the superintendent of public instruction shall post on its web site for voluntary use by school districts, a guide of diagnostic assessments. The assessments in the guide, to the extent possible, shall include the characteristics listed in subsection (4) of this section.

(4) Beginning September 1, 2007, the office of the superintendent of public instruction shall make diagnostic assessments in reading, writing, mathematics, and science in elementary, middle, and high school grades available to school districts. Subject to funds appropriated for this purpose, the office of the superintendent of public instruction shall also provide funding to school districts for administration of diagnostic assessments to help improve student learning, identify academic weaknesses, enhance student planning and guidance, and develop targeted instructional strategies to assist students before the high school Washington assessment of student learning. To the greatest extent possible, the assessments shall be:

- (a) Aligned to the state's grade level expectations;
 - (b) Individualized to each student's performance level;
 - (c) Administered efficiently to provide results either immediately or within two weeks;
 - (d) Capable of measuring individual student growth over time and allowing student progress to be compared to other students across the country;
 - (e) Readily available to parents; and
 - (f) Cost-effective.
- (5) The office of the superintendent of public instruction shall offer training at statewide and regional staff development activities in:

- (a) The interpretation of diagnostic assessments; and
- (b) Application of instructional strategies that will increase student learning based on diagnostic assessment data. [2007 c 354 § 8; 2006 c 117 § 4; 2005 c 217 § 2.]

Findings—Intent—2007 c 354: See note following RCW 28A.655.061.

Intent—2006 c 117: See note following RCW 28A.600.045.

Chapter 28A.660 RCW ALTERNATIVE ROUTE TEACHER CERTIFICATION

Sections

- 28A.660.005 Findings—Declaration.
- 28A.660.042 Pipeline for paraeducators conditional scholarship program.
- 28A.660.045 Retooling to teach mathematics and science conditional scholarship program.
- 28A.660.050 Conditional scholarship programs—Requirements—Recipients.

28A.660.005 Findings—Declaration. (1) The legislature finds and declares:

- (a) Teacher qualifications and effectiveness are the most important influences on student learning in schools;
 - (b) Preparation of individuals to become well-qualified, effective teachers must be high quality;
 - (c) Teachers who complete high-quality alternative route programs with intensive field-based experience, adequate coursework, and strong mentorship do as well or better than teachers who complete traditional preparation programs;
 - (d) High-quality alternative route programs can provide more flexibility and expedience for individuals to transition from their current career to teaching;
 - (e) High-quality alternative route programs can help school districts fill subject matter shortage areas and areas with shortages due to geographic location;
 - (f) Regardless of route, all candidates for residency teacher certification must meet the high standards required by the state; and
 - (g) Teachers need an adequate background in subject matter content if they are to teach it well, and should hold full, appropriate credentials in those subject areas.
- (2) The legislature recognizes widespread concerns about the potential for teacher shortages and finds that classified instructional staff in public schools, current certificated staff, and unemployed certificate holders represent a great untapped resource for recruiting more teachers in critical shortage areas. [2007 c 396 § 5; 2001 c 158 § 1.]

Captions not law—2007 c 396: See note following RCW 28A.305.215.

Finding—Intent—2007 c 396: See note following RCW 28A.300.515.

28A.660.042 Pipeline for paraeducators conditional scholarship program. (1) The pipeline for paraeducators conditional scholarship program is created. Participation is limited to paraeducators without a college degree who have at least three years of classroom experience. It is anticipated that candidates enrolled in this program will complete their associate of arts degree at a community and technical college in two years or less and become eligible for a mathematics, special education, or English as a second language endorsement via route one in the alternative routes to teacher certification program provided in this chapter.

(2) Entry requirements for candidates include district or building validation of qualifications, including three years of successful student interaction and leadership as a classified instructional employee. [2007 c 396 § 6.]

Captions not law—2007 c 396: See note following RCW 28A.305.215.

Finding—Intent—2007 c 396: See note following RCW 28A.300.515.

28A.660.045 Retooling to teach mathematics and science conditional scholarship program. (1) The retooling to teach mathematics and science conditional scholarship program is created. Participation is limited to current K-12 teachers and individuals having an elementary education certificate but who are not employed in positions requiring an elementary education certificate. It is anticipated that candidates enrolled in this program will complete the requirements for a mathematics or science endorsement, or both, in two years or less.

(2) Entry requirements for candidates include:

(a) Current K-12 teachers shall pursue a middle level mathematics or science, or secondary mathematics or science endorsement.

(b) Individuals having an elementary education certificate but who are not employed in positions requiring an elementary education certificate shall pursue an endorsement in middle level mathematics or science only. [2007 c 396 § 7.]

Captions not law—2007 c 396: See note following RCW 28A.305.215.

Finding—Intent—2007 c 396: See note following RCW 28A.300.515.

28A.660.050 Conditional scholarship programs—Requirements—Recipients. The conditional scholarship programs in this chapter are created under the following guidelines:

(1) The programs shall be administered by the higher education coordinating board. In administering the programs, the higher education coordinating board has the following powers and duties:

(a) To adopt necessary rules and develop guidelines to administer the programs;

(b) To collect and manage repayments from participants who do not meet their service obligations; and

(c) To accept grants and donations from public and private sources for the programs.

(2) Requirements for participation in the conditional scholarship programs are as provided in this subsection (2).

(a) The alternative route conditional scholarship program is limited to interns of the partnership grant programs under RCW 28A.660.040. In order to receive conditional scholarship awards, recipients shall:

(i) Be accepted and maintain enrollment in alternative certification routes through the partnership grant program;

(ii) Continue to make satisfactory progress toward completion of the alternative route certification program and receipt of a residency teaching certificate; and

(iii) Receive no more than the annual amount of the scholarship, not to exceed eight thousand dollars, for the cost of tuition, fees, and educational expenses, including books, supplies, and transportation for the alternative route certification program in which the recipient is enrolled. The board may adjust the annual award by the average rate of resident undergraduate tuition and fee increases at the state universities as defined in RCW 28B.10.016.

(b) The pipeline for paraeducators conditional scholarship program is limited to qualified paraeducators as provided by RCW 28A.660.042. In order to receive conditional scholarship awards, recipients shall:

(i) Be accepted and maintain enrollment at a community and technical college for no more than two years and attain an associate of arts degree;

(ii) Continue to make satisfactory progress toward completion of an associate of arts degree. This progress requirement is a condition for eligibility into a route one program of the alternative routes to teacher certification program for a mathematics, special education, or English as a second language endorsement; and

(iii) Receive no more than the annual amount of the scholarship, not to exceed four thousand dollars, for the cost of tuition, fees, and educational expenses, including books, supplies, and transportation for the alternative route certification program in which the recipient is enrolled. The board may adjust the annual award by the average rate of tuition and fee increases at the state community and technical colleges.

(c) The retooling to teach mathematics and science conditional scholarship program is limited to current K-12 teachers and individuals having an elementary education certificate but who are not employed in positions requiring an elementary education certificate as provided by RCW 28A.660.045. In order to receive conditional scholarship awards:

(i) Individuals currently employed as teachers shall pursue a middle level mathematics or science, or secondary mathematics or science endorsement; or

(ii) Individuals who are certificated with an elementary education endorsement, but not employed in positions requiring an elementary education certificate, shall pursue an endorsement in middle level mathematics or science, or both; and

(iii) Individuals shall use one of the pathways to endorsement processes to receive a mathematics or science endorsement, or both, which shall include passing a mathematics or science endorsement test, or both tests, plus observation and completing applicable coursework to attain the proper endorsement; and

(iv) Individuals shall receive no more than the annual amount of the scholarship, not to exceed three thousand dollars, for the cost of tuition, test fees, and educational expenses, including books, supplies, and transportation for the endorsement pathway being pursued.

(3) The Washington professional educator standards board shall select individuals to receive conditional scholarships.

(4) For the purpose of this chapter, a conditional scholarship is a loan that is forgiven in whole or in part in exchange for service as a certificated teacher employed in a Washington state K-12 public school. The state shall forgive one year of loan obligation for every two years a recipient teaches in a public school. Recipients who fail to continue a course of study leading to residency teacher certification or cease to teach in a public school in the state of Washington in their endorsement area are required to repay the remaining loan principal with interest.

(5) Recipients who fail to fulfill the required teaching obligation are required to repay the remaining loan principal with interest and any other applicable fees. The higher education coordinating board shall adopt rules to define the

terms for repayment, including applicable interest rates, fees, and deferments.

(6) The higher education coordinating board may deposit all appropriations, collections, and any other funds received for the program in this chapter in the future teachers conditional scholarship account authorized in RCW 28B.102.080. [2007 c 396 § 8; 2004 c 23 § 5; 2003 c 410 § 3; 2001 c 158 § 6.]

Captions not law—2007 c 396: See note following RCW 28A.305.215.

Finding—Intent—2007 c 396: See note following RCW 28A.300.515.

Title 28B

HIGHER EDUCATION

Chapters

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- 28B.15** College and university fees.
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Chapter 28B.07 RCW

WASHINGTON HIGHER EDUCATION FACILITIES AUTHORITY

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GENERAL PROVISIONS

28B.07.020 Definitions. As used in this chapter, the following words and terms shall have the following meanings, unless the context otherwise requires:

(1) "Authority" means the Washington higher education facilities authority created under RCW 28B.07.030 or any board, body, commission, department or officer succeeding to the principal functions of the authority or to whom the powers conferred upon the authority shall be given by law.

(2) "Bonds" means bonds, notes, commercial paper, certificates of indebtedness, or other evidences of indebtedness of the authority issued under this chapter.

(3) "Bond resolution" means any resolution of the authority, adopted under this chapter, authorizing the issuance and sale of bonds.

(4) "Higher education institution" means a private, non-profit educational institution, the main campus of which is permanently situated in the state, which is open to residents of the state, which neither restricts entry on racial or religious grounds, which provides programs of education beyond high school leading at least to the baccalaureate degree, and which is accredited by the Northwest Association of Schools and Colleges or by an accrediting association recognized by the higher education coordinating board.

(5) "Participant" means a higher education institution which, under this chapter, undertakes the financing of a project or projects or undertakes the refunding or refinancing of obligations, mortgages, or advances previously incurred for a project or projects.

(6) "Project" means any land or any improvement, including, but not limited to, buildings, structures, fixtures, utilities, machinery, excavations, paving, and landscaping, and any interest in such land or improvements, and any personal property pertaining or useful to such land and improvements, which are necessary, useful, or convenient for the operation of a higher education institution, including but not limited to, the following: Dormitories or other multi-unit housing facilities for students, faculty, officers, or employees; dining halls; student unions; administration buildings; academic buildings; libraries; laboratories; research facilities; computer facilities; classrooms; athletic facilities; health care facilities; maintenance, storage, or utility facilities; parking facilities; or any combination thereof, or any other structures, facilities, or equipment so related.

(7) "Project cost" means any cost related to the acquisition, construction, improvement, alteration, or rehabilitation by a participant or the authority of any project and the financing of the project through the authority, including, but not limited to, the following costs paid or incurred: Costs of acquisition of land or interests in land and any improvement; costs of contractors, builders, laborers, material suppliers, and suppliers of tools and equipment; costs of surety and performance bonds; fees and disbursements of architects, surveyors, engineers, feasibility consultants, accountants, attorneys, financial consultants, and other professionals; interest on bonds issued by the authority during any period of construction; principal of and interest on interim financing of any project; debt service reserve funds; depreciation funds, costs of the initial start-up operation of any project; fees for title insurance, document recording, or filing; fees of trustees and

the authority; taxes and other governmental charges levied or assessed on any project; and any other similar costs. Except as specifically set forth in this definition, the term "project cost" does not include books, fuel, supplies, and similar items which are required to be treated as a current expense under generally accepted accounting principles.

(8) "Trust indenture" means any agreement, trust indenture, or other similar instrument by and between the authority and one or more corporate trustees. [2007 c 218 § 86; 1985 c 370 § 47; 1983 c 169 § 2.]

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

28B.07.021 Definitions. The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

(1) "Authority" means the Washington higher education facilities authority established pursuant to RCW 28B.07.030 or any board, body, commission, department, or officer succeeding to the principal functions of the authority or to whom the powers conferred upon the authority shall be given by law.

(2) "Educational loans" means:

(a) Guaranteed federal educational loans made in accordance with Title IV, Part B, of the higher education act of 1965, or its successor, to a qualified borrower for payment of educational expenses incurred by a student while attending a participating institution, the payment of principal of and interest on which is insured by the United States secretary of education under the higher education act of 1965, or its successor; and

(b) Alternative state educational loans made in accordance with this chapter to a qualified borrower as determined by the authority for payment of educational expenses incurred by a student while attending a participating institution under the terms and conditions determined by the authority.

(3) "Obligation," "bond," or "bonds" means bonds, notes, commercial paper, certificates of indebtedness, or other evidences of indebtedness of the authority issued under this chapter, whether or not the interest on the obligation is subject to federal income taxation.

(4) "Participating institution" means any post high school educational institution, public or private, whose students are eligible for educational loans.

(5) "Qualified borrower" means a student, or the parent of a student, who: (a) Qualifies for an educational loan; and (b) is a resident of the state of Washington or has been accepted for enrollment at or is attending a participating institution within the state of Washington. [2007 c 36 § 2.]

Policy—Purpose—2007 c 36: See note following RCW 28B.07.300.

28B.07.030 Washington higher education facilities authority—Created—Members—Chairperson—Records—Quorum—Compensation and travel expenses.

(1) The Washington higher education facilities authority is hereby established as a public body corporate and politic, with perpetual corporate succession, constituting an agency of the state of Washington exercising essential governmental functions. The authority is a "public body" within the meaning of RCW 39.53.010.

(2) The authority shall consist of seven members as follows: The governor, lieutenant governor, executive director of the higher education coordinating board, and four public members, one of whom shall be the president of a higher education institution at the time of appointment. The public members shall be residents of the state and appointed by the governor, subject to confirmation by the senate, on the basis of their interest or expertise in the provision of higher education and the financing of higher education. The public members of the authority shall serve for terms of four years. The initial terms of the public members shall be staggered in a manner determined by the governor. In the event of a vacancy on the authority due to death, resignation, or removal of one of the public members, and upon the expiration of the term of any public member, the governor shall appoint a successor for a term expiring on the fourth anniversary of the successor's date of the appointment. If any of the state offices are abolished, the resulting vacancy on the authority shall be filled by the state officer who shall succeed substantially to the power and duties of the abolished office. Any public member of the authority may be removed by the governor for misfeasance, malfeasance, wilful neglect of duty, or any other cause after notice and a public hearing, unless such notice and hearing shall be expressly waived in writing.

(3) The governor shall serve as chairperson of the authority. The authority shall elect annually one of its members as secretary. If the governor shall be absent from a meeting of the authority, the secretary shall preside. However, the governor may designate an employee of the governor's office to act on the governor's behalf in all other respects during the absence of the governor at any meeting of the authority. If the designation is in writing and is presented to the person presiding at the meetings of the authority who is included in the designation, the vote of the designee has the same effect as if cast by the governor.

(4) Any person designated by resolution of the authority shall keep a record of the proceedings of the authority and shall be the custodian of all books, documents, and papers filed with the authority, the minute book or a journal of the authority, and the authority's official seal, if any. The person may cause copies to be made of all minutes and other records and documents of the authority, and may give certificates to the effect that such copies are true copies. All persons dealing with the authority may rely upon the certificates.

(5) Four members of the authority constitute a quorum. Members participating in a meeting through the use of any means of communication by which all members participating can hear each other during the meeting shall be deemed to be present in person at the meeting for all purposes. The authority may act on the basis of a motion except when authorizing the issuance and sale of bonds, in which case the authority shall act by resolution. Bond resolutions and other resolutions shall be adopted upon the affirmative vote of four members of the authority, and shall be signed by those members voting yes. Motions shall be adopted upon the affirmative vote of a majority of a quorum of members present at any meeting of the authority. All actions taken by the authority shall take effect immediately without need for publication or other public notice. A vacancy in the membership of the

authority does not impair the power of the authority to act under this chapter.

(6) The members of the authority shall be compensated in accordance with RCW 43.03.240 and shall be entitled to reimbursement, solely from the funds of the authority, for travel expenses as determined by the authority incurred in the discharge of their duties under this chapter. [2007 c 36 § 14; 1985 c 370 § 48; 1984 c 287 § 62; 1983 c 169 § 3.]

Policy—Purpose—2007 c 36: See note following RCW 28B.07.300.

Legislative findings—Severability—Effective date—1984 c 287: See notes following RCW 43.03.220.

STUDENT LOAN FINANCING

28B.07.300 Student loan financing—Authority—Liability. (1) In addition to its existing powers, the authority has the following powers with respect to student loan financing:

- (a) To originate and purchase educational loans;
- (b) To issue revenue bonds payable from and secured by educational loans;
- (c) To execute financing documents in connection with such educational loans and bonds;
- (d) To adopt rules in accordance with chapter 34.05 RCW;
- (e) To participate fully in federal programs that provide guaranties for the repayment of educational loans and do all things necessary, useful, or convenient to make such programs available in the state and carry out the purposes of this chapter;
- (f) To contract with an agency, financial institution, or corporation, whether organized under the laws of this state or otherwise, whereby such agency, financial institution, or corporation shall provide billing, accounting, reporting, or administrative services required for educational loan programs administered by the authority or in which the authority participates; and
- (g) To form one or more nonprofit special purpose corporations for accomplishing the purposes set forth in this chapter. The authority may contract with any such nonprofit corporation, as set forth in (f) of this subsection.

(2) In the exercise of any of these powers, the authority shall incur no expense or liability that shall be an obligation, either general or special, of the state, and shall pay no expense or liability from funds other than funds of the authority. Funds of the state may not be used for such purpose unless appropriated for such purpose. [2007 c 36 § 3.]

Policy—Purpose—2007 c 36: "It is the public policy of the state and a recognized governmental function to facilitate student loan financing and thereby increase access to higher education for Washington's citizens. The purpose of this act is to bring to the citizens of the state the applicable advantages of federal tax law and federal loan guaranties and to authorize the Washington higher education facilities authority to originate and acquire educational loans and to issue nonrecourse revenue bonds to be paid from such loans." [2007 c 36 § 1.]

28B.07.310 Administration of alternative state educational loans. The authority, in addition to administering federal loan programs, may administer an alternative state educational loan program that may include the purchase or origination of alternative state educational loans with terms as determined by the authority. These loans are not guaran-

teed by the state and the proceeds from loan repayment including interest or other loan-related payments or authority or contractor revenue may be used by the authority to make any required payments to bondholders. [2007 c 36 § 4.]

Policy—Purpose—2007 c 36: See note following RCW 28B.07.300.

28B.07.320 Revenue bonds—Issuance—Payment—Personal liability. (1) The authority may, from time to time, issue revenue bonds in order to carry out the purposes of this chapter.

(2) The bonds shall be issued pursuant to a bond resolution or trust indenture and shall be payable solely out of the special fund or funds created by the authority in the bond resolution or trust indenture. Any security interest created against the unexpended bond proceeds and against the special funds created by the authority shall be immediately valid and binding against the moneys and any securities in which the moneys may be invested without authority or trustee possession, and the security interest shall be prior to any party having any competing claim against the moneys or securities, without filing or recording under Article 62A.9A of the uniform commercial code, and regardless of whether the party has notice of the security interest.

(3) The obligations shall be payable from and secured by a pledge of revenues derived from or by reason of ownership of guaranteed educational loans and investment income, after deduction of expenses of operating the authority's program.

(4) The bonds may be issued as serial bonds or as term bonds or any such combination. The bonds shall bear such date or dates; mature at such time or times; bear interest at such rate or rates, either fixed or variable; be payable at such time or times; be in such denominations; be in such form; carry such registration privileges; be made transferable, exchangeable, and interchangeable; be payable in lawful money of the United States of America at such place or places; be subject to such terms of redemption; and be sold at public or private sale, in such manner, at such time, and at such price as the authority shall determine. The bonds shall be executed by the manual or facsimile signatures of the chairperson and the authority's duly elected secretary or its executive director, and by the trustee if the authority determines to use a trustee. At least one signature shall be manually subscribed.

(5) Any bond resolution, trust indenture, or other financing document may contain provisions, which may be made a part of the contract with the holders or owners of the bonds to be issued, pertaining to the following, among other matters: (a) The security interests granted to the holders or owners of the bonds to secure repayment of the bonds; (b) the segregation of reserves or sinking funds, and the regulation, investment, and disposition thereof; (c) limitations on the purposes to which, or the investments in which, the proceeds of the sale of any issue of bonds may be applied; (d) terms pertaining to the issuance of additional parity bonds; (e) the refunding of outstanding bonds; (f) procedures, if any, by which the terms of any contract with bondholders may be amended or abrogated; (g) events of default as well as rights and remedies in the event of a default including without limitation the right to declare all principal and interest immediately due and payable; (h) terms governing performance by the trustee of its

obligation; or (i) such other additional covenants, agreements, and provisions as are deemed necessary, useful, or convenient by the authority for the security of the holders of the bonds.

(6) All bonds and any interest coupons appertaining to the bonds shall be negotiable instruments under Title 62A RCW.

(7) Neither the members of the authority, nor its employees or agents, nor any person executing the bonds shall be liable personally on the bonds or be subject to any personal liability or accountability by reason of the issuance of the bonds.

(8) The authority may purchase its bonds with any of its funds available for the purchase. The authority may hold, pledge, cancel, or resell the bonds subject to and in accordance with agreements with bondholders.

(9) Bonds issued under this chapter shall not be deemed to constitute obligations, either general or special, of the state or of any political subdivision of the state, or a pledge of the faith and credit of the state or of any political subdivision, or a general obligation of the authority. The bonds shall be special obligations of the authority and shall be payable solely from the special fund or funds created by the authority in the bond resolution or trust indenture pursuant to which the bonds were issued. The issuance of bonds under this chapter shall not obligate, directly, indirectly, or contingently, the state or any political subdivision of the state to levy any taxes or appropriate or expend any funds for the payment of the principal or the interest on the bonds.

(10) Neither the proceeds of bonds issued under this chapter, any moneys used or to be used to pay the principal of or interest on the bonds, nor any moneys received by the authority to defray its administrative costs shall constitute public money or property. All of such moneys shall be kept segregated and set apart from funds of the state and any political subdivision of the state and shall not be subject to appropriation or allotment by the state or subject to the provisions of chapter 43.88 RCW. [2007 c 36 § 5.]

Policy—Purpose—2007 c 36: See note following RCW 28B.07.300.

28B.07.330 Revenue refunding bonds. Bonds may be issued by the authority to refund other outstanding bonds issued pursuant to this chapter, at or prior to the maturity thereof, and to pay any redemption premium with respect thereto. Bonds issued for such refunding purposes may be combined with bonds issued for the origination or purchase of educational loans. Pending the application of the proceeds of the refunding bonds to the redemption of the bonds to be redeemed, the authority may enter into an agreement or agreements with a corporate trustee with respect to the interim investment of the proceeds and the application of the proceeds and the earnings on the proceeds to the payment of the principal of and interest on, and the redemption of the bonds to be redeemed. [2007 c 36 § 6.]

Policy—Purpose—2007 c 36: See note following RCW 28B.07.300.

28B.07.340 Trust funds—Trust agreements. All moneys received by or on behalf of the authority under this chapter, whether as proceeds from the sale of bonds or from other sources shall be deemed to be trust funds to be held and

applied solely as provided in this chapter. The authority, in lieu of receiving and applying the moneys itself, may enter into an agreement or trust indenture with one or more banks or trust companies having the power and authority to conduct trust business in the state to:

(1) Perform all or any part of the obligations of the authority with respect to: (a) Bonds issued by it; (b) the receipt, investment, and application of the proceeds of the bonds and moneys available for the payment of the bonds; and (c) other matters relating to the exercise of the authority's powers under this chapter;

(2) Receive, hold, preserve, and enforce any security interest or evidence of security interest granted by a participant for purposes of securing the payment of the bonds; and

(3) Act on behalf of the authority or the holders or owners of bonds of the authority for purposes of assuring or enforcing the payment of the bonds, when due. [2007 c 36 § 7.]

Policy—Purpose—2007 c 36: See note following RCW 28B.07.300.

28B.07.350 Proceeds fund. (1) All proceeds derived from a particular bond under the provisions of this chapter shall be deposited in a fund to be known as the proceeds fund, which shall be maintained in such bank or banks as shall be determined by the authority. Proceeds deposited in the fund shall be expended only on approval of the authority.

(2) A separate proceeds fund shall be maintained for each series of bonds issued by the authority.

(3) Funds credited to a proceeds fund may be used for any or all of the following purposes:

(a) The payment of the necessary expenses, including, without limitation, the costs of issuing the authority's bonds, incurred by the authority in carrying out its responsibilities under RCW 28B.07.021, 28B.07.300 through 28B.07.380, 28B.07.925, 28B.07.927, and 28B.07.030;

(b) The establishment of a debt service reserve account to secure the payment of bonds;

(c) The making of educational loans to qualified borrowers;

(d) The purchase, either directly or acting through a bank with trust powers for its account, of educational loans; and

(e) The acquisition of an investment contract or contracts or any other investments permitted under an indenture of the authority securing its bonds. The income from the contract, contracts, or investments, after payment of the bonds and all expenses associated therewith, shall be used by the authority to assist in carrying out its purposes under this chapter. [2007 c 36 § 8.]

Policy—Purpose—2007 c 36: See note following RCW 28B.07.300.

28B.07.360 Default. The proceedings authorizing any revenue obligations under this chapter or any financing document securing the revenue bonds may provide that if there is a default in the payment of the principal of or the interest on the bonds or in the performance of any agreement contained in the proceedings or financing document, the payment and performance may be enforced by mandamus or by the appointment of a receiver in equity with power to collect revenues in accordance with the proceedings or provisions of the financing document. [2007 c 36 § 9.]

Policy—Purpose—2007 c 36: See note following RCW 28B.07.300.

28B.07.370 Debt limitation. Bonds issued by the authority under this chapter shall not be subject to the debt limitation set forth in RCW 28B.07.050(9). [2007 c 36 § 11.]

Policy—Purpose—2007 c 36: See note following RCW 28B.07.300.

28B.07.380 Sale of assets. The authority is authorized to offer for sale from time to time loan portfolios or other assets accumulated by the authority. Sales shall be conducted in a competitive manner and shall be approved by the authority board. [2007 c 36 § 12.]

Policy—Purpose—2007 c 36: See note following RCW 28B.07.300.

CONSTRUCTION

28B.07.925 Chapter supplemental—Application of other laws. This chapter shall be regarded as supplemental and additional to the powers conferred on the authority by other laws. The issuance of bonds and refunding bonds under this chapter need not comply with requirements of any other laws applicable to the issuance of bonds. [2007 c 36 § 13.]

28B.07.926 Construction—2007 c 36. This act, being necessary for the welfare of the state and its inhabitants, shall be liberally construed to effect the purposes thereof. [2007 c 36 § 15.]

28B.07.927 Conflict with federal requirements—2007 c 36. If any part of this act is found to be in conflict with federal requirements under the higher education act of 1965, the conflicting part of this act is hereby declared to be inoperative solely to the extent of the conflict and with respect to the agencies directly affected, and such finding or determination shall not affect the operation of the remainder of this act in its application to the agencies concerned. The rules under this act shall meet federal requirements that are a necessary condition for participation of a state agency under the higher education act of 1965, or its successor. [2007 c 36 § 10.]

28B.07.928 Captions not law—2007 c 36. Captions used in this act are not any part of the law. [2007 c 36 § 16.]

28B.07.929 Severability—2007 c 36. If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected. [2007 c 36 § 17.]

Chapter 28B.10 RCW

COLLEGES AND UNIVERSITIES GENERALLY

Sections

- 28B.10.350 Construction work, remodeling, or demolition—Public bid—Exemption—Waiver—Prevailing rate of wage—Universities and The Evergreen State College.
- 28B.10.590 Course materials—Cost savings.
- 28B.10.592 College textbook information—Publishers' duties.
- 28B.10.679 Washington mathematics placement test—Mathematics college readiness test.

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28B.10.350 Construction work, remodeling, or demolition—Public bid—Exemption—Waiver—Prevailing rate of wage—Universities and The Evergreen State College. (1) When the cost to The Evergreen State College or any regional or state university of any building, construction, renovation, remodeling, or demolition, other than maintenance or repairs, will equal or exceed the sum of fifty-five thousand dollars, or thirty-five thousand dollars if the work involves one trade or craft area, complete plans and specifications for the work shall be prepared, the work shall be put out for public bid, and the contract shall be awarded to the responsible bidder who submits the lowest responsive bid.

(2) Any building, construction, renovation, remodeling, or demolition project that exceeds the dollar amounts in subsection (1) of this section is subject to the provisions of chapter 39.12 RCW.

(3) The Evergreen State College or any regional or state university may require a project to be put to public bid even when it is not required to do so under subsection (1) of this section. Any project publicly bid under this subsection is subject to the provisions of chapter 39.12 RCW.

(4) Where the estimated cost of any building, construction, renovation, remodeling, or demolition is less than fifty-five thousand dollars or the contract is awarded by the small works roster procedure authorized in RCW 39.04.155, the publication requirements of RCW 39.04.020 do not apply.

(5) In the event of any emergency when the public interest or property of The Evergreen State College or a regional or state university would suffer material injury or damage by delay, the president of such college or university may declare the existence of an emergency and, reciting the facts constituting the same, may waive the requirements of this section with reference to any contract in order to correct the condition causing the emergency. For the purposes of this section, "emergency" means a condition likely to result in immediate physical injury to persons or to property of the college or university in the absence of prompt remedial action or a condition which immediately impairs the institution's ability to perform its educational obligations.

(6) This section does not apply when a contract is awarded by the small works roster procedure authorized in RCW 39.04.155 or under any other procedure authorized for an institution of higher education. [2007 c 495 § 1; 2001 c 38 § 1; 2000 c 138 § 202; 1993 c 379 § 109; 1985 c 152 § 1; 1979 ex.s. c 12 § 1; 1977 ex.s. c 169 § 14; 1971 ex.s. c 258 § 1.]

Purpose—Part headings not law—2000 c 138: See notes following RCW 39.04.155.

Intent—Severability—Effective date—1993 c 379: See notes following RCW 28B.10.029.

Severability—1979 ex.s. c 12: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1979 ex.s. c 12 § 3.]

Severability—Nomenclature—Savings—1977 ex.s. c 169: See notes following RCW 28B.10.016.

Severability—1971 ex.s. c 258: "If any provision of this 1971 amendatory act, or its application to any person or circumstance is held invalid, the remainder of the act, or the application of the provision to other persons or circumstances is not affected." [1971 ex.s. c 258 § 3.]

Subcontractors to be identified by bidder, when: RCW 39.30.060.

28B.10.590 Course materials—Cost savings. (1) The boards of regents of the state universities, the boards of trustees of the regional universities and The Evergreen State College, and the boards of trustees of each community and technical college district, in collaboration with affiliated bookstores and student and faculty representatives, shall adopt rules requiring that:

(a) Affiliated bookstores:

(i) Provide students the option of purchasing materials that are unbundled when possible, disclose to faculty and staff the costs to students of purchasing materials, and disclose publicly how new editions vary from previous editions;

(ii) Actively promote and publicize book buy-back programs; and

(iii) Disclose retail costs for course materials on a per course basis to faculty and staff and make this information publicly available; and

(b) Faculty and staff members consider the least costly practices in assigning course materials, such as adopting the least expensive edition available when educational content is comparable as determined by the faculty and working closely with publishers and local bookstores to create bundles and packages if they deliver cost savings to students.

(2) As used in this section:

(a) "Materials" means any supplies or texts required or recommended by faculty or staff for a given course.

(b) "Bundled" means a group of objects joined together by packaging or required to be purchased as an indivisible unit. [2007 c 457 § 1; 2006 c 81 § 2.]

Findings—Intent—2006 c 81: "The legislature finds that:

(1) Often the bundling of texts, workbooks, CD-ROMs, and other course related materials is unnecessary since many students do not use all of the materials included and may realize cost savings if materials are also offered independently one from the other; and

(2) Many faculty and staff select materials uninformed of the retail costs and differences between versions.

It is the intent of the legislature to give students more choices for purchasing educational materials and to encourage faculty and staff to work closely with bookstores and publishers to implement the least costly option without sacrificing educational content and to provide maximum cost savings to students." [2006 c 81 § 1.]

28B.10.592 College textbook information—Publishers' duties. (1) Each publisher of college textbooks shall make immediately available to faculty of institutions of higher education:

(a) The price at which the publisher would make the products available to the store run by or in a contractual relationship with the institution of higher education that would offer the products to students; and

(b) The history of revisions for the products, if any.

(2) For the purposes of this section:

(a) "Immediately available" means with any marketing materials presented to a member of the faculty.

(b) "Products" means all versions of a textbook or set of textbooks, except custom textbooks or special editions of textbooks, available in the subject area for which a faculty member is teaching a course, including supplemental items, both when sold together or separately from a textbook. [2007 c 186 § 1.]

28B.10.679 Washington mathematics placement test—Mathematics college readiness test. (1) By Septem-

ber 1, 2008, the state board for community and technical colleges, the council of presidents, the higher education coordinating board, and the office of the superintendent of public instruction, under the leadership of the transition math project and in collaboration with representatives of public two and four-year institutions of higher education, shall jointly revise the Washington mathematics placement test to serve as a common college readiness test for all two and four-year institutions of higher education.

(2) The revised mathematics college readiness test shall be implemented by all public two and four-year institutions of higher education by September 1, 2009. All public two and four-year institutions of higher education must use a common performance standard on the mathematics placement test for purposes of determining college readiness in mathematics. The performance standard must be publicized to all high schools in the state. [2007 c 396 § 10.]

Captions not law—2007 c 396: See note following RCW 28A.305.215.

Finding—Intent—2007 c 396: See note following RCW 28A.300.515.

Chapter 28B.15 RCW

COLLEGE AND UNIVERSITY FEES

Sections

28B.15.067	Tuition fees—Established.
28B.15.068	Tuition fees increase limitations—State funding goals—Reports—"Global challenge states."
28B.15.0681	Tuition billing statements—Disclosures to students.
28B.15.385	"Totally disabled" defined for certain purposes.
28B.15.520	Waiver of fees and nonresident tuition fees differential—Community colleges.
28B.15.558	Waiver of tuition and fees for state employees and educational employees.
28B.15.621	Tuition waivers—Veterans and national guard members—Dependents—Private institutions.
28B.15.820	Institutional financial aid fund—"Eligible student" defined.
28B.15.910	Limitation on total operating fees revenue waived, exempted, or reduced—Outreach to veterans.

28B.15.067 Tuition fees—Established. (1) Tuition fees shall be established under the provisions of this chapter.

(2) Beginning with the 2003-04 academic year and ending with the 2008-09 academic year, reductions or increases in full-time tuition fees for resident undergraduates shall be as provided in the omnibus appropriations act.

(3) Beginning with the 2003-04 academic year and ending with the 2008-09 academic year, the governing boards of the state universities, the regional universities, The Evergreen State College, and the state board for community and technical colleges may reduce or increase full-time tuition fees for all students other than resident undergraduates, including summer school students and students in other self-supporting degree programs. Percentage increases in full-time tuition fees may exceed the fiscal growth factor. Reductions or increases may be made for all or portions of an institution's programs, campuses, courses, or students.

(4) Academic year tuition for full-time students at the state's institutions of higher education beginning with 2009-10, other than summer term, shall be as charged during the 2008-09 academic year unless different rates are adopted by the legislature.

(5) The tuition fees established under this chapter shall not apply to high school students enrolling in participating

institutions of higher education under RCW 28A.600.300 through 28A.600.400.

(6) The tuition fees established under this chapter shall not apply to eligible students enrolling in a community or technical college under RCW 28C.04.610.

(7) The tuition fees established under this chapter shall not apply to eligible students enrolling in a community or technical college participating in the pilot program under RCW 28B.50.534 for the purpose of obtaining a high school diploma.

(8) For the academic years 2003-04 through 2008-09, the University of Washington shall use an amount equivalent to ten percent of all revenues received as a result of law school tuition increases beginning in academic year 2000-01 through academic year 2008-09 to assist needy low and middle income resident law students.

(9) For the academic years 2003-04 through 2008-09, institutions of higher education shall use an amount equivalent to ten percent of all revenues received as a result of graduate academic school tuition increases beginning in academic year 2003-04 through academic year 2008-09 to assist needy low and middle-income resident graduate academic students. [2007 c 355 § 7; 2006 c 161 § 6; 2003 c 232 § 4; 1997 c 403 § 1; 1996 c 212 § 1; 1995 1st sp.s. c 9 § 4; 1992 c 231 § 4; 1990 1st ex.s. c 9 § 413; 1986 c 42 § 1; 1985 c 390 § 15; 1982 1st ex.s. c 37 § 15; 1981 c 257 § 2.]

Finding—Intent—2007 c 355: See note following RCW 28B.50.534.

Effective date—2006 c 161: See note following RCW 49.04.160.

Finding—Intent—2003 c 232: See note following RCW 28B.15.031.

Severability—1996 c 212: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1996 c 212 § 2.]

Intent—Purpose—Effective date—1995 1st sp.s. c 9: See notes following RCW 28B.15.031.

Effective date—1992 c 231: See note following RCW 28B.10.016.

Finding—Severability—1990 1st ex.s. c 9: See notes following RCW 28A.225.220.

Effective date—Severability—1982 1st ex.s. c 37: See notes following RCW 28B.15.012.

Severability—1981 c 257: See note following RCW 28B.15.031.

28B.15.068 Tuition fees increase limitations—State funding goals—Reports—"Global challenge states." (1) Beginning with the 2007-08 academic year and ending with the 2016-17 academic year, tuition fees charged to full-time resident undergraduate students may increase no greater than seven percent over the previous academic year in any institution of higher education. Annual reductions or increases in full-time tuition fees for resident undergraduate students shall be as provided in the omnibus appropriations act, within the seven percent increase limit established in this section. To the extent that state appropriations combined with tuition and fee revenues are insufficient to achieve the total per-student funding goals established in subsection (2) of this section, the legislature may revisit state appropriations, authorized enrollment levels, and changes in tuition fees for any given fiscal year.

(2) The state shall adopt as its goal total per-student funding levels, from state appropriations plus tuition and fees, of at least the sixtieth percentile of total per-student

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funding at similar public institutions of higher education in the global challenge states. In defining comparable per-student funding levels, the office of financial management shall adjust for regional cost-of-living differences; for differences in program offerings and in the relative mix of lower division, upper division, and graduate students; and for accounting and reporting differences among the comparison institutions. The office of financial management shall develop a funding trajectory for each four-year institution of higher education and for the community and technical college system as a whole that when combined with tuition and fees revenue allows the state to achieve its funding goal for each four-year institution and the community and technical college system as a whole no later than fiscal year 2017. The state shall not reduce enrollment levels below fiscal year 2007 budgeted levels in order to improve or alter the per-student funding amount at any four-year institution of higher education or the community and technical college system as a whole. The state recognizes that each four-year institution of higher education and the community and technical college system as a whole have different funding requirements to achieve desired performance levels, and that increases to the total per-student funding amount may need to exceed the minimum funding goal.

(3) By September 1st of each year beginning [in] 2008, the office of financial management shall report to the governor, the higher education coordinating board, and appropriate committees of the legislature with updated estimates of the total per-student funding level that represents the sixtieth percentile of funding for comparable institutions of higher education in the global challenge states, and the progress toward that goal that was made for each of the public institutions of higher education.

(4) As used in this section, "global challenge states" are the top performing states on the new economy index published by the progressive policy institute as of July 22, 2007. The new economy index ranks states on indicators of their potential to compete in the new economy. At least once every five years, the office of financial management shall determine if changes to the list of global challenge states are appropriate. The office of financial management shall report its findings to the governor and the legislature. [2007 c 151 § 1.]

Captions not law—2007 c 151: "Captions used in this act are not any part of the law." [2007 c 151 § 3.]

28B.15.0681 Tuition billing statements—Disclosures to students. In addition to the requirement in RCW 28B.76.300(4), institutions of higher education shall disclose to their undergraduate resident students on the tuition billing statement, in dollar figures for a full-time equivalent student: (1) The full cost of instruction, (2) the amount collected from student tuition and fees, and (3) the difference between the amounts for the full cost of instruction and the student tuition and fees, noting that the difference between the cost and tuition was paid by state tax funds and other moneys. [2007 c 151 § 2.]

Captions not law—2007 c 151: See note following RCW 28B.15.068.

28B.15.385 "Totally disabled" defined for certain purposes. For the purposes of RCW 28B.15.380,

28B.15.520, and 28B.15.621, the phrase "totally disabled" means a person who has become totally and permanently disabled for life by bodily injury or disease, and is thereby prevented from performing any occupation or gainful pursuit. [2007 c 450 § 3; 1973 1st ex.s. c 191 § 5.]

Effective date—1973 1st ex.s. c 191: See note following RCW 28B.15.380.

28B.15.520 Waiver of fees and nonresident tuition fees differential—Community colleges. Subject to the limitations of RCW 28B.15.910, the governing boards of the community colleges may:

(1) Waive all or a portion of tuition fees and services and activities fees for:

(a) Students nineteen years of age or older who are eligible for resident tuition and fee rates as defined in RCW 28B.15.012 through 28B.15.015, who enroll in a course of study or program which will enable them to finish their high school education and obtain a high school diploma or certificate, but who are not eligible students as defined by RCW 28A.600.405; and

(b) Children of any law enforcement officer or firefighter who lost his or her life or became totally disabled in the line of duty while employed by any public law enforcement agency or full time or volunteer fire department in this state: PROVIDED, That such persons may receive the waiver only if they begin their course of study at a community college within ten years of their graduation from high school;

(2) Waive all or a portion of the nonresident tuition fees differential for:

(a) Nonresident students enrolled in a community college course of study or program which will enable them to finish their high school education and obtain a high school diploma or certificate but who are not eligible students as defined by RCW 28A.600.405. The waiver shall be in effect only for those courses which lead to a high school diploma or certificate; and

(b) Up to forty percent of the students enrolled in the regional education program for deaf students, subject to federal funding of such program. [2007 c 355 § 6; 1993 sp.s. c 18 § 16; 1992 c 231 § 12; 1990 c 154 § 2; 1987 c 390 § 1. Prior: 1985 c 390 § 26; 1985 c 198 § 1; 1982 1st ex.s. c 37 § 8; 1979 ex.s. c 148 § 1; 1973 1st ex.s. c 191 § 2; 1971 ex.s. c 279 § 12; 1970 ex.s. c 59 § 8; 1969 ex.s. c 261 § 29. Formerly RCW 28.85.310, part.]

Finding—Intent—2007 c 355: See note following RCW 28B.50.534.

Effective date—1993 sp.s. c 18: See note following RCW 28B.12.060.

Effective date—1992 c 231: See note following RCW 28B.10.016.

Effective date—Severability—1982 1st ex.s. c 37: See notes following RCW 28B.15.012.

Effective date—1973 1st ex.s. c 191: See note following RCW 28B.15.380.

Severability—1971 ex.s. c 279: See note following RCW 28B.15.005.

Severability—1970 ex.s. c 59: "If any provision of this act, or its application to any person or circumstance is held invalid, the remainder of the act, or the application of the provision to other persons or circumstances is not affected." [1970 ex.s. c 59 § 11.]

Severability—1969 ex.s. c 261: See note following RCW 28B.50.020.

GED test, eligibility: RCW 28A.305.190.

"Totally disabled" defined for certain purposes: RCW 28B.15.385.

28B.15.558 Waiver of tuition and fees for state employees and educational employees. (1) The governing boards of the state universities, the regional universities, The Evergreen State College, and the community colleges may waive all or a portion of the tuition and services and activities fees for state employees as defined under subsection (2) of this section and teachers and other certificated instructional staff under subsection (3) of this section. The enrollment of these persons is pursuant to the following conditions:

(a) Such persons shall register for and be enrolled in courses on a space available basis and no new course sections shall be created as a result of the registration;

(b) Enrollment information on persons registered pursuant to this section shall be maintained separately from other enrollment information and shall not be included in official enrollment reports, nor shall such persons be considered in any enrollment statistics that would affect budgetary determinations; and

(c) Persons registering on a space available basis shall be charged a registration fee of not less than five dollars.

(2) For the purposes of this section, "state employees" means persons employed half-time or more in one or more of the following employee classifications:

(a) Permanent employees in classified service under chapter 41.06 RCW;

(b) Permanent employees governed by chapter 41.56 RCW pursuant to the exercise of the option under *RCW 41.56.201;

(c) Permanent classified employees and exempt paraprofessional employees of technical colleges; and

(d) Faculty, counselors, librarians, and exempt professional and administrative employees at institutions of higher education as defined in RCW 28B.10.016.

(3) The waivers available to state employees under this section shall also be available to teachers and other certificated instructional staff employed at public common and vocational schools, holding or seeking a valid endorsement and assignment in a state-identified shortage area.

(4) In awarding waivers, an institution of higher education may award waivers to eligible persons employed by the institution before considering waivers for eligible persons who are not employed by the institution.

(5) If an institution of higher education exercises the authority granted under this section, it shall include all eligible state employees in the pool of persons eligible to participate in the program.

(6) In establishing eligibility to receive waivers, institutions of higher education may not discriminate between full-time employees and employees who are employed half-time or more. [2007 c 461 § 1; 2005 c 249 § 4; 2003 c 160 § 2; 1997 c 211 § 1; 1996 c 305 § 3; 1992 c 231 § 20; 1990 c 88 § 1.]

***Reviser's note:** RCW 41.56.201 was repealed by 2002 c 354 § 403, effective July 1, 2005.

Finding—Intent—2003 c 160: "The legislature finds that military and naval veterans who have served their country in wars on foreign soil have risked their own lives to defend both the lives of all Americans and the freedom that define[s] and distinguish[es] our nation. It is the intent of the legislature to honor veterans of the Korean conflict for the public service they have provided to their country." [2003 c 160 § 1.]

Effective date—1996 c 305 § 3: "Section 3 of this act is necessary for the immediate preservation of the public peace, health, or safety, or support

of the state government and its existing public institutions, and shall take effect immediately [March 30, 1996]. [1996 c 305 § 4.]

Severability—1996 c 305: See note following RCW 28B.85.020.

Effective date—1992 c 231: See note following RCW 28B.10.016.

28B.15.621 Tuition waivers—Veterans and national guard members—Dependents—Private institutions. (1)

The legislature finds that active military and naval veterans, reserve military and naval veterans, and national guard members called to active duty have served their country and have risked their lives to defend the lives of all Americans and the freedoms that define and distinguish our nation. The legislature intends to honor active military and naval veterans, reserve military and naval veterans, and national guard members who have served on active military or naval duty for the public service they have provided to this country.

(2) Subject to the limitations in RCW 28B.15.910, the governing boards of the state universities, the regional universities, The Evergreen State College, and the community colleges, may waive all or a portion of tuition and fees for an eligible veteran or national guard member.

(3) The governing boards of the state universities, the regional universities, The Evergreen State College, and the community colleges, may waive all or a portion of tuition and fees for a military or naval veteran who is a Washington domiciliary, but who did not serve on foreign soil or in international waters or in another location in support of those serving on foreign soil or in international waters and who does not qualify as an eligible veteran or national guard member under subsection (8) of this section. However, there shall be no state general fund support for waivers granted under this subsection.

(4) Subject to the conditions in subsection (5) of this section, the governing boards of the state universities, the regional universities, The Evergreen State College, and the community colleges, shall waive all tuition and fees for the following persons:

(a) A child and the spouse or surviving spouse of an eligible veteran or national guard member who became totally disabled as defined in RCW 28B.15.385 while engaged in active federal military or naval service, or who is determined by the federal government to be a prisoner of war or missing in action; and

(b) A child and the surviving spouse of an eligible veteran or national guard member who lost his or her life while engaged in active federal military or naval service.

(5) The conditions in this subsection (5) apply to waivers under subsection (4) of this section.

(a) A child must be a Washington domiciliary between the age of seventeen and twenty-six to be eligible for the tuition waiver. A child's marital status does not affect eligibility.

(b) A surviving spouse must be a Washington domiciliary. A surviving spouse has ten years from the date of the death, total disability as defined in RCW 28B.15.385, or federal determination of prisoner of war or missing in action status of the eligible veteran or national guard member to receive the benefit. Upon remarriage, the surviving spouse is ineligible for the waiver of all tuition and fees.

(c) Each recipient's continued participation is subject to the school's satisfactory progress policy.

(6) Required waivers of all tuition and fees under subsection (4) of this section shall not affect permissive waivers of tuition and fees under subsection (3) of this section.

(7) Private vocational schools and private higher education institutions are encouraged to provide waivers consistent with the terms in subsections (2) through (5) of this section.

(8) The definitions in this subsection apply throughout this section.

(a) "Eligible veteran or national guard member" means a Washington domiciliary who was an active or reserve member of the United States military or naval forces, or a national guard member called to active duty, who served in active federal service, under either Title 10 or Title 32 of the United States Code, in a war or conflict fought on foreign soil or in international waters or in another location in support of those serving on foreign soil or in international waters, and if discharged from service, has received an honorable discharge.

(b) "Washington domiciliary" means a person whose true, fixed, and permanent house and place of habitation is the state of Washington. "Washington domiciliary" includes a person who is residing in rental housing or residing in base housing. In ascertaining whether a child or surviving spouse is domiciled in the state of Washington, public institutions of higher education shall, to the fullest extent possible, rely upon the standards provided in RCW 28B.15.013. [2007 c 450 § 1; 2005 c 249 § 1.]

28B.15.820 Institutional financial aid fund—"Eligible student" defined. (1)

Each institution of higher education, including technical colleges, shall deposit a minimum of three and one-half percent of revenues collected from tuition and services and activities fees in an institutional financial aid fund that is hereby created and which shall be held locally. Moneys in the fund shall be used only for the following purposes: (a) To make guaranteed long-term loans to eligible students as provided in subsections (3) through (8) of this section; (b) to make short-term loans as provided in subsection (9) of this section; or (c) to provide financial aid to needy students as provided in subsection (10) of this section.

(2) An "eligible student" for the purposes of subsections (3) through (8) and (10) of this section is a student registered for at least three credit hours or the equivalent, who is eligible for resident tuition and fee rates as defined in RCW 28B.15.012 and 28B.15.013, and who is a "needy student" as defined in RCW 28B.92.030.

(3) The amount of the guaranteed long-term loans made under this section shall not exceed the demonstrated financial need of the student. Each institution shall establish loan terms and conditions which shall be consistent with the terms of the guaranteed loan program established by 20 U.S. Code Section 1071 et seq., as now or hereafter amended. All loans made shall be guaranteed by the Washington student loan guaranty association or its successor agency. Institutions are hereby granted full authority to operate as an eligible lender under the guaranteed loan program.

(4) Before approving a guaranteed long-term loan, each institution shall analyze the ability of the student to repay the loan based on factors which include, but are not limited to, the student's accumulated total education loan burdens and the employment opportunities and average starting salary characteristics of the student's chosen fields of study. The

institution shall counsel the student on the advisability of acquiring additional debt, and on the availability of other forms of financial aid.

(5) Each institution is responsible for collection of guaranteed long-term loans made under this section and shall exercise due diligence in such collection, maintaining all necessary records to insure that maximum repayments are made. Institutions shall cooperate with other lenders and the Washington student loan guaranty association, or its successor agency, in the coordinated collection of guaranteed loans, and shall assure that the guarantability of the loans is not violated. Collection and servicing of guaranteed long-term loans under this section shall be performed by entities approved for such servicing by the Washington student loan guaranty association or its successor agency: PROVIDED, That institutions be permitted to perform such servicing if specifically recognized to do so by the Washington student loan guaranty association or its successor agency. Collection and servicing of guaranteed long-term loans made by community colleges under subsection (1) of this section shall be coordinated by the state board for community and technical colleges and shall be conducted under procedures adopted by the state board.

(6) Receipts from payment of interest or principal or any other subsidies to which institutions as lenders are entitled, that are paid by or on behalf of borrowers of funds under subsections (3) through (8) of this section, shall be deposited in each institution's financial aid fund and shall be used to cover the costs of making the guaranteed long-term loans under this section and maintaining necessary records and making collections under subsection (5) of this section: PROVIDED, That such costs shall not exceed five percent of aggregate outstanding loan principal. Institutions shall maintain accurate records of such costs, and all receipts beyond those necessary to pay such costs, shall be deposited in the institution's financial aid fund.

(7) The governing boards of the state universities, the regional universities, and The Evergreen State College, and the state board for community and technical colleges, on behalf of the community colleges and technical colleges, shall each adopt necessary rules and regulations to implement this section.

(8) First priority for any guaranteed long-term loans made under this section shall be directed toward students who would not normally have access to educational loans from private financial institutions in Washington state, and maximum use shall be made of secondary markets in the support of loan consolidation.

(9) Short-term loans, not to exceed one year, may be made from the institutional financial aid fund to students enrolled in the institution. No such loan shall be made to any student who is known by the institution to be in default or delinquent in the payment of any outstanding student loan. A short-term loan may be made only if the institution has ample evidence that the student has the capability of repaying the loan within the time frame specified by the institution for repayment.

(10) Any moneys deposited in the institutional financial aid fund that are not used in making long-term or short-term loans may be used by the institution for locally administered financial aid programs for needy students, such as need-based

institutional employment programs or need-based tuition and fee scholarship or grant programs. These funds shall be used in addition to and not to replace institutional funds that would otherwise support these locally administered financial aid programs. First priority in the use of these funds shall be given to needy students who have accumulated excessive educational loan burdens. An excessive educational loan burden is a burden that will be difficult to repay given employment opportunities and average starting salaries in the student's chosen fields of study. Second priority in the use of these funds shall be given to needy single parents, to assist these students with their educational expenses, including expenses associated with child care and transportation. [2007 c 404 § 4; 2004 c 275 § 66; 1995 1st sp.s. c 9 § 10. Prior: 1993 c 385 § 1; 1993 c 173 § 1; 1985 c 390 § 35; 1983 1st ex.s. c 64 § 1; 1982 1st ex.s. c 37 § 13; 1981 c 257 § 9.]

Part headings not law—2004 c 275: See note following RCW 28B.76.030.

Intent—Purpose—Effective date—1995 1st sp.s. c 9: See notes following RCW 28B.15.031.

Effective date—Severability—1982 1st ex.s. c 37: See notes following RCW 28B.15.012.

Severability—1981 c 257: See note following RCW 28B.15.031.

28B.15.910 Limitation on total operating fees revenue waived, exempted, or reduced—Outreach to veterans.

(1) For the purpose of providing state general fund support to public institutions of higher education, except for revenue waived under programs listed in subsections (3) and (4) of this section, and unless otherwise expressly provided in the omnibus state appropriations act, the total amount of operating fees revenue waived, exempted, or reduced by a state university, a regional university, The Evergreen State College, or the community colleges as a whole, shall not exceed the percentage of total gross authorized operating fees revenue in this subsection. As used in this section, "gross authorized operating fees revenue" means the estimated gross operating fees revenue as estimated under RCW 82.33.020 or as revised by the office of financial management, before granting any waivers. This limitation applies to all tuition waiver programs established before or after July 1, 1992.

(a) University of Washington	21 percent
(b) Washington State University	20 percent
(c) Eastern Washington University	11 percent
(d) Central Washington University	10 percent
(e) Western Washington University	10 percent
(f) The Evergreen State College	10 percent
(g) Community colleges as a whole	35 percent

(2) The limitations in subsection (1) of this section apply to waivers, exemptions, or reductions in operating fees contained in the following:

- (a) RCW 28B.15.014;
- (b) RCW 28B.15.100;
- (c) RCW 28B.15.225;
- (d) RCW 28B.15.380;
- (e) RCW 28B.15.520;
- (f) RCW 28B.15.526;
- (g) RCW 28B.15.527;
- (h) RCW 28B.15.543;
- (i) RCW 28B.15.545;
- (j) RCW 28B.15.555;

- (k) RCW 28B.15.556;
- (l) RCW 28B.15.615;
- (m) RCW 28B.15.621(2);
- (n) RCW 28B.15.730;
- (o) RCW 28B.15.740;
- (p) RCW 28B.15.750;
- (q) RCW 28B.15.756;
- (r) RCW 28B.50.259; and
- (s) RCW 28B.70.050.

(3) The limitations in subsection (1) of this section do not apply to waivers, exemptions, or reductions in services and activities fees contained in the following:

- (a) RCW 28B.15.522;
- (b) RCW 28B.15.540;
- (c) RCW 28B.15.558; and
- (d) RCW 28B.15.621 (3) and (4).

(4) The total amount of operating fees revenue waived, exempted, or reduced by institutions of higher education participating in the western interstate commission for higher education western undergraduate exchange program under RCW 28B.15.544 shall not exceed the percentage of total gross authorized operating fees revenue in this subsection.

- (a) Washington State University 1 percent
- (b) Eastern Washington University 3 percent
- (c) Central Washington University 3 percent

(5) The institutions of higher education will participate in outreach activities to increase the number of veterans who receive tuition waivers. Colleges and universities shall revise the application for admissions so that all applicants shall have the opportunity to advise the institution that they are veterans who need assistance. If a person indicates on the application for admissions that the person is a veteran who is in need of assistance, then the institution of higher education shall ask the person whether they have any funds disbursed in accordance with the Montgomery GI Bill available to them. Each institution shall encourage veterans to utilize funds available to them in accordance with the Montgomery GI Bill prior to providing the veteran a tuition waiver. [2007 c 522 § 948; 2007 c 450 § 2; 2007 c 130 § 1; 2006 c 229 § 2; 2005 c 249 § 3; 2004 c 275 § 51; 2000 c 152 § 3; 1999 c 344 § 3; 1998 c 346 § 904; 1997 c 433 § 5; 1993 sp.s. c 18 § 31; 1992 c 231 § 33.]

Reviser's note: This section was amended by 2007 c 450 § 2 and by 2007 c 522 § 948, each without reference to the other. Both amendments are incorporated in the publication of this section under RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

Severability—Effective date—2007 c 522: See notes following RCW 15.64.050.

Finding—Intent—2006 c 229: "The legislature finds that active military and naval veterans, reserve military and naval veterans, and national guard members called to active duty have served their country and have risked their lives to defend the lives of all Americans and the freedoms that define and distinguish our nation. The legislature intends to honor active military and naval veterans, reserve military and naval veterans, and national guard members who have served on active military or naval duty for the public service they have provided to this country by making available to all eligible admitted veterans a waiver of operating fees by a state university, a regional university, The Evergreen State College, or the community colleges as a whole, to veterans who qualify under RCW 28B.15.621." [2006 c 229 § 1.]

Part headings not law—2004 c 275: See note following RCW 28B.76.030.

Findings—Intent—1999 c 344: See note following RCW 28B.15.544.

Construction—Severability—Effective date—1998 c 346: See notes following RCW 50.24.014.

Intent—Severability—1997 c 433: See notes following RCW 28B.15.725.

Effective date—1993 sp.s. c 18: See note following RCW 28B.12.060.

Effective date—1992 c 231: See note following RCW 28B.10.016.

Chapter 28B.20 RCW

UNIVERSITY OF WASHINGTON

Sections

28B.20.475 Sea grant program—Geoduck aquaculture—Scientific research studies—Reports.

28B.20.476 Sea grant program—Geoduck aquaculture research account.

28B.20.475 Sea grant program—Geoduck aquaculture—Scientific research studies—Reports. (1) The sea grant program at the University of Washington shall, consistent with this section, commission a series of scientific research studies that examines the possible effects, including the cumulative effects, of the current prevalent geoduck aquaculture techniques and practices on the natural environment in and around Puget Sound, including the Strait of Juan de Fuca. The sea grant program shall use funding provided from the geoduck aquaculture research account created in RCW 28B.20.476 to review existing literature, directly perform research identified as needed, or to enter into and manage contracts with scientific organizations or institutions to accomplish these results.

(2) Prior to entering into a contract with a scientific organization or institution, the sea grant program must:

(a) Analyze, through peer review, the credibility of the proposed party to the contract, including whether the party has credible experience and knowledge and has access to the facilities necessary to fully execute the research required by the contract; and

(b) Require that all proposed parties to a contract fully disclose any past, present, or planned future personal or professional connections with the shellfish industry or public interest groups.

(3) All research commissioned under this section must be subjected to a rigorous peer review process prior to being accepted and reported by the sea grant program.

(4) In prioritizing and directing research under this section, the sea grant program shall meet with the department of ecology at least annually and rely on guidance submitted by the department of ecology. The department of ecology shall convene the shellfish aquaculture regulatory committee created in section 4, chapter 216, Laws of 2007 as necessary to serve as an oversight committee to formulate the guidance provided to the sea grant program. The objective of the oversight committee, and the resulting guidance provided to the sea grant program, is to ensure that the research required under this section satisfies the planning, permitting, and data management needs of the state, to assist in the prioritization of research given limited funding, and to help identify any research that is beneficial to complete other than what is listed in subsection (5) of this section.

(5) To satisfy the minimum requirements of subsection (1) of this section, the sea grant program shall review all scientific research that is existing or in progress that examines

the possible effect of currently prevalent geoduck practices, on the natural environment, and prioritize and conduct new studies as needed, to measure and assess the following:

(a) The environmental effects of structures commonly used in the aquaculture industry to protect juvenile geoducks from predation;

(b) The environmental effects of commercial harvesting of geoducks from intertidal geoduck beds, focusing on current prevalent harvesting techniques, including a review of the recovery rates for benthic communities after harvest;

(c) The extent to which geoducks in standard aquaculture tracts alter the ecological characteristics of overlying waters while the tracts are submerged, including impacts on species diversity, and the abundance of other benthic organisms;

(d) Baseline information regarding naturally existing parasites and diseases in wild and cultured geoducks, including whether and to what extent commercial intertidal geoduck aquaculture practices impact the baseline;

(e) Genetic interactions between cultured and wild geoduck, including measurements of differences between cultured geoducks and wild geoducks in terms of genetics and reproductive status; and

(f) The impact of the use of sterile triploid geoducks and whether triploid animals diminish the genetic interactions between wild and cultured geoducks.

(6) If adequate funding is not made available for the completion of all research required under this section, the sea grant program shall consult with the shellfish aquaculture regulatory committee, via the department of ecology, to prioritize which of the enumerated research projects have the greatest cost/benefit ratio in terms of providing information important for regulatory decisions; however, the study identified in subsection (5)(b) of this section shall receive top priority. The prioritization process may include the addition of any new studies that may be appropriate in addition to, or in place of, studies listed in this section.

(7) When appropriate, all research commissioned under this section must address localized and cumulative effects of geoduck aquaculture.

(8) The sea grant program and the University of Washington are prohibited from retaining greater than fifteen percent of any funding provided to implement this section for administrative overhead or other deductions not directly associated with conducting the research required by this section.

(9) Individual commissioned contracts under this section may address single or multiple components listed for study under this section.

(10) All research commissioned under this section must be completed and the results reported to the appropriate committees of the legislature by December 1, 2013. In addition, the sea grant program shall provide the appropriate committees of the legislature with annual reports updating the status and progress of the ongoing studies that are completed in advance of the 2013 deadline. [2007 c 216 § 1.]

28B.20.476 Sea grant program—Geoduck aquaculture research account. The geoduck aquaculture research account is created in the custody of the state treasurer. All receipts from any legislative appropriations, the aquaculture industry, or any other private or public source directed to the

account must be deposited in the account. Expenditures from the account may only be used by the sea grant program for the geoduck research projects identified by RCW 28B.20.475. Only the president of the University of Washington or the president's designee may authorize expenditures from the account. The account is subject to the allotment procedures under chapter 43.88 RCW, but an appropriation is not required for expenditures. [2007 c 216 § 2.]

Chapter 28B.30 RCW

WASHINGTON STATE UNIVERSITY

Sections

28B.30.632 Puget Sound water quality field agents program—Local field agents.

28B.30.632 Puget Sound water quality field agents program—Local field agents. (1) The sea grant and cooperative extension shall jointly administer a program to provide field agents to work with local governments, property owners, and the general public to increase the propagation of shellfish, and to address Puget Sound water quality problems within Kitsap, Mason, and Jefferson counties that may limit shellfish propagation potential. The sea grant and cooperative extension shall each make available the services of no less than two agents within these counties for the purposes of this section.

(2) The responsibilities of the field agents shall include but not be limited to the following:

(a) Provide technical assistance to property owners, marine industry owners and operators, and others, regarding methods and practices to address nonpoint and point sources of pollution of Puget Sound;

(b) Provide technical assistance to address water quality problems limiting opportunities for enhancing the recreational harvest of shellfish;

(c) Provide technical assistance in the management and increased production of shellfish to facility operators or to those interested in establishing an operation;

(d) Assist local governments to develop and implement education and public involvement activities related to Puget Sound water quality;

(e) Assist in coordinating local water quality programs with region-wide and statewide programs;

(f) Provide information and assistance to local watershed committees.

(3) The sea grant and cooperative extension shall mutually coordinate their field agent activities to avoid duplicative efforts and to ensure that the full range of responsibilities under RCW 28B.30.632 through *28B.30.636 are carried out. They shall consult with the Puget Sound partnership, created in RCW 90.71.210, and ensure consistency with any of the Puget Sound partnership's water quality management plans.

(4) Recognizing the special expertise of both agencies, the sea grant and cooperative extension shall cooperate to divide their activities as follows:

(a) Sea grant shall have primary responsibility to address water quality issues related to activities within Puget Sound,

and to provide assistance regarding the management and improvement of shellfish production; and

(b) Cooperative extension shall have primary responsibility to address upland and freshwater activities affecting Puget Sound water quality and associated watersheds. [2007 c 341 § 64; 1990 c 289 § 2.]

*Reviser's note: RCW 28B.30.636 was repealed by 1998 c 245 § 176.

Severability—Effective date—2007 c 341: See RCW 90.71.906 and 90.71.907.

Chapter 28B.50 RCW

COMMUNITY AND TECHNICAL COLLEGES

Sections

28B.50.030	Definitions.
28B.50.271	Opportunity grant program.
28B.50.272	Opportunity grant program—Student eligibility—Funding—Performance measures—Documentation—Annual summary.
28B.50.273	Identification of job training programs—Designation as opportunity grant-eligible programs of study—Marketing.
28B.50.274	Opportunity partnership program.
28B.50.330	Construction, reconstruction, equipping, and demolition of community and technical college facilities and acquisition of property—Revenue bond financing—Public bid.
28B.50.534	High school completion pilot program.
28B.50.535	Community or technical college—Issuance of high school diploma or certificate.

28B.50.030 Definitions. As used in this chapter, unless the context requires otherwise, the term:

(1) "System" shall mean the state system of community and technical colleges, which shall be a system of higher education.

(2) "Board" shall mean the workforce training and education coordinating board.

(3) "College board" shall mean the state board for community and technical colleges created by this chapter.

(4) "Director" shall mean the administrative director for the state system of community and technical colleges.

(5) "District" shall mean any one of the community and technical college districts created by this chapter.

(6) "Board of trustees" shall mean the local community and technical college board of trustees established for each college district within the state.

(7) "Occupational education" shall mean that education or training that will prepare a student for employment that does not require a baccalaureate degree, and education and training leading to an applied baccalaureate degree.

(8) "K-12 system" shall mean the public school program including kindergarten through the twelfth grade.

(9) "Common school board" shall mean a public school district board of directors.

(10) "Community college" shall include those higher education institutions that conduct education programs under RCW 28B.50.020.

(11) "Technical college" shall include those higher education institutions with the sole mission of conducting occupational education, basic skills, literacy programs, and offering on short notice, when appropriate, programs that meet specific industry needs. The programs of technical colleges shall include, but not be limited to, continuous enrollment, competency-based instruction, industry-experienced faculty, curriculum integrating vocational and basic skills education,

and curriculum approved by representatives of employers and labor. For purposes of this chapter, technical colleges shall include Lake Washington Vocational-Technical Institute, Renton Vocational-Technical Institute, Bates Vocational-Technical Institute, Clover Park Vocational Institute, and Bellingham Vocational-Technical Institute.

(12) "Adult education" shall mean all education or instruction, including academic, vocational education or training, basic skills and literacy training, and "occupational education" provided by public educational institutions, including common school districts for persons who are eighteen years of age and over or who hold a high school diploma or certificate. However, "adult education" shall not include academic education or instruction for persons under twenty-one years of age who do not hold a high school degree or diploma and who are attending a public high school for the sole purpose of obtaining a high school diploma or certificate, nor shall "adult education" include education or instruction provided by any four year public institution of higher education.

(13) "Dislocated forest product worker" shall mean a forest products worker who: (a)(i) Has been terminated or received notice of termination from employment and is unlikely to return to employment in the individual's principal occupation or previous industry because of a diminishing demand for his or her skills in that occupation or industry; or (ii) is self-employed and has been displaced from his or her business because of the diminishing demand for the business' services or goods; and (b) at the time of last separation from employment, resided in or was employed in a rural natural resources impact area.

(14) "Forest products worker" shall mean a worker in the forest products industries affected by the reduction of forest fiber enhancement, transportation, or production. The workers included within this definition shall be determined by the employment security department, but shall include workers employed in the industries assigned the major group standard industrial classification codes "24" and "26" and the industries involved in the harvesting and management of logs, transportation of logs and wood products, processing of wood products, and the manufacturing and distribution of wood processing and logging equipment. The commissioner may adopt rules further interpreting these definitions. For the purposes of this subsection, "standard industrial classification code" means the code identified in RCW 50.29.025(3).

(15) "Dislocated salmon fishing worker" means a finfish products worker who: (a)(i) Has been terminated or received notice of termination from employment and is unlikely to return to employment in the individual's principal occupation or previous industry because of a diminishing demand for his or her skills in that occupation or industry; or (ii) is self-employed and has been displaced from his or her business because of the diminishing demand for the business's services or goods; and (b) at the time of last separation from employment, resided in or was employed in a rural natural resources impact area.

(16) "Salmon fishing worker" means a worker in the finfish industry affected by 1994 or future salmon disasters. The workers included within this definition shall be determined by the employment security department, but shall include workers employed in the industries involved in the

commercial and recreational harvesting of finfish including buying and processing finfish. The commissioner may adopt rules further interpreting these definitions.

(17) "Rural natural resources impact area" means:

(a) A nonmetropolitan county, as defined by the 1990 decennial census, that meets three of the five criteria set forth in subsection (18) of this section;

(b) A nonmetropolitan county with a population of less than forty thousand in the 1990 decennial census, that meets two of the five criteria as set forth in subsection (18) of this section; or

(c) A nonurbanized area, as defined by the 1990 decennial census, that is located in a metropolitan county that meets three of the five criteria set forth in subsection (18) of this section.

(18) For the purposes of designating rural natural resources impact areas, the following criteria shall be considered:

(a) A lumber and wood products employment location quotient at or above the state average;

(b) A commercial salmon fishing employment location quotient at or above the state average;

(c) Projected or actual direct lumber and wood products job losses of one hundred positions or more;

(d) Projected or actual direct commercial salmon fishing job losses of one hundred positions or more; and

(e) An unemployment rate twenty percent or more above the state average. The counties that meet these criteria shall be determined by the employment security department for the most recent year for which data is available. For the purposes of administration of programs under this chapter, the United States post office five-digit zip code delivery areas will be used to determine residence status for eligibility purposes. For the purpose of this definition, a zip code delivery area of which any part is ten miles or more from an urbanized area is considered nonurbanized. A zip code totally surrounded by zip codes qualifying as nonurbanized under this definition is also considered nonurbanized. The office of financial management shall make available a zip code listing of the areas to all agencies and organizations providing services under this chapter.

(19) "Applied baccalaureate degree" means a baccalaureate degree awarded by a college under RCW 28B.50.810 for successful completion of a program of study that is:

(a) Specifically designed for individuals who hold an associate of applied science degree, or its equivalent, in order to maximize application of their technical course credits toward the baccalaureate degree; and

(b) Based on a curriculum that incorporates both theoretical and applied knowledge and skills in a specific technical field.

(20) "Qualified institutions of higher education" means:

(a) Washington public community and technical colleges;

(b) Private career schools that are members of an accrediting association recognized by rule of the higher education coordinating board for the purposes of chapter 28B.92 RCW; and

(c) Washington state apprenticeship and training council-approved apprenticeship programs. [2007 c 277 § 301; 2005 c 258 § 8; 2003 2nd sp.s. c 4 § 33; 1997 c 367 § 13; 1995

c 226 § 17; 1992 c 21 § 5. Prior: 1991 c 315 § 15; 1991 c 238 § 22; 1985 c 461 § 14; 1982 1st ex.s. c 53 § 24; 1973 c 62 § 12; 1969 ex.s. c 261 § 18; 1969 ex.s. c 223 § 28B.50.030; prior: 1967 ex.s. c 8 § 3.]

Findings—Part headings not law—2007 c 277: See notes following RCW 28B.50.271.

Findings—Intent—2005 c 258: See note following RCW 28B.45.014.

Conflict with federal requirements—Severability—Effective date—2003 2nd sp.s. c 4: See notes following RCW 50.01.010.

Severability—Conflict with federal requirements—Effective date—1997 c 367: See notes following RCW 43.160.020.

Severability—Conflict with federal requirements—Effective date—1995 c 226: See notes following RCW 43.160.020.

Intent—1991 c 315: "The legislature finds that:

(1) The economic health and well-being of timber-dependent communities is of substantial public concern. The significant reduction in annual timber harvest levels likely will result in reduced economic activity and persistent unemployment and underemployment over time, which would be a serious threat to the safety, health, and welfare of residents of the timber impact areas, decreasing the value of private investments and jeopardizing the sources of public revenue.

(2) Timber impact areas are most often located in areas that are experiencing little or no economic growth, creating an even greater risk to the health, safety, and welfare of these communities. The ability to remedy problems caused by the substantial reduction in harvest activity is beyond the power and control of the regulatory process and influence of the state, and the ordinary operations of private enterprise without additional governmental assistance are insufficient to adequately remedy the resulting problems of poverty and unemployment.

(3) To address these concerns, it is the intent of the legislature to increase training and retraining services accessible to timber impact areas, and provide for coordination of noneconomic development services in timber impact areas as economic development efforts will not succeed unless social, housing, health, and other needs are addressed." [1991 c 315 § 1.]

Severability—Conflict with federal requirements—Effective date—1991 c 315: See RCW 50.70.900 through 50.70.902.

Severability—1985 c 461: See note following RCW 41.06.020.

Severability—1982 1st ex.s. c 53: See note following RCW 41.06.020.

Savings—Severability—1973 c 62: See notes following RCW 28B.10.510.

Severability—1969 ex.s. c 261: See note following RCW 28B.50.020.

28B.50.271 Opportunity grant program. (1) The college board shall develop and implement a workforce education program known as the opportunity grant program to provide financial and other assistance for students enrolled at qualified institutions of higher education in opportunity grant-eligible programs of study as described in RCW 28B.50.273. Students enrolled in the opportunity grant program are eligible for:

(a) Funding for tuition and mandatory fees at the public community and technical college rate, prorated if the credit load is less than full time, paid directly to the educational institution; and

(b) An additional one thousand dollars per academic year for books, tools, and supplies, prorated if the credit load is less than full time.

(2) Funding under subsection (1)(a) and (b) of this section is limited to a maximum forty-five credits or the equivalent in an opportunity grant-eligible program of study, including required related courses. No student may receive opportunity grant funding for more than forty-five credits or for more than three years from initial receipt of grant funds in one or a combination of programs.

(3) Grants awarded under this section are subject to the availability of amounts appropriated for this specific purpose. [2007 c 277 § 101.]

Findings—2007 c 277: "The legislature finds that:

(1) The economic trends of globalization and technological change are increasing the demand for higher and differently skilled workers than in the past;

(2) Increasing Washington's economic competitiveness requires increasing the supply of skilled workers in the state;

(3) Improving the labor market competitiveness of all Washington residents requires that all residents have access to postsecondary education; and

(4) Community and technical college workforce training programs and Washington state apprenticeship and training council-approved apprenticeship programs provide effective and efficient pathways for people to enter high wage, high skill careers while also meeting the needs of the economy." [2007 c 277 § 1.]

Part headings not law—2007 c 277: "Part headings used in this act are not any part of the law." [2007 c 277 § 302.]

Educational opportunity grant program—Placebound students: Chapter 28B.101 RCW.

28B.50.272 Opportunity grant program—Student eligibility—Funding—Performance measures—Documentation—Annual summary. (1) To be eligible for participation in the opportunity grant program established in RCW 28B.50.271, a student must:

(a) Be a Washington resident student as defined in RCW 28B.15.012 enrolled in an opportunity grant-eligible program of study;

(b) Have a family income that is at or below two hundred percent of the federal poverty level using the most current guidelines available from the United States department of health and human services, and be determined to have financial need based on the free application for federal student aid; and

(c) Meet such additional selection criteria as the college board shall establish in order to operate the program within appropriated funding levels.

(2) Upon enrolling, the student must provide evidence of commitment to complete the program. The student must make satisfactory progress and maintain a cumulative 2.0 grade point average for continued eligibility. If a student's cumulative grade point average falls below 2.0, the student may petition the institution of higher education of attendance. The qualified institution of higher education has the authority to establish a probationary period until such time as the student's grade point average reaches required standards.

(3) Subject to funds appropriated for this specific purpose, public qualified institutions of higher education shall receive an enhancement of one thousand five hundred dollars for each full-time equivalent student enrolled in the opportunity grant program whose income is below two hundred percent of the federal poverty level. The funds shall be used for individualized support services which may include, but are not limited to, college and career advising, tutoring, emergency child care, and emergency transportation. The qualified institution of higher education is expected to help students access all financial resources and support services available to them through alternative sources.

(4) The college board shall be accountable for student retention and completion of opportunity grant-eligible programs of study. It shall set annual performance measures and targets and monitor the performance at all qualified institu-

tions of higher education. The college board must reduce funding at institutions of higher education that do not meet targets for two consecutive years, based on criteria developed by the college board.

(5) The college board and higher education coordinating board shall work together to ensure that students participating in the opportunity grant program are informed of all other state and federal financial aid to which they may be entitled while receiving an opportunity grant.

(6) The college board and higher education coordinating board shall document the amount of opportunity grant assistance and the types and amounts of other sources of financial aid received by participating students. Annually, they shall produce a summary of the data.

(7) The college board shall:

(a) Begin developing the program no later than August 1, 2007, with student enrollment to begin no later than January 14, 2008; and

(b) Submit a progress report to the legislature by December 1, 2008.

(8) The college board may, in implementing the opportunity grant program, accept, use, and expend or dispose of contributions of money, services, and property. All such moneys received by the college board for the program must be deposited in an account at a depository approved by the state treasurer. Only the college board or a duly authorized representative thereof may authorize expenditures from this account. In order to maintain an effective expenditure and revenue control, the account is subject in all respects to chapter 43.88 RCW, but no appropriation is required to permit expenditure of moneys in the account. [2007 c 277 § 102.]

Findings—Part headings not law—2007 c 277: See notes following RCW 28B.50.271.

28B.50.273 Identification of job training programs—Designation as opportunity grant-eligible programs of study—Marketing. The college board, in partnership with business, labor, and the workforce training and education coordinating board, shall:

(1) Identify job-specific training programs offered by qualified postsecondary institutions that lead to a credential, certificate, or degree in high demand occupations, which are occupations where data show that employer demand for workers exceeds the supply of qualified job applicants throughout the state or in a specific region, and where training capacity is underutilized;

(2) Gain recognition of the credentials, certificates, and degrees by Washington's employers and labor organizations. The college board shall designate these recognized credentials, certificates, and degrees as "opportunity grant-eligible programs of study"; and

(3) Market the credentials, certificates, and degrees to potential students, businesses, and apprenticeship programs as a way for individuals to advance in their careers and to better meet the needs of industry. [2007 c 277 § 201.]

Findings—Part headings not law—2007 c 277: See notes following RCW 28B.50.271.

28B.50.274 Opportunity partnership program. (1) Community and technical colleges shall partner with local workforce development councils to develop the opportunity

partnership program. The opportunity partnership program may be newly developed or part of an existing program, and shall provide mentoring to students participating in the opportunity grant program. The program must develop criteria and identify opportunity grant students who would benefit by having a mentor. Each participating student shall be matched with a business or labor mentor employed in the field in which the student is interested. The mentor shall help the student explore careers and employment options through any combination of tours, informational interviews, job shadowing, and internships.

(2) Subject to funds appropriated for this specific purpose, the workforce training and education coordinating board shall create the opportunity partnership program. The board, in partnership with business, labor, and the college board, shall determine the criteria for the distribution of funds.

(3) The board may, in implementing this section, accept, use, and dispose of contributions of money, services, and property. All moneys received by the board for the purposes of this section must be deposited in a depository approved by the state treasurer. Only the board or a duly authorized representative thereof may authorize expenditures from this account. In order to maintain an effective expenditure and revenue control, the account is subject in all respects to chapter 43.88 RCW, but no appropriation is required to permit expenditure of moneys in the account. [2007 c 277 § 202.]

Findings—Part headings not law—2007 c 277: See notes following RCW 28B.50.271.

28B.50.330 Construction, reconstruction, equipping, and demolition of community and technical college facilities and acquisition of property—Revenue bond financing—Public bid. (1) The boards of trustees of college districts are empowered in accordance with the provisions of this chapter to provide for the construction, reconstruction, erection, equipping, demolition, and major alterations of buildings and other capital assets, and the acquisition of sites, rights-of-way, easements, improvements, or appurtenances for the use of the aforementioned colleges as authorized by the college board in accordance with RCW 28B.50.140; to be financed by bonds payable out of special funds from revenues hereafter derived from income received from such facilities, gifts, bequests, or grants, and such additional funds as the legislature may provide, and payable out of a bond retirement fund to be established by the respective district boards in accordance with rules and regulations of the state board. With respect to building, improvements, or repairs, or other work, where the estimated cost exceeds fifty-five thousand dollars, or thirty-five thousand dollars if the work involves one trade or craft area, complete plans and specifications for the work shall be prepared, the work shall be put out for a public bid, and the contract shall be awarded to the responsible bidder who submits the lowest responsive bid. Any project regardless of dollar amount may be put to public bid.

(2) This section does not apply when a contract is awarded by the small works roster procedure authorized in RCW 39.04.155.

(3) Where the estimated cost to any college of any building, improvements, or repairs, or other work, is less than fifty-five thousand dollars, or thirty-five thousand dollars if

the work involves one trade or craft area, the publication requirements of RCW 39.04.020 do not apply. [2007 c 495 § 2; 1993 c 379 § 108; 1991 c 238 § 48; 1979 ex.s. c 12 § 2; 1969 ex.s. c 223 § 28B.50.330. Prior: 1967 ex.s. c 8 § 33. Formerly RCW 28.85.330.]

Intent—Severability—Effective date—1993 c 379: See notes following RCW 28B.10.029.

Severability—1979 ex.s. c 12: See note following RCW 28B.10.350.

28B.50.534 High school completion pilot program.

(1) A pilot program is created for two community or technical colleges to make available courses or a program of study, on the college campus, designed to enable students under the age of twenty-one who have completed all state and local high school graduation requirements except the certificate of academic achievement or certificate of individual achievement to complete their high school education and obtain a high school diploma.

(a) The colleges participating in the pilot program in this section may make courses or programs under this section available by entering into contracts with local school districts to deliver the courses or programs. Colleges participating in the pilot program that offer courses or programs under contract shall be reimbursed for each enrolled eligible student as provided in the contract, and the high school diploma shall be issued by the local school district;

(b) Colleges participating in the pilot program may deliver courses or programs under this section directly. Colleges that deliver courses or programs directly shall be reimbursed for each enrolled eligible student as provided in RCW 28A.600.405, and the high school diploma shall be issued by the college;

(c) Colleges participating in the pilot program may make courses or programs under this section available through a combination of contracts with local school districts, collaboration with educational service districts, and direct service delivery. Colleges participating in the pilot program may also make courses or programs under this section available for students at locations in addition to the college campus; or

(d) Colleges participating in the pilot program may enter into regional partnerships to carry out the provisions of this subsection (1).

(2) Regardless of the service delivery method chosen, colleges participating in the pilot program shall ensure that all eligible students located in school districts within their college district as defined in RCW 28B.50.040 have an opportunity to enroll in a course or program under this section.

(3) Colleges participating in the pilot program shall not require students enrolled under this section to pay tuition or services and activities fees; however this waiver of tuition and services and activities fees shall be in effect only for those courses that lead to a high school diploma.

(4) Nothing in this section or RCW 28A.600.405 precludes a community or technical college from offering courses or a program of study for students other than eligible students as defined by RCW 28A.600.405 to obtain a high school diploma, nor is this section or RCW 28A.600.405 intended to restrict diploma completion programs offered by school districts or educational service districts. Community and technical colleges and school districts are encouraged to

consult with educational service districts in the development and delivery of programs and courses required under this section.

(5) Community and technical colleges participating in the pilot program shall not be required to administer the Washington assessment of student learning. [2007 c 355 § 3.]

Finding—Intent—2007 c 355: "The legislature finds that the goal of Washington's education reform is for all students to meet rigorous academic standards so that they are prepared for success in college, work, and life. Educators know that not all students learn at the same rate or in the same way. Some students will take longer to meet the state's standards for high school graduation. Older students who cannot graduate with their peers need an appropriate learning environment and flexible programming that enables them simultaneously to earn a diploma, work, and pursue other training options. Providing learning options in locations in addition to high schools will encourage older students to complete their diplomas. Therefore the legislature intends to create a pilot high school completion program at two community and technical colleges for older students who have not yet received a diploma but are eligible for state basic education support." [2007 c 355 § 1.]

28B.50.535 Community or technical college—Issuance of high school diploma or certificate. A community or technical college may issue a high school diploma or certificate, subject to rules adopted by the superintendent of public instruction and the state board of education. [2007 c 355 § 2; 1991 c 238 § 58; 1969 ex.s. c 261 § 30.]

Finding—Intent—2007 c 355: See note following RCW 28B.50.534.

Severability—1969 ex.s. c 261: See note following RCW 28B.50.020.

Chapter 28B.76 RCW

HIGHER EDUCATION COORDINATING BOARD

Sections

- 28B.76.050 Members—Terms.
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- 28B.76.505 Scholarship endowment programs—Administration of funds.

28B.76.050 Members—Terms. The members of the board, except the student member, shall serve for terms of four years, the terms expiring on June 30th of the fourth year of the term. The student member shall hold his or her office for a term of one year beginning on the first day of July. [2007 c 458 § 101; 2004 c 275 § 3; 2002 c 129 § 2; 1985 c 370 § 11. Formerly RCW 28B.80.400.]

Part headings not law—2007 c 458: "Part headings used in this act are not any part of the law." [2007 c 458 § 301.]

Part headings not law—2004 c 275: See note following RCW 28B.76.030.

28B.76.090 Director—Duties—Board use of state agencies. The board shall employ a director and may delegate agency management to the director. The director shall serve at the pleasure of the board, shall be the executive officer of the board, and shall, under the board's supervision, administer the provisions of this chapter. The executive director shall, with the approval of the board: (1) Employ

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necessary deputy and assistant directors and other exempt staff under chapter 41.06 RCW who shall serve at his or her pleasure on such terms and conditions as he or she determines and (2) subject to the provisions of chapter 41.06 RCW, appoint and employ such other employees as may be required for the proper discharge of the functions of the board. The executive director shall exercise such additional powers, other than rule making, as may be delegated by the board by resolution. In fulfilling the duties under this chapter, the board shall make extensive use of those state agencies with responsibility for implementing and supporting postsecondary education plans and policies including but not limited to appropriate legislative groups, the postsecondary education institutions, the office of financial management, the workforce training and education coordinating board, the state board for community and technical colleges, and the office of the superintendent of public instruction. Outside consulting and service agencies may also be employed. The board may compensate these groups and consultants in appropriate ways. [2007 c 458 § 102; 2004 c 275 § 4; 1987 c 330 § 301; 1985 c 370 § 14. Formerly RCW 28B.80.430.]

Part headings not law—2007 c 458: See note following RCW 28B.76.050.

Part headings not law—2004 c 275: See note following RCW 28B.76.030.

Construction—Application of rules—Severability—1987 c 330: See notes following RCW 28B.12.050.

28B.76.100 Advisory council. (1) The board shall establish an advisory council consisting of: A representative of the superintendent of public instruction; a representative of the state board of education appointed by the state board of education; a representative of the two-year system of the state board for community and technical colleges appointed by the state board for community and technical colleges; a representative of the workforce training and education coordinating board appointed by the workforce training and education coordinating board; one representative of the research universities appointed by the president of the University of Washington and the president of Washington State University; a representative of the regional universities and The Evergreen State College appointed through a process developed by the council of presidents; a representative of the faculty for the four-year institutions appointed by the council of faculty representatives; a representative of the proprietary schools appointed by the federation of private career schools and colleges; a representative of the independent colleges appointed by the independent colleges of Washington; and a faculty member in the community and technical college system appointed by the state board for community and technical colleges in consultation with the faculty unions.

(2) The members of the advisory council shall each serve a two-year term.

(3) The board shall meet with the advisory council at least quarterly and shall seek advice from the council regarding the board's discharge of its statutory responsibilities. [2007 c 458 § 103; 2004 c 275 § 2; 1985 c 370 § 9. Formerly RCW 28B.80.380.]

Part headings not law—2007 c 458: See note following RCW 28B.76.050.

Part headings not law—2004 c 275: See note following RCW 28B.76.030.

28B.76.200 Statewide strategic master plan for higher education—Institution-level strategic plans. (1)

The board shall develop a statewide strategic master plan for higher education that proposes a vision and identifies measurable goals and priorities for the system of higher education in Washington state for a ten-year time period. The board shall update the statewide strategic master plan every four years. The plan shall address the goals of: (a) Expanding access; (b) using methods of educational delivery that are efficient, cost-effective, and productive to deliver modern educational programs; and (c) using performance measures to gauge the effectiveness of the state's progress towards meeting its higher education goals. The plan shall encompass all sectors of higher education, including the two-year system, workforce training, the four-year institutions, and financial aid. The board shall also specify strategies for expanding access, affordability, quality, efficiency, and accountability among the various institutions of higher education.

(2) In developing the statewide strategic master plan for higher education, the board shall collaborate with the four-year institutions of higher education including the council of presidents, the community and technical college system, and, when appropriate, the workforce training and education coordinating board, the superintendent of public instruction, the independent higher education institutions, the business sector, and labor. The board shall identify and utilize models of regional planning and decision making before initiating a statewide planning process. The board shall also seek input from students, faculty organizations, community and business leaders in the state, members of the legislature, and the governor.

(3) As a foundation for the statewide strategic master plan for higher education, the board shall review role and mission statements for each of the four-year institutions of higher education and the community and technical college system. The purpose of the review is to ensure institutional roles and missions are aligned with the overall state vision and priorities for higher education.

(4) In assessing needs of the state's higher education system, the board should encourage partnerships, embrace innovation, and consider, analyze, and make recommendations concerning the following information:

(a) Demographic, social, economic, and technological trends and their impact on service delivery for a twenty-year horizon;

(b) The changing ethnic composition of the population and the special needs arising from those trends;

(c) Business and industrial needs for a skilled workforce;

(d) College attendance, retention, transfer, graduation, and dropout rates;

(e) Needs and demands for basic and continuing education and opportunities for lifelong learning by individuals of all age groups;

(f) Needs and demands for nontraditional populations including, but not limited to, adult learners; and

(g) Needs and demands for access to higher education by placebound students and individuals in heavily populated areas underserved by public institutions.

(5) The statewide strategic master plan for higher education shall include, but not be limited to, the following access and educational delivery items:

(a) Recommendations based on enrollment forecasts and analysis of data about demand for higher education, and policies and actions to meet the goal of expanding access;

(b) State and regional priorities for new or expanded degree programs or off-campus programs, including what models of service delivery may be most cost-effective;

(c) Recommended policies or actions to improve the efficiency of student transfer and graduation or completion;

(d) State and regional priorities for addressing needs in high-demand fields where enrollment access is limited and employers are experiencing difficulty finding enough qualified graduates to fill job openings;

(e) Recommended tuition and fees policies and levels; and

(f) Priorities and recommendations including increased transparency on financial aid.

(6) The board shall present the vision, goals, priorities, and strategies in the statewide strategic master plan for higher education in a way that provides guidance for institutions, the governor, and the legislature to make further decisions regarding institution-level plans, policies, legislation, and operating and capital funding for higher education. In the statewide strategic master plan for higher education, the board shall recommend specific actions to be taken and identify measurable performance indicators and benchmarks for gauging progress toward achieving the goals and priorities.

(7) Every four years by December 15th, beginning December 15, 2007, the board shall submit an update of the ten-year statewide strategic master plan for higher education to the governor and the legislature. The updated plan shall reflect the expectations and policy directions of the legislative higher education and fiscal committees, and shall provide a timely and relevant framework for the development of future budgets and policy proposals. The legislature shall, by concurrent resolution, approve or recommend changes to the updated plan, following public hearings. The board shall submit the final plan, incorporating legislative changes, to the governor and the legislature by June of the year in which the legislature approves the concurrent resolution. The plan shall then become state higher education policy unless legislation is enacted to alter the policies set forth in the plan. The board shall report annually to the governor and the legislature on the progress being made by the institutions of higher education and the state to implement the strategic master plan.

(8) Each four-year institution shall develop an institution-level ten-year strategic plan that implements the vision, goals, priorities, and strategies within the statewide strategic master plan for higher education based on the institution's role and mission. Institutional strategic plans shall encourage partnerships, embrace innovation, and contain measurable performance indicators and benchmarks for gauging progress toward achieving the goals and priorities with attention given to the goals and strategies of increased access and program delivery methods. The board shall review the institution-level plans to ensure the plans are aligned with and implement the statewide strategic master plan for higher education and shall periodically monitor institutions' progress toward achieving the goals and priorities within their plans.

(9) The board shall also review the comprehensive master plan prepared by the state board for community and technical colleges for the community and technical college system under RCW 28B.50.090 to ensure the plan is aligned with and implements the statewide strategic master plan for higher education. [2007 c 458 § 201; 2004 c 275 § 6; 2003 c 130 § 2. Formerly RCW 28B.80.345.]

Part headings not law—2007 c 458: See note following RCW 28B.76.050.

Part headings not law—2004 c 275: See note following RCW 28B.76.030.

Findings—Intent—2003 c 130: See note following RCW 28B.76.210.

28B.76.210 Budget priorities and levels of funding—Guidelines for institutions—Review and evaluation of budget requests—Recommendations. (1) The board shall collaborate with the four-year institutions including the council of presidents, the community and technical college system, and when appropriate the workforce training and education coordinating board, the superintendent of public instruction, and the independent higher educational institutions to identify budget priorities and levels of funding for higher education, including the two and four-year institutions of higher education and state financial aid programs. It is the intent of the legislature that recommendations from the board reflect not merely the sum of budget requests from multiple institutions, but prioritized funding needs for the overall system of higher education.

(2) By December of each odd-numbered year, the board shall distribute guidelines which outline the board's fiscal priorities to the institutions and the state board for community and technical colleges. The institutions and the state board for community and technical colleges shall submit an outline of their proposed budgets to the board no later than July 1st of each even-numbered year. Pursuant to guidelines developed by the board, operating budget outlines submitted by the institutions and the state board for community and technical colleges after January 1, 2007, shall include all policy changes and enhancements that will be requested by the institutions and the state board for community and technical colleges in their respective biennial budget requests. Operating budget outlines shall include a description of each policy enhancement, the dollar amount requested, and the fund source being requested. Capital budget outlines shall include the prioritized ranking of the capital projects being requested by two-year and four-year institutions, respectively. A description of each capital project, and the amount and fund source being requested, shall be included for each capital project appearing in the prioritized ranking. The office of financial management shall reference these reporting requirements in its budget instructions.

(3) The board shall review and evaluate the operating and capital budget requests from four-year institutions and the community and technical college system based on how the requests align with the board's budget priorities, the missions of the institutions, and the statewide strategic master plan for higher education under RCW 28B.76.200.

(4) The board shall submit recommendations on the proposed budgets and on the board's budget priorities to the office of financial management before October 1st of each

even-numbered year, and to the legislature by January 1st of each odd-numbered year.

(5) Institutions and the state board for community and technical colleges shall submit any supplemental budget requests and revisions to the board at the same time they are submitted to the office of financial management. The board shall submit recommendations on the proposed supplemental budget requests to the office of financial management by November 1st and to the legislature by January 1st. [2007 c 458 § 202; 2004 c 275 § 7; 2003 c 130 § 3; 1997 c 369 § 10; 1996 c 174 § 1; 1993 c 363 § 6; 1985 c 370 § 4. Formerly RCW 28B.80.330.]

Part headings not law—2007 c 458: See note following RCW 28B.76.050.

Part headings not law—2004 c 275: See note following RCW 28B.76.030.

Findings—Intent—2003 c 130: "(1) The legislature finds that:

(a) At the time the higher education coordinating board was created in 1985, the legislature wanted a board with a comprehensive mission that included planning, budget and program review authority, and program administration;

(b) Since its creation, the board has achieved numerous accomplishments, including proposals leading to creation of the branch campus system, and has made access and affordability of higher education a consistent priority;

(c) However, higher education in Washington state is currently at a crossroads. Demographic, economic, and technological changes present new and daunting challenges for the state and its institutions of higher education. As the state looks forward to the future, the legislature, the governor, and institutions need a common strategic vision to guide planning and decision making.

(2) Therefore, it is the legislature's intent to reaffirm and strengthen the strategic planning role of the higher education coordinating board. It is also the legislature's intent to examine options for reassigning or altering other roles and responsibilities to enable the board to place priority and focus on planning and coordination." [2003 c 130 § 1.]

Findings—1993 c 363: "The legislature finds a need to redefine the relationship between the state and its postsecondary education institutions through a compact based on trust, evidence, and a new alignment of responsibilities. As the proportion of the state budget dedicated to postsecondary education programs has continued to decrease and the opportunity for this state's citizens to participate in such programs also has declined, the state institutions of higher education have increasingly less flexibility to respond to emerging challenges through innovative management and programming. The legislature finds that this state has not provided its institutions of higher education with the ability to effectively achieve statewide goals and objectives to increase access to, improve the quality of, and enhance the accountability for its postsecondary education system.

Therefore, the legislature declares that the policy of the state of Washington is to create an environment in which the state institutions of higher education have the authority and flexibility to enhance attainment of statewide goals and objectives for the state's postsecondary education system through decisions and actions at the local level. The policy shall have the following attributes:

(1) The accomplishment of equitable and adequate enrollment by significantly raising enrollment lids, adequately funding those increases, and providing sufficient financial aid for the neediest students;

(2) The development and use of a new definition of quality measured by effective operations and clear results; the efficient use of funds to achieve well-educated students;

(3) The attainment of a new resource management relationship that removes the state from micromanagement, allows institutions greater management autonomy to focus resources on essential functions, and encourages innovation; and

(4) The development of a system of coordinated planning and sufficient feedback to assure policymakers and citizens that students are succeeding and resources are being prudently deployed." [1993 c 363 § 1.]

Effective date—1993 c 363: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and shall take effect July 1, 1993." [1993 c 363 § 7.]

Industrial project of statewide significance—Defined: RCW 43.157.010.

28B.76.335 Teacher preparation degree programs in mathematics, science, and technology—Needs assessment. As part of the state needs assessment process conducted by the board in accordance with RCW 28B.76.230, the board shall assess the need for additional baccalaureate degree programs in Washington that specialize in teacher preparation in mathematics, science, and technology. If the board determines that there is a need for additional programs, then the board shall encourage the appropriate institutions of higher education or institutional sectors to create such a program. [2007 c 396 § 17.]

Captions not law—2007 c 396: See note following RCW 28A.305.215.

Finding—Intent—2007 c 396: See note following RCW 28A.300.515.

28B.76.505 Scholarship endowment programs—Administration of funds. (1) The investment of funds from all scholarship endowment programs administered by the higher education coordinating board shall be managed by the state investment board.

(2) The state investment board has the full power to invest, reinvest, manage, contract, sell, or exchange investment money in scholarship endowment funds. All investment and operating costs associated with the investment of a scholarship endowment fund shall be paid pursuant to RCW 43.33A.160 and 43.84.160. With the exception of these expenses, the earnings from the investments of the fund belong to the fund.

(3) Funds from all scholarship endowment programs administered by the board shall be in the custody of the state treasurer.

(4) All investments made by the state investment board shall be made with the exercise of that degree of judgment and care pursuant to RCW 43.33A.140 and the investment policies established by the state investment board.

(5) As deemed appropriate by the state investment board, money in a scholarship endowment fund may be commingled for investment with other funds subject to investment by the state investment board.

(6) The authority to establish all policies relating to scholarship endowment funds, other than the investment policies in subsections (2) through (5) of this section, resides with the higher education coordinating board.

(7) The higher education coordinating board may request and accept moneys from the state investment board. With the exception of expenses of the state investment board in subsection (2) of this section, disbursements from the fund shall be made only on the authorization of the higher education coordinating board, and money in the fund may be spent only for the purposes of the endowment programs as specified in the authorizing chapter of each program.

(8) The state investment board shall routinely consult and communicate with the higher education coordinating board on the investment policy, earnings of the scholarship

endowment funds, and related needs of the programs. [2007 c 73 § 1.]

Chapter 28B.92 RCW

STATE STUDENT FINANCIAL AID PROGRAM

Sections

28B.92.060	State need grant awards.
28B.92.080	Eligibility for state need grant.
28B.92.085	Part-time students—Review of financial aid policies and procedures.

28B.92.060 State need grant awards. In awarding need grants, the board shall proceed substantially as follows: PROVIDED, That nothing contained herein shall be construed to prevent the board, in the exercise of its sound discretion, from following another procedure when the best interest of the program so dictates:

(1) The board shall annually select the financial aid award recipients from among Washington residents applying for student financial aid who have been ranked according to:

(a) Financial need as determined by the amount of the family contribution; and

(b) Other considerations, such as whether the student is a former foster youth.

(2) The financial need of the highest ranked students shall be met by grants depending upon the evaluation of financial need until the total allocation has been disbursed. Funds from grants which are declined, forfeited or otherwise unused shall be reawarded until disbursed, except that eligible former foster youth shall be assured receipt of a grant.

(3) A student shall be eligible to receive a state need grant for up to five years, or the credit or clock hour equivalent of five years, or up to one hundred twenty-five percent of the published length of time of the student's program. A student may not start a new associate degree program as a state need grant recipient until at least five years have elapsed since earning an associate degree as a need grant recipient, except that a student may earn two associate degrees concurrently. Qualifications for renewal will include maintaining satisfactory academic progress toward completion of an eligible program as determined by the board. Should the recipient terminate his or her enrollment for any reason during the academic year, the unused portion of the grant shall be returned to the state educational grant fund by the institution according to the institution's own policy for issuing refunds, except as provided in RCW 28B.92.070.

(4) In computing financial need, the board shall determine a maximum student expense budget allowance, not to exceed an amount equal to the total maximum student expense budget at the public institutions plus the current average state appropriation per student for operating expense in the public institutions. Any child support payments received by students who are parents attending less than half-time shall not be used in computing financial need.

(5)(a) A student who is enrolled in three to six credit-bearing quarter credits, or the equivalent semester credits, may receive a grant for up to one academic year before beginning a program that leads to a degree or certificate.

(b) An eligible student enrolled on a less-than-full-time basis shall receive a prorated portion of his or her state need

grant for any academic period in which he or she is enrolled on a less-than-full-time basis, as long as funds are available.

(c) An institution of higher education may award a state need grant to an eligible student enrolled in three to six credit-bearing quarter credits, or the semester equivalent, on a provisional basis if:

(i) The student has not previously received a state need grant from that institution;

(ii) The student completes the required free application for federal student aid;

(iii) The institution has reviewed the student's financial condition, and the financial condition of the student's family if the student is a dependent student, and has determined that the student is likely eligible for a state need grant; and

(iv) The student has signed a document attesting to the fact that the financial information provided on the free application for federal student aid and any additional financial information provided directly to the institution is accurate and complete, and that the student agrees to repay the institution for the grant amount if the student submitted false or incomplete information.

(6) As used in this section, "former foster youth" means a person who is at least eighteen years of age, but not more than twenty-four years of age, who was a dependent of the department of social and health services at the time he or she attained the age of eighteen. [2007 c 404 § 2; 2005 c 93 § 3; 2004 c 275 § 37; 1999 c 345 § 5; 1991 c 164 § 4; 1989 c 254 § 4; 1969 ex.s. c 222 § 12. Formerly RCW 28B.10.808, 28.76.470.]

Findings—Intent—2005 c 93: See note following RCW 74.13.570.

Part headings not law—2004 c 275: See note following RCW 28B.76.030.

Intent—1989 c 254: See note following RCW 28B.92.030.

28B.92.080 Eligibility for state need grant. For a student to be eligible for a state need grant a student must:

(1) Be a "needy student" or "disadvantaged student" as determined by the board in accordance with RCW 28B.92.030 (3) and (4).

(2) Have been domiciled within the state of Washington for at least one year.

(3) Be enrolled or accepted for enrollment on at least a half-time basis at an institution of higher education in Washington as defined in RCW 28B.92.030(1).

(4) Until June 30, 2011, to the extent funds are specifically appropriated for this purpose, and subject to any terms and conditions specified in the omnibus appropriations act, be enrolled or accepted for enrollment for at least three quarter credits or the equivalent semester credits at an institution of higher education in Washington as defined in RCW 28B.92.030(1).

(5) Have complied with all the rules and regulations adopted by the board for the administration of this chapter. [2007 c 404 § 1; 2004 c 275 § 39; 1999 c 345 § 6; 1989 c 254 § 5; 1969 ex.s. c 222 § 13. Formerly RCW 28B.10.810, 28.76.475.]

Part headings not law—2004 c 275: See note following RCW 28B.76.030.

Intent—1989 c 254: See note following RCW 28B.92.030.

28B.92.085 Part-time students—Review of financial aid policies and procedures. Institutions of higher education are encouraged to review their policies and procedures regarding financial aid for students taking a less-than-half-time course load, and to implement policies and procedures providing students taking a less-than-half-time course load with the same access to institutional aid, including tuition waivers, as provided to students enrolled half time or more. [2007 c 404 § 3.]

Chapter 28B.95 RCW

ADVANCED COLLEGE TUITION PAYMENT PROGRAM

Sections

28B.95.020 Definitions.

28B.95.060 Washington advanced college tuition payment program account.

28B.95.160 GET ready for math and science scholarship program—Tuition units—Ownership and redemption.

28B.95.020 Definitions. The definitions in this section apply throughout this chapter, unless the context clearly requires otherwise.

(1) "Academic year" means the regular nine-month, three-quarter, or two-semester period annually occurring between August 1st and July 31st.

(2) "Account" means the Washington advanced college tuition payment program account established for the deposit of all money received by the board from eligible purchasers and interest earnings on investments of funds in the account, as well as for all expenditures on behalf of eligible beneficiaries for the redemption of tuition units and for the development of any authorized college savings program pursuant to RCW 28B.95.150.

(3) "Board" means the higher education coordinating board as defined in chapter 28B.76 RCW.

(4) "Committee on advanced tuition payment" or "committee" means a committee of the following members: The state treasurer, the director of the office of financial management, the executive director of the higher education coordinating board, or their designees, and two members to be appointed by the governor, one representing program participants and one private business representative with marketing, public relations, or financial expertise.

(5) "Governing body" means the committee empowered by the legislature to administer the Washington advanced college tuition payment program.

(6) "Contractual obligation" means a legally binding contract of the state with the purchaser and the beneficiary establishing that purchases of tuition units will be worth the same number of tuition units at the time of redemption as they were worth at the time of the purchase.

(7) "Eligible beneficiary" means the person for whom the tuition unit will be redeemed for attendance at an institution of higher education. The beneficiary is that person named by the purchaser at the time that a tuition unit contract is accepted by the governing body. Qualified organizations, as allowed under section 529 of the federal internal revenue code, purchasing tuition unit contracts as future scholarships need not designate a beneficiary at the time of purchase.

(8) "Eligible purchaser" means an individual or organization that has entered into a tuition unit contract with the governing body for the purchase of tuition units for an eligible beneficiary. The state of Washington may be an eligible purchaser for purposes of purchasing tuition units to be held for granting Washington college bound scholarships.

(9) "Full-time tuition charges" means resident tuition charges at a state institution of higher education for enrollments between ten credits and eighteen credit hours per academic term.

(10) "Institution of higher education" means an institution that offers education beyond the secondary level and is recognized by the internal revenue service under chapter 529 of the internal revenue code.

(11) "Investment board" means the state investment board as defined in chapter 43.33A RCW.

(12) "State institution of higher education" means institutions of higher education as defined in RCW 28B.10.016.

(13) "Tuition and fees" means undergraduate tuition and services and activities fees as defined in RCW 28B.15.020 and 28B.15.041 rounded to the nearest whole dollar. For purposes of this chapter, services and activities fees do not include fees charged for the payment of bonds heretofore or hereafter issued for, or other indebtedness incurred to pay, all or part of the cost of acquiring, constructing, or installing any lands, buildings, or facilities.

(14) "Tuition unit contract" means a contract between an eligible purchaser and the governing body, or a successor agency appointed for administration of this chapter, for the purchase of tuition units for a specified beneficiary that may be redeemed at a later date for an equal number of tuition units.

(15) "Unit purchase price" means the minimum cost to purchase one tuition unit for an eligible beneficiary. Generally, the minimum purchase price is one percent of the undergraduate tuition and fees for the current year, rounded to the nearest whole dollar, adjusted for the costs of administration and adjusted to ensure the actuarial soundness of the account. The analysis for price setting shall also include, but not be limited to consideration of past and projected patterns of tuition increases, program liability, past and projected investment returns, and the need for a prudent stabilization reserve. [2007 c 405 § 8; 2005 c 272 § 1; 2004 c 275 § 59; 2001 c 184 § 1; 2000 c 14 § 1; 1997 c 289 § 2.]

Part headings not law—2004 c 275: See note following RCW 28B.76.030.

28B.95.060 Washington advanced college tuition payment program account. (1) The Washington advanced college tuition payment program account is created in the custody of the state treasurer. The account shall be a discrete nontreasury account retaining its interest earnings in accordance with RCW 43.79A.040.

(2)(a) Except as provided in (b) of this subsection, the governing body shall deposit in the account all money received for the program. The account shall be self-sustaining and consist of payments received from purchasers of tuition units and funds received from other sources, public or private. With the exception of investment and operating costs associated with the investment of money by the investment board paid under RCW 43.33A.160 and 43.84.160, the

account shall be credited with all investment income earned by the account. Disbursements from the account are exempt from appropriations and the allotment provisions of chapter 43.88 RCW. Money used for program administration is subject to the allotment of all expenditures. However, an appropriation is not required for such expenditures. Program administration shall include, but not be limited to: The salaries and expenses of the program personnel including lease payments, travel, and goods and services necessary for program operation; contracts for program promotion and advertisement, audits, and account management; and other general costs of conducting the business of the program.

(b) All money received by the program from the higher education coordinating board for the GET ready for math and science scholarship program shall be deposited in the GET ready for math and science scholarship account created in RCW 28B.105.110.

(3) The assets of the account may be spent without appropriation for the purpose of making payments to institutions of higher education on behalf of the qualified beneficiaries, making refunds, transfers, or direct payments upon the termination of the Washington advanced college tuition payment program. Disbursements from the account shall be made only on the authorization of the governing body.

(4) With regard to the assets of the account, the state acts in a fiduciary, not ownership, capacity. Therefore the assets of the program are not considered state money, common cash, or revenue to the state. [2007 c 214 § 13; 2000 c 14 § 5; 1998 c 69 § 4; 1997 c 289 § 6.]

Effective date—1998 c 69: See note following RCW 28B.95.025.

28B.95.160 GET ready for math and science scholarship program—Tuition units—Ownership and redemption. Ownership of tuition units purchased by the higher education coordinating board for the GET ready for math and science scholarship program under RCW 28B.105.070 shall be in the name of the state of Washington and may be redeemed by the state of Washington on behalf of recipients of GET ready for math and science scholarship program scholarships for tuition and fees. [2007 c 214 § 12.]

Chapter 28B.102 RCW

FUTURE TEACHERS CONDITIONAL SCHOLARSHIP AND LOAN REPAYMENT PROGRAM

Sections

28B.102.080 Future teachers conditional scholarship account.

28B.102.080 Future teachers conditional scholarship account. (1) The future teachers conditional scholarship account is created in the custody of the state treasurer. An appropriation is not required for expenditures of funds from the account. The account is not subject to allotment procedures under chapter 43.88 RCW except for moneys used for program administration.

(2) The board shall deposit in the account all moneys received for the future teachers conditional scholarship and loan repayment program and for conditional loan programs under chapter 28A.660 RCW. The account shall be self-sus-

taining and consist of funds appropriated by the legislature for the future teachers conditional scholarship and loan repayment program, private contributions to the program, receipts from participant repayments from the future teachers conditional scholarship and loan repayment program, and conditional loan programs established under chapter 28A.660 RCW. Beginning July 1, 2004, the board shall also deposit into the account: (a) All funds from the institution of higher education loan account that are traceable to any conditional scholarship program for teachers or prospective teachers established by the legislature before June 10, 2004; and (b) all amounts repaid by individuals under any such program.

(3) Expenditures from the account may be used solely for conditional loans and loan repayments to participants in the future teachers conditional scholarship and loan repayment program established by this chapter, conditional scholarships for participants in programs established in chapter 28A.660 RCW, and costs associated with program administration by the board.

(4) Disbursements from the account may be made only on the authorization of the board. [2007 c 396 § 9; 2004 c 58 § 9.]

Captions not law—2007 c 396: See note following RCW 28A.305.215.

Finding—Intent—2007 c 396: See note following RCW 28A.300.515.

Chapter 28B.105 RCW

GET READY FOR MATH AND SCIENCE SCHOLARSHIP PROGRAM

Sections

28B.105.010	GET ready for math and science scholarship program—Purpose—Awards.
28B.105.020	Definitions.
28B.105.030	Eligibility.
28B.105.040	Changes in eligibility—Consequences.
28B.105.050	Repayment obligation—Conditions.
28B.105.060	Office of the superintendent of public instruction—Duties.
28B.105.070	Higher education coordinating board—Duties.
28B.105.080	School districts—Duties.
28B.105.090	Program administrator—Duties.
28B.105.100	Higher education coordinating board and program administrator—Joint duties.
28B.105.110	GET ready for math and science scholarship account.

28B.105.010 GET ready for math and science scholarship program—Purpose—Awards. (1) The GET ready for math and science scholarship program is established. The purpose of the program is to provide scholarships to students who achieve level four on the mathematics or science portions of the tenth grade Washington assessment of student learning or achieve a score in the math section of the SAT or the math section of the ACT that is above the ninety-fifth percentile, major in a mathematics, science, or related field in college, and commit to working in mathematics, science, or a related field for at least three years in Washington following completion of their bachelor's degree. The program shall be administered by the nonprofit organization selected as the private partner in the public-private partnership.

(2) The total annual amount of each GET ready for math and science scholarship may vary, but shall not exceed the annual cost of resident undergraduate tuition fees and mandatory fees at the University of Washington. An eligible recipient may receive a GET ready for math and science scholar-

ship for up to one hundred eighty quarter credits, or the semester equivalent, or for up to five years, whichever comes first.

(3) Scholarships shall be awarded only to the extent that state funds and private matching funds are available for that purpose in the GET ready for math and science [scholarship] account established in RCW 28B.105.110. [2007 c 214 § 1.]

28B.105.020 Definitions. The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

(1) "Board" means the higher education coordinating board.

(2) "GET units" means tuition units under the advanced college tuition payment program in chapter 28B.95 RCW.

(3) "Institution of higher education" has the same meaning as in RCW 28B.92.030.

(4) "Program administrator" means the private nonprofit corporation that is registered under Title 24 RCW and qualified as a tax-exempt entity under section 501(c)(3) of the federal internal revenue code, that will serve as the private partner in the public-private partnership under this chapter.

(5) "Qualified program" or "qualified major" means a mathematics, science, or related degree program or major line of study offered by an institution of higher education that is included on the list of programs or majors selected by the board and the program administrator under RCW 28B.105.100. [2007 c 214 § 2.]

28B.105.030 Eligibility. (1) An eligible student is a student who:

(a) Is eligible for resident tuition and fee rates as defined in RCW 28B.15.012;

(b) Achieved level four on the mathematics or science portion of the tenth grade Washington assessment of student learning or achieved a score in the math section of the SAT or the math section of the ACT that is above the ninety-fifth percentile;

(c) Has a family income at or below one hundred twenty-five percent of the state median family income at the time the student applies for a GET ready for math and science scholarship and for up to the two previous years;

(d) Has declared an intention to complete a qualified program or qualified major or has entered a qualified program or declared a qualified major at an institution of higher education;

(e) Has declared an intention to work in a mathematics, science, or related field in Washington for at least three years immediately following completion of a bachelor's degree or higher degree.

(2) An eligible recipient is an eligible student who:

(a) Has been awarded a scholarship in accordance with the selection criteria and process established by the board and the program administrator;

(b) Enrolls at an institution of higher education within one year of graduating from high school;

(c) Maintains satisfactory academic progress, as defined by the institution of higher education where the student is enrolled;

(d) Takes at least one college-level mathematics or science course each term since enrolling in an institution of higher education; and

(e) Enters a qualified program or qualified major no later than the end of the first term in which the student has junior level standing. [2007 c 214 § 3.]

28B.105.040 Changes in eligibility—Consequences.

(1) If the student enrolls in a qualified program or declares a qualified major and the program or major is subsequently removed from the list of qualified programs and qualified majors by the board and the program administrator, the student's eligibility to receive a GET ready for math and science scholarship shall not be affected.

(2) If a student who received a GET ready for math and science scholarship ceases to be enrolled in an institution of higher education, withdraws or is no longer enrolled in a qualified program, declares a major that is not a qualified major, or otherwise is no longer eligible to receive a GET ready for math and science scholarship, the student shall notify the program administrator as soon as practicable and is not eligible for further GET ready for math and science scholarship awards. Such a student shall also repay the amount of the GET ready for math and science scholarship awarded to the student as required by RCW 28B.105.050. [2007 c 214 § 4.]

28B.105.050 Repayment obligation—Conditions. (1)

A recipient of a GET ready for math and science scholarship incurs an obligation to repay the scholarship, with interest and an equalization fee, if he or she does not:

(a) Graduate with a bachelor's degree from a qualified program or in a qualified major within five years of first enrolling at an institution of higher education; and

(b) Work in Washington in a mathematics, science, or related occupation full time for at least three years following completion of a bachelor's degree, unless he or she is enrolled in a graduate degree program as provided in subsection (4) of this section.

(2) A former scholarship recipient who has earned a bachelor's degree shall annually verify to the board that he or she is working full time in a mathematics, science, or related field for three years.

(3) If a former scholarship recipient begins but then stops working full time in a mathematics, science, or related field within three years following completion of a bachelor's degree, he or she shall pay back a prorated portion of the amount of the GET ready for math and science scholarship award received by the recipient, plus interest and a prorated equalization fee.

(4) A recipient may postpone for up to three years his or her in-state work obligation if he or she enrolls full time in a graduate degree program in mathematics, science, or a related field. [2007 c 214 § 5.]

28B.105.060 Office of the superintendent of public instruction—Duties. The office of the superintendent of public instruction shall:

(1) Notify elementary, middle, junior high, high school, and school district staff and administrators, and the children's

administration of the department of social and health services about the GET ready for math and science scholarship program using methods in place for communicating with schools and school districts; and

(2) Provide data showing the race, ethnicity, income, and other available demographic information of students who achieve level four of the math and science Washington assessment of student learning in the tenth grade. Compare those data with comparable information on the tenth grade student population as a whole. Submit a report with the analysis to the committees responsible for education and higher education in the legislature on December 1st of even-numbered years. [2007 c 214 § 6.]

28B.105.070 Higher education coordinating board—Duties. The board shall:

(1) Purchase GET units to be owned and held in trust by the board, for the purpose of scholarship awards as provided for in this section;

(2) Distribute scholarship funds, in the form of GET units or through direct payments from the GET ready for math and science scholarship account, to institutions of higher education on behalf of eligible recipients identified by the program administrator;

(3) Provide the program administrator with annual reports regarding enrollment, contact, and graduation information of GET ready for math and science scholarship recipients, if the recipients have given permission for the board to do so;

(4) Collect repayments from former scholarship recipients who do not meet the eligibility criteria or work obligations;

(5) Establish rules for scholarship repayment, approved leaves of absence, deferments, and exceptions to recognize extenuating circumstances that may impact students; and

(6) Provide information to school districts in Washington, at least once per year, about the GET ready for math and science scholarship program. [2007 c 214 § 7.]

28B.105.080 School districts—Duties. School districts shall:

(1) Notify parents, teachers, counselors, and principals about the GET ready for math and science scholarship program through existing channels. Notification methods may include, but are not limited to, regular school district and building communications, online scholarship bulletins and announcements, notices posted on school walls and bulletin boards, information available in each counselor's office, and school or district scholarship information sessions;

(2) Provide each student who achieves level four on the mathematics or science high school Washington assessment of student learning with information regarding the scholarship program and how to contact the program administrator. [2007 c 214 § 8.]

28B.105.090 Program administrator—Duties. The program administrator shall:

(1) Solicit and accept grants and donations from private sources to match state funds appropriated for the GET ready for math and science scholarship program;

(2) Develop and implement an application, selection, and notification process for awarding GET ready for math and science scholarships;

(3) Notify institutions of higher education of scholarship recipients who will attend their institutions and inform them of the terms of the students' eligibility; and

(4) Report to private donors on the program outcomes and facilitate contact between scholarship recipients and donors, if the recipients have given the program administrator permission to do so, in order for donors to offer employment opportunities, internships, and career information to recipients. [2007 c 214 § 9.]

28B.105.100 Higher education coordinating board and program administrator—Joint duties. The board and the program administrator shall jointly:

(1) Determine criteria for qualifying undergraduate programs, majors, and courses leading to a bachelor's degree in mathematics, science, or a related field, offered by institutions of higher education. The board shall publish the criteria for qualified courses, and lists of qualified programs and qualified majors on its web site on a biennial basis; and

(2) Establish criteria for selecting among eligible applicants those who, without scholarship assistance, would be least likely to pursue a qualified undergraduate program at an institution of higher education in Washington state. [2007 c 214 § 10.]

28B.105.110 GET ready for math and science scholarship account. (1) The GET ready for math and science scholarship account is created in the custody of the state treasurer.

(2) The board shall deposit into the account all money received for the GET ready for math and science scholarship program from appropriations and private sources. The account shall be self-sustaining.

(3) Expenditures from the account shall be used for scholarships to eligible students and for purchases of GET units. Purchased GET units shall be owned and held in trust by the board. Expenditures from the account shall be an equal match of state appropriations and private funds raised by the program administrator.

(4) With the exception of the operating costs associated with the management of the account by the treasurer's office as authorized in chapter 43.79A RCW, the account shall be credited with all investment income earned by the account.

(5) Disbursements from the account are exempt from appropriations and the allotment provisions of chapter 43.88 RCW.

(6) Disbursements from the account shall be made only on the authorization of the board. [2007 c 214 § 11.]

Chapter 28B.108 RCW

AMERICAN INDIAN ENDOWED SCHOLARSHIP PROGRAM

Sections

28B.108.060 Scholarship endowment fund.

[2007 RCW Supp—page 276]

28B.108.060 Scholarship endowment fund. The American Indian scholarship endowment fund is created in the custody of the state treasurer. The investment of the endowment fund shall be managed by the state investment board.

(1) Moneys received from the higher education coordinating board, private donations, state matching moneys, and funds received from any other source may be deposited into the endowment fund. Private moneys received as a gift subject to conditions may be deposited into the fund.

(2) At the request of the higher education coordinating board, the state investment board shall release earnings from the endowment fund to the state treasurer. The state treasurer shall then release those funds at the request of the higher education coordinating board for scholarships. No appropriation is required for expenditures from the endowment fund.

(3) When notified by the higher education coordinating board that a condition attached to a gift of private moneys in the fund has failed, the state investment board shall release those moneys to the higher education coordinating board. The higher education coordinating board shall then release the moneys to the donors according to the terms of the conditional gift.

(4) The principal of the endowment fund shall not be invaded. The release of moneys under subsection (3) of this section shall not constitute an invasion of corpus.

(5) The earnings on the fund shall be used solely for the purposes set forth in RCW 28B.108.040, except when the terms of a conditional gift of private moneys in the fund require that a portion of earnings on such moneys be reinvested in the fund. [2007 c 73 § 2; 1993 c 372 § 1; 1991 sp.s. c 13 § 110; 1990 c 287 § 7.]

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

Chapter 28B.116 RCW

FOSTER CARE ENDOWED SCHOLARSHIP PROGRAM

Sections

28B.116.060 Foster care scholarship endowment fund.

28B.116.060 Foster care scholarship endowment fund. The foster care scholarship endowment fund is created in the custody of the state treasurer. The investment of the endowment fund shall be managed by the state investment board.

(1) Moneys received from the higher education coordinating board, private donations, state matching moneys, and funds received from any other source may be deposited into the foster care scholarship endowment fund. Private moneys received as a gift subject to conditions may be deposited into the endowment fund if the conditions do not violate state or federal law.

(2) At the request of the higher education coordinating board, the state investment board shall release earnings from the endowment fund to the state treasurer. The state treasurer shall then release those funds at the request of the higher education coordinating board for scholarships. No appropriation is required for expenditures from the endowment fund.

(3) The higher education coordinating board may disburse grants to eligible students from the foster care scholarship endowment fund. No appropriation is required for expenditures from the endowment fund.

(4) When notified by court order that a condition attached to a gift of private moneys from the foster care scholarship endowment fund has failed, the higher education coordinating board shall release those moneys to the donors according to the terms of the conditional gift.

(5) The principal of the foster care scholarship endowment fund shall not be invaded. For the purposes of this section, only the first twenty-five thousand dollars deposited into the foster care scholarship endowment fund shall be considered the principal. The release of moneys under subsection (4) of this section shall not constitute an invasion of the corpus.

(6) The foster care scholarship endowment fund shall be used solely for the purposes in this chapter, except when the conditional gift of private moneys in the endowment fund require a portion of the earnings on such moneys be reinvested in the endowment fund. [2007 c 73 § 3; 2005 c 215 § 7.]

Chapter 28B.117 RCW

PASSPORT TO COLLEGE PROMISE PROGRAM

Sections

28B.117.005	Findings—Intent. (<i>Expires June 30, 2013.</i>)
28B.117.010	Program created—Purpose. (<i>Expires June 30, 2013.</i>)
28B.117.020	Definitions. (<i>Expires June 30, 2013.</i>)
28B.117.030	Program design and implementation—Student eligibility—Scholarships. (<i>Expires June 30, 2013.</i>)
28B.117.040	Identification of eligible students and applicants—Duties of institutions of higher education—Duties of the department of social and health services. (<i>Expires June 30, 2013.</i>)
28B.117.050	Internet web site and outreach program. (<i>Expires June 30, 2013.</i>)
28B.117.060	Program of supplemental educational transition planning for youth in foster care—Contract with nongovernmental entity. (<i>Expires June 30, 2013.</i>)
28B.117.070	Reports—Recommendations. (<i>Expires June 30, 2013.</i>)
28B.117.900	Construction—2007 c 314. (<i>Expires June 30, 2013.</i>)
28B.117.901	Expiration of chapter.

28B.117.005 Findings—Intent. (*Expires June 30, 2013.*) (1)(a) The legislature finds that in Washington, there are more than seven thousand three hundred children in foster family or group care. These children face unique obstacles and burdens as they transition to adulthood, including lacking continuity in their elementary and high school educations. As compared to the general population of students, twice as many foster care youth change schools at least once during their elementary and secondary school careers, and three times as many change schools at least three times. Only thirty-four percent of foster care youth graduate from high school within four years, compared to seventy percent for the general population. Of the former foster care youth who earn a high school diploma, more than twenty-eight percent earn a GED instead of a traditional high school diploma. This is almost six times the rate of the general population. Research indicates that GED holders tend not to be as economically successful as the holders of traditional high school diplomas. Only twenty percent of former foster care youth who earn a high school degree enroll in college, compared to over sixty

percent of the population generally. Of the former foster care youth who do enroll in college, very few go on to earn a degree. Less than two percent of former foster care youth hold bachelor's degrees, compared to twenty-eight percent of Washington's population generally.

(b) Former foster care youth face two critical hurdles to enrolling in college. The first is a lack of information regarding preparation for higher education and their options for enrolling in higher education. The second is finding the financial resources to fund their education. As a result of the unique hurdles and challenges that face former foster care youth, a disproportionate number of them are part of society's large group of marginalized youth and are at increased risk of continuing the cycle of poverty and violence that frequently plagues their families.

(c) Former foster care youth suffer from mental health problems at a rate greater than that of the general population. For example, one in four former foster care youth report having suffered from posttraumatic stress disorder within the previous twelve months, compared to only four percent of the general population. Similarly, the incidence of major depression among former foster care youth is twice that of the general population, twenty percent versus ten percent.

(d) There are other barriers for former foster care youth to achieving successful adulthood. One-third of former foster care youth live in households that are at or below the poverty level. This is three times the rate for the general population. The percentage of former foster care youth who report being homeless within one year of leaving foster care varies from over ten percent to almost twenty-five percent. By comparison, only one percent of the general population reports having been homeless at sometime during the past year. One in three former foster care youth lack health insurance, compared to less than one in five people in the general population. One in six former foster care youth receive cash public assistance. This is five times the rate of the general population.

(e) Approximately twenty-five percent of former foster care youth are incarcerated at sometime after leaving foster care. This is four times the rate of incarceration for the general population. Of the former foster care youth who "age out" of foster care, twenty-seven percent of the males and ten percent of the females are incarcerated within twelve to eighteen months of leaving foster care.

(f) Female former foster care youth become sexually active more than seven months earlier than their nonfoster care counterparts, have more sexual partners, and have a mean age of first pregnancy of almost two years earlier than their peers who were not in foster care.

(2) The legislature intends to create the passport to college promise pilot program. The pilot program will initially operate for a six-year period, and will have two primary components, as follows:

(a) Significantly increasing outreach to foster care youth between the ages of fourteen and eighteen regarding the higher education opportunities available to them, how to apply to college, and how to apply for and obtain financial aid; and

(b) Providing financial aid to former foster care youth to assist with the costs of their public undergraduate college education. [2007 c 314 § 1.]

28B.117.010 Program created—Purpose. (*Expires June 30, 2013.*) The passport to college promise pilot program is created. The purpose of the program is:

(1) To encourage current and former foster care youth to prepare for, attend, and successfully complete higher education; and

(2) To provide current and former foster care youth with the educational planning, information, institutional support, and direct financial resources necessary for them to succeed in higher education. [2007 c 314 § 3.]

28B.117.020 Definitions. (*Expires June 30, 2013.*) The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

(1) "Cost of attendance" means the cost associated with attending a particular institution of higher education as determined by the higher education coordinating board, including but not limited to tuition, fees, room, board, books, personal expenses, and transportation, plus the cost of reasonable additional expenses incurred by an eligible student and approved by a financial aid administrator at the student's school of attendance.

(2) "Emancipated from foster care" means a person who was a dependent of the state in accordance with chapter 13.34 RCW and who was receiving foster care in the state of Washington when he or she reached his or her eighteenth birthday.

(3) "Financial need" means the difference between a student's cost of attendance and the student's total family contribution as determined by the method prescribed by the United States department of education.

(4) "Independent college or university" means a private, nonprofit institution of higher education, open to residents of the state, providing programs of education beyond the high school level leading to at least the baccalaureate degree, and accredited by the Northwest association of schools and colleges, and other institutions as may be developed that are approved by the higher education coordinating board as meeting equivalent standards as those institutions accredited under this section.

(5) "Institution of higher education" means:

(a) Any public university, college, community college, or technical college operated by the state of Washington or any political subdivision thereof; or

(b) Any independent college or university in Washington; or

(c) Any other university, college, school, or institute in the state of Washington offering instruction beyond the high school level that is a member institution of an accrediting association recognized by rule of the higher education coordinating board for the purposes of this section: PROVIDED, That any institution, branch, extension, or facility operating within the state of Washington that is affiliated with an institution operating in another state must be a separately accredited member institution of any such accrediting association, or a branch of a member institution of an accrediting association recognized by rule of the board for purposes of this section, that is eligible for federal student financial aid assistance and has operated as a nonprofit college or university delivering on-site classroom instruction for a minimum of twenty consecutive years within the state of Washington, and has an

annual enrollment of at least seven hundred full-time equivalent students.

(6) "Program" means the passport to college promise pilot program created in this chapter. [2007 c 314 § 2.]

28B.117.030 Program design and implementation—Student eligibility—Scholarships. (*Expires June 30, 2013.*) (1) The higher education coordinating board shall design and, to the extent funds are appropriated for this purpose, implement, a program of supplemental scholarship and student assistance for students who have emancipated from the state foster care system after having spent at least one year in care.

(2) The board shall convene and consult with an advisory committee to assist with program design and implementation. The committee shall include but not be limited to former foster care youth and their advocates; representatives from the state board for community and technical colleges, and from public and private agencies that assist current and former foster care recipients in their transition to adulthood; and student support specialists from public and private colleges and universities.

(3) To the extent that sufficient funds have been appropriated for this purpose, a student is eligible for assistance under this section if he or she:

(a) Emancipated from foster care on or after January 1, 2007, after having spent at least one year in foster care subsequent to his or her sixteenth birthday;

(b) Is a resident student, as defined in RCW 28B.15.012(2);

(c) Is enrolled with or will enroll on at least a half-time basis with an institution of higher education in Washington state by the age of twenty-one;

(d) Is making satisfactory academic progress toward the completion of a degree or certificate program, if receiving supplemental scholarship assistance;

(e) Has not earned a bachelor's or professional degree; and

(f) Is not pursuing a degree in theology.

(4) A passport to college scholarship under this section:

(a) Shall not exceed resident undergraduate tuition and fees at the highest-priced public institution of higher education in the state; and

(b) Shall not exceed the student's financial need, less a reasonable self-help amount defined by the board, when combined with all other public and private grant, scholarship, and waiver assistance the student receives.

(5) An eligible student may receive a passport to college scholarship under this section for a maximum of five years after the student first enrolls with an institution of higher education or until the student turns age twenty-six, whichever occurs first. If a student turns age twenty-six during an academic year, and would otherwise be eligible for a scholarship under this section, the student shall continue to be eligible for a scholarship for the remainder of the academic year.

(6) The higher education coordinating board, in consultation with and with assistance from the state board for community and technical colleges, shall perform an annual analysis to verify that those institutions of higher education at which students have received a scholarship under this section have awarded the student all available need-based and

merit-based grant and scholarship aid for which the student qualifies.

(7) In designing and implementing the passport to college student support program under this section, the board, in consultation with and with assistance from the state board for community and technical colleges, shall ensure that a participating college or university:

(a) Has a viable plan for identifying students eligible for assistance under this section, for tracking and enhancing their academic progress, for addressing their unique needs for assistance during school vacations and academic interims, and for linking them to appropriate sources of assistance in their transition to adulthood;

(b) Receives financial and other incentives for achieving measurable progress in the recruitment, retention, and graduation of eligible students. [2007 c 314 § 4.]

28B.117.040 Identification of eligible students and applicants—Duties of institutions of higher education—Duties of the department of social and health services. (Expires June 30, 2013.) Effective operation of the passport to college promise pilot program requires early and accurate identification of former foster care youth so that they can be linked to the financial and other assistance that will help them succeed in college. To that end:

(1) All institutions of higher education that receive funding for student support services under RCW 28B.117.030 shall include on their applications for admission or on their registration materials a question asking whether the applicant has been in foster care in Washington state for at least one year since his or her sixteenth birthday. All other institutions of higher education are strongly encouraged to include such a question. No institution may consider whether an applicant may be eligible for a scholarship or student support services under this chapter when deciding whether the applicant will be granted admission.

(2) The department of social and health services shall devise and implement procedures for efficiently, promptly, and accurately identifying students and applicants who are eligible for services under RCW 28B.117.030, and for sharing that information with the higher education coordinating board and with institutions of higher education. The procedures shall include appropriate safeguards for consent by the applicant or student before disclosure. [2007 c 314 § 5.]

28B.117.050 Internet web site and outreach program. (Expires June 30, 2013.) (1) To the extent funds are appropriated for this purpose, the higher education coordinating board, with input from the state board for community and technical colleges, the foster care partnership, and institutions of higher education, shall develop and maintain an internet web site and outreach program to serve as a comprehensive portal for foster care youth in Washington state to obtain information regarding higher education including, but not necessarily limited to:

(a) Academic, social, family, financial, and logistical information important to successful postsecondary educational success;

(b) How and when to obtain and complete college applications;

(c) What college placement tests, if any, are generally required for admission to college and when and how to register for such tests;

(d) How and when to obtain and complete a federal free application for federal student aid (FAFSA); and

(e) Detailed sources of financial aid likely available to eligible former foster care youth, including the financial aid provided by this chapter.

(2) The board shall determine whether to design, build, and operate such program and web site directly or to use, support, and modify existing web sites created by government or nongovernmental entities for a similar purpose. [2007 c 314 § 6.]

28B.117.060 Program of supplemental educational transition planning for youth in foster care—Contract with nongovernmental entity. (Expires June 30, 2013.)

(1) To the extent funds are appropriated for this purpose, the department of social and health services, with input from the state board for community and technical colleges, the higher education coordinating board, and institutions of higher education, shall contract with at least one nongovernmental entity through a request for proposals process to develop, implement, and administer a program of supplemental educational transition planning for youth in foster care in Washington state.

(2) The nongovernmental entity or entities chosen by the department shall have demonstrated success in working with foster care youth and assisting foster care youth in successfully making the transition from foster care to independent adulthood.

(3) The selected nongovernmental entity or entities shall provide supplemental educational transition planning to foster care youth in Washington state beginning at age fourteen and then at least every six months thereafter. The supplemental transition planning shall include:

(a) Comprehensive information regarding postsecondary educational opportunities including, but not limited to, sources of financial aid, institutional characteristics and record of support for former foster care youth, transportation, housing, and other logistical considerations;

(b) How and when to apply to postsecondary educational programs;

(c) What precollege tests, if any, the particular foster care youth should take based on his or her postsecondary plans and when to take the tests;

(d) What courses to take to prepare the particular foster care youth to succeed at his or her postsecondary plans;

(e) Social, community, educational, logistical, and other issues that frequently impact college students and their success rates; and

(f) Which web sites, nongovernmental entities, public agencies, and other foster care youth support providers specialize in which services.

(4) The selected nongovernmental entity or entities shall work directly with the school counselors at the foster care youths' high schools to ensure that a consistent and complete transition plan has been prepared for each foster care youth who emancipates out of the foster care system in Washington state. [2007 c 314 § 7.]

28B.117.070 Reports—Recommendations. (*Expires June 30, 2013.*) (1) The higher education coordinating board shall report to appropriate committees of the legislature by January 15, 2008, on the status of program design and implementation. The report shall include a discussion of proposed scholarship and student support service approaches; an estimate of the number of students who will receive such services; baseline information on the extent to which former foster care youth who meet the eligibility criteria in RCW 28B.117.030 have enrolled and persisted in postsecondary education; and recommendations for any statutory changes needed to promote achievement of program objectives.

(2) The state board for community and technical colleges and the higher education coordinating board shall monitor and analyze the extent to which eligible young people are increasing their participation, persistence, and progress in postsecondary education, and shall jointly submit a report on their findings to appropriate committees of the legislature by December 1, 2009, and by December 1, 2011.

(3) The Washington state institute for public policy shall complete an evaluation of the passport to college promise pilot program and shall submit a report to appropriate committees of the legislature by December 1, 2012. The report shall estimate the impact of the program on eligible students' participation and success in postsecondary education, and shall include recommendations for program revision and improvement. [2007 c 314 § 8.]

28B.117.900 Construction—2007 c 314. (*Expires June 30, 2013.*) Nothing in this chapter may be construed to:

(1) Guarantee acceptance by, or entrance into, any institution of higher education; or

(2) Limit the participation of youth, in or formerly in, foster care in Washington state in any other program of financial assistance for postsecondary education. [2007 c 314 § 9.]

28B.117.901 Expiration of chapter. This chapter expires June 30, 2013. [2007 c 314 § 10.]

Chapter 28B.118 RCW

COLLEGE BOUND SCHOLARSHIP PROGRAM

Sections

28B.118.005	Intent—Finding.
28B.118.010	Program design.
28B.118.020	Duties of the office of the superintendent of public instruction.
28B.118.030	Duty of school districts—Notification.
28B.118.040	Duties of the higher education coordinating board.
28B.118.050	Grants, gifts, bequests, and devises.
28B.118.060	Rules.

28B.118.005 Intent—Finding. The legislature intends to inspire and encourage all Washington students to dream big by creating a guaranteed four-year tuition scholarship program for students from low-income families. The legislature finds that, too often, financial barriers prevent many of the brightest students from considering college as a future possibility. Often the cost of tuition coupled with the complexity of finding and applying for financial aid is enough to prevent a student from even applying to college. Many students become disconnected from the education system early

on and may give up or drop out before graduation. It is the intent of the legislature to alert students early in their educational career to the options and opportunities available beyond high school. [2007 c 405 § 1.]

28B.118.010 Program design. The higher education coordinating board shall design the Washington college bound scholarship program in accordance with this section.

(1) "Eligible students" are those students who qualify for free or reduced-price lunches. If a student qualifies in the seventh grade, the student remains eligible even if the student does not receive free or reduced-price lunches thereafter.

(2) Eligible students shall be notified of their eligibility for the Washington college bound scholarship program beginning in their seventh grade year. Students shall also be notified of the requirements for award of the scholarship.

(3) To be eligible for a Washington college bound scholarship, a student must sign a pledge during seventh or eighth grade that includes a commitment to graduate from high school with at least a C average and with no felony convictions. The pledge must be witnessed by a parent or guardian and forwarded to the higher education coordinating board by mail or electronically, as indicated on the pledge form.

(4)(a) Scholarships shall be awarded to eligible students graduating from public high schools, approved private high schools under chapter 28A.195 RCW, or who received home-based instruction under chapter 28A.200 RCW.

(b) To receive the Washington college bound scholarship, a student must graduate with at least a "C" average from a public high school or an approved private high school under chapter 28A.195 RCW in Washington or have received home-based instruction under chapter 28A.200 RCW, must have no felony convictions, and must be a resident student as defined in RCW 28B.15.012(2) (a) through (d).

(5) A student's family income will be assessed upon graduation before awarding the scholarship.

(6) If at graduation from high school the student's family income does not exceed sixty-five percent of the state median family income, scholarship award amounts shall be as provided in this section.

(a) For students attending two or four-year institutions of higher education as defined in RCW 28B.10.016, the value of the award shall be (i) the difference between the student's tuition and required fees, less the value of any state-funded grant, scholarship, or waiver assistance the student receives; (ii) plus five hundred dollars for books and materials.

(b) For students attending private four-year institutions of higher education in Washington, the award amount shall be the representative average of awards granted to students in public research universities in Washington.

(c) For students attending private vocational schools in Washington, the award amount shall be the representative average of awards granted to students in public community and technical colleges in Washington.

(7) Recipients may receive no more than four full-time years' worth of scholarship awards.

(8) Institutions of higher education shall award the student all need-based and merit-based financial aid for which the student would otherwise qualify. The Washington college bound scholarship is intended to replace unmet need,

loans, and, at the student's option, work-study award before any other grants or scholarships are reduced.

(9) The first scholarships shall be awarded to students graduating in 2012.

(10) The state of Washington retains legal ownership of tuition units awarded as scholarships under this chapter until the tuition units are redeemed. These tuition units shall remain separately held from any tuition units owned under chapter 28B.95 RCW by a Washington college bound scholarship recipient.

(11) The scholarship award must be used within five years of receipt. Any unused scholarship tuition units revert to the Washington college bound scholarship account.

(12) Should the recipient terminate his or her enrollment for any reason during the academic year, the unused portion of the scholarship tuition units shall revert to the Washington college bound scholarship account. [2007 c 405 § 2.]

28B.118.020 Duties of the office of the superintendent of public instruction. The office of the superintendent of public instruction shall:

(1) Notify elementary, middle, and junior high schools about the Washington college bound scholarship program using methods in place for communicating with schools and school districts; and

(2) Work with the higher education coordinating board to develop application collection and student tracking procedures. [2007 c 405 § 3.]

28B.118.030 Duty of school districts—Notification. Each school district shall notify students, parents, teachers, counselors, and principals about the Washington college bound scholarship program through existing channels. Notification methods may include, but are not limited to, regular school district and building communications, online scholarship bulletins and announcements, notices posted on school walls and bulletin boards, information available in each counselor's office, and school or district scholarship information sessions. [2007 c 405 § 4.]

28B.118.040 Duties of the higher education coordinating board. The higher education coordinating board shall:

(1) With the assistance of the office of the superintendent of public instruction, implement and administer the Washington college bound scholarship program;

(2) Develop and distribute, to all schools with students enrolled in grade seven or eight, a pledge form that can be completed and returned electronically or by mail by the student or the school to the higher education coordinating board;

(3) Develop and implement a student application, selection, and notification process for scholarships;

(4) Track scholarship recipients to ensure continued eligibility and determine student compliance for awarding of scholarships;

(5) Subject to appropriation, deposit funds into the state educational trust fund;

(6) Purchase tuition units under the advanced college tuition payment program in chapter 28B.95 RCW to be

owned and held in trust by the board, for the purpose of scholarship awards as provided for in this section; and

(7) Distribute scholarship funds, in the form of tuition units purchased under the advanced college tuition payment program in chapter 28B.95 RCW or through direct payments from the state educational trust fund, to institutions of higher education on behalf of scholarship recipients identified by the board, as long as recipients maintain satisfactory academic progress. [2007 c 405 § 5.]

28B.118.050 Grants, gifts, bequests, and devises. The higher education coordinating board may accept grants, gifts, bequests, and devises of real and personal property from any source for the purpose of granting financial aid in addition to that funded by the state. [2007 c 405 § 6.]

28B.118.060 Rules. The higher education coordinating board may adopt rules to implement this chapter. [2007 c 405 § 7.]

Chapter 28B.142 RCW

LOCAL BORROWING AUTHORITY— RESEARCH UNIVERSITIES

Sections

28B.142.005	Finding—Intent.
28B.142.010	Bonds, notes, evidences of indebtedness—University of Washington and Washington State University.
28B.142.020	Reports.
28B.142.030	Bonds, notes, evidences of indebtedness—University of Washington—Refinancing.
28B.142.040	Authority of chapter—Supplemental.

28B.142.005 Finding—Intent. The legislature hereby recognizes that the University of Washington and Washington State University will require additional methods of funding to meet the universities' educational and research missions and remain competitive in a challenging environment. State appropriations are sufficient to meet only a portion of these research universities' funding requirements. The state authorizes the universities to collect student tuition, services and activities fees, building fees, and technology fees, subject to statutory limits. In addition, the universities generate revenue from other sources such as grants, contracts, other fees, sales and services, and investment income. The legislature finds that the research universities are able to leverage these local nonstate-appropriated funds to enhance university facilities and services for the benefit of students, faculty, and the larger community. The legislature intends that the research universities be permitted to borrow and incur obligations for any university purpose, so long as repayment is limited to local nonappropriated university funds and so long as the state's credit or general state revenues are not obligated or used for repayment. To permit the University of Washington to refinance the real and personal property acquired between August and October 2006 before the end of the fiscal biennium, sections of chapter 24, Laws of 2007 necessary to accomplish this limited purpose are made effective before the end of the biennium. [2007 c 24 § 1.]

28B.142.010 Bonds, notes, evidences of indebtedness—University of Washington and Washington State

University. The board of regents of the University of Washington and Washington State University may issue bonds, notes, or other evidences of indebtedness for any university purpose. The board of regents of the University of Washington and Washington State University may obligate all or a component of the fees and revenues of the university for the payment of such bonds, notes, or evidences of indebtedness: PROVIDED, That such fees and revenues are not subject to appropriation by the legislature and do not constitute general state revenues as defined in Article VIII, section 1 of the state Constitution or general state revenues for the purpose of calculating statutory limits on state indebtedness pursuant to RCW 39.42.060. Such bonds, notes, and other indebtedness shall not constitute bonds, notes, or other evidences of indebtedness secured by the full faith and credit of the state or required to be paid, directly or indirectly, from general state revenues for the purposes of RCW 39.42.060. Bonds, notes, or other evidences of indebtedness issued under this chapter shall be issued in accordance with the procedures in RCW 28B.10.310 and 28B.10.315 or the provisions applicable to either the state or local governments under chapter 39.46 or 39.53 RCW. [2007 c 24 § 2.]

28B.142.020 Reports. The University of Washington and Washington State University must report annually to the ways and means committee of the senate, the capital budget committee of the house of representatives, and the office of the state treasurer on any bonds, notes, and other evidences of indebtedness issued under this chapter as a part of a public securities offering. The report shall include a summary of the total outstanding debt of the university, a summary of any public securities offerings issued that year by purpose, including rating information from at least one nationally recognized credit rating agency, issuance costs, interest rate information, sources of repayment, and a copy of the annual bondholder report filed by the University of Washington and Washington State University in accordance with Rule 15c2-12 of the securities and exchange commission. [2007 c 24 § 3.]

28B.142.030 Bonds, notes, evidences of indebtedness—University of Washington—Refinancing. The board of regents of the University of Washington may issue bonds, notes, or other evidences of indebtedness under this section for the purpose of refinancing real and personal property acquired by the University of Washington during the period between August and October 2006. The board of regents of the University of Washington may obligate all or a component of the fees and revenues of the university for the payment of such bonds, notes, or evidences of indebtedness: PROVIDED, That such fees and revenues are not subject to appropriation by the legislature and do not constitute general state revenues as defined in Article VIII, section 1 of the state Constitution or general state revenues for the purpose of calculating statutory limits on state indebtedness pursuant to RCW 39.42.060. Bonds, notes, or other evidences of indebtedness issued under this section shall be issued in accordance with the procedures in RCW 28B.10.310 and 28B.10.315 or the provisions applicable to either the state or local governments under chapter 39.46 or 39.53 RCW. Such bonds,

notes, and other indebtedness shall not constitute bonds, notes, or other evidences of indebtedness secured by the full faith and credit of the state or required to be paid, directly or indirectly, from general state revenues for the purposes of RCW 39.42.060. [2007 c 24 § 4.]

Effective date—2007 c 24 § 4: "Section 4 of this act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect May 1, 2007." [2007 c 24 § 6.]

28B.142.040 Authority of chapter—Supplemental. The authority granted by this chapter is in addition and supplemental to any previously granted or future authority granted to the University of Washington or Washington State University and shall not be construed to limit the existing or future powers or authority of these universities, including without limitation the authority to issue bonds, notes, and other evidences of indebtedness pursuant to RCW 28B.10.300 through 28B.10.330, 28B.20.145, or 28B.20.395 through 28B.20.398, or chapter 28B.140 RCW, or to participate in state reimbursable bond, certificate of participation, or other state debt programs. [2007 c 24 § 5.]

Title 28C

VOCATIONAL EDUCATION

Chapters

28C.10 Private vocational schools.

28C.18 Workforce training and education.

Chapter 28C.10 RCW

PRIVATE VOCATIONAL SCHOOLS

Sections

28C.10.020 Definitions.

28C.10.050 Minimum standards—Denial of application for licensure—Determination that school or program is at risk of closure or termination.

28C.10.120 Complaints—Investigations—Hearings—Remedies—Transition assistance for students.

28C.10.020 Definitions. Unless the context clearly requires otherwise, the definitions in this section apply throughout this chapter.

(1) "Agency" means the work force training and education coordinating board.

(2) "Agent" means a person owning an interest in, employed by, or representing for remuneration a private vocational school within or without this state, who enrolls or personally attempts to secure the enrollment in a private vocational school of a resident of this state, offers to award educational credentials for remuneration on behalf of a private vocational school, or holds himself or herself out to residents of this state as representing a private vocational school for any of these purposes.

(3) "Degree" means any designation, appellation, letters, or words including but not limited to "associate," "bachelor," "master," "doctor," or "fellow" which signify or purport to signify satisfactory completion of an academic program of study beyond the secondary school level.

(4) "Education" includes but is not limited to, any class, course, or program of training, instruction, or study.

(5) "Educational credentials" means degrees, diplomas, certificates, transcripts, reports, or documents, that signify satisfactory completion of the requirements or prerequisites for any educational program.

(6) "Entity" includes, but is not limited to, a person, company, firm, society, association, partnership, corporation, or trust.

(7) "Private vocational school" means any location where an entity is offering postsecondary education in any form or manner for the purpose of instructing, training, or preparing persons for any vocation or profession.

(8) "Probation" means the agency has officially notified a private vocational school in writing that the school or a program offered by the school has been identified by the agency as at risk and has deficiencies that must be corrected within a specified time period.

(9) "Program" means a sequence of approved subjects offered by a school that teaches skills and fundamental knowledge required for employment in a particular occupation.

(10) "To grant" includes to award, issue, sell, confer, bestow, or give.

(11) "To offer" includes, in addition to its usual meanings, to advertise or publicize. "To offer" also means to solicit or encourage any person, directly or indirectly, to perform the act described.

(12) "To operate" means to establish, keep, or maintain any facility or location where, from, or through which education is offered or educational credentials are offered or granted to residents of this state, and includes contracting for the performance of any such act. [2007 c 462 § 1; 1993 c 445 § 1; 1991 c 238 § 81; 1990 c 188 § 5; 1986 c 299 § 2.]

Effective dates—Severability—1991 c 238: See RCW 28B.50.917 and 28B.50.918.

Severability—1990 c 188: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1990 c 188 § 14.]

28C.10.050 Minimum standards—Denial of application for licensure—Determination that school or program is at risk of closure or termination. (1) The agency shall adopt by rule minimum standards for entities operating private vocational schools. The minimum standards shall include, but not be limited to, requirements to assess whether a private vocational school is eligible to obtain and maintain a license in this state.

(2) The requirements adopted by the agency shall, at a minimum, require a private vocational school to:

(a) Disclose to the agency information about its ownership and financial position and to demonstrate to the agency that the school is financially viable and responsible and that it has sufficient financial resources to fulfill its commitments to students. Financial disclosures provided to the agency shall not be subject to public disclosure under chapter 42.56 RCW;

(b) Follow a uniform statewide cancellation and refund policy as specified by the agency;

(c) Disclose through use of a school catalog, brochure, or other written material, necessary information to students so

that students may make informed enrollment decisions. The agency shall specify what information is required;

(d) Use an enrollment contract or agreement that includes: (i) The school's cancellation and refund policy, (ii) a brief statement that the school is licensed under this chapter and that inquiries may be made to the agency, and (iii) other necessary information as determined by the agency;

(e) Describe accurately and completely in writing to students before their enrollment prerequisites and requirements for (i) completing successfully the programs of study in which they are interested and (ii) qualifying for the fields of employment for which their education is designed;

(f) Comply with the requirements of RCW 28C.10.084;

(g) Assess the basic skills and relevant aptitudes of each potential student to determine that a potential student has the basic skills and relevant aptitudes necessary to complete and benefit from the program in which the student plans to enroll, including but not limited to administering a United States department of education-approved English as a second language exam before enrolling students for whom English is a second language unless the students provide proof of graduation from a United States high school or proof of completion of a GED in English or results of another academic assessment determined appropriate by the agency. Guidelines for such assessments shall be developed by the agency, in consultation with the schools;

(h) Discuss with each potential student the potential student's obligations in signing any enrollment contract and/or incurring any debt for educational purposes. The discussion shall include the inadvisability of acquiring an excessive educational debt burden that will be difficult to repay given employment opportunities and average starting salaries in the potential student's chosen occupation;

(i) Ensure that any enrollment contract between the private vocational school and its students has an attachment in a format provided by the agency. The attachment shall be signed by both the school and the student. The attachment shall stipulate that the school has complied with (h) of this subsection and that the student understands and accepts his or her responsibilities in signing any enrollment contract or debt application. The attachment shall also stipulate that the enrollment contract shall not be binding for at least five days, excluding Sundays and holidays, following signature of the enrollment contract by both parties; and

(j) Comply with the requirements related to qualifications of administrators and instructors.

(3) The agency may deny a private vocational school's application for licensure if the school fails to meet the requirements in this section.

(4) The agency may determine that a licensed private vocational school or a particular program of a private vocational school is at risk of closure or termination if:

(a) There is a pattern or history of substantiated student complaints filed with the agency pursuant to RCW 28C.10.120; or

(b) The private vocational school fails to meet minimum licensing requirements and has a pattern or history of failing to meet the minimum requirements.

(5) If the agency determines that a private vocational school or a particular program is at risk of closure or termination, the agency shall require the school to take corrective

action. [2007 c 462 § 2; 2005 c 274 § 247; 2001 c 23 § 1; 1990 c 188 § 7; 1987 c 459 § 3; 1986 c 299 § 5.]

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

Severability—1990 c 188: See note following RCW 28C.10.020.

28C.10.120 Complaints—Investigations—Hearings—Remedies—Transition assistance for students. (1) Complaints may be filed under this chapter only by a person claiming loss of tuition or fees as a result of an unfair business practice. The complaint shall set forth the alleged violation and shall contain information required by the agency on forms provided for that purpose. A complaint may also be filed with the agency by an authorized staff member of the agency or by the attorney general.

(2) The agency shall investigate any complaint under this section and shall first attempt to bring about a negotiated settlement. The agency director or the director's designee may conduct an informal hearing with the affected parties in order to determine whether a violation has occurred.

(3) If the agency finds that the private vocational school or its agent engaged in or is engaging in any unfair business practice, the agency shall issue and cause to be served upon the violator an order requiring the violator to cease and desist from the act or practice and may impose the penalties provided under RCW 28C.10.130. If the agency finds that the complainant has suffered loss as a result of the act or practice, the agency may order the violator to pay full or partial restitution of any amounts lost. The loss may include any money paid for tuition, required or recommended course materials, and any reasonable living expenses incurred by the complainant during the time the complainant was enrolled at the school.

(4) The complainant is not bound by the agency's determination of restitution. The complainant may reject that determination and may pursue any other legal remedy.

(5) The violator may, within twenty days of being served any order described under subsection (3) of this section, file an appeal under the administrative procedure act, chapter 34.05 RCW. Timely filing stays the agency's order during the pendency of the appeal. If the agency prevails, the appellant shall pay the costs of the administrative hearing.

(6) If a private vocational school closes without providing adequate notice to its enrolled students, the agency shall provide transition assistance to the school's students including, but not limited to, information regarding: (a) Transfer options available to students; (b) financial aid discharge eligibility and procedures; (c) the labor market, job search strategies, and placement assistance services; and (d) other support services available to students. [2007 c 462 § 3; 1993 c 445 § 3; 1990 c 188 § 10; 1989 c 175 § 83; 1986 c 299 § 12.]

Severability—1990 c 188: See note following RCW 28C.10.020.

Effective date—1989 c 175: See note following RCW 34.05.010.

Chapter 28C.18 RCW

WORKFORCE TRAINING AND EDUCATION

Sections

28C.18.060 Board's duties.

[2007 RCW Supp—page 284]

28C.18.060 Board's duties. The board, in cooperation with the operating agencies of the state training system and private career schools and colleges, shall:

(1) Concentrate its major efforts on planning, coordination evaluation, policy analysis, and recommending improvements to the state's training system.

(2) Advocate for the state training system and for meeting the needs of employers and the workforce for workforce education and training.

(3) Establish and maintain an inventory of the programs of the state training system, and related state programs, and perform a biennial assessment of the vocational education, training, and adult basic education and literacy needs of the state; identify ongoing and strategic education needs; and assess the extent to which employment, training, vocational and basic education, rehabilitation services, and public assistance services represent a consistent, integrated approach to meet such needs.

(4) Develop and maintain a state comprehensive plan for workforce training and education, including but not limited to, goals, objectives, and priorities for the state training system, and review the state training system for consistency with the state comprehensive plan. In developing the state comprehensive plan for workforce training and education, the board shall use, but shall not be limited to: Economic, labor market, and populations trends reports in office of financial management forecasts; joint office of financial management and employment security department labor force, industry employment, and occupational forecasts; the results of scientifically based outcome, net-impact and cost-benefit evaluations; the needs of employers as evidenced in formal employer surveys and other employer input; and the needs of program participants and workers as evidenced in formal surveys and other input from program participants and the labor community.

(5) In consultation with the higher education coordinating board, review and make recommendations to the office of financial management and the legislature on operating and capital facilities budget requests for operating agencies of the state training system for purposes of consistency with the state comprehensive plan for workforce training and education.

(6) Provide for coordination among the different operating agencies and components of the state training system at the state level and at the regional level.

(7) Develop a consistent and reliable database on vocational education enrollments, costs, program activities, and job placements from publicly funded vocational education programs in this state.

(8) Establish standards for data collection and maintenance for the operating agencies of the state training system in a format that is accessible to use by the board. The board shall require a minimum of common core data to be collected by each operating agency of the state training system.

The board shall develop requirements for minimum common core data in consultation with the office of financial management and the operating agencies of the training system.

(9) Establish minimum standards for program evaluation for the operating agencies of the state training system, including, but not limited to, the use of common survey instruments

and procedures for measuring perceptions of program participants and employers of program participants, and monitor such program evaluation.

(10) Every two years administer scientifically based outcome evaluations of the state training system, including, but not limited to, surveys of program participants, surveys of employers of program participants, and matches with employment security department payroll and wage files. Every five years administer scientifically based net-impact and cost-benefit evaluations of the state training system.

(11) In cooperation with the employment security department, provide for the improvement and maintenance of quality and utility in occupational information and forecasts for use in training system planning and evaluation. Improvements shall include, but not be limited to, development of state-based occupational change factors involving input by employers and employees, and delineation of skill and training requirements by education level associated with current and forecasted occupations.

(12) Provide for the development of common course description formats, common reporting requirements, and common definitions for operating agencies of the training system.

(13) Provide for effectiveness and efficiency reviews of the state training system.

(14) In cooperation with the higher education coordinating board, facilitate transfer of credit policies and agreements between institutions of the state training system, and encourage articulation agreements for programs encompassing two years of secondary workforce education and two years of postsecondary workforce education.

(15) In cooperation with the higher education coordinating board, facilitate transfer of credit policies and agreements between private training institutions and institutions of the state training system.

(16) Develop policy objectives for the workforce investment act, P.L. 105-220, or its successor; develop coordination criteria for activities under the act with related programs and services provided by state and local education and training agencies; and ensure that entrepreneurial training opportunities are available through programs of each local workforce investment board in the state.

(17) Make recommendations to the commission of student assessment, the state board of education, and the superintendent of public instruction, concerning basic skill competencies and essential core competencies for K-12 education. Basic skills for this purpose shall be reading, writing, computation, speaking, and critical thinking, essential core competencies for this purpose shall be English, math, science/technology, history, geography, and critical thinking. The board shall monitor the development of and provide advice concerning secondary curriculum which integrates vocational and academic education.

(18) Establish and administer programs for marketing and outreach to businesses and potential program participants.

(19) Facilitate the location of support services, including but not limited to, child care, financial aid, career counseling, and job placement services, for students and trainees at institutions in the state training system, and advocate for support services for trainees and students in the state training system.

(20) Facilitate private sector assistance for the state training system, including but not limited to: Financial assistance, rotation of private and public personnel, and vocational counseling.

(21) Facilitate the development of programs for school-to-work transition that combine classroom education and on-the-job training, including entrepreneurial education and training, in industries and occupations without a significant number of apprenticeship programs.

(22) Include in the planning requirements for local workforce investment boards a requirement that the local workforce investment boards specify how entrepreneurial training is to be offered through the one-stop system required under the workforce investment act, P.L. 105-220, or its successor.

(23) Encourage and assess progress for the equitable representation of racial and ethnic minorities, women, and people with disabilities among the students, teachers, and administrators of the state training system. Equitable, for this purpose, shall mean substantially proportional to their percentage of the state population in the geographic area served. This function of the board shall in no way lessen more stringent state or federal requirements for representation of racial and ethnic minorities, women, and people with disabilities.

(24) Participate in the planning and policy development of governor set-aside grants under P.L. 97-300, as amended.

(25) Administer veterans' programs, licensure of private vocational schools, the job skills program, and the Washington award for vocational excellence.

(26) Allocate funding from the state job training trust fund.

(27) Work with the director of community, trade, and economic development to ensure coordination between workforce training priorities and that department's economic development and entrepreneurial development efforts.

(28) Adopt rules as necessary to implement this chapter.

The board may delegate to the director any of the functions of this section. [2007 c 149 § 1; 1996 c 99 § 4; 1993 c 280 § 17; 1991 c 238 § 7.]

Effective date—Severability—1993 c 280: See RCW 43.330.902 and 43.330.903.

Title 29A

ELECTIONS

Chapters

29A.04	General provisions.
29A.08	Voters and registration.
29A.24	Filing for office.
29A.36	Ballots and other voting forms.
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Chapter 29A.04 RCW GENERAL PROVISIONS

Sections

29A.04.008	Ballot and related terms.
29A.04.133	Qualified.

29A.04.008 Ballot and related terms. As used in this title:

- (1) "Ballot" means, as the context implies, either:
 - (a) The issues and offices to be voted upon in a jurisdiction or portion of a jurisdiction at a particular primary, general election, or special election;
 - (b) A facsimile of the contents of a particular ballot whether printed on a paper ballot or ballot card or as part of a voting machine or voting device;
 - (c) A physical or electronic record of the choices of an individual voter in a particular primary, general election, or special election; or
 - (d) The physical document on which the voter's choices are to be recorded;
- (2) "Paper ballot" means a piece of paper on which the ballot for a particular election or primary has been printed, on which a voter may record his or her choices for any candidate or for or against any measure, and that is to be tabulated manually;
- (3) "Ballot card" means any type of card or piece of paper of any size on which a voter may record his or her choices for any candidate and for or against any measure and that is to be tabulated on a vote tallying system;
- (4) "Sample ballot" means a printed facsimile of all the issues and offices on the ballot in a jurisdiction and is intended to give voters notice of the issues, offices, and candidates that are to be voted on at a particular primary, general election, or special election;
- (5) "Provisional ballot" means a ballot issued at the polling place on election day by the precinct election board to a voter who would otherwise be denied an opportunity to vote a regular ballot, for any reason authorized by the Help America Vote Act, including but not limited to the following:
 - (a) The voter's name does not appear in the poll book;
 - (b) There is an indication in the poll book that the voter has requested an absentee ballot, but the voter wishes to vote at the polling place;
 - (c) There is a question on the part of the voter concerning the issues or candidates on which the voter is qualified to vote;
 - (d) Any other reason allowed by law;
- (6) "Party ballot" means a primary election ballot specific to a particular major political party that lists all candidates for partisan office who affiliate with that same major political party, as well as the nonpartisan races and ballot measures to be voted on at that primary;
- (7) "Nonpartisan ballot" means a primary election ballot that lists all nonpartisan races and ballot measures to be voted on at that primary. [2007 c 38 § 1; 2005 c 243 § 1; 2004 c 271 § 102.]

29A.04.133 Qualified. "Qualified" when pertaining to a winner of an election means that for such election:

- (1) The results have been certified;
- (2) Any required bond has been posted; and
- (3) The winner has taken and subscribed an oath or affirmation in compliance with the appropriate statute, or if none is specified, that he or she will faithfully and impartially discharge the duties of the office to the best of his or her ability. This oath or affirmation shall be administered and certified by any officer or notary public authorized to administer

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oaths, without charge therefor. [2007 c 374 § 1; 2003 c 111 § 123. Prior: 1979 ex.s. c 126 § 2. Formerly RCW 29.01.135.]

Purpose—1979 ex.s. c 126: RCW 29A.20.040(1).

Chapter 29A.08 RCW VOTERS AND REGISTRATION

Sections

29A.08.123 Registration electronically. (*Effective January 1, 2008.*)
29A.08.660 Repealed.

29A.08.123 Registration electronically. (*Effective January 1, 2008.*) (1) A person who has a valid Washington state driver's license or state identification card may submit a voter registration application electronically on the secretary of state's web site.

(2) The applicant must attest to the truth of the information provided on the application by affirmatively accepting the information as true.

(3) The applicant must affirmatively assent to use of his or her driver's license or state identification card signature for voter registration purposes.

(4) A voter registration application submitted electronically is otherwise considered a registration by mail.

(5) For each electronic application, the secretary of state must obtain a digital copy of the applicant's driver's license or state identification card signature from the department of licensing.

(6) The secretary of state may employ additional security measures to ensure the accuracy and integrity of voter registration applications submitted electronically. [2007 c 157 § 1.]

Effective date—2007 c 157: "This act takes effect January 1, 2008." [2007 c 157 § 2.]

29A.08.660 Repealed. See Supplementary Table of Disposition of Former RCW Sections, this volume.

Chapter 29A.24 RCW FILING FOR OFFICE

Sections

29A.24.220 Void in candidacy for water-sewer districts—Fewer than one hundred residents.

29A.24.220 Void in candidacy for water-sewer districts—Fewer than one hundred residents. A void in candidacy in a water-sewer district with fewer than one hundred residents may be filled in accordance with RCW 57.12.035. [2007 c 383 § 2.]

Chapter 29A.36 RCW BALLOTS AND OTHER VOTING FORMS

Sections

29A.36.104 Partisan primary ballots—Formats.
29A.36.106 Partisan primary ballots—Required statements.
29A.36.230 Regional transportation investment district and regional transit authority single ballot.

29A.36.104 Partisan primary ballots—Formats. Partisan primaries must be conducted using either:

(1) A consolidated ballot format that includes a check-off box for each major political party. The consolidated ballot must include all partisan races, nonpartisan races, and ballot measures to be voted on at that primary; or

(2) A physically separate ballot format that includes both party ballots and a nonpartisan ballot. A party ballot must be specific to a particular major political party and include the names of candidates for partisan offices who designated that same major political party in their declarations of candidacy, as well as all nonpartisan races and ballot measures to be voted on at that primary. The nonpartisan ballot must include only the nonpartisan races and ballot measures to be voted on at that primary. [2007 c 38 § 2; 2004 c 271 § 126.]

29A.36.106 Partisan primary ballots—Required statements. (1) If the consolidated ballot format is used, the major political party identification check-off box must appear on the primary ballot before all offices and ballot measures. Clear and concise instructions to the voter must be prominently displayed immediately before the list of major political parties, and must include:

(a) A statement that, for partisan offices, the voter may only vote for candidates of one political party;

(b) A question asking the voter to indicate the major political party with which the voter chooses to affiliate;

(c) A statement that, for a major political party candidate, only votes cast by voters who choose to affiliate with that same major political party will be tabulated and reported;

(d) A statement that votes cast for a major political party candidate by a voter who chooses to affiliate with a different major political party will not be tabulated or reported;

(e) A statement that votes cast for a major political party candidate by a voter who selects more than one major political party with which to affiliate will not be tabulated or reported; and

(f) A statement that party affiliation will not affect votes cast for candidates for nonpartisan offices, or for or against ballot measures.

(2) If the physically separate ballot format is used, clear and concise instructions to the voter must be prominently displayed, and must include:

(a) A statement that, for partisan offices, the voter may only vote for candidates of one political party;

(b) A statement explaining that only one ballot may be voted;

(c) A statement explaining that if more than one party ballot is voted, none of the partisan races will be tabulated or reported; and

(d) A statement explaining that the nonpartisan ballot only lists nonpartisan races and ballot measures and does not list partisan races. [2007 c 38 § 3; 2004 c 271 § 127.]

29A.36.230 Regional transportation investment district and regional transit authority single ballot. The election on the single ballot proposition described in RCW 36.120.070 and 81.112.030(10) must be conducted by the auditor of each component county in accordance with the general election laws of the state, except as provided in this section. Notice of the election must be published in one or

more newspapers of general circulation in each component county in the manner provided in the general election laws. The single joint ballot proposition required under RCW 36.120.070 and 81.112.030(10) must be in substantially the following form:

"REGIONAL TRANSPORTATION INVESTMENT DISTRICT (RTID) AND REGIONAL TRANSIT AUTHORITY (RTA) PROPOSITION #1 REGIONAL ROADS AND TRANSIT SYSTEM

To reduce transportation congestion, increase road capacity, promote safety, facilitate mobility, provide for an integrated regional transportation system, and improve the health, welfare, and safety of the citizens of Washington, shall a regional transit authority (RTA) implement a regional rail and transit system to link [insert geographic references] as described in [insert plan name], financed by [insert taxes] imposed by RTA, all as provided in Resolution No. [insert number]; and shall a regional transportation investment district (RTID) be formed and authorized to implement and invest in improving the regional transportation system by replacing vulnerable bridges, improving safety, and increasing capacity on state and local roads to further link major education, employment, and retail centers described in [insert plan name] financed by [insert taxes] imposed by RTID, all as provided in Resolution No. [insert number]; further provided that the RTA taxes shall be imposed only within the boundaries of the RTA, and the RTID taxes shall be imposed only within the boundaries of the RTID?

Yes
 No
 [2007 c 509 § 4.]

Findings—Intent—Constitutional challenges—Expedited appeals—Severability—Effective date—2007 c 509: See notes following RCW 36.120.070.

**Chapter 29A.52 RCW
 PRIMARIES AND ELECTIONS**

Sections

- 29A.52.151 Ballot format—Procedures.
- 29A.52.360 Ceremonial certificates of election to officers elected in single county or less.

29A.52.151 Ballot format—Procedures. (1) Under a consolidated ballot format:

(a) A voter's affiliation with a major political party is inferred from either selecting only that party in the check-off box, or voting only for candidates of that political party in partisan races;

(b) A vote cast for a major political party candidate will only be tabulated and reported if cast by a voter who affiliated with that same major political party;

(c) A vote cast for a major political party candidate by a voter who affiliated with a different major political party may not be tabulated or reported;

(d) A vote cast for a major political party candidate by a voter who affiliated with more than one major political party may not be tabulated or reported; and

(e) A vote properly cast may not be affected by votes improperly cast for other races.

(2) Under a physically separate ballot format:

(a) Only one party ballot and one nonpartisan ballot may be voted;

(b) If more than one party ballot is voted, none of the ballots may be tabulated or reported;

(c) A voter's affiliation with a major political party is inferred from the act of voting the party ballot for that major political party; and

(d) Every eligible registered voter may vote a nonpartisan ballot. [2007 c 38 § 4; 2004 c 271 § 142.]

29A.52.360 Ceremonial certificates of election to officers elected in single county or less. Immediately after the ascertainment of the result of an election for an office to be filled by the voters of a single county, or of a precinct, or of a constituency within a county for which the county auditor serves as supervisor of elections, the county auditor shall notify the person elected, and issue to the person a ceremonial certificate of election. [2007 c 374 § 2; 2003 c 111 § 1314; 1965 c 9 § 29.27.100. Prior: 1961 c 130 § 8; prior: Code 1881 § 3096, part; 1866 p 6 § 2, part; 1865 p 39 § 7, part; RRS § 5343, part. Formerly RCW 29.27.100.]

Chapter 29A.56 RCW

SPECIAL CIRCUMSTANCES ELECTIONS

Sections

29A.56.040 Procedures—Ballot form and arrangement.

29A.56.040 Procedures—Ballot form and arrangement. (1) Except where necessary to accommodate the national or state rules of a major political party or where this chapter specifically provides otherwise, the presidential primary must be conducted in substantially the same manner as a state partisan primary under this title.

(2) Except as provided under this chapter or by rule of the secretary of state adopted under RCW 29A.04.620, the arrangement and form of presidential primary ballots must be consistent with RCW 29A.52.151. Only the candidates who have qualified under RCW 29A.56.030 may appear on the ballots.

(3) Each party's ballot or portion of the ballot must list alphabetically the names of all candidates for the office of president. The ballot must clearly indicate the political party of each candidate. Each ballot must include a blank space to allow the voter to write in the name of any other candidate.

(4) A presidential primary ballot with votes for more than one candidate is void, and notice to this effect, stated in clear, simple language and printed in large type, must appear on the face of each presidential primary ballot or on or about each voting device. [2007 c 385 § 1; 2003 c 111 § 1404. Prior: 1995 1st sp.s. c 20 § 2. Formerly RCW 29.19.045.]

Effective date—1995 1st sp.s. c 20: See note following RCW 29A.56.020.

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Chapter 29A.60 RCW

CANVASSING

Sections

29A.60.160 Absentee ballots. (*Expires July 1, 2013.*)

29A.60.160 Absentee ballots. (*Effective July 1, 2013.*)

29A.60.170 Counting center, direction and observation of proceedings—Manual count of certain precincts.

29A.60.160 Absentee ballots. (*Expires July 1, 2013.*)

(1) Except for an election conducted under the instant runoff voting method for the pilot project authorized by RCW 29A.53.020, the county auditor, as delegated by the county canvassing board, shall process absentee ballots and canvass the votes cast at that primary or election on a daily basis in counties with a population of seventy-five thousand or more, or at least every third day for counties with a population of less than seventy-five thousand, if the county auditor is in possession of more than five hundred ballots that have yet to be canvassed.

(2) Saturdays, Sundays, and legal holidays are not counted for purposes of this section.

(3) In order to protect the secrecy of a ballot, the county auditor may use discretion to decide when to process absentee ballots and canvass the votes.

(4) Tabulation results must be made available to the public immediately upon completion of the canvass. [2007 c 373 § 1. Prior: 2005 c 243 § 15; 2005 c 153 § 11; 2003 c 111 § 1516; 1999 c 259 § 4; 1995 c 139 § 2; 1987 c 54 § 2; 1965 c 9 § 29.62.020; prior: 1957 c 195 § 15; prior: 1919 c 163 § 21, part; Code 1881 § 3095, part; 1868 p 20 § 1, part; 1865 p 39 § 6, part; RRS § 5340, part. Formerly RCW 29.62.020.]

Expiration date—2007 c 373 § 1: "Section 1 of this act expires July 1, 2013." [2007 c 373 § 4.]

Expiration date—2005 c 153 §§ 11 and 12: "Sections 11 and 12 of this act expire July 1, 2013." [2005 c 153 § 14.]

Captions not law—Severability—2005 c 153: See RCW 29A.53.901 and 29A.53.902.

Absentee ballots, canvassing: RCW 29A.40.110.

29A.60.160 Absentee ballots. (*Effective July 1, 2013.*)

(1) The county auditor, as delegated by the county canvassing board, shall process absentee ballots and canvass the votes cast at that primary or election on a daily basis in counties with a population of seventy-five thousand or more, or at least every third day for counties with a population of less than seventy-five thousand, if the county auditor is in possession of more than five hundred ballots that have yet to be canvassed.

(2) Saturdays, Sundays, and legal holidays are not counted for purposes of this section.

(3) In order to protect the secrecy of a ballot, the county auditor may use discretion to decide when to process absentee ballots and canvass the votes.

(4) Tabulation results must be made available to the public immediately upon completion of the canvass. [2007 c 373 § 2; 2005 c 243 § 15; 2003 c 111 § 1516; 1999 c 259 § 4; 1995 c 139 § 2; 1987 c 54 § 2; 1965 c 9 § 29.62.020. Prior: 1957 c 195 § 15; prior: 1919 c 163 § 21, part; Code 1881 § 3095, part; 1868 p 20 § 1, part; 1865 p 39 § 6, part; RRS § 5340, part. Formerly RCW 29.62.020.]

Effective date—2007 c 373 § 2: "Section 2 of this act takes effect July 1, 2013." [2007 c 373 § 5.]

Absentee ballots, canvassing: RCW 29A.40.110.

29A.60.170 Counting center, direction and observation of proceedings—Manual count of certain precincts.

(1) The counting center in a county using voting systems is under the direction of the county auditor and must be observed by one representative from each major political party, if representatives have been appointed by the respective major political parties and these representatives are present while the counting center is operating. The proceedings must be open to the public, but no persons except those employed and authorized by the county auditor may touch any ballot or ballot container or operate a vote tallying system.

(2) In counties in which ballots are not counted at the polling place, the official political party observers, upon mutual agreement, may request that a precinct be selected at random on receipt of the ballots from the polling place and that a manual count be made of the number of ballots and of the votes cast on any office or issue. The ballots for that precinct must then be counted by the vote tallying system, and this result will be compared to the results of the manual count. This may be done as many as three times during the tabulation of ballots on the day of the primary or election.

(3) In counties using poll-site ballot counting devices, the political party observers, upon mutual agreement, may choose as many as three precincts and request that a manual count be made of the number of ballots and the votes cast on any office or issue. The results of this count will be compared to the count of the precinct made by the poll-site ballot counting device. These selections must be made no later than thirty minutes after the close of the polls. The manual count must be completed within forty-eight hours after the close of the polls. The process must take place at a location designated by the county auditor for that purpose. The political party observers must receive timely notice of the time and location, and have the right to be present. However, the process must proceed as scheduled if the observers are unable to attend.

(4) In counties voting entirely by mail, a random check of the ballot counting equipment may be conducted upon mutual agreement of the political party observers or at the discretion of the county auditor. The random check procedures must be adopted by the county canvassing board prior to the processing of ballots. The random check process shall involve a comparison of a manual count to the machine count and may involve up to either three precincts or six batches depending on the ballot counting procedures in place in the county. The random check will be limited to one office or issue on the ballots in the precincts or batches that are selected for the check. The selection of the precincts or batches to be checked must be selected according to procedures established by the county canvassing board and the check must be completed no later than forty-eight hours after election day. [2007 c 373 § 3; 2003 c 111 § 1517; 1999 c 158 § 9; 1990 c 59 § 30; 1977 ex.s. c 361 § 71. Formerly RCW 29.54.025, 29.34.153.]

Intent—Effective date—1990 c 59: See notes following RCW 29A.04.013.

Effective date—Severability—1977 ex.s. c 361: See notes following RCW 29A.16.040.

**Chapter 29A.68 RCW
CONTESTING AN ELECTION**

Sections

- 29A.68.011 Prevention and correction of election frauds and errors.
- 29A.68.020 Commencement by registered voter—Causes for.
- 29A.68.030 Affidavit of error or omission—Contents—Witnesses.
- 29A.68.120 Election set aside—Appeal period.

29A.68.011 Prevention and correction of election frauds and errors. Any justice of the supreme court, judge of the court of appeals, or judge of the superior court in the proper county shall, by order, require any person charged with error, wrongful act, or neglect to forthwith correct the error, desist from the wrongful act, or perform the duty and to do as the court orders or to show cause forthwith why the error should not be corrected, the wrongful act desisted from, or the duty or order not performed, whenever it is made to appear to such justice or judge by affidavit of an elector that:

- (1) An error or omission has occurred or is about to occur in printing the name of any candidate on official ballots; or
- (2) An error other than as provided in subsections (1) and (3) of this section has been committed or is about to be committed in printing the ballots; or
- (3) The name of any person has been or is about to be wrongfully placed upon the ballots; or
- (4) A wrongful act other than as provided for in subsections (1) and (3) of this section has been performed or is about to be performed by any election officer; or
- (5) Any neglect of duty on the part of an election officer other than as provided for in subsections (1) and (3) of this section has occurred or is about to occur; or
- (6) An error or omission has occurred or is about to occur in the official certification of the election.

An affidavit of an elector under subsections (1) and (3) of this section when relating to a primary election must be filed with the appropriate court no later than the second Friday following the closing of the filing period for nominations for such office and shall be heard and finally disposed of by the court not later than five days after the filing thereof. An affidavit of an elector under subsections (1) and (3) of this section when relating to a general election must be filed with the appropriate court no later than three days following the official certification of the primary election returns and shall be heard and finally disposed of by the court not later than five days after the filing thereof. An affidavit of an elector under subsection (6) of this section shall be filed with the appropriate court no later than ten days following the official certification of the election as provided in RCW 29A.60.190, 29A.60.240, or 29A.60.250 or, in the case of a recount, ten days after the official certification of the amended abstract as provided in RCW 29A.64.061. [2007 c 374 § 3; 2005 c 243 § 22; 2004 c 271 § 182.]

29A.68.020 Commencement by registered voter—Causes for. Any of the following causes may be asserted by a registered voter to challenge the right to assume office of a candidate declared elected to that office:

(1) For misconduct on the part of any member of any precinct election board involved therein;

(2) Because the person whose right is being contested was not at the time the person was declared elected eligible to that office;

(3) Because the person whose right is being contested was previous to the election convicted of a felony by a court of competent jurisdiction, the conviction not having been reversed nor the person's civil rights restored after the conviction;

(4) Because the person whose right is being contested gave a bribe or reward to a voter or to an inspector or judge of election for the purpose of procuring the election, or offered to do so;

(5) On account of illegal votes.

(a) Illegal votes include but are not limited to the following:

(i) More than one vote cast by a single voter;

(ii) A vote cast by a person disqualified under Article VI, section 3 of the state Constitution.

(b) Illegal votes do not include votes cast by improperly registered voters who were not properly challenged under RCW 29A.08.810 and 29A.08.820.

All election contests must proceed under RCW 29A.68.011. [2007 c 374 § 4; 2003 c 111 § 1702; 1983 1st ex.s. c 30 § 6; 1977 ex.s. c 361 § 101; 1965 c 9 § 29.65.010. Prior: 1959 c 329 § 26; prior: (i) Code 1881 § 3105; 1865 p 42 § 1; RRS § 5366. (ii) Code 1881 § 3109; 1865 p 43 § 5; RRS § 5370. Formerly RCW 29.65.010.]

Effective date—Severability—1977 ex.s. c 361: See notes following RCW 29A.16.040.

Civil rights

loss of: State Constitution Art. 6 § 3, RCW 29A.08.520.

restoration of: RCW 9.92.066, 9.94A.637, 9.94A.885, 9.95.260, chapter 9.96 RCW.

29A.68.030 Affidavit of error or omission—Contents—Witnesses. An affidavit of an elector filed pursuant to RCW 29A.68.011(6) must set forth specifically:

(1) The name of the contestant and that he or she is a registered voter in the county, district or precinct, as the case may be, in which the office is to be exercised;

(2) The name of the person whose right is being contested;

(3) The office;

(4) The particular causes of the contest.

No statement of contest may be dismissed for want of form if the particular causes of contest are alleged with sufficient certainty. The person charged with the error or omission must be given the opportunity to call any witness, including the candidate. [2007 c 374 § 5; 2003 c 111 § 1703; 1977 ex.s. c 361 § 102; 1965 c 9 § 29.65.020. Prior: (i) Code 1881 § 3110; 1865 p 43 § 6; RRS § 5371. (ii) Code 1881 § 3112; 1865 p 44 § 8; RRS § 5373. Formerly RCW 29.65.020.]

Effective date—Severability—1977 ex.s. c 361: See notes following RCW 29A.16.040.

29A.68.120 Election set aside—Appeal period. If an election is set aside by the judgment of the superior court and if no appeal is taken therefrom within ten days, the election of

the person challenged shall be thereby rendered void. [2007 c 374 § 6; 2003 c 111 § 1712; 1965 c 9 § 29.65.120. Prior: Code 1881 § 3123, part; 1865 p 46 § 19, part; RRS § 5382, part. Formerly RCW 29.65.120.]

Title 30

BANKS AND TRUST COMPANIES

Chapters

30.04 General provisions.

Chapter 30.04 RCW

GENERAL PROVISIONS

Sections

30.04.285 Director's approval of a branch—Satisfactory financial condition—Affiliated commercial locations.

30.04.285 Director's approval of a branch—Satisfactory financial condition—Affiliated commercial locations. (1) The director's approval of a branch within the United States or any territory of the United States or in any foreign country shall be conditioned on a finding by the director that the bank has a satisfactory record of compliance with applicable laws and has a satisfactory financial condition. A bank chartered under this title may exercise any powers and authorities at any branch outside Washington that are permissible for a bank operating in that state where the branch is located, except to the extent those activities are expressly prohibited by the laws of this state or by any rule or order of the director applicable to the state bank. However, the director may waive any limitation in writing with respect to powers and authorities that the director determines do not threaten the safety or soundness of the state bank.

(2) An out-of-state bank may acquire, establish, or maintain a branch in Washington within one mile of an affiliate commercial location only to the same extent permitted for a Washington bank under applicable state and federal law. For purposes of this subsection, "bank" means any national bank, state bank, and district bank, as defined in 12 U.S.C. Sec. 1813(a); "out-of-state bank" means a bank whose home state is a state other than Washington; and "Washington bank" means a bank whose home state is Washington. "Home state" has the same meaning as defined in RCW 30.38.005. [2007 c 167 § 1; 1996 c 2 § 6.]

Severability—1996 c 2: See RCW 30.38.900.

Title 31

MISCELLANEOUS LOAN AGENCIES

Chapters

31.04 Consumer loan act.

31.45 Check cashers and sellers.

**Chapter 31.04 RCW
CONSUMER LOAN ACT**

Sections

31.04.125 Loan restrictions—Interest calculations.

31.04.125 Loan restrictions—Interest calculations.

(1) No licensee may make a loan using any method of calculating interest other than the simple interest method; except that the add-on method of calculating interest may be used for a loan not secured by real property or personal property used as a residence when the repayment period does not exceed three years and fifteen days after the loan origination date.

(2) No licensee may make a loan using the add-on method to calculate interest that does not provide for a refund to the borrower or a credit to the borrower's account of any unearned interest when the loan is repaid before the original maturity date in full by cash, by a new loan, by refinancing, or otherwise before the final due date. The refund must be calculated using the actuarial method, unless a sum equal to two or more installments has been prepaid and the account is not in arrears and continues to be paid ahead, in which case the interest on the account must be recalculated by the simple interest method with the refund of unearned interest made as if the loan had been made using the simple interest method. When computing an actuarial refund, the lender may round the annual rate used to the nearest quarter of one percent.

In computing a required refund of unearned interest, a prepayment made on or before the fifteenth day after the scheduled payment date is deemed to have been made on the payment date preceding the prepayment. In the case of prepayment before the first installment due date, the company may retain an amount not to exceed one-thirtieth of the first month's interest charge for each day between the origination date of the loan and the actual date of prepayment.

(3) No licensee may provide credit life or disability insurance in an amount greater than that required to pay off the total balance owing on the date of the borrower's death net of refunds in the case of credit life insurance, or all minimum payments that become due on the loan during the covered period of disability in the case of credit disability insurance. The lender may not require any such insurance.

(4) Except in the case of loans by mail, where the borrower has sufficient time to review papers before returning them, no licensee may prepare loan papers in advance of the loan closing without having reviewed with the borrower the terms and conditions of the loan to include the type and amount of insurance, if any, requested by the borrower. [2007 c 208 § 1; 1995 c 9 § 1; 1991 c 208 § 13.]

**Chapter 31.45 RCW
CHECK CASHERS AND SELLERS**

Sections

31.45.105 Violations of chapter—Enforceability of transaction.

31.45.105 Violations of chapter—Enforceability of transaction. (1) It is a violation of this chapter for any person subject to this chapter to:

(a) Directly or indirectly employ any scheme, device, or artifice to defraud or mislead any borrower, to defraud or mislead any lender, or to defraud or mislead any person;

(b) Directly or indirectly engage in any unfair or deceptive practice toward any person;

(c) Directly or indirectly obtain property by fraud or misrepresentation; and

(d) Make a small loan to any person physically located in Washington through use of the internet, facsimile, telephone, kiosk, or other means without first obtaining a small loan endorsement.

(2) In addition to any other penalties, any transaction in violation of subsection (1) of this section is uncollectible and unenforceable. [2007 c 81 § 1.]

Title 34

ADMINISTRATIVE LAW

Chapters

34.05 Administrative procedure act.

34.12 Office of administrative hearings.

Chapter 34.05 RCW

ADMINISTRATIVE PROCEDURE ACT

Sections

34.05.210 Code and register—Publication and distribution—Omissions, removals, revisions—Judicial notice.

34.05.312 Rules coordinator.

34.05.380 Filing with code reviser—Written record—Effective dates.

34.05.210 Code and register—Publication and distribution—Omissions, removals, revisions—Judicial notice.

(1) The code reviser shall cause the Washington Administrative Code to be compiled, indexed by subject, and published. All current, permanently effective rules of each agency shall be published in the Washington Administrative Code. Compilations shall be supplemented or revised as often as necessary and at least annually in a form compatible with the main compilation.

(2) Subject to the provisions of this chapter, the code reviser shall prescribe a uniform numbering system, form, and style for all proposed and adopted rules.

(3) The code reviser shall publish a register setting forth the text of all rules filed during the appropriate register publication period.

(4) The code reviser may omit from the register or the compilation, rules that would be unduly cumbersome, expensive, or otherwise inexpedient to publish, if such rules are made available in printed or processed form on application to the adopting agency, and if the register or compilation contains a notice stating the general subject matter of the rules so omitted and stating how copies thereof may be obtained.

(5) The code reviser may edit and revise rules for publication, codification, and compilation, without changing the meaning of any such rule.

(6) When a rule, in whole or in part, is declared invalid and unconstitutional by a court of final appeal, the adopting agency shall give notice to that effect in the register. With the consent of the attorney general, the code reviser may remove

obsolete rules or parts of rules from the Washington Administrative Code when:

(a) The rules are declared unconstitutional by a court of final appeal; or

(b) The adopting agency ceases to exist and the rules are not transferred by statute to a successor agency.

(7) Compilations shall be made available, in written form to (a) state elected officials whose offices are created by Article II or III of the state Constitution or by RCW 48.02.010, upon request, (b) the secretary of the senate and the chief clerk of the house for committee use, as required, but not to exceed the number of standing committees in each body, (c) county boards of law library trustees and to the Olympia press corps library, and (d) other persons at a price fixed by the code reviser.

(8) The board of law library trustees of each county shall keep and maintain a complete and current set of registers and compilations when required for use and inspection as provided in chapter 27.24 RCW. If the register is published exclusively by electronic means on the code reviser web site, providing on-site access to the electronic version of the register shall satisfy the requirements of this subsection for access to the register.

(9) Registers shall be made available in written form to the same parties and under the same terms as those listed in subsection (7) of this section, unless the register is published exclusively by electronic means on the code reviser web site.

(10) Judicial notice shall be taken of rules filed and published as provided in RCW 34.05.380 and this section. [2007 c 456 § 3; 1988 c 288 § 201; 1982 1st ex.s. c 32 § 7; 1980 c 186 § 12; 1977 ex.s. c 240 § 9; 1959 c 234 § 5. Formerly RCW 34.04.050.]

Severability—1980 c 186: See note following RCW 34.05.320.

Effective date—Severability—1977 ex.s. c 240: See RCW 34.08.905 and 34.08.910.

Nonbinding effect of unpublished rules and procedures: RCW 42.56.040.

34.05.312 Rules coordinator. Each agency shall designate a rules coordinator, who shall have knowledge of the subjects of rules being proposed or prepared within the agency for proposal, maintain the records of any such action, and respond to public inquiries about possible, proposed, or adopted rules and the identity of agency personnel working, reviewing, or commenting on them. The office and mailing address of the rules coordinator shall be published in the state register at the time of designation and maintained thereafter on the code reviser web site for the duration of the designation. The rules coordinator may be an employee of another agency. [2007 c 456 § 4; 2003 c 246 § 4; 1993 c 202 § 3.]

Finding—2003 c 246: See note following RCW 34.05.362.

Finding—Intent—1993 c 202: See note following RCW 34.05.310.

34.05.380 Filing with code reviser—Written record—Effective dates. (1) Each agency shall file in the office of the code reviser a certified copy of all rules it adopts, except for rules contained in tariffs filed with or published by the Washington utilities and transportation commission. The code reviser shall place upon each rule a notation of the time and date of filing and shall keep a permanent written record of filed rules open to public inspection. In filing a rule, each

agency shall use the standard form prescribed for this purpose by the code reviser.

(2) Emergency rules adopted under RCW 34.05.350 become effective upon filing unless a later date is specified in the order of adoption. All other rules become effective upon the expiration of thirty days after the date of filing, unless a later date is required by statute or specified in the order of adoption.

(3) A rule may become effective immediately upon its filing with the code reviser or on any subsequent date earlier than that established by subsection (2) of this section, if the agency establishes that effective date in the adopting order and finds that:

(a) Such action is required by the state or federal Constitution, a statute, or court order;

(b) The rule only delays the effective date of another rule that is not yet effective; or

(c) The earlier effective date is necessary because of imminent peril to the public health, safety, or welfare.

The finding and a brief statement of the reasons therefor required by this subsection shall be made a part of the order adopting the rule.

(4) With respect to a rule made effective pursuant to subsection (3) of this section, each agency shall make reasonable efforts to make the effective date known to persons who may be affected by it. [2007 c 456 § 5; 1989 c 175 § 11; 1988 c 288 § 315; 1987 c 505 § 17; 1980 c 87 § 11; 1959 c 234 § 4. Formerly RCW 34.04.040.]

Effective date—1989 c 175: See note following RCW 34.05.010.

Chapter 34.12 RCW

OFFICE OF ADMINISTRATIVE HEARINGS

Sections

34.12.036 Landlord-tenant proceedings.

34.12.036 Landlord-tenant proceedings. When requested by the attorney general, the chief administrative law judge shall assign an administrative law judge to conduct proceedings under Title 59 RCW. [2007 c 431 § 9.]

Implementation—2007 c 431: See note following RCW 59.30.010.

Title 35

CITIES AND TOWNS

Chapters

35.13 Annexation of unincorporated areas.

35.17 Commission form of government.

35.21 Miscellaneous provisions.

35.23 Second-class cities.

35.27 Towns.

35.57 Public facilities districts.

35.61 Metropolitan park districts.

35.63 Planning commissions.

35.66 Police matrons.

35.75 Streets—Bicycles—Paths.

35.82 Housing authorities law.

35.88 Water pollution—Protection from.

35.92 Municipal utilities.

- 35.95A** City transportation authority—Monorail transportation.
35.102 Municipal business and occupation tax.
35.104 Health sciences and services authorities.

Chapter 35.13 RCW

ANNEXATION OF UNINCORPORATED AREAS

Sections

- 35.13.270 Taxes collected in annexed territory—Notification of annexation.

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

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

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

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

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

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

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

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

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

(6) The city or town is required to provide notification, by certified mail, that includes a list of annexed parcel num-

bers, to the county treasurer and assessor, and to the fire district and library district, as appropriate, at least thirty days before the effective date of the annexation. The county treasurer is only required to remit to the city or town those road taxes, fire district taxes, and library district taxes collected thirty days or more after receipt of the notification.

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

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

(ii) Include a description of the annexed area.

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

(8) The provisions of this section regarding (a) the transfer of fire and library district property taxes and (b) city and town notifications to fire and library districts do not apply if the city or town has been annexed to and is within the fire or library district when the city or town approves a resolution to annex unincorporated county territory. [2007 c 285 § 1; 2001 c 299 § 2; 1998 c 106 § 1; 1965 c 7 § 35.13.270. Prior: 1957 c 175 § 15; prior: 1951 c 248 § 5, part.]

Chapter 35.17 RCW

COMMISSION FORM OF GOVERNMENT

Sections

- 35.17.100 Bonds of commissioners and employees.

35.17.100 Bonds of commissioners and employees.

Every member of the city commission, before qualifying, shall give a good and sufficient bond to the city in a sum equivalent to five times the amount of his or her annual salary, conditioned for the faithful performance of the duties of his or her office. The bonds must be approved by a judge of the superior court for the county in which the city is located and filed with the clerk thereof. The commission, by resolution, may require any of its appointees to give bond to be fixed and approved by the commission and filed with the mayor. [2007 c 218 § 65; 1965 c 7 § 35.17.100. Prior: 1911 c 116 § 6; RRS § 9095.]

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

Chapter 35.21 RCW

MISCELLANEOUS PROVISIONS

Sections

- 35.21.228 Rail fixed guideway system—Safety program plan and security and emergency preparedness plan.
 35.21.465 Crop purchase contracts for dedicated energy crops.
 35.21.688 Family day-care provider's home facility—City or town may not prohibit in residential or commercial area—Conditions.
 35.21.712 License fees or taxes on telephone business to be at uniform rate. (*Effective July 1, 2008.*)
 35.21.714 License fees or taxes on telephone business—Imposition on certain gross revenues authorized—Limitations. (*Effective*

July 1, 2008; contingency, see note following RCW 82.04.530.)

- 35.21.715 Taxes on network telephone services. (*Effective July 1, 2008.*)
- 35.21.735 Public corporations—Declaration of public purpose—Power and authority to enter into agreements, receive and expend funds—Security—Special funds—Agreements to implement federal new markets tax credit program.
- 35.21.755 Public corporations—Exemption or immunity from taxation—In lieu excise tax.
- 35.21.860 Electricity, telephone, or natural gas business, service provider—Franchise fees prohibited—Exceptions. (*Effective July 1, 2008.*)
- 35.21.905 Consultation with public utilities for water-sewer facility relocation projects.

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

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

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

(4) The system security and emergency preparedness plan required in subsection (1)(d) of this section is exempt

from public disclosure under chapter 42.56 RCW. However, the system safety program plan as described in this section is not subject to this exemption. [2007 c 422 § 1; 2005 c 274 § 264; 1999 c 202 § 1.]

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

Effective date—1999 c 202: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately [May 7, 1999]." [1999 c 202 § 10.]

35.21.465 Crop purchase contracts for dedicated energy crops. In addition to any other authority provided by law, public development authorities are authorized to enter into crop purchase contracts for a dedicated energy crop for the purposes of producing, selling, and distributing biodiesel produced from Washington state feedstocks, cellulosic ethanol, and cellulosic ethanol blend fuels. [2007 c 348 § 208.]

Findings—Part headings not law—2007 c 348: See RCW 43.325.005 and 43.325.903.

35.21.688 Family day-care provider's home facility—City or town may not prohibit in residential or commercial area—Conditions. (1) Except as provided in subsections (2) and (3) of this section, no city or town may enact, enforce, or maintain an ordinance, development regulation, zoning regulation, or official control, policy, or administrative practice that prohibits the use of a residential dwelling, located in an area zoned for residential or commercial use, as a family day-care provider's facility serving twelve or fewer children.

(2) A city or town may require that the facility: (a) Comply with all building, fire, safety, health code, and business licensing requirements; (b) conform to lot size, building size, setbacks, and lot coverage standards applicable to the zoning district except if the structure is a legal nonconforming structure; (c) is certified by the department of early learning licensor as providing a safe passenger loading area; (d) include signage, if any, that conforms to applicable regulations; and (e) limit hours of operations to facilitate neighborhood compatibility, while also providing appropriate opportunity for persons who use family day-care who work a nonstandard work shift.

(3) A city or town may also require that the family day-care provider, before state licensing, require proof of written notification by the provider that the immediately adjoining property owners have been informed of the intent to locate and maintain such a facility. If a dispute arises between neighbors and the day-care provider over licensing requirements, the licensor may provide a forum to resolve the dispute.

(4) This section may not be construed to prohibit a city or town from imposing zoning conditions on the establishment and maintenance of a family day-care provider's home serving twelve or fewer children in an area zoned for residential or commercial use, if the conditions are no more restrictive than conditions imposed on other residential dwellings in the same zone and the establishment of such facilities is not precluded. As used in this section, "family day-care provider" is as defined in RCW 43.215.010. [2007 c 17 § 9; 2003 c 286 § 1.]

35.21.712 License fees or taxes on telephone business to be at uniform rate. (Effective July 1, 2008.) Any city which imposes a license fee or tax upon the business activity of engaging in the telephone business, as defined in RCW 82.16.010, which is measured by gross receipts or gross income from the business shall impose the tax at a uniform rate on all persons engaged in the telephone business in the city.

This section does not apply to the providing of competitive telephone service as defined in RCW 82.04.065 or to the providing of payphone service as defined in RCW 35.21.710. [2007 c 6 § 1016; 2002 c 179 § 2; 1983 2nd ex.s. c 3 § 35; 1981 c 144 § 8.]

Part headings not law—Savings—Effective date—Severability—2007 c 6: See notes following RCW 82.32.020.

Findings—Intent—2007 c 6: See note following RCW 82.14.495.

Effective date—2002 c 179: See note following RCW 35.21.710.

Construction—Severability—Effective dates—1983 2nd ex.s. c 3: See notes following RCW 82.04.255.

Intent—Severability—Effective date—1981 c 144: See notes following RCW 82.16.010.

35.21.714 License fees or taxes on telephone business—Imposition on certain gross revenues authorized—Limitations. (Effective July 1, 2008; contingency, see note following RCW 82.04.530.) (1) Any city which imposes a license fee or tax upon the business activity of engaging in the telephone business which is measured by gross receipts or gross income may impose the fee or tax, if it desires, on one hundred percent of the total gross revenue derived from intrastate toll telephone services subject to the fee or tax: PROVIDED, That the city shall not impose the fee or tax on that portion of network telephone service which represents charges to another telecommunications company, as defined in RCW 80.04.010, for connecting fees, switching charges, or carrier access charges relating to intrastate toll telephone services, or for access to, or charges for, interstate services, or charges for network telephone service that is purchased for the purpose of resale, or charges for mobile telecommunications services provided to customers whose place of primary use is not within the city.

(2) Any city that imposes a license tax or fee under subsection (1) of this section has the authority, rights, and obligations of a taxing jurisdiction as provided in RCW 82.32.490 through 82.32.510.

(3) The definitions in RCW 82.04.065 and 82.16.010 apply to this section. [2007 c 6 § 1018; 2007 c 6 § 1017; 2002 c 67 § 9; 1989 c 103 § 1; 1986 c 70 § 1; 1983 2nd ex.s. c 3 § 37; 1981 c 144 § 10.]

Contingent effective date—2007 c 6 §§ 1003, 1006, 1014, and 1018: See note following RCW 82.04.065.

Part headings not law—Savings—Effective date—Severability—2007 c 6: See notes following RCW 82.32.020.

Findings—Intent—2007 c 6: See note following RCW 82.14.495.

Finding—Contingency—Court judgment—Effective date—2002 c 67: See note and Reviser's note following RCW 82.04.530.

Severability—1989 c 103: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1989 c 103 § 5.]

Effective date—1986 c 70 §§ 1, 2, 4, and 5: "Sections 1, 2, 4, and 5 of this act shall take effect on January 1, 1987." [1986 c 70 § 8.]

Construction—Severability—Effective dates—1983 2nd ex.s. c 3: See notes following RCW 82.04.255.

Intent—Severability—Effective date—1981 c 144: See notes following RCW 82.16.010.

35.21.715 Taxes on network telephone services. (Effective July 1, 2008.) Notwithstanding RCW 35.21.714 or 35A.82.060, any city or town which imposes a tax upon business activities measured by gross receipts or gross income from sales, may impose such tax on that portion of network telephone service, as defined in RCW 82.16.010, which represents charges to another telecommunications company, as defined in RCW 80.04.010, for connecting fees, switching charges, or carrier access charges relating to intrastate toll services, or charges for network telephone service that is purchased for the purpose of resale. Such tax shall be levied at the same rate as is applicable to other competitive telephone service as defined in RCW 82.04.065. [2007 c 6 § 1019; 1989 c 103 § 2; 1986 c 70 § 2.]

Part headings not law—Savings—Effective date—Severability—2007 c 6: See notes following RCW 82.32.020.

Findings—Intent—2007 c 6: See note following RCW 82.14.495.

Severability—1989 c 103: See note following RCW 35.21.714.

Effective date—1986 c 70 §§ 1, 2, 4, and 5: See note following RCW 35.21.714.

35.21.735 Public corporations—Declaration of public purpose—Power and authority to enter into agreements, receive and expend funds—Security—Special funds—Agreements to implement federal new markets tax credit program. (1) The legislature hereby declares that carrying out the purposes of federal grants or programs is both a public purpose and an appropriate function for a city, town, county, or public corporation. The provisions of RCW 35.21.730 through 35.21.755 and 35.21.660 and 35.21.670 and the enabling authority herein conferred to implement these provisions shall be construed to accomplish the purposes of RCW 35.21.730 through 35.21.755.

(2) All cities, towns, counties, and public corporations shall have the power and authority to enter into agreements with the United States or any agency or department thereof, or any agency of the state government or its political subdivisions, and pursuant to such agreements may receive and expend, or cause to be received and expended by a custodian or trustee, federal or private funds for any lawful public purpose. Pursuant to any such agreement, a city, town, county, or public corporation may issue bonds, notes, or other evidences of indebtedness that are guaranteed or otherwise secured by funds or other instruments provided by or through the federal government or by the federal government or an agency or instrumentality thereof under section 108 of the housing and community development act of 1974 (42 U.S.C. Sec. 5308), as amended, or its successor, and may agree to repay and reimburse for any liability thereon any guarantor of any such bonds, notes, or other evidences of indebtedness issued by such jurisdiction or public corporation, or issued by any other public entity. For purposes of this subsection, federal housing mortgage insurance shall not constitute a federal guarantee or security.

(3) A city, town, county, or public corporation may pledge, as security for any such bonds, notes, or other evi-

dences of indebtedness or for its obligations to repay or reimburse any guarantor thereof, its right, title, and interest in and to any or all of the following: (a) Any federal grants or payments received or that may be received in the future; (b) any of the following that may be obtained directly or indirectly from the use of any federal or private funds received as authorized in this section: (i) Property and interests therein, and (ii) revenues; (c) any payments received or owing from any person resulting from the lending of any federal or private funds received as authorized in this section; (d) any proceeds under (a), (b), or (c) of this subsection and any securities or investments in which (a), (b), or (c) of this subsection or proceeds thereof may be invested; (e) any interest or other earnings on (a), (b), (c), or (d) of this subsection.

(4) A city, town, county, or public corporation may establish one or more special funds relating to any or all of the sources listed in subsection (3)(a) through (e) of this section and pay or cause to be paid from such fund the principal, interest, premium if any, and other amounts payable on any bonds, notes, or other evidences of indebtedness authorized under this section, and pay or cause to be paid any amounts owing on any obligations for repayment or reimbursement of guarantors of any such bonds, notes, or other evidences of indebtedness. A city, town, county, or public corporation may contract with a financial institution either to act as trustee or custodian to receive, administer, and expend any federal or private funds, or to collect, administer, and make payments from any special fund as authorized under this section, or both, and to perform other duties and functions in connection with the transactions authorized under this section. If the bonds, notes, or other evidences of indebtedness and related agreements comply with subsection (6) of this section, then any such funds held by any such trustee or custodian, or by a public corporation, shall not constitute public moneys or funds of any city, town, or county and at all times shall be kept segregated and set apart from other funds.

(5) For purposes of this section, "lawful public purpose" includes, without limitation, any use of funds, including loans thereof to public or private parties, authorized by the agreements with the United States or any department or agency thereof under which federal or private funds are obtained, or authorized under the federal laws and regulations pertinent to such agreements.

(6) If any such federal or private funds are loaned or granted to any private party or used to guarantee any obligations of any private party, then any bonds, notes, other evidences of indebtedness issued or entered into for the purpose of receiving or causing the receipt of such federal or private funds, and any agreements to repay or reimburse guarantors, shall not be obligations of any city, town, or county and shall be payable only from a special fund as authorized in this section or from any of the security pledged pursuant to the authority of this section, or both. Any bonds, notes, or other evidences of indebtedness to which this subsection applies shall contain a recital to the effect that they are not obligations of the city, town, or county or the state of Washington and that neither the faith and credit nor the taxing power of the state or any municipal corporation or subdivision of the state or any agency of any of the foregoing, is pledged to the payment of principal, interest, or premium, if any, thereon. Any bonds, notes, other evidences of indebtedness, or other

obligations to which this subsection applies shall not be included in any computation for purposes of limitations on indebtedness. To the extent expressly agreed in writing by a city, town, county, or public corporation, this subsection shall not apply to bonds, notes, or other evidences of indebtedness issued for, or obligations incurred for, the necessary support of the poor and infirm by that city, town, county, or public corporation.

(7) Any bonds, notes, or other evidences of indebtedness issued by, or reimbursement obligations incurred by, a city, town, county, or public corporation consistent with the provisions of this section but prior to May 3, 1995, and any loans or pledges made by a city, town, or county in connection therewith substantially consistent with the provisions of this section but prior to May 3, 1995, are deemed authorized and shall not be held void, voidable, or invalid due to any lack of authority under the laws of this state.

(8) All cities, towns, counties, public corporations, and port districts may create partnerships and limited liability companies and enter into agreements with public or private entities, including partnership agreements and limited liability company agreements, to implement within their boundaries the federal new markets tax credit program established by the community renewal tax relief act of 2000 (26 U.S.C. Sec. 45D) or its successor statute. [2007 c 230 § 2; 1995 c 212 § 2; 1985 c 332 § 3; 1974 ex.s. c 37 § 3.]

Purpose—2007 c 230: "The purpose of this act is to assist community and economic development by clarifying how cities, towns, counties, public corporations, and port districts may fully participate in the federal new markets tax credit program." [2007 c 230 § 1.]

Construction—2007 c 230: "The authority granted by this act is additional and supplemental to any other authority of any city, town, county, public corporation, or port district. This act may not be construed to imply that any of the power or authority granted in this act was not available to any city, town, county, public corporation, or port district under prior law. Any previous actions consistent with this act are ratified and confirmed." [2007 c 230 § 3.]

Severability—2007 c 230: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [2007 c 230 § 4.]

Purpose—1995 c 212: "The purpose of this act is to assist community and economic development by clarifying the authority of all cities, towns, counties, and public corporations to engage in federally guaranteed "conduit financings" and to specify procedures that may be used for such conduit financings. Generally, in such a conduit financing a municipality borrows funds from the federal government or from private sources with the help of federal guarantees, without pledging the credit or tax revenues of the municipality, and then lends the proceeds for private projects that both fulfill public purposes, such as community and economic development, and provide the revenues to retire the municipal borrowings. Such conduit financings include issuance by municipalities of federally guaranteed notes under section 108 of the housing and community development act of 1974, as amended, to finance projects eligible under federal community development block grant regulations." [1995 c 212 § 1.]

Severability—1995 c 212: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1995 c 212 § 3.]

Construction—1995 c 212: "The authority granted by this act is additional and supplemental to any other authority of any city, town, county, or public corporation. Nothing in this act may be construed to imply that any of the power or authority granted hereby was not available to any city, town, county, or public corporation under prior law. Any previous actions consistent with the provisions of this act are ratified and confirmed." [1995 c 212 § 4.]

Effective date—1995 c 212: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and shall take effect immediately [May 3, 1995]." [1995 c 212 § 5.]

35.21.755 Public corporations—Exemption or immunity from taxation—In lieu excise tax. (1) A public corporation, commission, or authority created pursuant to RCW 35.21.730, 35.21.660, or 81.112.320 shall receive the same immunity or exemption from taxation as that of the city, town, or county creating the same: PROVIDED, That, except for (a) any property within a special review district established by ordinance prior to January 1, 1976, or listed on or which is within a district listed on any federal or state register of historical sites or (b) any property owned, operated, or controlled by a public corporation that is used primarily for low-income housing, or that is used as a convention center, performing arts center, public assembly hall, public meeting place, public esplanade, street, public way, public open space, park, public utility corridor, or view corridor for the general public or (c) any blighted property owned, operated, or controlled by a public corporation that was acquired for the purpose of remediation and redevelopment of the property in accordance with an agreement or plan approved by the city, town, or county in which the property is located, or (d) any property owned, operated, or controlled by a public corporation created under RCW 81.112.320, any such public corporation, commission, or authority shall pay to the county treasurer an annual excise tax equal to the amounts which would be paid upon real property and personal property devoted to the purposes of such public corporation, commission, or authority were it in private ownership, and such real property and personal property is acquired and/or operated under RCW 35.21.730 through 35.21.755, and the proceeds of such excise tax shall be allocated by the county treasurer to the various taxing authorities in which such property is situated, in the same manner as though the property were in private ownership: PROVIDED FURTHER, That the provisions of chapter 82.29A RCW shall not apply to property within a special review district established by ordinance prior to January 1, 1976, or listed on or which is within a district listed on any federal or state register of historical sites and which is controlled by a public corporation, commission, or authority created pursuant to RCW 35.21.730 or 35.21.660, which was in existence prior to January 1, 1987: AND PROVIDED FURTHER, That property within a special review district established by ordinance prior to January 1, 1976, or property which is listed on any federal or state register of historical sites and controlled by a public corporation, commission, or authority created pursuant to RCW 35.21.730 or 35.21.660, which was in existence prior to January 1, 1976, shall receive the same immunity or exemption from taxation as if such property had been within a district listed on any such federal or state register of historical sites as of January 1, 1976, and controlled by a public corporation, commission, or authority created pursuant to RCW 35.21.730 or 35.21.660 which was in existence prior to January 1, 1976.

(2) As used in this section:

(a) "Low-income" means a total annual income, adjusted for family size, not exceeding fifty percent of the area median income.

(b) "Area median income" means:

(i) For an area within a standard metropolitan statistical area, the area median income reported by the United States department of housing and urban development for that standard metropolitan statistical area; or

(ii) For an area not within a standard metropolitan statistical area, the county median income reported by the department of community, trade, and economic development.

(c) "Blighted property" means property that is contaminated with hazardous substances as defined under RCW 70.105D.020. [2007 c 104 § 16; 2000 2nd sp.s. c 4 § 29; 1999 c 266 § 1; 1995 c 399 § 38; 1993 c 220 § 1; 1990 c 131 § 1; 1987 c 282 § 1; 1985 c 332 § 5; 1984 c 116 § 1; 1979 ex.s. c 196 § 9; 1977 ex.s. c 35 § 1; 1974 ex.s. c 37 § 7.]

Application—Construction—Severability—2007 c 104: See RCW 64.70.015 and 64.70.900.

Findings—Construction—2000 2nd sp.s. c 4 §§ 18-30: See notes following RCW 81.112.300.

Effective date—1979 ex.s. c 196: See note following RCW 82.04.240.

Effective date—1977 ex.s. c 35: "This 1977 amendatory act is necessary for the immediate preservation of the public peace, health, and safety, the support of the state government and its existing public institutions, and shall take effect July 1, 1977." [1977 ex.s. c 35 § 2.]

35.21.860 Electricity, telephone, or natural gas business, service provider—Franchise fees prohibited—Exceptions. (Effective July 1, 2008.) (1) No city or town may impose a franchise fee or any other fee or charge of whatever nature or description upon the light and power, or gas distribution businesses, as defined in RCW 82.16.010, or telephone business, as defined in RCW 82.16.010, or service provider for use of the right of way, except:

(a) A tax authorized by RCW 35.21.865 may be imposed;

(b) A fee may be charged to such businesses or service providers that recovers actual administrative expenses incurred by a city or town that are directly related to receiving and approving a permit, license, and franchise, to inspecting plans and construction, or to the preparation of a detailed statement pursuant to chapter 43.21C RCW;

(c) Taxes permitted by state law on service providers;

(d) Franchise requirements and fees for cable television services as allowed by federal law; and

(e) A site-specific charge pursuant to an agreement between the city or town and a service provider of personal wireless services acceptable to the parties for:

(i) The placement of new structures in the right of way regardless of height, unless the new structure is the result of a mandated relocation in which case no charge will be imposed if the previous location was not charged;

(ii) The placement of replacement structures when the replacement is necessary for the installation or attachment of wireless facilities, and the overall height of the replacement structure and the wireless facility is more than sixty feet; or

(iii) The placement of personal wireless facilities on structures owned by the city or town located in the right of way. However, a site-specific charge shall not apply to the placement of personal wireless facilities on existing structures, unless the structure is owned by the city or town.

A city or town is not required to approve the use permit for the placement of a facility for personal wireless services

that meets one of the criteria in this subsection absent such an agreement. If the parties are unable to agree on the amount of the charge, the service provider may submit the amount of the charge to binding arbitration by serving notice on the city or town. Within thirty days of receipt of the initial notice, each party shall furnish a list of acceptable arbitrators. The parties shall select an arbitrator; failing to agree on an arbitrator, each party shall select one arbitrator and the two arbitrators shall select a third arbitrator for an arbitration panel. The arbitrator or arbitrators shall determine the charge based on comparable siting agreements involving public land and rights of way. The arbitrator or arbitrators shall not decide any other disputed issues, including but not limited to size, location, and zoning requirements. Costs of the arbitration, including compensation for the arbitrator's services, must be borne equally by the parties participating in the arbitration and each party shall bear its own costs and expenses, including legal fees and witness expenses, in connection with the arbitration proceeding.

(2) Subsection (1) of this section does not prohibit franchise fees imposed on an electrical energy, natural gas, or telephone business, by contract existing on April 20, 1982, with a city or town, for the duration of the contract, but the franchise fees shall be considered taxes for the purposes of the limitations established in RCW 35.21.865 and 35.21.870 to the extent the fees exceed the costs allowable under subsection (1) of this section. [2007 c 6 § 1020; 2000 c 83 § 8; 1983 2nd ex.s. c 3 § 39; 1982 1st ex.s. c 49 § 2.]

Part headings not law—Savings—Effective date—Severability—2007 c 6: See notes following RCW 82.32.020.

Findings—Intent—2007 c 6: See note following RCW 82.14.495.

Construction—Severability—Effective dates—1983 2nd ex.s. c 3: See notes following RCW 82.04.255.

Intent—Construction—Effective date—Fire district funding—1982 1st ex.s. c 49: See notes following RCW 35.21.710.

"Service provider" defined: RCW 35.99.010.

35.21.905 Consultation with public utilities for water-sewer facility relocation projects. Cities shall, in the predesign phase of construction projects involving relocation of sewer and/or water facilities, consult with public utilities operating water/sewer systems in order to coordinate design. [2007 c 31 § 5.]

Chapter 35.23 RCW SECOND-CLASS CITIES

Sections

35.23.121 City clerk—Duties—Deputies.

35.23.121 City clerk—Duties—Deputies. The city clerk shall keep a full and true record of every act and proceeding of the city council and keep such books, accounts and make such reports as may be required by the state auditor. The city clerk shall record all ordinances, annexing thereto his or her certificate giving the number and title of the ordinance, stating that the ordinance was published and posted according to law and that the record is a true and correct copy thereof. The record copy with the clerk's certificate shall be prima facie evidence of the contents of the ordinance

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and of its passage and publication and shall be admissible as such evidence in any court or proceeding.

The city clerk shall be custodian of the seal of the city and shall have authority to acknowledge the execution of all instruments by the city which require acknowledgment.

The city clerk may appoint a deputy for whose acts he or she and his or her bondspersons shall be responsible, and he or she and his or her deputy shall have authority to take all necessary affidavits to claims against the city and certify them without charge.

The city clerk shall perform such other duties as may be required by statute or ordinance. [2007 c 218 § 75; 1995 c 301 § 36; 1965 c 7 § 35.24.120. Prior: 1915 c 184 § 25; RRS § 9139. Formerly RCW 35.24.120.]

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

Chapter 35.27 RCW TOWNS

Sections

35.27.220 Town clerk—Duties.

35.27.240 Town marshal—Police department.

35.27.220 Town clerk—Duties. The town clerk shall be custodian of the seal of the town. The town clerk may appoint a deputy for whose acts he or she and his or her bondspersons shall be responsible. The town clerk and his or her deputy may administer oaths or affirmations and certify to them, and may take affidavits and depositions to be used in any court or proceeding in the state.

The town clerk shall make a quarterly statement in writing showing the receipts and expenditures of the town for the preceding quarter and the amount remaining in the treasury.

At the end of every fiscal year the town clerk shall make a full and detailed statement of receipts and expenditures of the preceding year and a full statement of the financial condition of the town which shall be published.

The town clerk shall perform such other services as may be required by statute or by ordinances of the town council.

The town clerk shall keep a full and true account of all the proceedings of the council. [2007 c 218 § 76; 1965 c 7 § 35.27.220. Prior: 1890 p 210 § 170, part; RRS § 9188, part.]

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

35.27.240 Town marshal—Police department. The department of police in a town shall be under the direction and control of the marshal subject to the direction of the mayor. He or she may pursue and arrest violators of town ordinances beyond the town limits.

The marshal's lawful orders shall be promptly executed by deputies, police officers and watchpersons. Every citizen shall lend him or her aid, when required, for the arrest of offenders and maintenance of public order. He or she may appoint, subject to the approval of the mayor, one or more deputies, for whose acts he and his or her bondspersons shall be responsible, whose compensation shall be fixed by the council. With the concurrence of the mayor, the marshal may appoint additional police officers for one day only when necessary for the preservation of public order.

The marshal shall have the same authority as that conferred upon sheriffs for the suppression of any riot, public tumult, disturbance of the peace, or resistance against the laws or public authorities in the lawful exercise of their functions and shall be entitled to the same protection.

The marshal shall execute and return all process issued and directed to him or her by any legal authority and for his or her services shall receive the same fees as are paid to constables. The marshal shall perform such other services as the council by ordinance may require. [2007 c 218 § 67; 1987 c 3 § 13; 1977 ex.s. c 316 § 24; 1965 c 125 § 1; 1965 c 7 § 35.27.240. Prior: 1963 c 191 § 1; 1890 p 213 § 172; RRS § 9190.]

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

Severability—1987 c 3: See note following RCW 3.46.020.

Severability—1977 ex.s. c 316: See note following RCW 70.48.020.

Chapter 35.57 RCW

PUBLIC FACILITIES DISTRICTS

Sections

35.57.010 Creation—Board of directors—Corporate powers.

35.57.010 Creation—Board of directors—Corporate powers. (1)(a) The legislative authority of any town or city located in a county with a population of less than one million may create a public facilities district.

(b) The legislative authorities of any contiguous group of towns or cities located in a county or counties each with a population of less than one million may enter an agreement under chapter 39.34 RCW for the creation and joint operation of a public facilities district.

(c) The legislative authority of any town or city, or any contiguous group of towns or cities, located in a county with a population of less than one million and the legislative authority of a contiguous county, or the legislative authority of the county or counties in which the towns or cities are located, may enter into an agreement under chapter 39.34 RCW for the creation and joint operation of a public facilities district.

(d) The legislative authority of a city located in a county with a population greater than one million may create a public facilities district, when the city has a total population of less than one hundred fifteen thousand but greater than eighty thousand and commences construction of a regional center prior to July 1, 2008.

(2)(a) A public facilities district shall be coextensive with the boundaries of the city or town or contiguous group of cities or towns that created the district.

(b) A public facilities district created by an agreement between a town or city, or a contiguous group of towns or cities, and a contiguous county or the county in which they are located, shall be coextensive with the boundaries of the towns or cities, and the boundaries of the county or counties as to the unincorporated areas of the county or counties. The boundaries shall not include incorporated towns or cities that are not parties to the agreement for the creation and joint operation of the district.

(3)(a) A public facilities district created by a single city or town shall be governed by a board of directors consisting

of five members selected as follows: (i) Two members appointed by the legislative authority of the city or town; and (ii) three members appointed by legislative authority based on recommendations from local organizations. The members appointed under (a)(i) of this subsection, shall not be members of the legislative authority of the city or town. The members appointed under (a)(ii) of this subsection, shall be based on recommendations received from local organizations that may include, but are not limited to the local chamber of commerce, local economic development council, and local labor council. The members shall serve four-year terms. Of the initial members, one must be appointed for a one-year term, one must be appointed for a two-year term, one must be appointed for a three-year term, and the remainder must be appointed for four-year terms.

(b) A public facilities district created by a contiguous group of cities and towns shall be governed by a board of directors consisting of seven members selected as follows: (i) Three members appointed by the legislative authorities of the cities and towns; and (ii) four members appointed by the legislative authority based on recommendations from local organizations. The members appointed under (b)(i) of this subsection shall not be members of the legislative authorities of the cities and towns. The members appointed under (b)(ii) of this subsection, shall be based on recommendations received from local organizations that include, but are not limited to the local chamber of commerce, local economic development council, local labor council, and a neighborhood organization that is directly affected by the location of the regional center in their area. The members of the board of directors shall be appointed in accordance with the terms of the agreement under chapter 39.34 RCW for the joint operation of the district and shall serve four-year terms. Of the initial members, one must be appointed for a one-year term, one must be appointed for a two-year term, one must be appointed for a three-year term, and the remainder must be appointed for four-year terms.

(c) A public facilities district created by a town or city, or a contiguous group of towns or cities, and a contiguous county or the county or counties in which they are located, shall be governed by a board of directors consisting of seven members selected as follows: (i) Three members appointed by the legislative authorities of the cities, towns, and county; and (ii) four members appointed by the legislative authority based on recommendations from local organizations. The members appointed under (c)(i) of this subsection shall not be members of the legislative authorities of the cities, towns, or county. The members appointed under (c)(ii) of this subsection shall be based on recommendations received from local organizations that include, but are not limited to, the local chamber of commerce, the local economic development council, the local labor council, and a neighborhood organization that is directly affected by the location of the regional center in their area. The members of the board of directors shall be appointed in accordance with the terms of the agreement under chapter 39.34 RCW for the joint operation of the district and shall serve four-year terms. Of the initial members, one must be appointed for a one-year term, one must be appointed for a two-year term, one must be appointed for a three-year term, and the remainder must be appointed for four-year terms.

(4) A public facilities district is a municipal corporation, an independent taxing "authority" within the meaning of Article VII, section 1 of the state Constitution, and a "taxing district" within the meaning of Article VII, section 2 of the state Constitution.

(5) A public facilities district shall constitute a body corporate and shall possess all the usual powers of a corporation for public purposes as well as all other powers that may now or hereafter be specifically conferred by statute, including, but not limited to, the authority to hire employees, staff, and services, to enter into contracts, and to sue and be sued.

(6) A public facilities district may acquire and transfer real and personal property by lease, sublease, purchase, or sale. No direct or collateral attack on any public facilities district purported to be authorized or created in conformance with this chapter may be commenced more than thirty days after creation by the city and/or county legislative authority. [2007 c 486 § 1; 2002 c 363 § 1; 1999 c 165 § 1.]

Chapter 35.61 RCW

METROPOLITAN PARK DISTRICTS

Sections

- 35.61.150 Park commissioners—Compensation.
35.61.210 Park district tax levy—Metropolitan park district fund.

35.61.150 Park commissioners—Compensation.

Metropolitan park commissioners selected by election according to RCW 35.61.050(2) shall perform their duties and may provide, by resolution passed by the commissioners, for the payment of compensation to each of its commissioners at a rate of up to ninety dollars for each day or portion of a day spent in actual attendance at official meetings or in performance of other official services or duties on behalf of the district. However, the compensation for each commissioner must not exceed eight thousand six hundred forty dollars per year.

Any commissioner may waive all or any portion of his or her compensation payable under this section as to any month or months during his or her term of office, by a written waiver filed with the clerk of the board. The waiver, to be effective, must be filed any time after the commissioner's election and prior to the date on which the compensation would otherwise be paid. The waiver shall specify the month or period of months for which it is made.

The dollar thresholds established in this section must be adjusted for inflation by the office of financial management every five years, beginning July 1, 2008, based upon changes in the consumer price index during that time period. "Consumer price index" means, for any calendar year, that year's annual average consumer price index, for Washington state, for wage earners and clerical workers, all items, compiled by the bureau of labor and statistics, United States department of labor. If the bureau of labor and statistics develops more than one consumer price index for areas within the state, the index covering the greatest number of people, covering areas exclusively within the boundaries of the state, and including all items shall be used for the adjustments for inflation in this section. The office of financial management must calculate the new dollar threshold and transmit it to the office of the

code reviser for publication in the Washington State Register at least one month before the new dollar threshold is to take effect.

A person holding office as commissioner for two or more special purpose districts shall receive only that per diem compensation authorized for one of his or her commissioner positions as compensation for attending an official meeting or conducting official services or duties while representing more than one of his or her districts. However, such commissioner may receive additional per diem compensation if approved by resolution of all boards of the affected commissions. [2007 c 469 § 1; 2002 c 88 § 6; 1998 c 121 § 1; 1965 c 7 § 35.61.150. Prior: 1943 c 264 § 3, part; Rem. Supp. 1943 § 6741-3, part; prior: 1909 c 131 § 2; 1907 c 98 § 3, part; RRS § 6722, part.]

35.61.210 Park district tax levy—Metropolitan park district fund. The board of park commissioners may levy or cause to be levied a general tax on all the property located in said park district each year not to exceed fifty cents per thousand dollars of assessed value of the property in such park district. In addition, the board of park commissioners may levy or cause to be levied a general tax on all property located in said park district each year not to exceed twenty-five cents per thousand dollars of assessed valuation. Although park districts are authorized to impose two separate regular property tax levies, the levies shall be considered to be a single levy for purposes of the limitation provided for in chapter 84.55 RCW.

The board is hereby authorized to levy a general tax in excess of its regular property tax levy or levies when authorized so to do at a special election conducted in accordance with and subject to all the requirements of the Constitution and laws of the state now in force or hereafter enacted governing the limitation of tax levies. The board is hereby authorized to call a special election for the purpose of submitting to the qualified voters of the park district a proposition to levy a tax in excess of the seventy-five cents per thousand dollars of assessed value herein specifically authorized. The manner of submitting any such proposition, of certifying the same, and of giving or publishing notice thereof, shall be as provided by law for the submission of propositions by cities or towns.

The board shall include in its general tax levy for each year a sufficient sum to pay the interest on all outstanding bonds and may include a sufficient amount to create a sinking fund for the redemption of all outstanding bonds. The levy shall be certified to the proper county officials for collection the same as other general taxes and when collected, the general tax shall be placed in a separate fund in the office of the county treasurer to be known as the "metropolitan park district fund" and disbursed under RCW 36.29.010(1) and 39.58.750. [2007 c 295 § 1; 1997 c 3 § 205 (Referendum Bill No. 47, approved November 4, 1997); 1990 c 234 § 3; 1973 1st ex.s. c 195 § 25; 1965 c 7 § 35.61.210. Prior: 1951 c 179 § 1; prior: (i) 1943 c 264 § 10, part; Rem. Supp. 1943 § 6741-10, part; prior: 1909 c 131 § 4; 1907 c 98 § 10; RRS § 6729. (ii) 1947 c 117 § 1; 1943 c 264 § 5; Rem. Supp. 1947 § 6741-5; prior: 1925 ex.s. c 97 § 1; 1907 c 98 § 5; RRS § 6724.]

Intent—1997 c 3 §§ 201-207: See note following RCW 84.55.010.

Application—Severability—Part headings not law—Referral to electorate—1997 c 3: See notes following RCW 84.40.030.

Severability—Effective dates—Construction—1973 1st ex.s. c 195: See notes following RCW 84.52.043.

Limitation on levies: State Constitution Art. 7 § 2 (Amendments 55, 59), RCW 84.52.050.

Chapter 35.63 RCW

PLANNING COMMISSIONS

Sections

35.63.185 Family day-care provider's home facility—City may not prohibit in residential or commercial area—Conditions.

35.63.185 Family day-care provider's home facility—City may not prohibit in residential or commercial area—Conditions. (1) Except as provided in subsections (2) and (3) of this section, no city may enact, enforce, or maintain an ordinance, development regulation, zoning regulation, or official control, policy, or administrative practice that prohibits the use of a residential dwelling, located in an area zoned for residential or commercial use, as a family day-care provider's home facility.

(2) A city may require that the facility: (a) Comply with all building, fire, safety, health code, and business licensing requirements; (b) conform to lot size, building size, setbacks, and lot coverage standards applicable to the zoning district except if the structure is a legal nonconforming structure; (c) is certified by the department of early learning licensor as providing a safe passenger loading area; (d) include signage, if any, that conforms to applicable regulations; and (e) limit hours of operations to facilitate neighborhood compatibility, while also providing appropriate opportunity for persons who use family day-care and who work a nonstandard work shift.

(3) A city may also require that the family day-care provider, before state licensing, require proof of written notification by the provider that the immediately adjoining property owners have been informed of the intent to locate and maintain such a facility. If a dispute arises between neighbors and the family day-care provider over licensing requirements, the licensor may provide a forum to resolve the dispute.

(4) Nothing in this section shall be construed to prohibit a city from imposing zoning conditions on the establishment and maintenance of a family day-care provider's home in an area zoned for residential or commercial use, so long as such conditions are no more restrictive than conditions imposed on other residential dwellings in the same zone and the establishment of such facilities is not precluded. As used in this section, "family day-care provider" is as defined in RCW 43.215.010. [2007 c 17 § 10; 2003 c 286 § 3; 1995 c 49 § 1; 1994 c 273 § 14.]

Chapter 35.66 RCW

POLICE MATRONS

Sections

35.66.040 Compensation.

35.66.040 Compensation. A police matron must be paid such compensation for her services as shall be fixed by the city council and at such time as may be appointed for the

payment of police officers. [2007 c 218 § 68; 1965 c 7 § 35.66.040. Prior: 1893 c 15 § 6; RRS § 9287.]

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

Chapter 35.75 RCW

STREETS—BICYCLES—PATHS

Sections

35.75.050 Bicycle road fund—Sources—Use.

35.75.050 Bicycle road fund—Sources—Use. The city or town council shall by ordinance provide that the whole amount or any amount not less than seventy-five percent of all license fees, penalties or other moneys collected under the authority of this chapter shall be paid into and placed to the credit of a special fund to be known as the "bicycle road fund." The moneys in the bicycle road fund shall not be transferred to any other fund and shall be paid out for the sole purpose of building and maintaining bicycle paths and roadways authorized to be constructed and maintained by this chapter or for special police officers, bicycle tags, stationery and other expenses growing out of the regulating and licensing of the riding of bicycles and other vehicles and the construction, maintenance and regulation of the use of bicycle paths and roadways. [2007 c 218 § 69; 1965 c 7 § 35.75.050. Prior: 1899 c 31 § 6; RRS § 9209.]

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

Chapter 35.82 RCW

HOUSING AUTHORITIES LAW

Sections

35.82.340 Previously incarcerated individuals—Rental policies that are not unduly burdensome encouraged.

35.82.340 Previously incarcerated individuals—Rental policies that are not unduly burdensome encouraged. The legislature recognizes that stable, habitable, and supportive housing is a critical factor that increases a previously incarcerated individual's access to treatment and services as well as the likelihood of success in the community. Housing authorities are therefore encouraged to formulate rental policies that are not unduly burdensome to previously incarcerated individuals attempting to reenter the community, particularly when the individual's family may already reside in government subsidized housing. [2007 c 483 § 603.]

Finding—Intent—2007 c 483: See note following RCW 59.18.600.

Findings—Part headings not law—Severability—2007 c 483: See RCW 72.78.005, 72.78.900, and 72.78.901.

Chapter 35.88 RCW

WATER POLLUTION—PROTECTION FROM

Sections

35.88.020 Enforcement of ordinance—Special police.

35.88.020 Enforcement of ordinance—Special police. Every city and town may by ordinance prescribe what acts shall constitute offenses against the purity of its water supply

and the punishment or penalties therefor and enforce them. The mayor of each city and town may appoint special police officers, with such compensation as the city or town may fix, who shall, after taking oath, have the powers of constables, and who may arrest with or without warrant any person committing, within the territory over which any city or town is given jurisdiction by this chapter, any offense declared by law or by ordinance, against the purity of the water supply, or which violate any rule or regulation lawfully promulgated by the state board of health for the protection of the purity of such water supply. Every special police officer whose appointment is authorized herein may take any person arrested for any such offense or violation before any court having jurisdiction thereof to be proceeded with according to law. Every such special police officer shall, when on duty wear in plain view a badge or shield bearing the words "special police" and the name of the city or town by which he or she has been appointed. [2007 c 218 § 70; 1965 c 7 § 35.88.020. Prior: 1907 c 227 § 1, part; 1899 c 70 § 1, part; RRS § 9473, part.]

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

Chapter 35.92 RCW MUNICIPAL UTILITIES

Sections

- 35.92.430 Environmental mitigation activities.
35.92.440 Production and distribution of biodiesel, ethanol, and ethanol blend fuels—Crop purchase contracts for dedicated energy crops.

35.92.430 Environmental mitigation activities. (1) A city or town authorized to acquire and operate utilities for the purpose of furnishing the city or town and its inhabitants and other persons with water, with electricity for lighting and other purposes, or with service from sewerage, storm water, surface water, or solid waste handling facilities, may develop and make publicly available a plan to reduce its greenhouse gases emissions or achieve no-net emissions from all sources of greenhouse gases that the utility owns, leases, uses, contracts for, or otherwise controls.

(2) A city or town authorized to acquire and operate utilities for the purpose of furnishing the city or town and its inhabitants and other persons with water, with electricity for lighting and other purposes, or with service from sewerage, storm water, surface water, or solid waste handling facilities, may, as part of its utility operation, mitigate the environmental impacts, such as greenhouse gases emissions, of its operation, including any power purchases. The mitigation may include, but is not limited to, those greenhouse gases mitigation mechanisms recognized by independent, qualified organizations with proven experience in emissions mitigation activities. Mitigation mechanisms may include the purchase, trade, and banking of greenhouse gases offsets or credits. If a state greenhouse gases registry is established, a utility that has purchased, traded, or banked greenhouse gases mitigation mechanisms under this section shall receive credit in the registry. [2007 c 349 § 2.]

Finding—Intent—2007 c 349 § 2: "The legislature finds and declares that greenhouse gases offset contracts, credits, and other greenhouse gases mitigation efforts are a recognized utility purpose that confers a direct benefit on the utility's ratepayers. The legislature declares that section 2 of this

act is intended to reverse the result of *Okeson v. City of Seattle* (January 18, 2007), by expressly granting municipal utilities the statutory authority to engage in mitigation activities to offset their utility's impact on the environment." [2007 c 349 § 1.]

35.92.440 Production and distribution of biodiesel, ethanol, and ethanol blend fuels—Crop purchase contracts for dedicated energy crops. In addition to any other authority provided by law, municipal utilities are authorized to produce and distribute biodiesel, ethanol, and ethanol blend fuels, including entering into crop purchase contracts for a dedicated energy crop for the purpose of generating electricity or producing biodiesel produced from Washington feedstocks, cellulosic ethanol, and cellulosic ethanol blend fuels for use in internal operations of the electric utility and for sale or distribution. [2007 c 348 § 209.]

Findings—Part headings not law—2007 c 348: See RCW 43.325.005 and 43.325.903.

Chapter 35.95A RCW CITY TRANSPORTATION AUTHORITY— MONORAIL TRANSPORTATION

Sections

- 35.95A.120 Dissolution of authority.

35.95A.120 Dissolution of authority. (1) Except as provided in subsection (2) of this section, the city transportation authority may be dissolved by a vote of the people residing within the boundaries of the authority if the authority is faced with significant financial problems. However, the authority may covenant with holders of its bonds that it may not be dissolved and shall continue to exist solely for the purpose of continuing to levy and collect any taxes or assessments levied by it and pledged to the repayment of debt and to take other actions, including the appointment of a trustee, as necessary to allow it to repay any remaining debt. No such debt may be incurred by the authority on a project until thirty days after a final environmental impact statement on that project has been issued as required by chapter 43.21C RCW. The amount of the authority's initial bond issue is limited to the amount of the project costs in the subsequent two years as documented by a certified engineer or by submitted bids, plus any reimbursable capital expenses already incurred at the time of the bond issue. The authority may size the first bond issue consistent with the internal revenue service five-year spend down schedule if an independent financial advisor recommends such an approach is financially advisable. Any referendum petition to dissolve the city transportation authority must be filed with the city council and contain provisions for dissolution of the authority. Within seven days, the city prosecutor must review the validity of the petition and submit its report to the petitioner and city council. If the petitioner's claims are deemed valid by the city prosecutor, within ten days of the petitioner's filing, the city council will confer with the petitioner concerning the form and style of the petition, issue an identification number for the petition, and write a ballot title for the measure. The ballot title must be posed as a question and an affirmative vote on the measure results in authority retention and a negative vote on the measure results in the authority's dissolution. The petitioner will be

notified of the identification number and ballot title within this ten-day period.

After this notification, the petitioner has ninety days in which to secure on petition forms, the signatures of not less than fifteen percent of the registered voters in the authority area and to file the signed petitions with the filing officer. Each petition form must contain the ballot title and the full text of the measure to be referred. The filing officer will verify the sufficiency of the signatures on the petitions. If sufficient valid signatures are properly submitted, the filing officer shall submit the initiative to the authority area voters at a general or special election held on one of the dates provided in RCW 29A.04.321 as determined by the city council, which election will not take place later than one hundred twenty days after the signed petition has been filed with the filing officer.

(2) A city transportation authority is dissolved and terminated if all of the following events occur before or after July 22, 2007:

(a) A majority of the qualified electors voting at a regular or special election determine that new public monorail transportation facilities must not be built;

(b) The governing body of the authority adopts a resolution and publishes a notice of the proposed dissolution at least once every week for three consecutive weeks in a newspaper of general circulation published in the authority area. The resolution and notice must:

(i) Describe information that must be included in a notice of claim against the authority including, but not limited to, any claims for refunds of special motor vehicle excise tax levied under RCW 35.95A.080 and collected by or on behalf of the authority;

(ii) Provide a mailing address where a notice of claim may be sent;

(iii) State the deadline, which must be at least ninety days from the date of the third publication, by which the authority must receive a notice of claim; and

(iv) State that a claim will be barred if a notice of claim is not received by the deadline;

(c) The authority resolves all claims timely made under (b) of this subsection; and

(d) The governing body adopts a resolution (i) finding that the conditions of (a) through (c) of this subsection have been met and (ii) dissolving and terminating the authority.

(3) A claim against a city transportation authority is barred if (a) a claimant does not deliver a notice of claim to the authority by the deadline stated in subsection (2)(b)(iii) of this section or (b) a claimant whose claim was rejected by the authority does not commence a proceeding to enforce the claim within sixty days from receipt of the rejection notice. For purposes of this subsection, "claim" includes, but is not limited to, any right to payment, whether liquidated, unliquidated, fixed, contingent, matured, unmatured, disputed, undisputed, legal, equitable, secured, or unsecured, or the right to an equitable remedy for breach of performance if the breach gives rise to a right to payment, whether or not the right to an equitable remedy is fixed, contingent, matured, unmatured, disputed, undisputed, secured, or unsecured, including, but not limited to, any claim for a refund of special motor vehicle excise tax levied under RCW 35.95A.080 and collected by or on behalf of the authority.

(4) The governing body of the authority may transfer any net assets to one or more other political subdivisions with instructions as to their use or disposition. The governing body shall authorize this transfer in the resolution that dissolves and terminates the authority under subsection (2)(d) of this section.

(5) Upon the dissolution and termination of the authority, the former officers, directors, employees, and agents of the authority shall be immune from personal liability in connection with any claims brought against them arising from or relating to their service to the authority, and any claim brought against any of them is barred.

(6) Upon satisfaction of the conditions set forth in subsection (2)(a) and (b) of this section, the terms of all members of the governing body of the city transportation authority, whether elected or appointed, who are serving as of the date of the adoption of the resolution described in subsection (2)(b) of this section, shall be extended, and incumbent governing body members shall remain in office until dissolution of the authority, notwithstanding any provision of any law to the contrary. [2007 c 516 § 12; 2003 c 147 § 14; 2002 c 248 § 13.]

Findings—Intent—2007 c 516: See note following RCW 47.01.011.

Effective date—2003 c 147: See note following RCW 47.10.861.

Chapter 35.102 RCW

MUNICIPAL BUSINESS AND OCCUPATION TAX

Sections

35.102.020 Limited scope—Utility businesses. (*Effective July 1, 2008.*)

35.102.020 Limited scope—Utility businesses. (*Effective July 1, 2008.*) Chapter 79, Laws of 2003 does not apply to taxes on any service that historically or traditionally has been taxed as a utility business for municipal tax purposes, such as:

- (1) A light and power business or a natural gas distribution business, as defined in RCW 82.16.010;
- (2) A telephone business, as defined in RCW 82.16.010;
- (3) Cable television services;
- (4) Sewer or water services;
- (5) Drainage services;
- (6) Solid waste services; or
- (7) Steam services. [2007 c 6 § 1021; 2003 c 79 § 2.]

Part headings not law—Savings—Effective date—Severability—2007 c 6: See notes following RCW 82.32.020.

Findings—Intent—2007 c 6: See note following RCW 82.14.495.

Chapter 35.104 RCW

HEALTH SCIENCES AND SERVICES AUTHORITIES

Sections

- 35.104.010 Purpose.
- 35.104.020 Definitions.
- 35.104.030 Creation.
- 35.104.040 Applications.
- 35.104.050 Governing board.
- 35.104.060 Powers and duties.
- 35.104.070 General indebtedness—General obligation bonds.
- 35.104.080 Limitation on bonds issued.
- 35.104.090 Liability.
- 35.104.100 Dissolution of sponsoring local government.

35.104.010 Purpose. The health sciences and services program is created to promote bioscience-based economic development and advance new therapies and procedures to combat disease and promote public health. [2007 c 251 § 2.]

Captions not law—2007 c 251: "Captions used in this act are not any part of the law." [2007 c 251 § 14.]

Severability—2007 c 251: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [2007 c 251 § 15.]

35.104.020 Definitions. The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

(1) "Authority" means a health sciences and services authority created pursuant to this chapter.

(2) "Board" means the governing board of trustees of an authority.

(3) "Director" means [the director of] the higher education coordinating board.

(4) "Health sciences and services" means biosciences that advance new therapies and procedures to combat disease and promote public health.

(5) "Local government" means a city, town, or county.

(6) "Sponsoring local government" means a city, town, or county that creates a health sciences and services authority. [2007 c 251 § 1.]

Captions not law—Severability—2007 c 251: See notes following RCW 35.104.010.

35.104.030 Creation. A local government must establish by ordinance or resolution an authority. At a minimum, the ordinance must:

(1) Specify the powers to be exercised by the authority;

(2) Reserve the local government's right to dissolve the authority after its contractual responsibilities have expired;

(3) Establish an administrative board, including: (a) The number of board members; (b) the times and terms of appointment for each board position; (c) the amount of compensation, if any, to be paid to board members; (d) the procedures for removing board members and filing vacancies; and (e) the qualifications for the appointment of individuals to the board;

(4) Establish the authority's boundaries, which must be contiguous tracts of land;

(5) Ensure that private and public funds provided to the authority will be segregated;

(6) Establish guidelines under which the authority may invest its funds;

(7) Provide the requirements for auditing the records of the authority; and

(8) Require the local government's legal counsel to also provide legal services to the authority. [2007 c 251 § 3.]

Captions not law—Severability—2007 c 251: See notes following RCW 35.104.010.

35.104.040 Applications. (1) The higher education coordinating board may approve applications submitted by local governments for an area's designation as a health sciences and services authority under this chapter. The director shall determine the division to review applications submitted

by local governments under this chapter. The application for designation shall be in the form and manner and contain such information as the higher education coordinating board may prescribe, provided the application shall:

(a) Contain sufficient information to enable the director to determine the viability of the proposal;

(b) Demonstrate that an ordinance or resolution has been passed by the legislative authority of a local government that delineates the boundaries of an area that may be designated an authority;

(c) Be submitted on behalf of the local government, or, if that office does not exist, by the legislative body of the local government;

(d) Demonstrate that the public funds directed to programs or facilities in the authority will leverage private sector resources and contributions to activities to be performed;

(e) Provide a plan or plans for the development of the authority as an entity to advance as a cluster for health sciences education, health sciences research, biotechnology development, biotechnology product commercialization, and/or health care services; and

(f) Demonstrate that the state has previously provided funds to health sciences and services programs or facilities in the applicant city, town, or county.

(2) The director shall determine the division to develop criteria to evaluate the application. The criteria shall include:

(a) The presence of infrastructure capable of spurring development of the area as a center of health sciences and services;

(b) The presence of higher education facilities where undergraduate or graduate coursework or research is conducted; and

(c) The presence of facilities in which health services are provided.

(3) There shall be no more than one authority statewide.

(4) An authority may only be created in a county with a population of less than one million persons.

(5) The director may reject or approve an application. When denying an application, the director must specify the application's deficiencies. The decision regarding such designation as it relates to a specific local government is final; however, a rejected application may be resubmitted.

(6) Applications are due by December 31, 2007, and must be processed within sixty days of submission.

(7) The director may, at his or her discretion, amend the boundaries of an authority upon the request of the local government.

(8) The higher education coordinating board may adopt any rules necessary to implement chapter 251, Laws of 2007 within one hundred twenty days of July 22, 2007.

(9) The higher education coordinating board must develop evaluation and performance measures in order to evaluate the effectiveness of the programs in the authorities that are funded with public resources. A report to the legislature shall be due on a biennial basis beginning December 1, 2009. In addition, the higher education coordinating board shall develop evaluation criteria that enables the local governments to measure the effectiveness of the program. [2007 c 251 § 4.]

Captions not law—Severability—2007 c 251: See notes following RCW 35.104.010.

35.104.050 Governing board. (1) An authority shall be overseen by a board with not more than fourteen members. The authority board shall select the chair. Board members must have some experience with the mission of the authority. The board members shall be appointed as follows:

- (a) The governor shall appoint three members;
- (b) The county legislative authority in which the authority resides shall appoint three members;
- (c) The mayor of the city in which the authority is created, or the mayor of the largest city within the authority if created by a county, shall appoint three members; and
- (d) Up to five additional members may be appointed by the board.

(2) A simple majority of the board members shall constitute a quorum.

(3) The board shall annually elect a secretary and any other officers it deems necessary.

(4) The local government shall designate an individual with financial experience to serve as treasurer. The individual may be a city or county treasurer, city or county auditor, or a private party. If the treasurer is a private party, the local government shall require a bond in an amount and under such terms and conditions as the local government deems necessary to protect the authority. The treasurer shall have the power to create and maintain funds, issue warrants, and invest funds in its possession.

(5) The board may adopt bylaws or rules for their own governance.

(6) Meetings of the board shall be held in accordance with the open public meetings act, chapter 42.30 RCW, and at the call of the chair or when a majority of the board so requests. Meetings of the board may be held at any location and board members may participate in a meeting of the board by means of a conference telephone or similar communication equipment under RCW 23B.08.200. [2007 c 251 § 5.]

Captions not law—Severability—2007 c 251: See notes following RCW 35.104.010.

35.104.060 Powers and duties. (1) The authority has all the general powers necessary to carry out its purposes and duties and to exercise its specific powers, including the authority may:

- (a) Sue and be sued in its own name;
- (b) Make and execute agreements, contracts, and other instruments, with any public or private entity or person, in accordance with this chapter;
- (c) Employ, contract with, or engage independent counsel, financial advisors, auditors, other technical or professional assistants, and such other personnel as are necessary or desirable to implement this chapter;
- (d) Establish such special funds, and control deposits to and disbursements from them, as it finds convenient for the implementation of this chapter;
- (e) Enter into contracts with public and private entities for research to be conducted in this state;
- (f) Delegate any of its powers and duties if consistent with the purposes of this chapter;
- (g) Exercise any other power reasonably required to implement the purposes of this chapter; and
- (h) Hire staff and pay administrative costs; however, such expenses shall be paid from moneys provided by the

sponsoring local government and moneys received from gifts, grants, and bequests and the interest earned on the authority's accounts and investments.

(2) In addition to other powers and duties prescribed in this chapter, the authority is empowered to:

(a) Use the authority's public moneys, leveraging those moneys with amounts received from other public and private sources in accordance with contribution agreements, to promote bioscience-based economic development, and to advance new therapies and procedures to combat disease and promote public health;

(b) Solicit and receive gifts, grants, and bequests, and enter into contribution agreements with private entities and public entities to receive moneys in consideration of the authority's promise to leverage those moneys with the revenue generated by the tax authorized under RCW 82.14.480 and contributions from other public entities and private entities, in order to use those moneys to promote bioscience-based economic development and advance new therapies and procedures to combat disease and promote public health;

(c) Hold funds received by the authority in trust for their use pursuant to this chapter to promote bioscience-based economic development and advance new therapies and procedures to combat disease and promote public health;

(d) Manage its funds, obligations, and investments as necessary and consistent with its purpose, including the segregation of revenues into separate funds and accounts;

(e) Make grants to entities pursuant to contract to promote bioscience-based economic development and advance new therapies and procedures to combat disease and promote public health. Grant agreements shall specify the deliverables to be provided by the recipient pursuant to the grant. Grants to private entities may only be provided under a contractual agreement that ensures the state will receive appropriate consideration, such as an assurance of job creation or retention, or the delivery of services that provide for the public health, safety, and welfare. The authority shall solicit requests for funding and evaluate the requests by reference to factors such as: (i) The quality of the proposed research; (ii) its potential to improve health outcomes, with particular attention to the likelihood that it will also lower health care costs, substitute for a more costly diagnostic or treatment modality, or offer a breakthrough treatment for a particular disease or condition; (iii) its potential to leverage additional funding; (iv) its potential to provide health care benefits; (v) its potential to stimulate employment; and (vi) evidence of public and private collaboration;

(f) Create one or more advisory boards composed of scientists, industrialists, and others familiar with health sciences and services; and

(g) Adopt policies and procedures to facilitate the orderly process of grant application, review, and reward.

(3) The records of the authority shall be subject to audit by the office of the state auditor. [2007 c 251 § 6.]

Captions not law—Severability—2007 c 251: See notes following RCW 35.104.010.

35.104.070 General indebtedness—General obligation bonds. (1) A local government that creates a health sciences and services authority may incur general indebtedness, and issue general obligation bonds, to finance the grants and

other programs and retire the indebtedness in whole or in part from the funds distributed pursuant to RCW 82.14.480 and subject to the following requirements:

(a) The ordinance adopted by the local government creating the authority and authorizing the use of the excise tax in RCW 82.14.480 indicates an intent to incur this indebtedness and the maximum amount of this indebtedness that is contemplated; and

(b) The local government includes this statement of the intent in all notices.

(2) The general indebtedness incurred under this section may be payable from other tax revenues, the full faith and credit of the sponsoring local government, and nontax income, revenues, fees, and rents from the public improvements, as well as contributions, grants, and nontax money available to the local government for payment of costs of the grants and other programs or associated debt service on the general indebtedness. [2007 c 251 § 7.]

Captions not law—Severability—2007 c 251: See notes following RCW 35.104.010.

35.104.080 Limitation on bonds issued. The bonds issued by a local government under RCW 35.104.070 shall not constitute an obligation of the state of Washington, either general or special. [2007 c 251 § 8.]

Captions not law—Severability—2007 c 251: See notes following RCW 35.104.010.

35.104.090 Liability. (1) Members of the board, as well as other persons acting on behalf of the authority, while acting within the scope of their employment or agency, shall not be subject to personal liability resulting from their official duties conferred on them under this chapter.

(2) The state, the local government that created the authority, and the authority shall not be liable for any loss, damage, harm, or other consequences resulting directly or indirectly from grants provided by the authority or from programs, services, research, or other activities funded with such grants. [2007 c 251 § 9.]

Captions not law—Severability—2007 c 251: See notes following RCW 35.104.010.

35.104.100 Dissolution of sponsoring local government. The board may petition the sponsoring local government to be dissolved upon a showing that it has no reason to exist and that any assets it retains must be returned to the state treasurer. [2007 c 251 § 10.]

Captions not law—Severability—2007 c 251: See notes following RCW 35.104.010.

Title 35A

OPTIONAL MUNICIPAL CODE

Chapters

- 35A.11** Laws governing noncharter code cities and charter code cities—Powers.
- 35A.14** Annexation by code cities.
- 35A.21** Provisions affecting all code cities.
- 35A.40** Fiscal provisions applicable to code cities.
- 35A.63** Planning and zoning in code cities.
- 35A.82** Taxation—Excises.

Chapter 35A.11 RCW

LAWS GOVERNING NONCHARTER CODE CITIES AND CHARTER CODE CITIES—POWERS

Sections

- 35A.11.020** Powers vested in legislative bodies of noncharter and charter code cities.

35A.11.020 Powers vested in legislative bodies of noncharter and charter code cities. The legislative body of each code city shall have power to organize and regulate its internal affairs within the provisions of this title and its charter, if any; and to define the functions, powers, and duties of its officers and employees; within the limitations imposed by vested rights, to fix the compensation and working conditions of such officers and employees and establish and maintain civil service, or merit systems, retirement and pension systems not in conflict with the provisions of this title or of existing charter provisions until changed by the people: PROVIDED, That nothing in this section or in this title shall permit any city, whether a code city or otherwise, to enact any provisions establishing or respecting a merit system or system of civil service for firefighters and police officers which does not substantially accomplish the same purpose as provided by general law in chapter 41.08 RCW for firefighters and chapter 41.12 RCW for police officers now or as hereafter amended, or enact any provision establishing or respecting a pension or retirement system for firefighters or police officers which provides different pensions or retirement benefits than are provided by general law for such classes.

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

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

In addition and not in limitation, the legislative body of each code city shall have any authority ever given to any

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

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

Effective date—1993 c 83: See note following RCW 35.21.163.

Severability—1986 c 278: See note following RCW 36.01.010.

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

Effective date—1969 ex.s. c 29: "The effective date of this act is July 1, 1969." [1969 ex.s. c 29 § 2.]

Chapter 35A.14 RCW

ANNEXATION BY CODE CITIES

Sections

35A.14.801 Taxes collected in annexed territory—Notification of annexation.

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

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

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

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

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

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

(b) Library district taxes on annexed property that were levied, but not collected, and were delinquent at the time of

the annexation and the pro rata share of the current year levy budgeted for general obligation debt, when collected, shall be paid to the library district.

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

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

(6) The code city is required to provide notification, by certified mail, that includes a list of annexed parcel numbers, to the county treasurer and assessor, and to the fire district and library district, as appropriate, at least thirty days before the effective date of the annexation. The county treasurer is only required to remit to the code city those road taxes, fire district taxes, and library district taxes collected thirty or more days after receipt of the notification.

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

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

(ii) Include a description of the annexed area.

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

(8) The provisions of this section regarding (a) the transfer of fire and library district property taxes and (b) code city notifications to fire and library districts do not apply if the code city has been annexed to and is within the fire or library district when the code city approves a resolution to annex unincorporated county territory. [2007 c 285 § 2; 2001 c 299 § 3; 1998 c 106 § 2; 1971 ex.s. c 251 § 14.]

Severability—1971 ex.s. c 251: See RCW 35A.90.050.

Chapter 35A.21 RCW

PROVISIONS AFFECTING ALL CODE CITIES

Sections

35A.21.300 Rail fixed guideway system—Safety program plan and security and emergency preparedness plan.

35A.21.300 Rail fixed guideway system—Safety program plan and security and emergency preparedness plan. (1) Each code city that owns or operates a rail fixed guideway system as defined in RCW 81.104.015 shall submit a system safety program plan and a system security and emergency preparedness plan for that guideway to the state department of transportation by September 1, 1999, or at least one hundred eighty calendar days before beginning operations or instituting revisions to its plans. These plans must describe the code city's procedures for (a) reporting and investigating

reportable accidents, unacceptable hazardous conditions, and security breaches, (b) submitting corrective action plans and annual safety and security audit reports, (c) facilitating on-site safety and security reviews by the state department of transportation, and (d) addressing passenger and employee security. The plans must, at a minimum, conform to the standards adopted by the state department of transportation. If required by the department, the code city shall revise its plans to incorporate the department's review comments within sixty days after their receipt, and resubmit its revised plans for review.

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

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

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

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

Effective date—1999 c 202: See note following RCW 35.21.228.

Chapter 35A.40 RCW

FISCAL PROVISIONS APPLICABLE TO CODE CITIES

Sections

35A.40.050 Fiscal—Investment of funds.

35A.40.050 Fiscal—Investment of funds. Excess and inactive funds on hand in the treasury of any code city may be invested in the same manner and subject to the same limitations as provided for city and town funds in all applicable statutes, including, but not limited to the following: RCW 35.39.030, 35.58.510, 35.81.070, 35.82.070, 36.29.020,

39.58.020, 39.58.080, 39.58.130, 39.60.010, 39.60.020, 41.16.040, 68.52.060, 68.52.065, and 72.19.120.

The responsibility for determining the amount of money available in each fund for investment purposes shall be placed upon the department, division, or board responsible for the administration of such fund.

Moneys thus determined available for this purpose may be invested on an individual fund basis or may, unless otherwise restricted by law be commingled within one common investment portfolio for the mutual benefit of all participating funds: PROVIDED, That if such moneys are commingled in a common investment portfolio, all income derived therefrom shall be apportioned among the various participating funds or the general or current expense fund as the governing body of the code city determines by ordinance or resolution.

Any excess or inactive funds on hand in the city treasury not otherwise invested for the specific benefit of any particular fund, may be invested by the city treasurer in United States government bonds, notes, bills or certificates of indebtedness for the benefit of the general or current expense fund. [2007 c 64 § 1; 1987 c 331 § 77; 1983 c 66 § 2; 1983 c 3 § 64; 1967 ex.s. c 119 § 35A.40.050.]

Effective date—1987 c 331: See RCW 68.05.900.

Severability—1983 c 66: See note following RCW 39.58.010.

Chapter 35A.63 RCW

PLANNING AND ZONING IN CODE CITIES

Sections

35A.63.215 Family day-care provider's home facility—City may not prohibit in residential or commercial area—Conditions.

35A.63.215 Family day-care provider's home facility—City may not prohibit in residential or commercial area—Conditions. (1) Except as provided in subsections (2) and (3) of this section, no city may enact, enforce, or maintain an ordinance, development regulation, zoning regulation, or official control, policy, or administrative practice that prohibits the use of a residential dwelling, located in an area zoned for residential or commercial use, as a family day-care provider's home facility.

(2) A city may require that the facility: (a) Comply with all building, fire, safety, health code, and business licensing requirements; (b) conform to lot size, building size, setbacks, and lot coverage standards applicable to the zoning district except if the structure is a legal nonconforming structure; (c) is certified by the department of early learning licenser as providing a safe passenger loading area; (d) include signage, if any, that conforms to applicable regulations; and (e) limit hours of operations to facilitate neighborhood compatibility, while also providing appropriate opportunity for persons who use family day-care and who work a nonstandard work shift.

(3) A city may also require that the family day-care provider, before state licensing, require proof of written notification by the provider that the immediately adjoining property owners have been informed of the intent to locate and maintain such a facility. If a dispute arises between neighbors and the family day-care provider over licensing requirements, the licenser may provide a forum to resolve the dispute.

(4) Nothing in this section shall be construed to prohibit a city from imposing zoning conditions on the establishment and maintenance of a family day-care provider's home in an area zoned for residential or commercial use, so long as such conditions are no more restrictive than conditions imposed on other residential dwellings in the same zone and the establishment of such facilities is not precluded. As used in this section, "family day-care provider" is as defined in RCW 43.215.010. [2007 c 17 § 11; 2003 c 286 § 4; 1995 c 49 § 2; 1994 c 273 § 16.]

Chapter 35A.82 RCW TAXATION—EXCISES

Sections

- 35A.82.055 License fees or taxes on telephone business to be at uniform rate. (*Effective July 1, 2008.*)
- 35A.82.060 License fees or taxes on telephone business—Imposition on certain gross revenues authorized—Limitations. (*Effective July 1, 2008; contingency, see note following RCW 82.04.530.*)
- 35A.82.065 Taxes on network telephone services. (*Effective July 1, 2008.*)

35A.82.055 License fees or taxes on telephone business to be at uniform rate. (*Effective July 1, 2008.*) Any code city which imposes a license fee or tax upon the business activity of engaging in the telephone business, as defined in RCW 82.16.010, which is measured by gross receipts or gross income from the business shall impose the tax at a uniform rate on all persons engaged in the telephone business in the code city.

This section does not apply to the providing of competitive telephone service as defined in RCW 82.04.065 or to the providing of payphone service as defined in RCW 35.21.710. [2007 c 6 § 1012; 2002 c 179 § 4; 1983 2nd ex.s. c 3 § 36; 1981 c 144 § 9.]

Part headings not law—Savings—Effective date—Severability—2007 c 6: See notes following RCW 82.32.020.

Findings—Intent—2007 c 6: See note following RCW 82.14.495.

Effective date—2002 c 179: See note following RCW 35.21.710.

Construction—Severability—Effective dates—1983 2nd ex.s. c 3: See notes following RCW 82.04.255.

Intent—Severability—Effective date—1981 c 144: See notes following RCW 82.16.010.

35A.82.060 License fees or taxes on telephone business—Imposition on certain gross revenues authorized—Limitations. (*Effective July 1, 2008; contingency, see note following RCW 82.04.530.*) (1) Any code city which imposes a license fee or tax upon the business activity of engaging in the telephone business which is measured by gross receipts or gross income may impose the fee or tax, if it desires, on one hundred percent of the total gross revenue derived from intrastate toll telephone services subject to the fee or tax: PROVIDED, That the city shall not impose the fee or tax on that portion of network telephone service which represents charges to another telecommunications company, as defined in RCW 80.04.010, for connecting fees, switching charges, or carrier access charges relating to intrastate toll telephone services, or for access to, or charges for, interstate services, or charges for network telephone service that is purchased for the purpose of resale, or charges for mobile tele-

communications services provided to customers whose place of primary use is not within the city.

(2) Any city that imposes a license tax or fee under subsection (1) of this section has the authority, rights, and obligations of a taxing jurisdiction as provided in RCW 82.32.490 through 82.32.510.

(3) The definitions in RCW 82.04.065 and 82.16.010 apply to this section. [2007 c 6 § 1014; 2007 c 6 § 1013; 2002 c 67 § 10; 1989 c 103 § 3; 1986 c 70 § 4; 1983 2nd ex.s. c 3 § 38; 1981 c 144 § 11.]

Contingent effective date—2007 c 6 §§ 1003, 1006, 1014, and 1018: See note following RCW 82.04.065.

Part headings not law—Savings—Effective date—Severability—2007 c 6: See notes following RCW 82.32.020.

Findings—Intent—2007 c 6: See note following RCW 82.14.495.

Finding—Contingency—Court judgment—Effective date—2002 c 67: See note and Reviser's note following RCW 82.04.530.

Severability—1989 c 103: See note following RCW 35.21.714.

Effective date—1986 c 70 §§ 1, 2, 4, 5: See note following RCW 35.21.714.

Construction—Severability—Effective dates—1983 2nd ex.s. c 3: See notes following RCW 82.04.255.

Intent—Severability—Effective date—1981 c 144: See notes following RCW 82.16.010.

35A.82.065 Taxes on network telephone services. (*Effective July 1, 2008.*) Notwithstanding RCW 35.21.714 or 35A.82.060, any city or town which imposes a tax upon business activities measured by gross receipts or gross income from sales, may impose such tax on that portion of network telephone service, as defined in RCW 82.16.010, which represents charges to another telecommunications company, as defined in RCW 80.04.010, for connecting fees, switching charges, or carrier access charges relating to intrastate toll services, or charges for network telephone service that is purchased for the purpose of resale. Such tax shall be levied at the same rate as is applicable to other competitive telephone service as defined in RCW 82.04.065. [2007 c 6 § 1015; 1989 c 103 § 4; 1986 c 70 § 5.]

Part headings not law—Savings—Effective date—Severability—2007 c 6: See notes following RCW 82.32.020.

Findings—Intent—2007 c 6: See note following RCW 82.14.495.

Severability—1989 c 103: See note following RCW 35.21.714.

Effective date—1986 c 70 §§ 1, 2, 4, 5: See note following RCW 35.21.714.

Title 36 COUNTIES

Chapters

- 36.01** General provisions.
- 36.18** Fees of county officers.
- 36.22** County auditor.
- 36.28A** Association of sheriffs and police chiefs.
- 36.32** County commissioners.
- 36.33A** Equipment rental and revolving fund.
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- 36.57** County public transportation authority.
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Chapter 36.01 RCW
GENERAL PROVISIONS

Sections

- 36.01.210 Rail fixed guideway system—Safety program plan and security and emergency preparedness plan.
 36.01.250 Environmental mitigation activities.

36.01.210 Rail fixed guideway system—Safety program plan and security and emergency preparedness plan. (1) Each county functioning under chapter 36.56 RCW that owns or operates a rail fixed guideway system as defined in RCW 81.104.015 shall submit a system safety program plan and a system security and emergency preparedness plan for that guideway to the state department of transportation by September 1, 1999, or at least one hundred eighty calendar days before beginning operations or instituting revisions to its plans. These plans must describe the county's procedures for (a) reporting and investigating reportable accidents, unacceptable hazardous conditions, and security breaches, (b) submitting corrective action plans and annual safety and security audit reports, (c) facilitating on-site safety and security reviews by the state department of transportation, and (d) addressing passenger and employee security. The plans must, at a minimum, conform to the standards adopted by the state department of transportation. If required by the department, the county shall revise its plans to incorporate the department's review comments within sixty days after their receipt, and resubmit its revised plans for review.

(2) Each county functioning under chapter 36.56 RCW shall implement and comply with its system safety program plan and system security and emergency preparedness plan. The county shall perform internal safety and security audits to evaluate its compliance with the plans, and submit its audit schedule to the department of transportation no later than December 15th each year. The county shall prepare an annual report for its internal safety and security audits undertaken in the prior year and submit it to the department no later than February 15th. This annual report must include the dates the audits were conducted, the scope of the audit activity, the audit findings and recommendations, the status of any corrective actions taken as a result of the audit activity, and the results of each audit in terms of the adequacy and effectiveness of the plans.

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

within forty-five calendar days after the reportable accident, unacceptable hazardous condition, or security breach.

(4) The system security and emergency preparedness plan required in subsection (1)(d) of this section is exempt from public disclosure under chapter 42.56 RCW. However, the system safety program plan as described in this section is not subject to this exemption. [2007 c 422 § 3; 2005 c 274 § 268; 1999 c 202 § 3.]

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

Effective date—1999 c 202: See note following RCW 35.21.228.

36.01.250 Environmental mitigation activities. (1) Any county authorized to acquire and operate utilities or conduct other proprietary or user or ratepayer funded activities may develop and make publicly available a plan for the county to reduce its greenhouse gases emissions or achieve no-net emissions from all sources of greenhouse gases that such county utility or proprietary or user or ratepayer funded activity owns, operates, leases, uses, contracts for, or otherwise controls.

(2) Any county authorized to acquire and operate utilities or conduct other proprietary or user or ratepayer funded activities may, as part of such utility or activity, reduce or mitigate the environmental impacts, such as greenhouse gases emissions, of such utility and other proprietary or user or ratepayer funded activity. The mitigation may include, but is not limited to, all greenhouse gases mitigation mechanisms recognized by independent, qualified organizations with proven experience in emissions mitigation activities. Mitigation mechanisms may include the purchase, trade, and banking of carbon offsets or credits. Ratepayer funds, fees, or other revenue dedicated to a county utility or other proprietary or user or ratepayer funded activity may be spent to reduce or mitigate the environmental impacts of greenhouse gases emitted as a result of that function. If a state greenhouse gases registry is established, the county that has purchased, traded, or banked greenhouse gases mitigation mechanisms under this section shall receive credit in the registry. [2007 c 349 § 6.]

Findings—Intent—2007 c 349 § 6: "The legislature finds and declares that greenhouse gases offset contracts, credits, and other greenhouse gases mitigation efforts are a recognized utility purpose that confers a direct benefit on the utility's ratepayers. The legislature also finds and declares that greenhouse gases offset contracts, credits, and other greenhouse gases mitigation efforts are a recognized purpose of other county proprietary activities that are funded by users and ratepayers, and that such mitigation efforts confer a direct benefit on such payers. The legislature declares that section 6 of this act is intended to reverse the result of *Okeson v. City of Seattle* (January 18, 2007), by expressly granting counties the statutory authority to engage in mitigation activities to offset the impact on the environment of their utilities and certain other proprietary and user and ratepayer funded activities." [2007 c 349 § 5.]

Chapter 36.18 RCW
FEES OF COUNTY OFFICERS

Sections

- 36.18.010 Auditor's fees. (*Effective January 1, 2008.*)
 36.18.016 Various fees collected—Not subject to division. (*Effective July 1, 2009.*)

36.18.010 Auditor's fees. (Effective January 1, 2008.)

County auditors or recording officers shall collect the following fees for their official services:

(1) For recording instruments, for the first page eight and one-half by fourteen inches or less, five dollars; for each additional page eight and one-half by fourteen inches or less, one dollar. The fee for recording multiple transactions contained in one instrument will be calculated for each transaction requiring separate indexing as required under RCW 65.04.050 as follows: The fee for each title or transaction is the same fee as the first page of any additional recorded document; the fee for additional pages is the same fee as for any additional pages for any recorded document; the fee for the additional pages may be collected only once and may not be collected for each title or transaction;

(2) For preparing and certifying copies, for the first page eight and one-half by fourteen inches or less, three dollars; for each additional page eight and one-half by fourteen inches or less, one dollar;

(3) For preparing noncertified copies, for each page eight and one-half by fourteen inches or less, one dollar;

(4) For administering an oath or taking an affidavit, with or without seal, two dollars;

(5) For issuing a marriage license, eight dollars, (this fee includes taking necessary affidavits, filing returns, indexing, and transmittal of a record of the marriage to the state registrar of vital statistics) plus an additional five-dollar fee for use and support of the prevention of child abuse and neglect activities to be transmitted monthly to the state treasurer and deposited in the state general fund plus an additional ten-dollar fee to be transmitted monthly to the state treasurer and deposited in the state general fund. The legislature intends to appropriate an amount at least equal to the revenue generated by this fee for the purposes of the displaced homemaker act, chapter 28B.04 RCW;

(6) For searching records per hour, eight dollars;

(7) For recording plats, fifty cents for each lot except cemetery plats for which the charge shall be twenty-five cents per lot; also one dollar for each acknowledgment, dedication, and description: PROVIDED, That there shall be a minimum fee of twenty-five dollars per plat;

(8) For recording of miscellaneous records not listed above, for the first page eight and one-half by fourteen inches or less, five dollars; for each additional page eight and one-half by fourteen inches or less, one dollar;

(9) For modernization and improvement of the recording and indexing system, a surcharge as provided in RCW 36.22.170;

(10) For recording an emergency nonstandard document as provided in RCW 65.04.047, fifty dollars, in addition to all other applicable recording fees;

(11) For recording instruments, a two-dollar surcharge to be deposited into the Washington state heritage center account created in RCW 43.07.129;

(12) For recording instruments, a surcharge as provided in RCW 36.22.178; and

(13) For recording instruments, except for documents recording a birth, marriage, divorce, or death or any documents otherwise exempted from a recording fee under state law, a surcharge as provided in RCW 36.22.179. [2007 c 523 § 2. Prior: 2005 c 484 § 19; 2005 c 374 § 1; 2002 c 294 § 3;

1999 c 233 § 3; 1996 c 143 § 1; 1995 c 246 § 37; 1991 c 26 § 2; prior: 1989 c 304 § 1; 1989 c 204 § 6; 1987 c 230 § 1; 1985 c 44 § 2; 1984 c 261 § 4; 1982 1st ex.s. c 15 § 7; 1982 c 4 § 12; 1977 ex.s. c 56 § 1; 1967 c 26 § 8; 1963 c 4 § 36.18.010; prior: 1959 c 263 § 6; 1953 c 214 § 2; 1951 c 51 § 4; 1907 c 56 § 1, part, p 92; 1903 c 151 § 1, part, p 295; 1893 c 130 § 1, part, p 423; Code 1881 § 2086, part, p 358; 1869 p 369 § 3; 1865 p 94 § 1; part; 1863 p 391 § 1, part, p 394; 1861 p 34 § 1, part, p 37; 1854 p 368 § 1, part, p 371; RRS §§ 497, part, 4105.]

Effective date—2007 c 523 § 2: "Section 2 of this act takes effect January 1, 2008." [2007 c 523 § 8.]

Contingency—2007 c 523: See note following RCW 43.07.128.

Findings—Conflict with federal requirements—Effective date—2005 c 484: See RCW 43.185C.005, 43.185C.901, and 43.185C.902.

Findings—2002 c 294: See note following RCW 36.22.178.

Effective date—1999 c 233: See note following RCW 4.28.320.

Effective date—1996 c 143: "This act shall take effect January 1, 1997." [1996 c 143 § 5.]

Effective date—1995 c 246 § 37: "Section 37 of this act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and shall take effect immediately [May 5, 1995]." [1995 c 246 § 39.]

Severability—1995 c 246: See note following RCW 26.50.010.

Findings—1989 c 204: See note following RCW 36.22.160.

Effective date—1987 c 230: "This act is necessary for the immediate preservation of the public peace, health and safety, the support of the state government and its existing public institutions, and shall take effect July 1, 1987." [1987 c 230 § 4.]

Severability—1984 c 261: See note following RCW 43.121.020.

Severability—1982 c 4: See RCW 43.121.910.

Effective date—1967 c 26: See note following RCW 43.70.150.

Family court funding, marriage license fee increase authorized: RCW 26.12.220.

36.18.016 Various fees collected—Not subject to division. (Effective July 1, 2009.) (1) Revenue collected under this section is not subject to division under RCW 36.18.025 or 27.24.070.

(2)(a) For the filing of a petition for modification of a decree of dissolution or paternity, within the same case as the original action, and any party filing a counterclaim, cross-claim, or third-party claim in any such action, a fee of thirty-six dollars must be paid.

(b) The party filing the first or initial petition for dissolution, legal separation, or declaration concerning the validity of marriage shall pay, at the time and in addition to the filing fee required under RCW 36.18.020, a fee of thirty dollars. The clerk of the superior court shall transmit monthly twenty-four dollars of the thirty-dollar fee collected under this subsection to the state treasury for deposit in the domestic violence prevention account. The remaining six dollars shall be retained by the county for the purpose of supporting community-based services within the county for victims of domestic violence, except for five percent of the six dollars, which may be retained by the court for administrative purposes.

(3)(a) The party making a demand for a jury of six in a civil action shall pay, at the time, a fee of one hundred twenty-five dollars; if the demand is for a jury of twelve, a fee of two hundred fifty dollars. If, after the party demands a jury of six and pays the required fee, any other party to the action requests a jury of twelve, an additional one hundred twenty-

five dollar fee will be required of the party demanding the increased number of jurors.

(b) Upon conviction in criminal cases a jury demand charge of one hundred twenty-five dollars for a jury of six, or two hundred fifty dollars for a jury of twelve may be imposed as costs under RCW 10.46.190.

(4) For preparing a certified copy of an instrument on file or of record in the clerk's office, for the first page or portion of the first page, a fee of five dollars, and for each additional page or portion of a page, a fee of one dollar must be charged. For authenticating or exemplifying an instrument, a fee of two dollars for each additional seal affixed must be charged. For preparing a copy of an instrument on file or of record in the clerk's office without a seal, a fee of fifty cents per page must be charged. When copying a document without a seal or file that is in an electronic format, a fee of twenty-five cents per page must be charged. For copies made on a compact disc, an additional fee of twenty dollars for each compact disc must be charged.

(5) For executing a certificate, with or without a seal, a fee of two dollars must be charged.

(6) For a garnishee defendant named in an affidavit for garnishment and for a writ of attachment, a fee of twenty dollars must be charged.

(7) For filing a supplemental proceeding, a fee of twenty dollars must be charged.

(8) For approving a bond, including justification on the bond, in other than civil actions and probate proceedings, a fee of two dollars must be charged.

(9) For the issuance of a certificate of qualification and a certified copy of letters of administration, letters testamentary, or letters of guardianship, there must be a fee of two dollars.

(10) For the preparation of a passport application, the clerk may collect an execution fee as authorized by the federal government.

(11) For clerk's services such as processing ex parte orders, performing historical searches, compiling statistical reports, and conducting exceptional record searches, the clerk may collect a fee not to exceed twenty dollars per hour or portion of an hour.

(12) For duplicated recordings of court's proceedings there must be a fee of ten dollars for each audio tape and twenty-five dollars for each video tape or other electronic storage medium.

(13) For registration of land titles, Torrens Act, under RCW 65.12.780, a fee of twenty dollars must be charged.

(14) For the issuance of extension of judgment under RCW 6.17.020 and chapter 9.94A RCW, a fee of two hundred dollars must be charged. When the extension of judgment is at the request of the clerk, the two hundred dollar charge may be imposed as court costs under RCW 10.46.190.

(15) A facilitator surcharge of up to twenty dollars must be charged as authorized under RCW 26.12.240.

(16) For filing a water rights statement under RCW 90.03.180, a fee of twenty-five dollars must be charged.

(17) For filing a claim of frivolous lien under RCW 60.04.081, a fee of thirty-five dollars must be charged.

(18) For preparation of a change of venue, a fee of twenty dollars must be charged by the originating court in

addition to the per page charges in subsection (4) of this section.

(19) A service fee of three dollars for the first page and one dollar for each additional page must be charged for receiving faxed documents, pursuant to Washington state rules of court, general rule 17.

(20) For preparation of clerk's papers under RAP 9.7, a fee of fifty cents per page must be charged.

(21) For copies and reports produced at the local level as permitted by RCW 2.68.020 and supreme court policy, a variable fee must be charged.

(22) Investment service charge and earnings under RCW 36.48.090 must be charged.

(23) Costs for nonstatutory services rendered by clerk by authority of local ordinance or policy must be charged.

(24) For filing a request for mandatory arbitration, a filing fee may be assessed against the party filing a statement of arbitrability not to exceed two hundred twenty dollars as established by authority of local ordinance. This charge shall be used solely to offset the cost of the mandatory arbitration program.

(25) For filing a request for trial de novo of an arbitration award, a fee not to exceed two hundred fifty dollars as established by authority of local ordinance must be charged.

(26) A public agency may not charge a fee to a law enforcement agency, for preparation, copying, or mailing of certified copies of the judgment and sentence, information, affidavit of probable cause, and/or the notice of requirement to register, of a sex offender convicted in a Washington court, when such records are necessary for risk assessment, preparation of a case for failure to register, or maintenance of a sex offender's registration file.

(27) For the filing of a will or codicil under the provisions of chapter 11.12 RCW, a fee of twenty dollars must be charged.

(28) A surcharge of up to twenty dollars may be charged as authorized by RCW 26.12.260.

The revenue to counties from the fees established in this section shall be deemed to be complete reimbursement from the state for the state's share of benefits paid to the superior court judges of the state prior to July 24, 2005, and no claim shall lie against the state for such benefits. [2007 c 496 § 204; 2006 c 192 § 2. Prior: 2005 c 457 § 18; 2005 c 374 § 2; 2005 c 202 § 1; 2002 c 338 § 2; 2001 c 146 § 2; 2000 c 170 § 1; 1999 c 397 § 8; 1996 c 56 § 5; 1995 c 292 § 14.]

Effective dates—2007 c 496 §§ 201, 202, 204, and 501: See note following RCW 26.12.260.

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

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

Chapter 36.22 RCW COUNTY AUDITOR

Sections

36.22.178	Affordable housing for all surcharge—Permissible uses.
36.22.179	Surcharge for local homeless housing and assistance—Use.
36.22.1791	Additional surcharge for local homeless housing and assistance—Use.

36.22.178 Affordable housing for all surcharge—Permissible uses. The surcharge provided for in this section shall be named the affordable housing for all surcharge.

(1) Except as provided in subsection (3) of this section, a surcharge of ten dollars per instrument shall be charged by the county auditor for each document recorded, which will be in addition to any other charge authorized by law. The county may retain up to five percent of these funds collected solely for the collection, administration, and local distribution of these funds. Of the remaining funds, forty percent of the revenue generated through this surcharge will be transmitted monthly to the state treasurer who will deposit the funds into the affordable housing for all account created in RCW 43.185C.190. The department of community, trade, and economic development must use these funds to provide housing and shelter for extremely low-income households, including but not limited to grants for building operation and maintenance costs of housing projects or units within housing projects that are affordable to extremely low-income households with incomes at or below thirty percent of the area median income, and that require a supplement to rent income to cover ongoing operating expenses.

(2) All of the remaining funds generated by this surcharge will be retained by the county and be deposited into a fund that must be used by the county and its cities and towns for eligible housing activities as described in this subsection that serve very low-income households with incomes at or below fifty percent of the area median income. The portion of the surcharge retained by a county shall be allocated to eligible housing activities that serve extremely low and very low-income households in the county and the cities within a county according to an interlocal agreement between the county and the cities within the county consistent with countywide and local housing needs and policies. A priority must be given to eligible housing activities that serve extremely low-income households with incomes at or below thirty percent of the area median income. Eligible housing activities to be funded by these county funds are limited to:

(a) Acquisition, construction, or rehabilitation of housing projects or units within housing projects that are affordable to very low-income households with incomes at or below fifty percent of the area median income, including units for homeownership, rental units, seasonal and permanent farm worker housing units, and single room occupancy units;

(b) Supporting building operation and maintenance costs of housing projects or units within housing projects eligible to receive housing trust funds, that are affordable to very low-income households with incomes at or below fifty percent of the area median income, and that require a supplement to rent income to cover ongoing operating expenses;

(c) Rental assistance vouchers for housing units that are affordable to very low-income households with incomes at or below fifty percent of the area median income, to be administered by a local public housing authority or other local organization that has an existing rental assistance voucher program, consistent with or similar to the United States department of housing and urban development's section 8 rental assistance voucher program standards; and

(d) Operating costs for emergency shelters and licensed overnight youth shelters.

(3) The surcharge imposed in this section does not apply to assignments or substitutions of previously recorded deeds of trust. [2007 c 427 § 1; 2005 c 484 § 18; 2002 c 294 § 2.]

Findings—Conflict with federal requirements—Effective date—2005 c 484: See RCW 43.185C.005, 43.185C.901, and 43.185C.902.

Findings—2002 c 294: "The legislature recognizes housing affordability has become a significant problem for a large portion of society in many parts of Washington state in recent years. The state has traditionally focused its resources on housing for low-income populations. Additional funding resources are needed for building operation and maintenance activities for housing projects affordable to extremely low-income people, for example farmworkers or people with developmental disabilities. Affordable rents for extremely low-income people are not sufficient to cover the cost of building operations and maintenance. In addition resources are needed at the local level to assist in development and preservation of affordable low-income housing to address critical local housing needs." [2002 c 294 § 1.]

36.22.179 Surcharge for local homeless housing and assistance—Use. (1) In addition to the surcharge authorized in RCW 36.22.178, and except as provided in subsection (2) of this section, an additional surcharge of ten dollars shall be charged by the county auditor for each document recorded, which will be in addition to any other charge allowed by law. The funds collected pursuant to this section are to be distributed and used as follows:

(a) The auditor shall retain two percent for collection of the fee, and of the remainder shall remit sixty percent to the county to be deposited into a fund that must be used by the county and its cities and towns to accomplish the purposes of *this chapter, six percent of which may be used by the county for administrative costs related to its homeless housing plan, and the remainder for programs which directly accomplish the goals of the county's local homeless housing plan, except that for each city in the county which elects as authorized in RCW 43.185C.080 to operate its own local homeless housing program, a percentage of the surcharge assessed under this section equal to the percentage of the city's local portion of the real estate excise tax collected by the county shall be transmitted at least quarterly to the city treasurer, without any deduction for county administrative costs, for use by the city for program costs which directly contribute to the goals of the city's local homeless housing plan; of the funds received by the city, it may use six percent for administrative costs for its homeless housing program.

(b) The auditor shall remit the remaining funds to the state treasurer for deposit in the home security fund account. The department may use twelve and one-half percent of this amount for administration of the program established in RCW 43.185C.020, including the costs of creating the state-wide homeless housing strategic plan, measuring performance, providing technical assistance to local governments, and managing the homeless housing grant program. The remaining eighty-seven and one-half percent is to be used by the department to:

(i) Provide housing and shelter for homeless people including, but not limited to: Grants to operate, repair, and staff shelters; grants to operate transitional housing; partial payments for rental assistance; consolidated emergency assistance; overnight youth shelters; and emergency shelter assistance; and

(ii) Fund the homeless housing grant program.

(ii) Fund the homeless housing grant program.

(2) The surcharge imposed in this section does not apply to assignments or substitutions of previously recorded deeds of trust. [2007 c 427 § 4; 2005 c 484 § 9.]

***Reviser's note:** The reference to "this chapter" appears to be erroneous. The senate committee amendment to the engrossed second substitute house bill directed this section to be recodified in chapter 43.185C, which was created out of chapter 484, Laws of 2005. The final bill removed the recodification direction for this section. The reference to "this chapter" appears to be a reference to chapter 484, Laws of 2005.

Findings—Conflict with federal requirements—Effective date—2005 c 484: See RCW 43.185C.005, 43.185C.901, and 43.185C.902.

36.22.1791 Additional surcharge for local homeless housing and assistance—Use. (1) In addition to the surcharges authorized in RCW 36.22.178 and 36.22.179, and except as provided in subsection (2) of this section, the county auditor shall charge an additional surcharge of eight dollars for each document recorded, which is in addition to any other charge allowed by law. The funds collected under this section are to be distributed and used as follows:

(a) The auditor shall remit ninety percent to the county to be deposited into a fund six percent of which may be used by the county for administrative costs related to its homeless housing plan, and the remainder for programs that directly accomplish the goals of the county's local homeless housing plan, except that for each city in the county that elects, as authorized in RCW 43.185C.080, to operate its own homeless housing program, a percentage of the surcharge assessed under this section equal to the percentage of the city's local portion of the real estate excise tax collected by the county must be transmitted at least quarterly to the city treasurer for use by the city for program costs that directly contribute to the goals of the city's homeless housing plan.

(b) The auditor shall remit the remaining funds to the state treasurer for deposit in the home security fund account. The department may use the funds for administering the program established in RCW 43.185C.020, including the costs of creating and updating the statewide homeless housing strategic plan, measuring performance, providing technical assistance to local governments, and managing the homeless housing grant program. Remaining funds may also be used to:

(i) Provide housing and shelter for homeless people including, but not limited to: Grants to operate, repair, and staff shelters; grants to operate transitional housing; partial payments for rental assistance; consolidated emergency assistance; overnight youth shelters; and emergency shelter assistance; and

(ii) Fund the homeless housing grant program.

(2) The surcharge imposed in this section does not apply to assignments or substitutions of previously recorded deeds of trust. [2007 c 427 § 5.]

Reviser's note: 2007 c 427 directed that this section be codified in chapter 43.185C RCW, but placement in chapter 36.22 RCW appears to be more appropriate.

[2007 RCW Supp—page 314]

Chapter 36.28A RCW

ASSOCIATION OF SHERIFFS AND POLICE CHIEFS

Sections

36.28A.040	Statewide city and county jail booking and reporting system—Standards committee—Statewide automated victim information and notification system.
36.28A.0401	Statewide automated victim information and notification system—Vendor services.
36.28A.0402	Statewide automated victim information and notification system—Department of corrections data.
36.28A.110	Missing persons information web site creation.
36.28A.120	State patrol involvement with missing persons systems—Local law enforcement procedures for missing persons information.
36.28A.130	Washington auto theft prevention authority—Created.
36.28A.140	Development of model policy to address property access during forest fires and wildfires.

36.28A.040 Statewide city and county jail booking and reporting system—Standards committee—Statewide automated victim information and notification system.

(1) No later than July 1, 2002, the Washington association of sheriffs and police chiefs shall implement and operate an electronic statewide city and county jail booking and reporting system. The system shall serve as a central repository and instant information source for offender information and jail statistical data. The system may be placed on the Washington state justice information network and be capable of communicating electronically with every Washington state city and county jail and with all other Washington state criminal justice agencies as defined in RCW 10.97.030.

(2) After the Washington association of sheriffs and police chiefs has implemented an electronic jail booking system as described in subsection (1) of this section, if a city or county jail or law enforcement agency receives state or federal funding to cover the entire cost of implementing or reconfiguring an electronic jail booking system, the city or county jail or law enforcement agency shall implement or reconfigure an electronic jail booking system that is in compliance with the jail booking system standards developed pursuant to subsection (4) of this section.

(3) After the Washington association of sheriffs and police chiefs has implemented an electronic jail booking system as described in subsection (1) of this section, city or county jails, or law enforcement agencies that operate electronic jail booking systems, but choose not to accept state or federal money to implement or reconfigure electronic jail booking systems, shall electronically forward jail booking information to the Washington association of sheriffs and police chiefs. At a minimum the information forwarded shall include the name of the offender, vital statistics, the date the offender was arrested, the offenses arrested for, the date and time an offender is released or transferred from a city or county jail, and if available, the mug shot. The electronic format in which the information is sent shall be at the discretion of the city or county jail, or law enforcement agency forwarding the information. City and county jails or law enforcement agencies that forward jail booking information under this subsection are not required to comply with the standards developed under subsection (4)(b) of this section.

(4) The Washington association of sheriffs and police chiefs shall appoint, convene, and manage a statewide jail booking and reporting system standards committee. The committee shall include representatives from the Washington

association of sheriffs and police chiefs correction committee, the information service board's justice information committee, the judicial information system, at least two individuals who serve as jailers in a city or county jail, and other individuals that the Washington association of sheriffs and police chiefs places on the committee. The committee shall have the authority to:

(a) Develop and amend as needed standards for the statewide jail booking and reporting system and for the information that must be contained within the system. At a minimum, the system shall contain:

- (i) The offenses the individual has been charged with;
- (ii) Descriptive and personal information about each offender booked into a city or county jail. At a minimum, this information shall contain the offender's name, vital statistics, address, and mugshot;
- (iii) Information about the offender while in jail, which could be used to protect criminal justice officials that have future contact with the offender, such as medical conditions, acts of violence, and other behavior problems;
- (iv) Statistical data indicating the current capacity of each jail and the quantity and category of offenses charged;
- (v) The ability to communicate directly and immediately with the city and county jails and other criminal justice entities; and
- (vi) The date and time that an offender was released or transferred from a local jail;

(b) Develop and amend as needed operational standards for city and county jail booking systems, which at a minimum shall include the type of information collected and transmitted, and the technical requirements needed for the city and county jail booking system to communicate with the statewide jail booking and reporting system;

(c) Develop and amend as needed standards for allocating grants to city and county jails or law enforcement agencies that will be implementing or reconfiguring electronic jail booking systems.

(5)(a) A statewide automated victim information and notification system shall be added to the city and county jail booking and reporting system. The system shall:

(i) Automatically notify a registered victim via the victim's choice of telephone, letter, or e-mail when any of the following events affect an offender housed in any Washington state city or county jail or department of corrections facility:

- (A) Is transferred or assigned to another facility;
- (B) Is transferred to the custody of another agency outside the state;
- (C) Is given a different security classification;
- (D) Is released on temporary leave or otherwise;
- (E) Is discharged;
- (F) Has escaped; or
- (G) Has been served with a protective order that was requested by the victim;

(ii) Automatically notify a registered victim via the victim's choice of telephone, letter, or e-mail when an offender has:

- (A) An upcoming court event where the victim is entitled to be present, if the court information is made available to the statewide automated victim information and notification system

administrator at the Washington association of sheriffs and police chiefs;

(B) An upcoming parole, pardon, or community supervision hearing; or

(C) A change in the offender's parole, probation, or community supervision status including:

- (I) A change in the offender's supervision status; or
- (II) A change in the offender's address;

(iii) Automatically notify a registered victim via the victim's choice of telephone, letter, or e-mail when a sex offender has:

- (A) Updated his or her profile information with the state sex offender registry; or
- (B) Become noncompliant with the state sex offender registry;

(iv) Permit a registered victim to receive the most recent status report for an offender in any Washington state city and county jail, department of corrections, or sex offender registry by calling the statewide automated victim information and notification system on a toll-free telephone number or by accessing the statewide automated victim information and notification system via a public web site. All registered victims calling the statewide automated victim information and notification system will be given the option to have live operator assistance to help use the program on a twenty-four hour, three hundred sixty-five day per year basis;

(v) Permit a crime victim to register, or registered victim to update, the victim's registration information for the statewide automated victim information and notification system by calling a toll-free telephone number or by accessing a public web site; and

(vi) Ensure that the offender information contained within the statewide automated victim information and notification system is updated frequently to timely notify a crime victim that an offender has been released or discharged or has escaped. However, the failure of the statewide automated victim information and notification system to provide notice to the victim does not establish a separate cause of action by the victim against state officials, local officials, law enforcement officers, or any related correctional authorities.

(b) An appointed or elected official, public employee, or public agency as defined in RCW 4.24.470, or units of government and its employees, as provided in RCW 36.28A.010, are immune from civil liability for damages for any release of information or the failure to release information related to the statewide automated victim information and notification system and the jail booking and reporting system as described in this section, so long as the release was without gross negligence. The immunity provided under this subsection applies to the release of relevant and necessary information to other public officials, public employees, or public agencies, and to the general public.

(c) Participation in the statewide automated victim information and notification program satisfies any obligation to notify the crime victim of an offender's custody status and the status of the offender's upcoming court events so long as:

- (i) Information making offender and case data available is provided on a timely basis to the statewide automated victim information and notification program; and

(ii) Information a victim submits to register and participate in the victim notification system is only used for the sole purpose of victim notification.

(d) Automated victim information and notification systems in existence and operational as of July 22, 2007, shall not be required to participate in the statewide system. [2007 c 204 § 1; 2001 c 169 § 3; 2000 c 3 § 1.]

Contingent expiration date—2000 c 3: "If the Washington association of sheriffs and police chiefs does not receive federal funding for purposes of this act by December 31, 2000, this act is null and void." [2000 c 3 § 4.] According to the Washington association of sheriffs and police chiefs, federal funding for the purposes of chapter 3, Laws of 2000, was received by December 31, 2000.

36.28A.0401 Statewide automated victim information and notification system—Vendor services. In Washington any vendor contracted to provide a statewide automated victim notification service must deliver the service with a minimum of 99.95-percent availability and with less than an average of one-percent notification errors as a result of the vendor's technology. [2007 c 204 § 2.]

36.28A.0402 Statewide automated victim information and notification system—Department of corrections data. The department of corrections is not required to provide any data to the Washington association of sheriffs and police chiefs for the statewide automated victim information and notification system as stated in RCW 36.28A.040, until January 1, 2010. [2007 c 204 § 3.]

36.28A.110 Missing persons information web site creation. The Washington association of sheriffs and police chiefs shall create and maintain a statewide web site, which shall be available to the public. The web site shall post relevant information concerning persons reported missing in the state of Washington. For missing persons, the web site shall contain, but is not limited to: The person's name, physical description, photograph, and other information that is deemed necessary according to the adopted protocols. This web site shall allow citizens to more broadly disseminate information regarding missing persons for at least thirty days. [2007 c 10 § 3; 2006 c 102 § 4.]

Intent—2007 c 10: See note following RCW 43.103.110.

Finding—Intent—2006 c 102: See note following RCW 36.28A.100.

36.28A.120 State patrol involvement with missing persons systems—Local law enforcement procedures for missing persons information. The Washington state patrol shall establish an interface with local law enforcement and the Washington association of sheriffs and police chiefs missing persons web site, the toll-free twenty-four hour hotline, and national and other statewide missing persons systems or clearinghouses.

Local law enforcement agencies shall file an official missing persons report and enter biographical information into the state missing persons computerized network without delay after notification of a missing person's report is received under this chapter. [2007 c 10 § 4; 2006 c 102 § 5.]

Intent—2007 c 10: See note following RCW 43.103.110.

Finding—Intent—2006 c 102: See note following RCW 36.28A.100.

[2007 RCW Supp—page 316]

36.28A.130 Washington auto theft prevention authority—Created. There is hereby created in the Washington association of sheriffs and police chiefs the Washington auto theft prevention authority which shall be under the direction of the executive director of the Washington association of sheriffs and police chiefs. [2007 c 199 § 19.]

Findings—Intent—Short title—2007 c 199: See notes following RCW 9A.56.065.

36.28A.140 Development of model policy to address property access during forest fires and wildfires. (1) The Washington association of sheriffs and police chiefs shall convene a model policy work group to develop a model policy for sheriffs regarding residents, landowners, and others in lawful possession and control of land in the state during a forest fire or wildfire. The model policy must be designed in a way that, first and foremost, protects life and safety during a forest fire or wildfire. The model policy must include guidance on allowing access, when safe and appropriate, to residents, landowners, and others in lawful possession and control of land in the state during a wildfire or forest fire. The model policy must specifically address procedures to allow, when safe and appropriate, residents, landowners, and others in lawful possession and control of land in the state access to their residences and land to:

- (a) Conduct fire prevention or suppression activities;
- (b) Protect or retrieve any property located in their residences or on their land, including equipment, livestock, or any other belongings; or
- (c) Undertake activities under both (a) and (b) of this subsection.

(2) In developing the policy under subsection (1) of this section, the association shall consult with appropriate stakeholders and government agencies. [2007 c 252 § 1.]

Chapter 36.32 RCW

COUNTY COMMISSIONERS

Sections

36.32.245 Competitive bids—Requirements—Advertisements—Exceptions.

36.32.245 Competitive bids—Requirements—Advertisements—Exceptions. (1) No contract for the purchase of materials, equipment, or supplies may be entered into by the county legislative authority or by any elected or appointed officer of the county until after bids have been submitted to the county. Bid specifications shall be in writing and shall be filed with the clerk of the county legislative authority for public inspection. An advertisement shall be published in the official newspaper of the county stating the time and place where bids will be opened, the time after which bids will not be received, the materials, equipment, supplies, or services to be purchased, and that the specifications may be seen at the office of the clerk of the county legislative authority. The advertisement shall be published at least once at least thirteen days prior to the last date upon which bids will be received.

(2) The bids shall be in writing and filed with the clerk. The bids shall be opened and read in public at the time and place named in the advertisement. Contracts requiring com-

petitive bidding under this section may be awarded only to the lowest responsible bidder. Immediately after the award is made, the bid quotations shall be recorded and open to public inspection and shall be available by telephone inquiry. Any or all bids may be rejected for good cause.

(3) For advertisement and formal sealed bidding to be dispensed with as to purchases between five thousand and twenty-five thousand dollars, the county legislative authority must use the uniform process to award contracts as provided in RCW 39.04.190. Advertisement and formal sealed bidding may be dispensed with as to purchases of less than five thousand dollars upon the order of the county legislative authority.

(4) This section does not apply to performance-based contracts, as defined in RCW 39.35A.020(4), that are negotiated under chapter 39.35A RCW; or contracts and purchases for the printing of election ballots, voting machine labels, and all other election material containing the names of candidates and ballot titles.

(5) Nothing in this section shall prohibit the legislative authority of any county from allowing for preferential purchase of products made from recycled materials or products that may be recycled or reused.

(6) This section does not apply to contracting for public defender services by a county. [2007 c 88 § 1. Prior: 1993 c 233 § 1; 1993 c 198 § 7; 1991 c 363 § 62.]

Purpose—Captions not law—1991 c 363: See notes following RCW 2.32.180.

Chapter 36.33A RCW

EQUIPMENT RENTAL AND REVOLVING FUND

Sections

36.33A.040 Rates for equipment rental.

36.33A.040 Rates for equipment rental. Rates for the rental of equipment owned by the fund shall be set to cover all costs of maintenance and repair, material and supplies consumed in operating or maintaining the equipment, and the future replacement thereof. The rates shall be determined by the county engineer or other appointee of the county legislative body and shall be subject to annual review by the legislative body. This section does not restrict the ability of the county road administration board to directly inquire into the process of setting rental rates while performing its statutory oversight responsibility. [2007 c 195 § 1; 1977 c 67 § 4.]

Chapter 36.35 RCW

TAX TITLE LANDS

Sections

36.35.020 "Tax title lands" defined—Held in trust for taxing districts.
36.35.100 Treatment of county held tax-title property.

36.35.020 "Tax title lands" defined—Held in trust for taxing districts. The term "tax title lands" as used in this chapter shall mean any tract of land acquired by the county for lack of other bidders at a tax foreclosure sale. Tax title lands are held in trust for the taxing districts. [2007 c 295 § 2; 1972 ex.s. c 150 § 2.]

36.35.100 Treatment of county held tax-title property. All property deeded to the county under the provisions of this chapter shall be treated as follows during the period the property is so held:

- (1) The property shall be:
 - (a) Stricken from the tax rolls as county property;
 - (b) Exempt from taxation;
 - (c) Exempt from special assessments except as provided in chapter 35.49 RCW and RCW 35.44.140 and 79.44.190; and
 - (d) Exempt from property owner association dues or fees.
- (2) The sale, management, and leasing of tax title property shall be handled as under chapter 36.35 RCW. [2007 c 295 § 3; 1998 c 106 § 13; 1961 c 15 § 84.64.220. Prior: 1925 ex.s. c 130 § 131; RRS § 11292; prior: 1899 c 141 § 27. Formerly RCW 84.64.220.]

Chapter 36.54 RCW

FERRIES—COUNTY OWNED

Sections

36.54.110 County ferry districts—Authorized—Powers—Governing body—Passenger-only ferry service between Vashon and Seattle.
36.54.130 County ferry districts—Tax levy authorized—Uses.
36.54.135 County ferry districts—General indebtedness, bond issuance.

36.54.110 County ferry districts—Authorized—Powers—Governing body—Passenger-only ferry service between Vashon and Seattle. (1) The legislative authority of a county may adopt an ordinance creating a ferry district in all or a portion of the area of the county, including the area within the corporate limits of any city or town within the county. The ordinance may be adopted only after a public hearing has been held on the creation of a ferry district, and the county legislative authority makes a finding that it is in the public interest to create the district.

(2) A ferry district is a municipal corporation, an independent taxing "authority" within the meaning of Article VII, section 1 of the state Constitution, and a "taxing district" within the meaning of Article VII, section 2 of the state Constitution.

(3) A ferry district is a body corporate and possesses all the usual powers of a corporation for public purposes as well as all other powers that may now or hereafter be specifically conferred by statute, including, but not limited to, the authority to hire employees, staff, and services, to enter into contracts, and to sue and be sued.

(4) The members of the county legislative authority, acting ex officio and independently, shall compose the governing body of any ferry district that is created within the county. The voters of a ferry district must be registered voters residing within the boundaries of the district.

(5) A county with a population greater than one million persons and having a boundary on Puget Sound, or a county to the west of Puget Sound with a population greater than two hundred thirty thousand but less than three hundred thousand persons, proposing to create a ferry district to assume a passenger-only ferry route between Vashon and Seattle, including an expansion of that route to include Southworth, shall

first receive approval from the governor after submitting a complete business plan to the governor and the legislature by November 1, 2007. The business plan must, at a minimum, include hours of operation, vessel needs, labor needs, proposed routes, passenger terminal facilities, passenger rates, anticipated federal and local funding, coordination with Washington state ferry system, coordination with existing transit providers, long-term operation and maintenance needs, and long-term financial plan. The business plan may include provisions regarding coordination with an appropriate county to participate in a joint ferry under RCW 36.54.030 through 36.54.070. In order to be considered for assuming the route, the ferry district shall ensure that the route will be operated only by the ferry district and not contracted out to a private entity, all existing labor agreements will be honored, and operations will begin no later than July 1, 2008. If the route is to be expanded to include serving Southworth, the ferry district shall enter into an interlocal agreement with the public transportation benefit area serving the Southworth ferry terminal within thirty days of beginning Southworth ferry service. For the purposes of this subsection, Puget Sound is considered as extending north to Admiralty Inlet. [2007 c 223 § 5; 2006 c 332 § 7; 2003 c 83 § 301.]

Effective date—2007 c 223: See note following RCW 36.57A.220.

Findings—Intent—Captions, part headings not law—Severability—Effective date—2003 c 83: See notes following RCW 36.57A.200.

36.54.130 County ferry districts—Tax levy authorized—Uses. (1) To carry out the purposes for which ferry districts are created, the governing body of a ferry district may levy each year an ad valorem tax on all taxable property located in the district not to exceed seventy-five cents per thousand dollars of assessed value. The levy must be sufficient for the provision of ferry services as shown to be required by the budget prepared by the governing body of the ferry district.

(2) A tax imposed under this section may be used only for:

(a) Providing ferry services, including the purchase, lease, or rental of ferry vessels and dock facilities;

(b) The operation, maintenance, and improvement of ferry vessels and dock facilities;

(c) Providing shuttle services between the ferry terminal and passenger parking facilities, and other landside improvements directly related to the provision of passenger-only ferry service; and

(d) Related personnel costs. [2007 c 223 § 6; 2006 c 332 § 9; 2003 c 83 § 303.]

Effective date—2007 c 223: See note following RCW 36.57A.220.

Findings—Intent—Captions, part headings not law—Severability—Effective date—2003 c 83: See notes following RCW 36.57A.200.

36.54.135 County ferry districts—General indebtedness, bond issuance. (1) A county ferry district may incur general indebtedness, and issue general obligation bonds, to finance the construction, purchase, and preservation of passenger-only ferries and associated terminals and retire the indebtedness in whole or in part from the revenues received from the tax levy authorized in RCW 36.54.130.

(2) The ordinance adopted by the county legislative authority creating the county ferry district and authorizing the

use of revenues received from the tax levy authorized in RCW 36.54.130 must indicate an intent to incur this indebtedness and the maximum amount of this indebtedness that is contemplated. [2007 c 223 § 7.]

Effective date—2007 c 223: See note following RCW 36.57A.220.

Chapter 36.55 RCW

FRANCHISES ON ROADS AND BRIDGES

Sections

36.55.060 Limitations upon grants.

36.55.060 Limitations upon grants. (1) Any person constructing or operating any utility on or along a county road shall be liable to the county for all necessary expense incurred in restoring the county road to a suitable condition for travel.

(2) No franchise shall be granted for a period of longer than fifty years.

(3) No exclusive franchise or privilege shall be granted.

(4) The facilities of the holder of any such franchise shall be removed at the expense of the holder thereof, to some other location on such county road in the event it is to be constructed, altered, or improved or becomes a primary state highway and such removal is reasonably necessary for the construction, alteration, or improvement thereof.

(5) Counties shall, in the predesign phase of construction projects involving relocation of sewer and/or water facilities, consult with public utilities operating water/sewer systems in order to coordinate design. [2007 c 31 § 6; 1963 c 4 § 36.55.060. Prior: 1961 c 55 § 5; prior: 1937 c 187 § 38, part; RRS § 6450-38, part.]

Chapter 36.57 RCW

COUNTY PUBLIC TRANSPORTATION AUTHORITY

Sections

36.57.120 Rail fixed guideway system—Safety program plan and security and emergency preparedness plan.

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

review comments within sixty days after their receipt, and resubmit its revised plans for review.

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

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

(4) The system security and emergency preparedness plan required in subsection (1)(d) of this section is exempt from public disclosure under chapter 42.56 RCW. However, the system safety program plan as described in this section is not subject to this exemption. [2007 c 422 § 4; 2005 c 274 § 270; 1999 c 202 § 4.]

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

Effective date—1999 c 202: See note following RCW 35.21.228.

Chapter 36.57A RCW

PUBLIC TRANSPORTATION BENEFIT AREAS

Sections

- 36.57A.050 Governing body—Selection, qualification, number of members—Travel expenses, compensation.
- 36.57A.170 Rail fixed guideway system—Safety program plan and security and emergency preparedness plan.
- 36.57A.220 Passenger-only ferry service between Kingston and Seattle.

36.57A.050 Governing body—Selection, qualification, number of members—Travel expenses, compensation. Within sixty days of the establishment of the boundaries of the public transportation benefit area the members of the county legislative authority and the elected representative of each city within the area shall provide for the selection of the governing body of such area, the public transportation benefit area authority, which shall consist of elected officials selected by and serving at the pleasure of the governing bodies of component cities within the area and the county legislative authority of each county within the area. If at the time a public transportation benefit area authority assumes the public transportation functions previously provided under the

Interlocal Cooperation Act (chapter 39.34 RCW) there are citizen positions on the governing board of the transit system, those positions may be retained as positions on the governing board of the public transportation benefit area authority.

Within such sixty-day period, any city may by resolution of its legislative body withdraw from participation in the public transportation benefit area. The county legislative authority and each city remaining in the public transportation benefit area may disapprove and prevent the establishment of any governing body of a public transportation benefit area if the composition thereof does not meet its approval.

In no case shall the governing body of a single county public transportation benefit area be greater than nine members and in the case of a multicounty area, fifteen members. Those cities within the transportation benefit area and excluded from direct membership on the authority are hereby authorized to designate a member of the authority who shall be entitled to represent the interests of such city which is excluded from direct membership on the authority. The legislative body of such city shall notify the authority as to the determination of its authorized representative on the authority.

Each member of the authority is eligible to be reimbursed for travel expenses in accordance with RCW 43.03.050 and 43.03.060 and to receive compensation, as set by the authority, in an amount not to exceed forty-four dollars for each day during which the member attends official meetings of the authority or performs prescribed duties approved by the chairman of the authority. Except that the authority may, by resolution, increase the payment of per diem compensation to each member from forty-four dollars up to ninety dollars per day or portion of a day for actual attendance at board meetings or for performance of other official services or duties on behalf of the authority. In no event may a member be compensated in any year for more than seventy-five days, except the chairman who may be paid compensation for not more than one hundred days: PROVIDED, That compensation shall not be paid to an elected official or employee of federal, state, or local government who is receiving regular full-time compensation from such government for attending meetings and performing prescribed duties of the authority.

The dollar thresholds established in this section must be adjusted for inflation by the office of financial management every five years, beginning July 1, 2008, based upon changes in the consumer price index during that time period. "Consumer price index" means, for any calendar year, that year's annual average consumer price index, for Washington state, for wage earners and clerical workers, all items, compiled by the bureau of labor and statistics, United States department of labor. If the bureau of labor and statistics develops more than one consumer price index for areas within the state, the index covering the greatest number of people, covering areas exclusively within the boundaries of the state, and including all items shall be used for the adjustments for inflation in this section. The office of financial management must calculate the new dollar threshold and transmit it to the office of the code reviser for publication in the Washington State Register at least one month before the new dollar threshold is to take effect.

A person holding office as commissioner for two or more special purpose districts shall receive only that per diem compensation authorized for one of his or her commissioner positions as compensation for attending an official meeting or conducting official services or duties while representing more than one of his or her districts. However, such commissioner may receive additional per diem compensation if approved by resolution of all boards of the affected commissions. [2007 c 469 § 14; 1998 c 121 § 15; 1983 c 65 § 3; 1977 ex.s. c 44 § 2; 1975 1st ex.s. c 270 § 15.]

Severability—Effective date—1977 ex.s. c 44: See notes following RCW 36.57A.030.

Severability—Effective date—1975 1st ex.s. c 270: See notes following RCW 35.58.272.

36.57A.170 Rail fixed guideway system—Safety program plan and security and emergency preparedness plan. (1) Each public transportation benefit area that owns or operates a rail fixed guideway system as defined in RCW 81.104.015 shall submit a system safety program plan and a system security and emergency preparedness plan for that guideway to the state department of transportation by September 1, 1999, or at least one hundred eighty calendar days before beginning operations or instituting revisions to its plans. These plans must describe the public transportation benefit area's procedures for (a) reporting and investigating reportable accidents, unacceptable hazardous conditions, and security breaches, (b) submitting corrective action plans and annual safety and security audit reports, (c) facilitating on-site safety and security reviews by the state department of transportation, and (d) addressing passenger and employee security. The plans must, at a minimum, conform to the standards adopted by the state department of transportation. If required by the department, the public transportation benefit area shall revise its plans to incorporate the department's review comments within sixty days after their receipt, and resubmit its revised plans for review.

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

(3) Each public transportation benefit area shall notify the department of transportation within two hours of an occurrence of a reportable accident, unacceptable hazardous condition, or security breach. The department may adopt rules further defining a reportable accident, unacceptable hazardous condition, or security breach. The public transportation benefit area shall investigate all reportable accidents, unacceptable hazardous conditions, or security breaches and

provide a written investigation report to the department within forty-five calendar days after the reportable accident, unacceptable hazardous condition, or security breach.

(4) The system security and emergency preparedness plan required in subsection (1)(d) of this section is exempt from public disclosure under chapter 42.56 RCW. However, the system safety program plan as described in this section is not subject to this exemption. [2007 c 422 § 5; 2005 c 274 § 271; 1999 c 202 § 5.]

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

Effective date—1999 c 202: See note following RCW 35.21.228.

36.57A.220 Passenger-only ferry service between Kingston and Seattle. A public transportation benefit area seeking grant funding as described in RCW 47.01.350 for a passenger-only ferry route between Kingston and Seattle shall first receive approval from the governor after submitting a complete business plan to the governor and the legislature by November 1, 2007. The business plan must, at a minimum, include hours of operation, vessel needs, labor needs, proposed routes, passenger terminal facilities, passenger rates, anticipated federal and local funding, coordination with the Washington state ferry system, coordination with existing transit providers, long-term operation and maintenance needs, and a long-term financial plan. [2007 c 223 § 1; 2006 c 332 § 8.]

Effective date—2007 c 223: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately [April 27, 2007]." [2007 c 223 § 11.]

Chapter 36.70 RCW

PLANNING ENABLING ACT

Sections

36.70.757 Family day-care provider's home facility—County may not prohibit in residential or commercial area—Conditions.

36.70.757 Family day-care provider's home facility—County may not prohibit in residential or commercial area—Conditions. (1) Except as provided in subsections (2) and (3) of this section, no county may enact, enforce, or maintain an ordinance, development regulation, zoning regulation, or official control, policy, or administrative practice that prohibits the use of a residential dwelling, located in an area zoned for residential or commercial use, as a family day-care provider's facility serving twelve or fewer children.

(2) A county may require that the facility: (a) Comply with all building, fire, safety, health code, and business licensing requirements; (b) conform to lot size, building size, setbacks, and lot coverage standards applicable to the zoning district except if the structure is a legal nonconforming structure; (c) is certified by the department of early learning licensor as providing a safe passenger loading area; (d) include signage, if any, that conforms to applicable regulations; and (e) limit hours of operations to facilitate neighborhood compatibility, while also providing appropriate opportunity for persons who use family day-care who work a nonstandard work shift.

(3) A county may also require that the family day-care provider, before state licensing, require proof of written notification by the provider that the immediately adjoining property owners have been informed of the intent to locate and maintain such a facility. If a dispute arises between neighbors and the day-care provider over licensing requirements, the licensor may provide a forum to resolve the dispute.

(4) This section may not be construed to prohibit a county from imposing zoning conditions on the establishment and maintenance of a family day-care provider's home serving twelve or fewer children in an area zoned for residential or commercial use, if the conditions are no more restrictive than conditions imposed on other residential dwellings in the same zone and the establishment of such facilities is not precluded. As used in this section, "family day-care provider" is as defined in RCW 43.215.010. [2007 c 17 § 12; 2003 c 286 § 2.]

Chapter 36.70A RCW

GROWTH MANAGEMENT—PLANNING BY SELECTED COUNTIES AND CITIES

Sections

36.70A.367	Major industrial developments—Master planned locations.
36.70A.368	Major industrial development—Master planned locations—Reclaimed surface coal mine sites.
36.70A.450	Family day-care provider's home facility—County or city may not prohibit in residential or commercial area—Conditions.
36.70A.550	Aquifer conservation zones.
36.70A.560	Viability of agricultural lands—Deferral requirements—Definition. (<i>Expires December 1, 2011.</i>)
36.70A.5601	Viability of agricultural lands—Ruckelshaus Center examination, report. (<i>Expires December 1, 2011.</i>)
36.70A.570	Regulation of forest practices.

36.70A.367 Major industrial developments—Master planned locations. (1) In addition to the major industrial development allowed under RCW 36.70A.365, a county planning under RCW 36.70A.040 that meets the criteria in subsection (5) of this section may establish, in consultation with cities consistent with provisions of RCW 36.70A.210, a process for designating a bank of no more than two master planned locations for major industrial activity outside urban growth areas.

(2) A master planned location for major industrial developments may be approved through a two-step process: Designation of an industrial land bank area in the comprehensive plan; and subsequent approval of specific major industrial developments through a local master plan process described under subsection (3) of this section.

(a) The comprehensive plan must identify locations suited to major industrial development due to proximity to transportation or resource assets. The plan must identify the maximum size of the industrial land bank area and any limitations on major industrial developments based on local limiting factors, but does not need to specify a particular parcel or parcels of property or identify any specific use or user except as limited by this section. In selecting locations for the industrial land bank area, priority must be given to locations that are adjacent to, or in close proximity to, an urban growth area.

(b) The environmental review for amendment of the comprehensive plan must be at the programmatic level and, in addition to a threshold determination, must include:

(i) An inventory of developable land as provided in RCW 36.70A.365; and

(ii) An analysis of the availability of alternative sites within urban growth areas and the long-term annexation feasibility of sites outside of urban growth areas.

(c) Final approval of an industrial land bank area under this section must be by amendment to the comprehensive plan adopted under RCW 36.70A.070, and the amendment is exempt from the limitation of RCW 36.70A.130(2) and may be considered at any time. Approval of a specific major industrial development within the industrial land bank area requires no further amendment of the comprehensive plan.

(3) In concert with the designation of an industrial land bank area, a county shall also adopt development regulations for review and approval of specific major industrial developments through a master plan process. The regulations governing the master plan process shall ensure, at a minimum, that:

(a) Urban growth will not occur in adjacent nonurban areas;

(b) Development is consistent with the county's development regulations adopted for protection of critical areas;

(c) Required infrastructure is identified and provided concurrent with development. Such infrastructure, however, may be phased in with development;

(d) Transit-oriented site planning and demand management programs are specifically addressed as part of the master plan approval;

(e) Provision is made for addressing environmental protection, including air and water quality, as part of the master plan approval;

(f) The master plan approval includes a requirement that interlocal agreements between the county and service providers, including cities and special purpose districts providing facilities or services to the approved master plan, be in place at the time of master plan approval;

(g) A major industrial development is used primarily by industrial and manufacturing businesses, and that the gross floor area of all commercial and service buildings or facilities locating within the major industrial development does not exceed ten percent of the total gross floor area of buildings or facilities in the development. The intent of this provision for commercial or service use is to meet the needs of employees, clients, customers, vendors, and others having business at the industrial site, to attract and retain a quality workforce, and to further other public objectives, such as trip reduction. These uses may not be promoted to attract additional clientele from the surrounding area. Commercial and service businesses must be established concurrently with or subsequent to the industrial or manufacturing businesses;

(h) New infrastructure is provided for and/or applicable impact fees are paid to assure that adequate facilities are provided concurrently with the development. Infrastructure may be achieved in phases as development proceeds;

(i) Buffers are provided between the major industrial development and adjacent rural areas;

(j) Provision is made to mitigate adverse impacts on designated agricultural lands, forest lands, and mineral resource lands; and

(k) An open record public hearing is held before either the planning commission or hearing examiner with notice published at least thirty days before the hearing date and mailed to all property owners within one mile of the site.

(4) For the purposes of this section:

(a) "Major industrial development" means a master planned location suitable for manufacturing or industrial businesses that: (i) Requires a parcel of land so large that no suitable parcels are available within an urban growth area; (ii) is a natural resource-based industry requiring a location near agricultural land, forest land, or mineral resource land upon which it is dependent; or (iii) requires a location with characteristics such as proximity to transportation facilities or related industries such that there is no suitable location in an urban growth area. The major industrial development may not be for the purpose of retail commercial development or multitenant office parks.

(b) "Industrial land bank" means up to two master planned locations, each consisting of a parcel or parcels of contiguous land, sufficiently large so as not to be readily available within the urban growth area of a city, or otherwise meeting the criteria contained in (a) of this subsection, suitable for manufacturing, industrial, or commercial businesses and designated by the county through the comprehensive planning process specifically for major industrial use.

(5) This section and the termination provisions specified in subsection (6) of this section apply to a county that at the time the process is established under subsection (1) of this section:

(a) Has a population greater than two hundred fifty thousand and is part of a metropolitan area that includes a city in another state with a population greater than two hundred fifty thousand;

(b) Has a population greater than one hundred forty thousand and is adjacent to another country;

(c) Has a population greater than forty thousand but less than seventy-five thousand and has an average level of unemployment for the preceding three years that exceeds the average state unemployment for those years by twenty percent; and

(i) Is bordered by the Pacific Ocean;

(ii) Is located in the Interstate 5 or Interstate 90 corridor;

or

(iii) Is bordered by Hood Canal;

(d) Is east of the Cascade divide; and

(i) Borders another state to the south; or

(ii) Is located wholly south of Interstate 90 and borders the Columbia river to the east;

(e) Has an average population density of less than one hundred persons per square mile as determined by the office of financial management, and is bordered by the Pacific Ocean and by Hood Canal; or

(f) Meets all of the following criteria:

(i) Has a population greater than forty thousand but fewer than eighty thousand;

(ii) Has an average level of unemployment for the preceding three years that exceeds the average state unemployment for those years by twenty percent; and

(iii) Is located in the Interstate 5 or Interstate 90 corridor.

(6) In order to identify and approve locations for industrial land banks, the county shall take action to designate one or more industrial land banks and adopt conforming regulations as provided by RCW 36.70A.367(2) on or before the last date to complete that county's next periodic review under RCW 36.70A.130(4) that occurs prior to December 31, 2014. The authority to take action to designate a land bank area in the comprehensive plan expires if not acted upon by the county within the time frame provided in this section. Once a land bank area has been identified in the county's comprehensive plan, the authority of the county to process a master plan or site projects within an approved master plan does not expire.

(7) Any county seeking to designate an industrial land bank under this section must:

(a) Provide countywide notice, in conformity with RCW 36.70A.035, of the intent to designate an industrial land bank. Notice must be published in a newspaper or newspapers of general circulation reasonably likely to reach subscribers in all geographic areas of the county. Notice must be provided not less than thirty days prior to commencement of consideration by the county legislative body; and

(b) Make a written determination of the criteria and rationale used by the legislative body as the basis for siting an industrial land bank under this chapter.

(8) Any location included in an industrial land bank pursuant to section 2, chapter 289, Laws of 1998, section 1, chapter 402, Laws of 1997, and section 2, chapter 167, Laws of 1996 shall remain available for major industrial development according to this section as long as the requirements of this section continue to be satisfied. [2007 c 433 § 1; 2004 c 208 § 1; 2003 c 88 § 1; 2002 c 306 § 1; 2001 c 326 § 1; 1998 c 289 § 2; 1997 c 402 § 1; 1996 c 167 § 2.]

Findings—Purpose—1998 c 289: "The legislature finds that to fulfill the economic development goal of this chapter, it is beneficial to expand the limited authorization for pilot projects for identifying locations for major industrial activity in advance of specific proposals by an applicant. The legislature further finds that land bank availability may provide economically disadvantaged counties the opportunity to attract new industrial activity by offering expeditious siting and therefore promote a community's economic health and vitality. The purpose of this act is to authorize and evaluate additional pilot projects for major industrial activity in economically disadvantaged counties." [1998 c 289 § 1.]

Findings—Purpose—1996 c 167: "In 1995 the legislature addressed the demand for siting of major industrial facilities by passage of Engrossed Senate Bill No. 5019, implementing a process for siting such activities outside urban growth areas. The legislature recognizes that the 1995 act requires consideration of numerous factors necessary to ensure that the community can reasonably accommodate a major industrial development outside an urban growth area.

The legislature finds that the existing case-by-case procedure for evaluating and approving such a site under the 1995 act may operate to a community's economic disadvantage when a firm, for business reasons, must make a business location decision expeditiously. The legislature therefore finds that it would be useful to authorize, on a limited basis, and evaluate a process for identifying locations for major industrial activity in advance of specific proposals by an applicant.

It is the purpose of this act (1) to authorize a pilot project under which a bank of major industrial development locations outside urban growth areas is created for use in expeditiously siting such a development; (2) to evaluate the impact of this process on the county's compliance with chapter 36.70A RCW; and (3) to encourage consolidation and planning, and environmental review procedures under chapter 36.70B RCW." [1996 c 167 § 1.]

Effective date—1996 c 167: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and shall take effect immediately [March 28, 1996]." [1996 c 167 § 3.]

36.70A.368 Major industrial development—Master planned locations—Reclaimed surface coal mine sites. (1) In addition to the major industrial development allowed under RCW 36.70A.365 and 36.70A.367, a county planning under RCW 36.70A.040 that meets the criteria in subsection (2) of this section may establish, in consultation with cities consistent with RCW 36.70A.210, a process for designating a master planned location for major industrial activity outside urban growth areas on lands formerly used or designated for surface coal mining and supporting uses. Once a master planned location is designated, it shall be considered an urban growth area retained for purposes of promoting major industrial activity.

(2) This section applies to a county that, at the time the process is established in subsection (1) of this section, had a surface coal mining operation in excess of three thousand acres that ceased operation after July 1, 2006, and that is located within fifteen miles of the Interstate 5 corridor.

(3) Designation of a master planned location for major industrial activities is an amendment to the comprehensive plan adopted under RCW 36.70A.070, except that RCW 36.70A.130(2) does not apply so that designation of master planned locations may be considered at any time. The process established under subsection (1) of this section for designating a master planned location for one or more major industrial activities must include, but is not limited to, the following comprehensive plan policy criteria:

(a) The master planned location must be located on lands: Formerly used or designated for surface coal mining and supporting uses; that consist of an aggregation of land of one thousand or more acres, which is not required to be contiguous; and that are suitable for manufacturing, industrial, or commercial businesses;

(b) New infrastructure is provided for; and

(c) Environmental review of a proposed designation of a master planned location must be at the programmatic level, as long as the environmental review of a proposed designation that is being reviewed concurrent with a proposed major industrial activity is at the project level.

(4) Approval of a specific major industrial activity proposed for a master planned location designated under this section is through a local master plan process and does not require further comprehensive plan amendment. The process for reviewing and approving a specific major industrial activity proposed for a master planned location designated under this section must include the following criteria in adopted development regulations:

(a) The site consists of one hundred or more acres of land formerly used or designated for surface coal mining and supporting uses that has been or will be reclaimed as land suitable for industrial development;

(b) Urban growth will not occur in adjacent nonurban areas;

(c) Environmental review of a specific proposed major industrial activity must be conducted as required in chapter 43.21C RCW. Environmental review may be processed as a

planned action, as long as it meets the requirements of RCW 43.21C.031; and

(d) Commercial development within a master planned location must be directly related to manufacturing or industrial uses. Commercial uses shall not exceed ten percent of the total gross floor area of buildings or facilities in the development.

(5) Final approval of the designation of a master planned location designated under subsection (3) of this section is subject to appeal under this chapter. Approval of a specific major industrial activity under subsection (4) of this section is subject to appeal under chapter 36.70C RCW.

(6) RCW 36.70A.365 and 36.70A.367 do not apply to the designation of master planned locations or the review and approval of specific major industrial activities under this section. [2007 c 194 § 1.]

36.70A.450 Family day-care provider's home facility—County or city may not prohibit in residential or commercial area—Conditions. (1) Except as provided in subsections (2) and (3) of this section, no county or city may enact, enforce, or maintain an ordinance, development regulation, zoning regulation, or official control, policy, or administrative practice that prohibits the use of a residential dwelling, located in an area zoned for residential or commercial use, as a family day-care provider's home facility.

(2) A county or city may require that the facility: (a) Comply with all building, fire, safety, health code, and business licensing requirements; (b) conform to lot size, building size, setbacks, and lot coverage standards applicable to the zoning district except if the structure is a legal nonconforming structure; (c) is certified by the department of early learning licenser as providing a safe passenger loading area; (d) include signage, if any, that conforms to applicable regulations; and (e) limit hours of operations to facilitate neighborhood compatibility, while also providing appropriate opportunity for persons who use family day-care and who work a nonstandard work shift.

(3) A county or city may also require that the family day-care provider, before state licensing, require proof of written notification by the provider that the immediately adjoining property owners have been informed of the intent to locate and maintain such a facility. If a dispute arises between neighbors and the family day-care provider over licensing requirements, the licenser may provide a forum to resolve the dispute.

(4) Nothing in this section shall be construed to prohibit a county or city from imposing zoning conditions on the establishment and maintenance of a family day-care provider's home in an area zoned for residential or commercial use, so long as such conditions are no more restrictive than conditions imposed on other residential dwellings in the same zone and the establishment of such facilities is not precluded. As used in this section, "family day-care provider" is as defined in RCW 43.215.010. [2007 c 17 § 13; 2003 c 286 § 5; 1995 c 49 § 3; 1994 c 273 § 17.]

36.70A.550 Aquifer conservation zones. (1) Any city coterminous with, and comprised only of, an island that relies solely on groundwater aquifers for its potable water source

and does not have reasonable access to a potable water source outside its jurisdiction may designate one or more aquifer conservation zones.

Aquifer conservation zones may only be designated for the purpose of conserving and protecting potable water sources.

(2) Aquifer conservation zones may not be considered critical areas under this chapter except to the extent that specific areas located within aquifer conservation zones qualify for critical area designation and have been designated as such under RCW 36.70A.060(2).

(3) Any city may consider whether an area is within an aquifer conservation zone when determining the residential density of that particular area. The residential densities within conservation zones, in combination with other densities of the city, must be sufficient to accommodate projected population growth under RCW 36.70A.110.

(4) Nothing in this section may be construed to modify the population accommodation obligations required of jurisdictions under this chapter. [2007 c 159 § 1.]

36.70A.560 Viability of agricultural lands—Deferral requirements—Definition. (Expires December 1, 2011.)

(1) For the period beginning May 1, 2007, and concluding July 1, 2010, counties and cities may not amend or adopt critical area ordinances under RCW 36.70A.060(2) as they specifically apply to agricultural activities. Nothing in this section:

(a) Nullifies critical area ordinances adopted by a county or city prior to May 1, 2007, to comply with RCW 36.70A.060(2);

(b) Limits or otherwise modifies the obligations of a county or city to comply with the requirements of this chapter pertaining to critical areas not associated with agricultural activities; or

(c) Limits the ability of a county or city to adopt or employ voluntary measures or programs to protect or enhance critical areas associated with agricultural activities.

(2) Counties and cities subject to deferral requirements under subsection (1) of this section:

(a) Should implement voluntary programs to enhance public resources and the viability of agriculture. Voluntary programs implemented under this subsection (2)(a) must include measures to evaluate the successes of these programs; and

(b) Must review and, if necessary, revise critical area ordinances as they specifically apply to agricultural activities to comply with the requirements of this chapter by December 1, 2011.

(3) For purposes of this section and RCW 36.70A.5601, "agricultural activities" means agricultural uses and practices currently existing or legally allowed on rural land or agricultural land designated under RCW 36.70A.170 including, but not limited to: Producing, breeding, or increasing agricultural products; rotating and changing agricultural crops; allowing land used for agricultural activities to lie fallow in which it is plowed and tilled but left unseeded; allowing land used for agricultural activities to lie dormant as a result of adverse agricultural market conditions; allowing land used for agricultural activities to lie dormant because the land is enrolled in a local, state, or federal conservation program, or

the land is subject to a conservation easement; conducting agricultural operations; maintaining, repairing, and replacing agricultural equipment; maintaining, repairing, and replacing agricultural facilities, when the replacement facility is no closer to a critical area than the original facility; and maintaining agricultural lands under production or cultivation. [2007 c 353 § 2.]

Finding—Intent—2007 c 353: "(1) The legislature finds that the goal of preserving Washington's agricultural lands is shared by citizens throughout the state. The legislature recognizes that efforts to achieve a balance between the productive use of these resource lands and associated regulatory requirements have proven difficult, but that good faith efforts to seek solutions have yielded successes. The legislature believes that this willingness to find and pursue common ground will enable Washingtonians to enjoy the benefits of a successful agricultural economy and a healthy environment, while also preventing the unnecessary conversion of valuable agricultural lands.

(2) The legislature, therefore, intends this act, the temporary delays it establishes for amending or adopting provisions of certain critical area ordinances, and the duties and requirements it prescribes for the William D. Ruckelshaus Center, to be expressions of progress in resolving, harmonizing, and advancing commonly held environmental protection and agricultural viability goals.

(3) The legislature fully expects the duties and requirements it is prescribing for the Ruckelshaus Center to be successful. If, however, the efforts of the center do not result in agreement on how to best address the conflicts between agricultural activities and certain regulatory requirements as they apply to agricultural activities, the legislature intends, upon the expiration of the delay, to require jurisdictions that have delayed amending or adopting certain regulatory measures to promptly complete all regulatory amendments or adoptions necessary to comply with the growth management act.

(4) The legislature does not intend this act to reduce or otherwise diminish existing critical area ordinances that apply to agricultural activities during the deferral period established in RCW 36.70A.560." [2007 c 353 § 1.]

Effective date—2007 c 353: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately [May 8, 2007]." [2007 c 353 § 5.]

Expiration date—2007 c 353: "This act expires December 1, 2011." [2007 c 353 § 6.]

36.70A.5601 Viability of agricultural lands—Ruckelshaus Center examination, report. (Expires December 1, 2011.)

(1) Subject to the availability of amounts appropriated for this specific purpose, the William D. Ruckelshaus Center must conduct an examination of the conflicts between agricultural activities and critical area ordinances adopted under chapter 36.70A RCW. The examination required by this section must commence by July 1, 2007.

(2) In fulfilling the requirements of this section, the center must: (a) Work and consult with willing participants including, but not limited to, agricultural, environmental, tribal, and local government interests; and (b) involve and apprise legislators and legislative staff of its efforts.

(3) The examination conducted by the center must be completed in two distinct phases in accordance with the following:

(a) In the first phase, the center must conduct fact-finding and stakeholder discussions with stakeholders identified in subsection (2) of this section. These discussions must identify stakeholder concerns, desired outcomes, opportunities, and barriers. The fact-finding must identify existing regulatory, management, and scientific information related to agricultural activities and critical areas including, but not limited to: (i) Critical area ordinances adopted under chapter 36.70A RCW; (ii) acreage enrolled in the conservation

Chapter 36.73 RCW

TRANSPORTATION BENEFIT DISTRICTS

Sections

36.73.050	Establishment of district—Public hearing—Ordinance.
36.73.065	Taxes, fees, charges, tolls.
36.73.120	Imposition of fees on building construction or land development.

reserve enhancement program; (iii) acreage protected by conservation easements; (iv) buffer widths; (v) requirements of federally approved salmon recovery plans; (vi) the impacts of agricultural activities on Puget Sound recovery efforts; and (vii) compliance with water quality requirements. The center must issue two reports of its fact-finding efforts and stakeholder discussions to the governor and the appropriate committees of the house of representatives and the senate by December 1, 2007, and December 1, 2008; and

(b)(i) In the second phase, the center must facilitate discussions between the stakeholders identified in subsection (2) of this section to identify policy and financial options or opportunities to address the issues and desired outcomes identified by stakeholders in the first phase of the center’s examination efforts.

(ii) In particular, the stakeholders must examine innovative solutions including, but not limited to, outcome-based approaches that incorporate, to the maximum extent practicable, voluntary programs or approaches. Additionally, stakeholders must examine ways to modify statutory provisions to ensure that regulatory constraints on agricultural activities are used as a last resort if desired outcomes are not achieved through voluntary programs or approaches.

(iii) The center must work to achieve agreement among participating stakeholders and to develop a coalition that can be used to support agreed upon changes or new approaches to protecting critical areas during the 2010 legislative session.

(4) The center must issue a final report of findings and legislative recommendations to the governor and the appropriate committees of the house of representatives and the senate by September 1, 2009. [2007 c 353 § 3.]

Finding—Intent—Effective date—Expiration date—2007 c 353: See notes following RCW 36.70A.560.

36.70A.570 Regulation of forest practices. (1) Each county, city, and town assuming regulation of forest practices as provided in RCW 76.09.240 (1) and (2) shall adopt development regulations that:

(a) Protect public resources, as defined in RCW 76.09.020, from material damage or the potential for material damage;

(b) Require appropriate approvals for all phases of the conversion of forest lands, including clearing and grading;

(c) Are guided by the planning goals in RCW 36.70A.020 and by the purposes and policies of the forest practices act as set forth in RCW 76.09.010; and

(d) Are consistent with or supplement development regulations that protect critical areas pursuant to RCW 36.70A.060.

(2) If necessary, each county, city, or town that assumes regulation of forest practices under RCW 76.09.240 shall amend its comprehensive plan to ensure consistency between its comprehensive plan and development regulations.

(3) Before a county, city, or town may regulate forest practices under RCW 76.09.240 (1) and (2), it shall update its development regulations as required by RCW 36.70A.130 and, if applicable, RCW 36.70A.215. Forest practices regulations adopted under RCW 76.09.240 (1) and (2) may be adopted as part of the legislative action taken under RCW 36.70A.130 or 36.70A.215. [2007 c 236 § 2.]

36.73.050 Establishment of district—Public hearing—Ordinance. (1) The legislative authorities proposing to establish a district, or to modify the boundaries of an existing district, or to dissolve an existing district shall conduct a hearing at the time and place specified in a notice published at least once, not less than ten days before the hearing, in a newspaper of general circulation within the proposed district. Subject to the provisions of RCW 36.73.170, the legislative authorities shall make provision for a district to be automatically dissolved when all indebtedness of the district has been retired and anticipated responsibilities have been satisfied. This notice shall be in addition to any other notice required by law to be published. The notice shall, where applicable, specify the functions or activities proposed to be provided or funded, or the additional functions or activities proposed to be provided or funded, by the district. Additional notice of the hearing may be given by mail, by posting within the proposed district, or in any manner the legislative authorities deem necessary to notify affected persons. All hearings shall be public and the legislative authorities shall hear objections from any person affected by the formation, modification of the boundaries, or dissolution of the district.

(2)(a) Following the hearing held pursuant to subsection (1) of this section, the legislative authorities may establish a district, modify the boundaries or functions of an existing district, or dissolve an existing district, if the legislative authorities find the action to be in the public interest and adopt an ordinance providing for the action.

(b) The ordinance establishing a district shall specify the functions and transportation improvements described under RCW 36.73.015 to be exercised or funded and establish the boundaries of the district. Subject to the provisions of RCW 36.73.160, functions or transportation improvements proposed to be provided or funded by the district may not be expanded beyond those specified in the notice of hearing, unless additional notices are made, further hearings on the expansion are held, and further determinations are made that it is in the public interest to so expand the functions or transportation improvements proposed to be provided or funded. [2007 c 329 § 3; 2005 c 336 § 5; 1987 c 327 § 5.]

Effective date—2005 c 336: See note following RCW 36.73.015.

36.73.065 Taxes, fees, charges, tolls. (1) Except as provided in subsection (4) of this section, taxes, fees, charges, and tolls may not be imposed by a district without approval of a majority of the voters in the district voting on a proposition at a general or special election. The proposition must include a specific description of the transportation improvement or improvements proposed by the district and the proposed taxes, fees, charges, and the range of tolls imposed by the district to raise revenue to fund the improvement or improvements.

(2) Voter approval under this section shall be accorded substantial weight regarding the validity of a transportation improvement as defined in RCW 36.73.015.

(3) A district may not increase any taxes, fees, charges, or range of tolls imposed under this chapter once the taxes, fees, charges, or tolls take effect, unless authorized by the district voters pursuant to RCW 36.73.160.

(4)(a) A district that includes all the territory within the boundaries of the jurisdiction, or jurisdictions, establishing the district may impose by a majority vote of the governing board of the district the following fees and charges:

(i) Up to twenty dollars of the vehicle fee authorized in RCW 82.80.140; or

(ii) A fee or charge in accordance with RCW 36.73.120.

(b) The vehicle fee authorized in (a) of this subsection may only be imposed for a passenger-only ferry transportation improvement if the vehicle fee is first approved by a majority of the voters within the jurisdiction of the district.

(c)(i) A district solely comprised of a city or cities shall not impose the fees or charges identified in (a) of this subsection within one hundred eighty days after July 22, 2007, unless the county in which the city or cities reside, by resolution, declares that it will not impose the fees or charges identified in (a) of this subsection within the one hundred eighty-day period; or

(ii) A district solely comprised of a city or cities identified in RCW 36.73.020(6)(b) shall not impose the fees or charges until after May 22, 2008, unless the county in which the city or cities reside, by resolution, declares that it will not impose the fees or charges identified in (a) of this subsection through May 22, 2008.

(5) If the interlocal agreement in RCW 82.80.140(2)(a) cannot be reached, a district that includes only the unincorporated territory of a county may impose by a majority vote of the governing body of the district up to twenty dollars of the vehicle fee authorized in RCW 82.80.140. [2007 c 329 § 1; 2005 c 336 § 17.]

Effective date—2005 c 336: See note following RCW 36.73.015.

36.73.120 Imposition of fees on building construction or land development. (1) Subject to the provisions in RCW 36.73.065, a district may impose a fee or charge on the construction or reconstruction of commercial buildings, industrial buildings, or on any other commercial or industrial building or building space or appurtenance, or on the development, subdivision, classification, or reclassification of land for commercial purposes, only if done in accordance with chapter 39.92 RCW.

(2) Any fee or charge imposed under this section shall be used exclusively for transportation improvements constructed by a district. The fees or charges imposed must be reasonably necessary as a result of the impact of development, construction, or classification or reclassification of land on identified transportation needs.

(3) If a county or city within the district area is levying a fee or charge for a transportation improvement, the fee or charge shall be credited against the amount of the fee or charge imposed by the district. [2007 c 329 § 4; 2005 c 336 § 11; 1988 c 179 § 7; 1987 c 327 § 12.]

[2007 RCW Supp—page 326]

Effective date—2005 c 336: See note following RCW 36.73.015.

Severability—Prospective application—Section captions—1988 c 179: See RCW 39.92.900 and 39.92.901.

Chapter 36.89 RCW

HIGHWAYS—OPEN SPACES—PARKS— OTHER PUBLIC FACILITIES— STORM WATER CONTROL

Sections

36.89.065 Lien for delinquent charges.
36.89.090 Recodified as RCW 36.89.065.

36.89.065 Lien for delinquent charges. The county shall have a lien for delinquent charges, including interest, penalties, and costs of foreclosure thereon, against any property against which they were levied for the purposes authorized by this chapter, which lien shall be superior to all other liens and encumbrances except general taxes and local and special assessments. Such lien shall be effective upon the charges becoming delinquent and shall be enforced and foreclosed in the same manner as provided for sewerage liens of cities and towns by RCW 35.67.200 through 35.67.290. However, a county may, by resolution or ordinance, adopt all or any part of the alternative interest rate, lien, and foreclosure procedures as set forth in RCW 36.89.092 through 36.89.094 or 36.94.150, or chapters 84.56, 84.60, and 84.64 RCW. [2007 c 295 § 4; 1991 c 36 § 1; 1987 c 241 § 1; 1970 ex.s. c 30 § 8. Formerly RCW 36.89.090.]

36.89.090 Recodified as RCW 36.89.065. See Supplementary Table of Disposition of Former RCW Sections, this volume.

Chapter 36.94 RCW

SEWERAGE, WATER, AND DRAINAGE SYSTEMS

Sections

36.94.010 Definitions.

36.94.010 Definitions. As used in this chapter:

(1) A "system of sewerage" means and may include any or all of the following:

(a) Sanitary sewage collection, treatment, and/or disposal facilities and services, including without limitation on-site or off-site sanitary sewerage facilities, large on-site sewerage systems defined under RCW 70.118B.010, inspection services and maintenance services for private or public on-site systems, or any other means of sewage treatment and disposal approved by the county;

(b) Combined sanitary sewage disposal and storm or surface water drains and facilities;

(c) Storm or surface water drains, channels, and facilities;

(d) Outfalls for storm drainage or sanitary sewage and works, plants, and facilities for storm drainage or sanitary sewage treatment and disposal, and rights and interests in property relating to the system;

(e) Combined water and sewerage systems;

(f) Point and nonpoint water pollution monitoring programs that are directly related to the sewerage facilities and programs operated by a county;

(g) Public restroom and sanitary facilities;

(h) The facilities and services authorized in RCW 36.94.020; and

(i) Any combination of or part of any or all of such facilities.

(2) A "system of water" means and includes:

(a) A water distribution system, including dams, reservoirs, aqueducts, plants, pumping stations, transmission and lateral distribution lines and other facilities for distribution of water;

(b) A combined water and sewerage system;

(c) Any combination of or any part of any or all of such facilities.

(3) A "sewerage and/or water general plan" means a general plan for a system of sewerage and/or water for the county which shall be an element of the comprehensive plan established by the county pursuant to RCW 36.70.350(6) and/or chapter 35.63 RCW, if there is such a comprehensive plan.

(a) A sewerage general plan shall include the general location and description of treatment and disposal facilities, trunk and interceptor sewers, pumping stations, monitoring and control facilities, channels, local service areas and a general description of the collection system to serve those areas, a description of on-site sanitary sewerage system inspection services and maintenance services, and other facilities and services as may be required to provide a functional and implementable plan, including preliminary engineering to assure feasibility. The plan may also include a description of the regulations deemed appropriate to carrying out surface drainage plans.

(b) A water general plan shall include the general location and description of water resources to be utilized, wells, treatment facilities, transmission lines, storage reservoirs, pumping stations, and monitoring and control facilities as may be required to provide a functional and implementable plan.

(c) Water and/or sewerage general plans shall include preliminary engineering in adequate detail to assure technical feasibility and, to the extent then known, shall further discuss the methods of distributing the cost and expense of the system and shall indicate the economic feasibility of plan implementation. The plans may also specify local or lateral facilities and services. The sewerage and/or water general plan does not mean the final engineering construction or financing plans for the system.

(4) "Municipal corporation" means and includes any city, town, metropolitan municipal corporation, any public utility district which operates and maintains a sewer or water system, any sewer, water, diking, or drainage district, any diking, drainage, and sewerage improvement district, and any irrigation district.

(5) A "private utility" means and includes all utilities, both public and private, which provide sewerage and/or water service and which are not municipal corporations within the definition of this chapter. The ownership of a private utility may be in a corporation, nonprofit or for profit, in a cooperative association, in a mutual organization, or in individuals.

(6) "Board" means one or more boards of county commissioners and/or the legislative authority of a home rule charter county. [2007 c 343 § 14; 1997 c 447 § 10; 1981 c 313 § 14; 1979 ex.s. c 30 § 6; 1971 ex.s. c 96 § 1; 1967 c 72 § 1.]

Captions and part headings not law—2007 c 343: See RCW 70.118B.900.

Finding—Purpose—1997 c 447: See note following RCW 70.05.074.

Severability—1981 c 313: See note following RCW 36.94.020.

Construction—1971 ex.s. c 96: "This 1971 amendatory act shall apply to any existing and future sewerage and/or water plans or amendments thereto and implementations thereof and shall not be deemed to be prospective only." [1971 ex.s. c 96 § 12.]

Severability—1971 ex.s. c 96: "If any provision of this 1971 amendatory act, or its application to any person or circumstance is held invalid, the remainder of the act, or the application of the provision to other persons or circumstances is not affected." [1971 ex.s. c 96 § 13.]

Chapter 36.120 RCW

REGIONAL TRANSPORTATION INVESTMENT DISTRICTS

Sections

36.120.070 Submission of ballot propositions to the voters.

36.120.070 Submission of ballot propositions to the voters. (1) Beginning no sooner than the 2007 general election, two or more contiguous county legislative authorities, or a single county legislative authority as provided under RCW 36.120.030(8), upon receipt of the regional transportation investment plan under RCW 36.120.040, may submit to the voters of the proposed district a single ballot proposition that approves formation of the district, approves the regional transportation investment plan, and approves the revenue sources necessary to finance the plan. For a county to participate in the plan, the county legislative authority shall, within ninety days after receiving the plan, adopt an ordinance indicating the county's participation. The planning committee may draft the ballot proposition on behalf of the county legislative authorities, and the county legislative authorities may give notice as required by law for ballot propositions, and perform other duties as required to submit the proposition to the voters of the proposed district for their approval or rejection. Counties may negotiate interlocal agreements necessary to implement the plan. The electorate will be the voters voting within the boundaries of the proposed district. A simple majority of the total persons voting on the single ballot proposition is required for approval.

(2) The participating counties shall submit a regional transportation investment plan at the 2007 general election as part of a single ballot proposition that includes, in conjunction with RCW 81.112.030(10), a plan to support an authority's system and financing plan, or additional implementation phases of the system and financing plan, developed under chapter 81.112 RCW. The regional transportation investment plan shall not be considered approved unless both a majority of the persons voting on the proposition residing in the proposed district vote in favor of the proposition and a majority of the persons voting on the proposition residing within the regional transit authority vote in favor of the proposition. [2007 c 509 § 2; 2006 c 311 § 8; 2002 c 56 § 107.]

Findings—Intent—2007 c 509: "The legislature finds that traffic congestion reduces personal and freight mobility and is detrimental to the economy, air quality, and the quality of life throughout the central Puget Sound area. Effective transportation solutions are essential for the future growth and development of the central Puget Sound area and the welfare of its citizens.

The legislature further finds that investments in both transit and road improvements are necessary to relieve traffic congestion and to improve mobility. The transportation improvements proposed by regional transportation investment districts and regional transit authorities within the central Puget Sound region form integral parts of, and are naturally and necessarily related to, a single regional transportation system. The construction of road and transit projects in a comprehensive and interrelated manner will help reduce transportation congestion, increase road capacity, promote safety, facilitate mobility, and improve the health, welfare, and safety of the citizens of Washington.

The legislature further finds that under RCW 81.112.030 and *36.120.170 regional transportation investment districts and regional transit authorities are required to submit to the voters propositions for their respective transportation plans on the same ballot at the 2007 general election and that the opportunity to propose a single ballot reflecting a comprehensive, systemic, and interrelated approach to regional transportation would further the legislative intent and provide voters with an easier and more efficient method of expressing their will.

It is therefore the policy and intent of the state of Washington that transportation plans required to be submitted for voter approval at the 2007 general election by a regional transportation investment district and a regional transit authority must be submitted to voters in single ballot question seeking approval of both plans." [2007 c 509 § 1.]

***Reviser's note:** Reference to RCW 36.120.170 appears to be erroneous. The correct reference should be to RCW 36.120.070.

Constitutional challenges—Expedited appeals—2007 c 509: "Any legal challenges as to the constitutionality of this act must be filed in superior court along with any supporting legal and factual authority within twenty calendar days of May 15, 2007. Notice of a challenge along with any supporting legal and factual authority must be served upon the secretary of state, the attorney general, the district, and the authority. Upon the filing of a challenge, the state, district, and authority have ten calendar days to file any response to the challenge along with any supporting legal and factual authority. The court shall accord priority to hearing the matter and shall, within five calendar days of the filing of the response to the challenge, render its decision and file with the secretary of state a copy of its decision. The decision of the superior court constitutes a final judgment. Any appeal must be filed in the supreme court within ten calendar days after the date of the superior court decision. The supreme court shall issue its ruling on the appeal within thirty days of receipt by the court." [2007 c 509 § 5.]

Severability—2007 c 509: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [2007 c 509 § 6.]

Effective date—2007 c 509: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately [May 15, 2007]." [2007 c 509 § 7.]

Findings—2006 c 311: See note following RCW 36.120.020.

Chapter 36.125 RCW

MARINE RESOURCES COMMITTEES

Sections

36.125.005	Findings—Intent.
36.125.010	Counties authorized to establish—Purpose—Role.
36.125.020	Administration—Members—Petition.
36.125.030	Regional coordinating entities.
36.125.040	Application to committees established under federal law.
36.125.050	Collaborative process for ocean policy development and coastal area management.

36.125.005 Findings—Intent. (1) The legislature finds the challenge of developing realistic, effective, and efficient solutions to the conservation and management issues facing Puget Sound and Washington's outer coast requires calling

on all available sources of knowledge and creative thinking available in the collective wisdom of Washington's citizens. The legislature further finds that both Puget Sound and the outer coast are dynamic and localized waterbodies with unique local challenges and unique local solutions. As such, it is essential for the future management of these ecosystems that citizens, through their local government, have a voice and an opportunity to share their dedication and interest in the well-being of their community's unique marine waters, while providing a valuable contribution to the statewide efforts aimed at restoring the outer coast and Puget Sound as a whole.

(2) The legislature further finds that federally led efforts to establish marine resources committees have proven to be an exciting vehicle for involving local citizens and community leaders in the future discussions, decisions, and restoration commitments in the waters most important to the community. The existing model of using a community-based, nonregulatory organization to examine issues particular to a community's corner of Puget Sound, applying for grants, and thoroughly and fairly investigating available options and solutions has proved to be a valuable asset to Puget Sound and its communities, and is worthy of replication throughout the Puget Sound basin and the outer coast.

(3) In this chapter, the legislature intends to establish a structure on which interested local communities can harness the dedication, creativity, and wisdom of their residents in the form of marine resources committees. These committees are intended to complement, and not compete with or undermine, any other governmental efforts to restore and manage the Puget Sound. The legislature further intends that the department of fish and wildlife should apply the lessons learned from Puget Sound to work with county governments on the outer coast to establish marine resources committees. [2007 c 344 § 1.]

36.125.010 Counties authorized to establish—Purpose—Role. (1)(a) The legislative authority for each county that borders the marine waters of southern Puget Sound may establish marine resources committees consistent with the procedures outlined in RCW 36.125.020. Counties authorized to establish marine resources committees in the southern Puget Sound are: King, Pierce, Thurston, Kitsap, and Mason counties.

(b) The legislative authority for each county bordering the marine waters of the outer coast may develop a marine resources committee consistent with the procedures outlined in RCW 36.125.020. Counties authorized to establish marine resources committees on the outer coast are: Pacific, Grays Harbor, and Wahkiakum counties.

(c) Jefferson and Clallam counties may establish a new marine resources committee or a subcommittee of the county's existing marine resources committee, consistent with the procedures outlined in RCW 36.125.020, specifically to address the marine ecosystems for the outer coast or Puget Sound, where appropriate.

(2) The mission of a marine resources committee created under this section is to address, utilizing sound science, the needs of the marine ecosystem local to the county initiating the marine resources committee.

(3) A marine resources committee created under this section should review current data and resource conservation and management programs and make prioritized recommendations for additional measures that might be necessary to enhance protection of marine resources.

(4) The role of a marine resources committee in developing recommendations includes, but is not limited to:

(a) Utilizing existing data and, to the extent necessary, helping to gather new data on the health of local marine resources;

(b) Making scientifically based recommendations on local candidate sites for marine protected areas;

(c) Working closely with local and state officials to help implement recommendations of the marine resources committee;

(d) Promoting public outreach and education around marine resource conservation and management issues; and

(e) Engaging in any other activities that the initiating county deems appropriate. [2007 c 344 § 2.]

36.125.020 Administration—Members—Petition.

(1) A marine resources committee, as described in RCW 36.125.010, may be created by the legislative authority of any county bordering the marine waters of the outer coast or Puget Sound, in cooperation with all appropriate cities and special districts within their boundaries. Adjacent county legislative authorities shall coordinate their efforts whenever there is a mutual interest in creating a marine resources committee.

(2) A county may delegate the management and oversight of a marine resources committee created by the county under RCW 36.125.010 to a city, or cities, within its jurisdiction, if the city or cities are located on the marine waters of the outer coast or southern Puget Sound and are willing to accept the delegation.

(3) Participating county legislative authorities must select members of the marine resources committee, ensuring balanced representation from: Local government; scientific experts; affected economic interests; affected recreational interests; and environmental and conservation interests. Additionally, participating county legislative authorities must invite tribal representatives to participate in the marine resources committee. An initiating county may delegate its appointment authority to a city or cities that have received from the county the delegated responsibilities of managing and overseeing the marine resources committee.

(4) County residents may petition the county legislative authority to create a marine resources committee. Upon receipt of a petition, the county legislative authority must respond in writing within sixty days as to whether they will authorize the creation of a marine resources committee as well as the reasons for their decision. [2007 c 344 § 3.]

36.125.030 Regional coordinating entities. (1) The Puget Sound action team, or its successor organization, shall serve as the regional coordinating entity for marine resources committees created in the southern Puget Sound and the department of fish and wildlife shall serve as the regional coordinating entity for marine resources committees created for the outer coast.

(2) The regional coordinating entity shall serve as a resource to, at a minimum:

(a) Coordinate and pool grant applications and other funding requests for marine resources committees;

(b) Coordinate communications and information among marine resources committees;

(c) Assist marine resources committees to measure themselves against regional performance benchmarks;

(d) Assist marine resources committees with coordinating local projects to complement regional priorities;

(e) Assist marine resources committees to interact with and complement other marine resources committees, and other similar groups, constituted under a different authority; and

(f) Coordinate with the Northwest Straits commission on issues common to marine resources committees statewide. [2007 c 344 § 4.]

36.125.040 Application to committees established under federal law. Nothing in RCW 36.125.010 or 36.125.020 is intended to expand or limit the authority of local marine resources committees established under the Northwest Straits marine conservation initiative by federal act in San Juan, Whatcom, Skagit, Island, Snohomish, Clallam, and Jefferson counties and existing as of July 22, 2007. [2007 c 344 § 5.]

36.125.050 Collaborative process for ocean policy development and coastal area management. Outer coast marine resources committees, in conjunction with their regional coordinating entity, shall meet and consult with key state, federal, local, and tribal governments, and private interest groups to develop a collaborative process to address ocean policy issues. This collaborative process should use Washington's "Ocean Action Plan: Enhancing Management of Washington State's Ocean and Outer Coasts" developed by the Washington ocean policy work group as a guide to begin the work of developing and coordinating state and local ocean policy and providing better management of Washington's coastal areas. [2007 c 344 § 6.]

Title 38

MILITIA AND MILITARY AFFAIRS

Chapters

38.52 Emergency management.

Chapter 38.52 RCW

EMERGENCY MANAGEMENT

Sections

38.52.010	Definitions.
38.52.180	Liability for property damage, bodily injury, death—Immunity—Assumption by state—Indemnification—Immunity from liability for covered volunteers.
38.52.570	Repealed.

38.52.010 Definitions. As used in this chapter:

(1) "Emergency management" or "comprehensive emergency management" means the preparation for and the carry-

ing out of all emergency functions, other than functions for which the military forces are primarily responsible, to mitigate, prepare for, respond to, and recover from emergencies and disasters, and to aid victims suffering from injury or damage, resulting from disasters caused by all hazards, whether natural, technological, or human caused, and to provide support for search and rescue operations for persons and property in distress. However, "emergency management" or "comprehensive emergency management" does not mean preparation for emergency evacuation or relocation of residents in anticipation of nuclear attack.

(2) "Local organization for emergency services or management" means an organization created in accordance with the provisions of this chapter by state or local authority to perform local emergency management functions.

(3) "Political subdivision" means any county, city or town.

(4) "Emergency worker" means any person who is registered with a local emergency management organization or the department and holds an identification card issued by the local emergency management director or the department for the purpose of engaging in authorized emergency management activities or is an employee of the state of Washington or any political subdivision thereof who is called upon to perform emergency management activities.

(5) "Injury" as used in this chapter shall mean and include accidental injuries and/or occupational diseases arising out of emergency management activities.

(6)(a) "Emergency or disaster" as used in all sections of this chapter except RCW 38.52.430 shall mean an event or set of circumstances which: (i) Demands immediate action to preserve public health, protect life, protect public property, or to provide relief to any stricken community overtaken by such occurrences, or (ii) reaches such a dimension or degree of destructiveness as to warrant the governor declaring a state of emergency pursuant to RCW 43.06.010.

(b) "Emergency" as used in RCW 38.52.430 means an incident that requires a normal police, coroner, fire, rescue, emergency medical services, or utility response as a result of a violation of one of the statutes enumerated in RCW 38.52.430.

(7) "Search and rescue" means the acts of searching for, rescuing, or recovering by means of ground, marine, or air activity any person who becomes lost, injured, or is killed while outdoors or as a result of a natural, technological, or human caused disaster, including instances involving searches for downed aircraft when ground personnel are used. Nothing in this section shall affect appropriate activity by the department of transportation under chapter 47.68 RCW.

(8) "Executive head" and "executive heads" means the county executive in those charter counties with an elective office of county executive, however designated, and, in the case of other counties, the county legislative authority. In the case of cities and towns, it means the mayor in those cities and towns with mayor-council or commission forms of government, where the mayor is directly elected, and it means the city manager in those cities and towns with council manager forms of government. Cities and towns may also designate an executive head for the purposes of this chapter by ordinance.

(9) "Director" means the adjutant general.

(10) "Local director" means the director of a local organization of emergency management or emergency services.

(11) "Department" means the state military department.

(12) "Emergency response" as used in RCW 38.52.430 means a public agency's use of emergency services during an emergency or disaster as defined in subsection (6)(b) of this section.

(13) "Expense of an emergency response" as used in RCW 38.52.430 means reasonable costs incurred by a public agency in reasonably making an appropriate emergency response to the incident, but shall only include those costs directly arising from the response to the particular incident. Reasonable costs shall include the costs of providing police, coroner, fire fighting, rescue, emergency medical services, or utility response at the scene of the incident, as well as the salaries of the personnel responding to the incident.

(14) "Public agency" means the state, and a city, county, municipal corporation, district, town, or public authority located, in whole or in part, within this state which provides or may provide fire fighting, police, ambulance, medical, or other emergency services.

(15) "Incident command system" means: (a) An all-hazards, on-scene functional management system that establishes common standards in organization, terminology, and procedures; provides a means (unified command) for the establishment of a common set of incident objectives and strategies during multiagency/multijurisdiction operations while maintaining individual agency/jurisdiction authority, responsibility, and accountability; and is a component of the national interagency incident management system; or (b) an equivalent and compatible all-hazards, on-scene functional management system.

(16) "Radio communications service company" has the meaning ascribed to it in RCW 82.14B.020. [2007 c 292 § 1; 2002 c 341 § 2; 1997 c 49 § 1; 1995 c 391 § 2. Prior: 1993 c 251 § 5; 1993 c 206 § 1; 1986 c 266 § 23; 1984 c 38 § 2; 1979 ex.s. c 268 § 1; 1975 1st ex.s. c 113 § 1; 1974 ex.s. c 171 § 4; 1967 c 203 § 1; 1953 c 223 § 2; 1951 c 178 § 3.]

Severability—Effective date—2002 c 341: See notes following RCW 38.52.501.

Effective date—1995 c 391: See note following RCW 38.52.005.

Finding—Intent—1993 c 251: See note following RCW 38.52.430.

Severability—1986 c 266: See note following RCW 38.52.005.

38.52.180 Liability for property damage, bodily injury, death—Immunity—Assumption by state—Indemnification—Immunity from liability for covered volunteers. (1) There shall be no liability on the part of anyone including any person, partnership, corporation, the state of Washington or any political subdivision thereof who owns or maintains any building or premises which have been designated by a local organization for emergency management as a shelter from destructive operations or attacks by enemies of the United States for any injuries sustained by any person while in or upon said building or premises, as a result of the condition of said building or premises or as a result of any act or omission, or in any way arising from the designation of such premises as a shelter, when such person has entered or gone upon or into said building or premises for the purpose of

seeking refuge therein during destructive operations or attacks by enemies of the United States or during tests ordered by lawful authority, except for an act of willful negligence by such owner or occupant or his servants, agents, or employees.

(2) All legal liability for damage to property or injury or death to persons (except an emergency worker, regularly enrolled and acting as such), caused by acts done or attempted during or while traveling to or from an emergency or disaster, search and rescue, or training or exercise authorized by the department in preparation for an emergency or disaster or search and rescue, under the color of this chapter in a bona fide attempt to comply therewith, except as provided in subsections (3), (4), and (5) of this section regarding covered volunteer emergency workers, shall be the obligation of the state of Washington. Suits may be instituted and maintained against the state for the enforcement of such liability, or for the indemnification of persons appointed and regularly enrolled as emergency workers while actually engaged in emergency management duties, or as members of any agency of the state or political subdivision thereof engaged in emergency management activity, or their dependents, for damage done to their private property, or for any judgment against them for acts done in good faith in compliance with this chapter: PROVIDED, That the foregoing shall not be construed to result in indemnification in any case of willful misconduct, gross negligence or bad faith on the part of any agent of emergency management: PROVIDED, That should the United States or any agency thereof, in accordance with any federal statute, rule or regulation, provide for the payment of damages to property and/or for death or injury as provided for in this section, then and in that event there shall be no liability or obligation whatsoever upon the part of the state of Washington for any such damage, death, or injury for which the United States government assumes liability.

(3) No act or omission by a covered volunteer emergency worker while engaged in a covered activity shall impose any liability for civil damages resulting from such an act or omission upon:

- (a) The covered volunteer emergency worker;
- (b) The supervisor or supervisors of the covered volunteer emergency worker;
- (c) Any facility or their officers or employees;
- (d) The employer of the covered volunteer emergency worker;
- (e) The owner of the property or vehicle where the act or omission may have occurred during the covered activity;
- (f) Any local organization that registered the covered volunteer emergency worker; and
- (g) The state or any state or local governmental entity.

(4) The immunity in subsection (3) of this section applies only when the covered volunteer emergency worker was engaged in a covered activity:

- (a) Within the scope of his or her assigned duties;
- (b) Under the direction of a local emergency management organization or the department, or a local law enforcement agency for search and rescue; and
- (c) The act or omission does not constitute gross negligence or willful or wanton misconduct.

(5) For purposes of this section:

(a) "Covered volunteer emergency worker" means an emergency worker as defined in RCW 38.52.010 who (i) is not receiving or expecting compensation as an emergency worker from the state or local government, or (ii) is not a state or local government employee unless on leave without pay status.

(b) "Covered activity" means:

(i) Providing assistance or transportation authorized by the department during an emergency or disaster or search and rescue as defined in RCW 38.52.010, whether such assistance or transportation is provided at the scene of the emergency or disaster or search and rescue, at an alternative care site, at a hospital, or while in route to or from such sites or between sites; or

(ii) Participating in training or exercise authorized by the department in preparation for an emergency or disaster or search and rescue.

(6) Any requirement for a license to practice any professional, mechanical or other skill shall not apply to any authorized emergency worker who shall, in the course of performing his duties as such, practice such professional, mechanical or other skill during an emergency described in this chapter.

(7) The provisions of this section shall not affect the right of any person to receive benefits to which he would otherwise be entitled under this chapter, or under the workers' compensation law, or under any pension or retirement law, nor the right of any such person to receive any benefits or compensation under any act of congress. [2007 c 292 § 2; 1987 c 185 § 7; 1984 c 38 § 17; 1974 ex.s. c 171 § 20; 1971 ex.s. c 8 § 2; 1953 c 145 § 1; 1951 c 178 § 11.]

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

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

Title 39

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Chapter 39.04 RCW
PUBLIC WORKS

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39.04.010 Definitions. The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

(1) "Award" means the formal decision by the state or municipality notifying a responsible bidder with the lowest responsive bid of the state or municipality's acceptance of the bid and intent to enter into a contract with the bidder.

(2) "Contract" means a contract in writing for the execution of public work for a fixed or determinable amount duly awarded after advertisement and competitive bid, or a contract awarded under the small works roster process in RCW 39.04.155.

(3) "Municipality" means every city, county, town, district, or other public agency authorized by law to require the execution of public work, except drainage districts, diking districts, diking and drainage improvement districts, drainage improvement districts, diking improvement districts, consolidated diking and drainage improvement districts, consolidated drainage improvement districts, consolidated diking improvement districts, irrigation districts, or other districts authorized by law for the reclamation or development of waste or undeveloped lands.

(4) "Public work" means all work, construction, alteration, repair, or improvement other than ordinary maintenance, executed at the cost of the state or of any municipality, or which is by law a lien or charge on any property therein. All public works, including maintenance when performed by contract shall comply with chapter 39.12 RCW. "Public work" does not include work, construction, alteration, repair, or improvement performed under contracts entered into under RCW 36.102.060(4) or under development agreements entered into under RCW 36.102.060(7) or leases entered into under RCW 36.102.060(8).

(5) "Responsible bidder" means a contractor who meets the criteria in RCW 39.04.350.

(6) "State" means the state of Washington and all departments, supervisors, commissioners, and agencies of the state. [2007 c 133 § 1; 2000 c 138 § 102; 1997 c 220 § 402 (Referendum Bill No. 48, approved June 17, 1997); 1993 c 174 § 1; 1989 c 363 § 5; 1986 c 282 § 1; 1982 c 98 § 1; 1977 ex.s. c 177 § 1; 1923 c 183 § 1; RRS § 10322-1.]

Purpose—Part headings not law—2000 c 138: See notes following RCW 39.04.155.

Referendum—Other legislation limited—Legislators' personal intent not indicated—Reimbursements for election—Voters' pamphlet, election requirements—1997 c 220: See RCW 36.102.800 through 36.102.803.

Part headings not law—Severability—1997 c 220: See RCW 36.102.900 and 36.102.901.

Severability—1986 c 282: See RCW 82.18.900.

Municipalities—Energy audits and efficiency: RCW 43.19.691.

39.04.155 Small works roster contract procedures—Limited public works process—Definition (*as amended by 2007 c 133*). (1) This section provides uniform small works roster provisions to award contracts for construction, building, renovation, remodeling, alteration, repair, or improvement of real property that may be used by state agencies and by any local government that is expressly authorized to use these provisions. These provisions may be used in lieu of other procedures to award contracts for such work with an estimated cost of two hundred thousand dollars or less. The small works roster process includes the limited public works process authorized under subsection (3) of this section and any local government authorized to award contracts using the small works roster process under this section may award contracts using the limited public works process under subsection (3) of this section.

(2)(a) A state agency or authorized local government may create a single general small works roster, or may create a small works roster for different specialties or categories of anticipated work. Where applicable, small works rosters may make distinctions between contractors based upon different geographic areas served by the contractor. The small works roster or rosters shall consist of all responsible contractors who have requested to be on the list, and where required by law are properly licensed or registered to perform such work in this state. A state agency or local government establishing a small works roster or rosters may require eligible contractors desiring to be placed on a roster or rosters to keep current records of any applicable licenses, certifications, registrations, bonding, insurance, or other appropriate matters on file with the state agency or local government as a condition of being placed on a roster or rosters. At least once a year, the state agency or local government shall publish in a newspaper of general circulation within the jurisdiction a notice of the existence of the roster or rosters and solicit the names of contractors for such roster or rosters. In addition, responsible contractors shall be added to an appropriate roster or rosters at any time they submit a written request and necessary records. Master contracts may be required to be signed that become effective when a specific award is made using a small works roster.

(b) A state agency establishing a small works roster or rosters shall adopt rules implementing this subsection. A local government establishing a small works roster or rosters shall adopt an ordinance or resolution implementing this subsection. Procedures included in rules adopted by the department of general administration in implementing this subsection must be included in any rules providing for a small works roster or rosters that is adopted by another state agency, if the authority for that state agency to engage in these activities has been delegated to it by the department of general administration under chapter 43.19 RCW. An interlocal contract or agreement between two or more state agencies or local governments establishing a small works roster or rosters to be used by the parties to the agreement or contract must clearly identify the lead entity that is responsible for implementing the provisions of this subsection.

(c) Procedures shall be established for securing telephone, written, or electronic quotations from contractors on the appropriate small works roster to assure that a competitive price is established and to award contracts to the lowest responsible bidder(ers) as defined in RCW ((43.19.1914)) 39.04.010. Invitations for quotations shall include an estimate of the scope and nature of the work to be performed as well as materials and equipment to be furnished. However, detailed plans and specifications need not be included in the invitation. This subsection does not eliminate other requirements for architectural or engineering approvals as to quality and compliance with building codes. Quotations may be invited from all appropriate contractors on the appropriate small works roster. As an alternative, quotations may be invited from at least five contractors on the appropriate small works roster who have indicated the capability of performing the kind of work being contracted, in a manner that will equitably distribute the opportunity among the contractors on the appropriate roster. However, if the estimated cost of the work is from one hundred thousand dollars to two hundred thousand dollars, a state agency or local government, other than a port district, that chooses to solicit bids from less than all the appropriate contractors on the appropriate small works roster must also notify the remaining contractors on the appropriate small works roster that quotations on the work are being sought. The government has the sole option of determining whether this notice to the remaining contractors is made by: (i) Publishing notice in a legal newspaper in general circulation in the area where the work is to be done; (ii) mailing a notice to these contractors; or (iii) sending a notice to these contractors by facsimile

or other electronic means. For purposes of this subsection (2)(c), "equitably distribute" means that a state agency or local government soliciting bids may not favor certain contractors on the appropriate small works roster over other contractors on the appropriate small works roster who perform similar services.

(d) A contract awarded from a small works roster under this section need not be advertised.

(e) Immediately after an award is made, the bid quotations obtained shall be recorded, open to public inspection, and available by telephone inquiry.

(3) In lieu of awarding contracts under subsection (2) of this section, a state agency or authorized local government may award a contract for work, construction, alteration, repair, or improvement (~~(project [projects])~~) projects estimated to cost less than thirty-five thousand dollars using the limited public works process provided under this subsection. Public works projects awarded under this subsection are exempt from the other requirements of the small works roster process provided under subsection (2) of this section and are exempt from the requirement that contracts be awarded after advertisement as provided under RCW 39.04.010.

For limited public works projects, a state agency or authorized local government shall solicit electronic or written quotations from a minimum of three contractors from the appropriate small works roster and shall award the contract to the lowest responsible bidder as defined under RCW (~~(43.19.1911)~~) 39.04.010. After an award is made, the quotations shall be open to public inspection and available by electronic request. A state agency or authorized local government shall attempt to distribute opportunities for limited public works projects equitably among contractors willing to perform in the geographic area of the work. A state agency or authorized local government shall maintain a list of the contractors contacted and the contracts awarded during the previous twenty-four months under the limited public works process, including the name of the contractor, the contractor's registration number, the amount of the contract, a brief description of the type of work performed, and the date the contract was awarded. For limited public works projects, a state agency or authorized local government may waive the payment and performance bond requirements of chapter 39.08 RCW and the retainage requirements of chapter 60.28 RCW, thereby assuming the liability for the contractor's nonpayment of laborers, mechanics, sub-contractors, materialmen, suppliers, and taxes imposed under Title 82 RCW that may be due from the contractor for the limited public works project, however the state agency or authorized local government shall have the right of recovery against the contractor for any payments made on the contractor's behalf.

(4) The breaking of any project into units or accomplishing any projects by phases is prohibited if it is done for the purpose of avoiding the maximum dollar amount of a contract that may be let using the small works roster process or limited public works process.

(5) As used in this section, "state agency" means the department of general administration, the state parks and recreation commission, the department of natural resources, the department of fish and wildlife, the department of transportation, any institution of higher education as defined under RCW 28B.10.016, and any other state agency delegated authority by the department of general administration to engage in construction, building, renovation, remodeling, alteration, improvement, or repair activities. [2007 c 133 § 4; 2001 c 284 § 1; 2000 c 138 § 101; 1998 c 278 § 12; 1993 c 198 § 1; 1991 c 363 § 109.]

39.04.155 Small works roster contract procedures—Limited public works process—Definition (as amended by 2007 c 210). (1) This section provides uniform small works roster provisions to award contracts for construction, building, renovation, remodeling, alteration, repair, or improvement of real property that may be used by state agencies and by any local government that is expressly authorized to use these provisions. These provisions may be used in lieu of other procedures to award contracts for such work with an estimated cost of two hundred thousand dollars or less. The small works roster process includes the limited public works process authorized under subsection (3) of this section and any local government authorized to award contracts using the small works roster process under this section may award contracts using the limited public works process under subsection (3) of this section.

(2)(a) A state agency or authorized local government may create a single general small works roster, or may create a small works roster for different specialties or categories of anticipated work. Where applicable, small works rosters may make distinctions between contractors based upon different geographic areas served by the contractor. The small works roster or rosters shall consist of all responsible contractors who have requested to be on

the list, and where required by law are properly licensed or registered to perform such work in this state. A state agency or local government establishing a small works roster or rosters may require eligible contractors desiring to be placed on a roster or rosters to keep current records of any applicable licenses, certifications, registrations, bonding, insurance, or other appropriate matters on file with the state agency or local government as a condition of being placed on a roster or rosters. At least once a year, the state agency or local government shall publish in a newspaper of general circulation within the jurisdiction a notice of the existence of the roster or rosters and solicit the names of contractors for such roster or rosters. In addition, responsible contractors shall be added to an appropriate roster or rosters at any time they submit a written request and necessary records. Master contracts may be required to be signed that become effective when a specific award is made using a small works roster.

(b) A state agency establishing a small works roster or rosters shall adopt rules implementing this subsection. A local government establishing a small works roster or rosters shall adopt an ordinance or resolution implementing this subsection. Procedures included in rules adopted by the department of general administration in implementing this subsection must be included in any rules providing for a small works roster or rosters that is adopted by another state agency, if the authority for that state agency to engage in these activities has been delegated to it by the department of general administration under chapter 43.19 RCW. An interlocal contract or agreement between two or more state agencies or local governments establishing a small works roster or rosters to be used by the parties to the agreement or contract must clearly identify the lead entity that is responsible for implementing the provisions of this subsection.

(c) Procedures shall be established for securing telephone, written, or electronic quotations from contractors on the appropriate small works roster to assure that a competitive price is established and to award contracts to the lowest responsible bidder, as defined in RCW 43.19.1911. Invitations for quotations shall include an estimate of the scope and nature of the work to be performed as well as materials and equipment to be furnished. However, detailed plans and specifications need not be included in the invitation. This subsection does not eliminate other requirements for architectural or engineering approvals as to quality and compliance with building codes. Quotations may be invited from all appropriate contractors on the appropriate small works roster. As an alternative, quotations may be invited from at least five contractors on the appropriate small works roster who have indicated the capability of performing the kind of work being contracted, in a manner that will equitably distribute the opportunity among the contractors on the appropriate roster. However, if the estimated cost of the work is from one hundred thousand dollars to two hundred thousand dollars, a state agency or local government, other than a port district, that chooses to solicit bids from less than all the appropriate contractors on the appropriate small works roster must also notify the remaining contractors on the appropriate small works roster that quotations on the work are being sought. The government has the sole option of determining whether this notice to the remaining contractors is made by: (i) Publishing notice in a legal newspaper in general circulation in the area where the work is to be done; (ii) mailing a notice to these contractors; or (iii) sending a notice to these contractors by facsimile or other electronic means. For purposes of this subsection (2)(c), "equitably distribute" means that a state agency or local government soliciting bids may not favor certain contractors on the appropriate small works roster over other contractors on the appropriate small works roster who perform similar services.

(d) A contract awarded from a small works roster under this section need not be advertised.

(e) Immediately after an award is made, the bid quotations obtained shall be recorded, open to public inspection, and available by telephone inquiry.

(3) In lieu of awarding contracts under subsection (2) of this section, a state agency or authorized local government may award a contract for work, construction, alteration, repair, or improvement (~~(project [projects])~~) projects estimated to cost less than thirty-five thousand dollars using the limited public works process provided under this subsection. Public works projects awarded under this subsection are exempt from the other requirements of the small works roster process provided under subsection (2) of this section and are exempt from the requirement that contracts be awarded after advertisement as provided under RCW 39.04.010.

For limited public works projects, a state agency or authorized local government shall solicit electronic or written quotations from a minimum of three contractors from the appropriate small works roster and shall award the contract to the lowest responsible bidder as defined under RCW 43.19.1911. After an award is made, the quotations shall be open to public inspection and available by electronic request. A state agency or authorized local government shall attempt to distribute opportunities for limited public works

projects equitably among contractors willing to perform in the geographic area of the work. A state agency or authorized local government shall maintain a list of the contractors contacted and the contracts awarded during the previous twenty-four months under the limited public works process, including the name of the contractor, the contractor's registration number, the amount of the contract, a brief description of the type of work performed, and the date the contract was awarded. For limited public works projects, a state agency or authorized local government may waive the payment and performance bond requirements of chapter 39.08 RCW and the retainage requirements of chapter 60.28 RCW, thereby assuming the liability for the contractor's nonpayment of laborers, mechanics, subcontractors, ~~((materialmen))~~ material persons, suppliers, and taxes imposed under Title 82 RCW that may be due from the contractor for the limited public works project, however the state agency or authorized local government shall have the right of recovery against the contractor for any payments made on the contractor's behalf.

(4) The breaking of any project into units or accomplishing any projects by phases is prohibited if it is done for the purpose of avoiding the maximum dollar amount of a contract that may be let using the small works roster process or limited public works process.

(5)(a) A state agency or authorized local government may use the limited public works process of subsection (3) of this section to solicit and award small works roster contracts to small businesses that are registered contractors with gross revenues under one million dollars annually as reported on their federal tax return.

(b) A state agency or authorized local government may adopt additional procedures to encourage small businesses that are registered contractors with gross revenues under two hundred fifty thousand dollars annually as reported on their federal tax returns to submit quotations or bids on small works roster contracts.

(6) As used in this section, "state agency" means the department of general administration, the state parks and recreation commission, the department of natural resources, the department of fish and wildlife, the department of transportation, any institution of higher education as defined under RCW 28B.10.016, and any other state agency delegated authority by the department of general administration to engage in construction, building, renovation, remodeling, alteration, improvement, or repair activities. [2007 c 210 § 1; 2001 c 284 § 1; 2000 c 138 § 101; 1998 c 278 § 12; 1993 c 198 § 1; 1991 c 363 § 109.]

39.04.155 Small works roster contract procedures—Limited public works process—Definition (as amended by 2007 c 218). (1) This section provides uniform small works roster provisions to award contracts for construction, building, renovation, remodeling, alteration, repair, or improvement of real property that may be used by state agencies and by any local government that is expressly authorized to use these provisions. These provisions may be used in lieu of other procedures to award contracts for such work with an estimated cost of two hundred thousand dollars or less. The small works roster process includes the limited public works process authorized under subsection (3) of this section and any local government authorized to award contracts using the small works roster process under this section may award contracts using the limited public works process under subsection (3) of this section.

(2)(a) A state agency or authorized local government may create a single general small works roster, or may create a small works roster for different specialties or categories of anticipated work. Where applicable, small works rosters may make distinctions between contractors based upon different geographic areas served by the contractor. The small works roster or rosters shall consist of all responsible contractors who have requested to be on the list, and where required by law are properly licensed or registered to perform such work in this state. A state agency or local government establishing a small works roster or rosters may require eligible contractors desiring to be placed on a roster or rosters to keep current records of any applicable licenses, certifications, registrations, bonding, insurance, or other appropriate matters on file with the state agency or local government as a condition of being placed on a roster or rosters. At least once a year, the state agency or local government shall publish in a newspaper of general circulation within the jurisdiction a notice of the existence of the roster or rosters and solicit the names of contractors for such roster or rosters. In addition, responsible contractors shall be added to an appropriate roster or rosters at any time they submit a written request and necessary records. Master contracts may be required to be signed that become effective when a specific award is made using a small works roster.

(b) A state agency establishing a small works roster or rosters shall adopt rules implementing this subsection. A local government establishing a small works roster or rosters shall adopt an ordinance or resolution imple-

menting this subsection. Procedures included in rules adopted by the department of general administration in implementing this subsection must be included in any rules providing for a small works roster or rosters that is adopted by another state agency, if the authority for that state agency to engage in these activities has been delegated to it by the department of general administration under chapter 43.19 RCW. An interlocal contract or agreement between two or more state agencies or local governments establishing a small works roster or rosters to be used by the parties to the agreement or contract must clearly identify the lead entity that is responsible for implementing the provisions of this subsection.

(c) Procedures shall be established for securing telephone, written, or electronic quotations from contractors on the appropriate small works roster to assure that a competitive price is established and to award contracts to the lowest responsible bidder, as defined in RCW 43.19.1911. Invitations for quotations shall include an estimate of the scope and nature of the work to be performed as well as materials and equipment to be furnished. However, detailed plans and specifications need not be included in the invitation. This subsection does not eliminate other requirements for architectural or engineering approvals as to quality and compliance with building codes. Quotations may be invited from all appropriate contractors on the appropriate small works roster. As an alternative, quotations may be invited from at least five contractors on the appropriate small works roster who have indicated the capability of performing the kind of work being contracted, in a manner that will equitably distribute the opportunity among the contractors on the appropriate roster. However, if the estimated cost of the work is from one hundred thousand dollars to two hundred thousand dollars, a state agency or local government, other than a port district, that chooses to solicit bids from less than all the appropriate contractors on the appropriate small works roster must also notify the remaining contractors on the appropriate small works roster that quotations on the work are being sought. The government has the sole option of determining whether this notice to the remaining contractors is made by: (i) Publishing notice in a legal newspaper in general circulation in the area where the work is to be done; (ii) mailing a notice to these contractors; or (iii) sending a notice to these contractors by facsimile or other electronic means. For purposes of this subsection (2)(c), "equitably distribute" means that a state agency or local government soliciting bids may not favor certain contractors on the appropriate small works roster over other contractors on the appropriate small works roster who perform similar services.

(d) A contract awarded from a small works roster under this section need not be advertised.

(e) Immediately after an award is made, the bid quotations obtained shall be recorded, open to public inspection, and available by telephone inquiry.

(3) In lieu of awarding contracts under subsection (2) of this section, a state agency or authorized local government may award a contract for work, construction, alteration, repair, or improvement ~~((project {projects}))~~ projects estimated to cost less than thirty-five thousand dollars using the limited public works process provided under this subsection. Public works projects awarded under this subsection are exempt from the other requirements of the small works roster process provided under subsection (2) of this section and are exempt from the requirement that contracts be awarded after advertisement as provided under RCW 39.04.010.

For limited public works projects, a state agency or authorized local government shall solicit electronic or written quotations from a minimum of three contractors from the appropriate small works roster and shall award the contract to the lowest responsible bidder as defined under RCW 43.19.1911. After an award is made, the quotations shall be open to public inspection and available by electronic request. A state agency or authorized local government shall attempt to distribute opportunities for limited public works projects equitably among contractors willing to perform in the geographic area of the work. A state agency or authorized local government shall maintain a list of the contractors contacted and the contracts awarded during the previous twenty-four months under the limited public works process, including the name of the contractor, the contractor's registration number, the amount of the contract, a brief description of the type of work performed, and the date the contract was awarded. For limited public works projects, a state agency or authorized local government may waive the payment and performance bond requirements of chapter 39.08 RCW and the retainage requirements of chapter 60.28 RCW, thereby assuming the liability for the contractor's nonpayment of laborers, mechanics, subcontractors, ~~((materialmen))~~ material suppliers, suppliers, and taxes imposed under Title 82 RCW that may be due from the contractor for the limited public works project, however the state agency or authorized local government shall have the right of recovery against the contractor for any payments made on the contractor's behalf.

(4) The breaking of any project into units or accomplishing any projects by phases is prohibited if it is done for the purpose of avoiding the

maximum dollar amount of a contract that may be let using the small works roster process or limited public works process.

(5) As used in this section, "state agency" means the department of general administration, the state parks and recreation commission, the department of natural resources, the department of fish and wildlife, the department of transportation, any institution of higher education as defined under RCW 28B.10.016, and any other state agency delegated authority by the department of general administration to engage in construction, building, renovation, remodeling, alteration, improvement, or repair activities. [2007 c 218 § 87; 2001 c 284 § 1; 2000 c 138 § 101; 1998 c 278 § 12; 1993 c 198 § 1; 1991 c 363 § 109.]

Reviser's note: RCW 39.04.155 was amended three times during the 2007 legislative session, all without reference to the other. For rule of construction concerning sections amended more than once during the same legislative session, see RCW 1.12.025.

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

Purpose—2000 c 138: "The purpose of this act is to establish a common small works roster procedure that state agencies and local governments may use to award contracts for construction, building, renovation, remodeling, alteration, repair, or improvement of real property." [2000 c 138 § 1.]

Part headings not law—2000 c 138: "Part headings used in this act are not any part of the law." [2000 c 138 § 302.]

Purpose—Captions not law—1991 c 363: See notes following RCW 2.32.180.

Competitive bids—Contract procedure: RCW 36.32.250.

39.04.310 Apprenticeship training programs—Definitions. The definitions in this section apply throughout this section and RCW 39.04.300 and 39.04.320 unless the context clearly requires otherwise.

(1) "Apprentice" means an apprentice enrolled in a state-approved apprenticeship training program.

(2) "Apprentice utilization requirement" means the requirement that the appropriate percentage of labor hours be performed by apprentices.

(3) "Labor hours" means the total hours of workers receiving an hourly wage who are directly employed on the site of the public works project. "Labor hours" includes hours performed by workers employed by the contractor and all subcontractors working on the project. "Labor hours" does not include hours worked by foremen, superintendents, owners, and workers who are not subject to prevailing wage requirements.

(4) "School district" has the same meaning as in RCW 28A.315.025.

(5) "State-approved apprenticeship training program" means an apprenticeship training program approved by the Washington state apprenticeship council. [2007 c 437 § 1; 2005 c 3 § 2.]

Effective date—2005 c 3: See note following RCW 39.04.300.

39.04.320 Apprenticeship training programs—Public works contracts—Adjustment of specific projects—Report and collection of agency data—Apprenticeship utilization advisory committee created. (1)(a) Except as provided in (b) and (c) of this subsection, from January 1, 2005, and thereafter, for all public works estimated to cost one million dollars or more, all specifications shall require that no less than fifteen percent of the labor hours be performed by apprentices.

(b)(i) This section does not apply to contracts advertised for bid before July 1, 2007, for any public works by the department of transportation.

(ii) For contracts advertised for bid on or after July 1, 2007, and before July 1, 2008, for all public works by the department of transportation estimated to cost five million dollars or more, all specifications shall require that no less than ten percent of the labor hours be performed by apprentices.

(iii) For contracts advertised for bid on or after July 1, 2008, and before July 1, 2009, for all public works by the department of transportation estimated to cost three million dollars or more, all specifications shall require that no less than twelve percent of the labor hours be performed by apprentices.

(iv) For contracts advertised for bid on or after July 1, 2009, for all public works by the department of transportation estimated to cost two million dollars or more, all specifications shall require that no less than fifteen percent of the labor hours be performed by apprentices.

(c)(i) This section does not apply to contracts advertised for bid before January 1, 2008, for any public works by a school district, or to any project funded in whole or in part by bond issues approved before July 1, 2007.

(ii) For contracts advertised for bid on or after January 1, 2008, for all public works by a school district estimated to cost three million dollars or more, all specifications shall require that no less than ten percent of the labor hours be performed by apprentices.

(iii) For contracts advertised for bid on or after January 1, 2009, for all public works by a school district estimated to cost two million dollars or more, all specifications shall require that no less than twelve percent of the labor hours be performed by apprentices.

(iv) For contracts advertised for bid on or after January 1, 2010, for all public works by a school district estimated to cost one million dollars or more, all specifications shall require that no less than fifteen percent of the labor hours be performed by apprentices.

(2) Awarding agency directors or school districts may adjust the requirements of this section for a specific project for the following reasons:

(a) The demonstrated lack of availability of apprentices in specific geographic areas;

(b) A disproportionately high ratio of material costs to labor hours, which does not make feasible the required minimum levels of apprentice participation;

(c) Participating contractors have demonstrated a good faith effort to comply with the requirements of RCW 39.04.300 and 39.04.310 and this section; or

(d) Other criteria the awarding agency director or school district deems appropriate, which are subject to review by the office of the governor.

(3) The secretary of the department of transportation shall adjust the requirements of this section for a specific project for the following reasons:

(a) The demonstrated lack of availability of apprentices in specific geographic areas; or

(b) A disproportionately high ratio of material costs to labor hours, which does not make feasible the required minimum levels of apprentice participation.

(4) This section applies to public works contracts awarded by the state and to public works contracts awarded by school districts. However, this section does not apply to

contracts awarded by state four-year institutions of higher education or state agencies headed by a separately elected public official.

(5)(a) The department of general administration must provide information and technical assistance to affected agencies and collect the following data from affected agencies for each project covered by this section:

- (i) The name of each apprentice and apprentice registration number;
- (ii) The name of each project;
- (iii) The dollar value of each project;
- (iv) The date of the contractor's notice to proceed;
- (v) The number of apprentices and labor hours worked by them, categorized by trade or craft;
- (vi) The number of journey level workers and labor hours worked by them, categorized by trade or craft; and
- (vii) The number, type, and rationale for the exceptions granted under subsection (2) of this section.

(b) The department of labor and industries shall assist the department of general administration in providing information and technical assistance.

(6) The secretary of transportation shall establish an apprenticeship utilization advisory committee, which shall include statewide geographic representation and consist of equal numbers of representatives of contractors and labor. The committee must include at least one member representing contractor businesses with less than thirty-five employees. The advisory committee shall meet regularly with the secretary of transportation to discuss implementation of this section by the department of transportation, including development of the process to be used to adjust the requirements of this section for a specific project. The committee shall provide a report to the legislature by January 1, 2008, on the effects of the apprentice labor requirement on transportation projects and on the availability of apprentice labor and programs statewide.

(7) At the request of the senate labor, commerce, research and development committee, the house of representatives commerce and labor committee, or their successor committees, and the governor, the department of general administration and the department of labor and industries shall compile and summarize the agency data and provide a joint report to both committees. The report shall include recommendations on modifications or improvements to the apprentice utilization program and information on skill shortages in each trade or craft. [2007 c 437 § 2; 2006 c 321 § 2; 2005 c 3 § 3.]

Effective date—2005 c 3: See note following RCW 39.04.300.

39.04.350 Bidder responsibility criteria—Supplemental criteria. (1) Before award of a public works contract, a bidder must meet the following responsibility criteria to be considered a responsible bidder and qualified to be awarded a public works project. The bidder must:

- (a) At the time of bid submittal, have a certificate of registration in compliance with chapter 18.27 RCW;
- (b) Have a current state unified business identifier number;
- (c) If applicable, have industrial insurance coverage for the bidder's employees working in Washington as required in

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Title 51 RCW; an employment security department number as required in Title 50 RCW; and a state excise tax registration number as required in Title 82 RCW; and

(d) Not be disqualified from bidding on any public works contract under RCW 39.06.010 or 39.12.065(3).

(2) In addition to the bidder responsibility criteria in subsection (1) of this section, the state or municipality may adopt relevant supplemental criteria for determining bidder responsibility applicable to a particular project which the bidder must meet.

(a) Supplemental criteria for determining bidder responsibility, including the basis for evaluation and the deadline for appealing a determination that a bidder is not responsible, must be provided in the invitation to bid or bidding documents.

(b) In a timely manner before the bid submittal deadline, a potential bidder may request that the state or municipality modify the supplemental criteria. The state or municipality must evaluate the information submitted by the potential bidder and respond before the bid submittal deadline. If the evaluation results in a change of the criteria, the state or municipality must issue an addendum to the bidding documents identifying the new criteria.

(c) If the bidder fails to supply information requested concerning responsibility within the time and manner specified in the bid documents, the state or municipality may base its determination of responsibility upon any available information related to the supplemental criteria or may find the bidder not responsible.

(d) If the state or municipality determines a bidder to be not responsible, the state or municipality must provide, in writing, the reasons for the determination. The bidder may appeal the determination within the time period specified in the bidding documents by presenting additional information to the state or municipality. The state or municipality must consider the additional information before issuing its final determination. If the final determination affirms that the bidder is not responsible, the state or municipality may not execute a contract with any other bidder until two business days after the bidder determined to be not responsible has received the final determination.

(3) The capital projects advisory review board created in *RCW 39.10.800 shall develop suggested guidelines to assist the state and municipalities in developing supplemental bidder responsibility criteria. The guidelines must be posted on the board's web site. [2007 c 133 § 2.]

***Reviser's note:** RCW 39.10.800 was recodified as RCW 39.10.220 pursuant to 2007 c 494 § 511, effective July 1, 2007.

Chapter 39.06 RCW

PUBLIC WORKS—REGISTRATION, LICENSING, OF CONTRACTORS

Sections

39.06.020 Verification of subcontractor responsibility criteria.

39.06.020 Verification of subcontractor responsibility criteria. A public works contractor must verify responsibility criteria for each first tier subcontractor, and a subcontractor of any tier that hires other subcontractors must verify

responsibility criteria for each of its subcontractors. Verification shall include that each subcontractor, at the time of subcontract execution, meets the responsibility criteria listed in RCW 39.04.350(1) and possesses an electrical contractor license, if required by chapter 19.28 RCW, or an elevator contractor license, if required by chapter 70.87 RCW. This verification requirement, as well as the responsibility criteria, must be included in every public works contract and subcontract of every tier. [2007 c 133 § 3.]

**Chapter 39.08 RCW
CONTRACTOR'S BOND**

Sections

- 39.08.010 Bond required—Conditions—Retention of contract amount in lieu of bond—Contracts of one hundred thousand dollars or less.
- 39.08.030 Conditions of bond—Notice of claim—Action on bond—Attorney's fees.

39.08.010 Bond required—Conditions—Retention of contract amount in lieu of bond—Contracts of one hundred thousand dollars or less. Whenever any board, council, commission, trustees, or body acting for the state or any county or municipality or any public body shall contract with any person or corporation to do any work for the state, county, or municipality, or other public body, city, town, or district, such board, council, commission, trustees, or body shall require the person or persons with whom such contract is made to make, execute, and deliver to such board, council, commission, trustees, or body a good and sufficient bond, with a surety company as surety, conditioned that such person or persons shall faithfully perform all the provisions of such contract and pay all laborers, mechanics, and subcontractors and material suppliers, and all persons who supply such person or persons, or subcontractors, with provisions and supplies for the carrying on of such work, which bond in cases of cities and towns shall be filed with the clerk or comptroller thereof, and any person or persons performing such services or furnishing material to any subcontractor shall have the same right under the provisions of such bond as if such work, services, or material was furnished to the original contractor: PROVIDED, HOWEVER, That the provisions of RCW 39.08.010 through 39.08.030 shall not apply to any money loaned or advanced to any such contractor, subcontractor or other person in the performance of any such work: PROVIDED FURTHER, That on contracts of thirty-five thousand dollars or less, at the option of the contractor the respective public entity may, in lieu of the bond, retain fifty percent of the contract amount for a period of thirty days after date of final acceptance, or until receipt of all necessary releases from the department of revenue and the department of labor and industries and settlement of any liens filed under chapter 60.28 RCW, whichever is later: PROVIDED FURTHER, That for contracts of one hundred thousand dollars or less, the public entity may accept a full payment and performance bond from an individual surety or sureties: AND PROVIDED FURTHER, That the surety must agree to be bound by the laws of the state of Washington and subjected to the jurisdiction of the state of Washington. [2007 c 218 § 88; 2007 c 210 § 3; 1989 c 145 § 1; 1982 c 98 § 5; 1975 1st ex.s.

c 278 § 23; 1967 c 70 § 2; 1915 c 28 § 1; 1909 c 207 § 1; RRS § 1159. Prior: 1897 c 44 § 1; 1888 p 15 § 1.]

Reviser's note: This section was amended by 2007 c 210 § 3 and by 2007 c 218 § 88, each without reference to the other. Both amendments are incorporated in the publication of this section under RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

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

Construction—Severability—1975 1st ex.s. c 278: See notes following RCW 11.08.160.

Liens for labor, material, taxes on public works—Reserve fund required: RCW 60.28.010.

State highway construction and maintenance, bond and surety requirements: Chapter 47.28 RCW.

39.08.030 Conditions of bond—Notice of claim—Action on bond—Attorney's fees. (1) The bond mentioned in RCW 39.08.010 shall be in an amount equal to the full contract price agreed to be paid for such work or improvement, except under subsection (2) of this section, and shall be to the state of Washington, except as otherwise provided in RCW 39.08.100, and except in cases of cities and towns, in which cases such municipalities may by general ordinance fix and determine the amount of such bond and to whom such bond shall run: PROVIDED, The same shall not be for a less amount than twenty-five percent of the contract price of any such improvement, and may designate that the same shall be payable to such city, and not to the state of Washington, and all such persons mentioned in RCW 39.08.010 shall have a right of action in his, her, or their own name or names on such bond for work done by such laborers or mechanics, and for materials furnished or provisions and goods supplied and furnished in the prosecution of such work, or the making of such improvements: PROVIDED, That such persons shall not have any right of action on such bond for any sum whatever, unless within thirty days from and after the completion of the contract with an acceptance of the work by the affirmative action of the board, council, commission, trustees, officer, or body acting for the state, county or municipality, or other public body, city, town or district, the laborer, mechanic or subcontractor, or material supplier, or person claiming to have supplied materials, provisions or goods for the prosecution of such work, or the making of such improvement, shall present to and file with such board, council, commission, trustees or body acting for the state, county or municipality, or other public body, city, town or district, a notice in writing in substance as follows:

To (here insert the name of the state, county or municipality or other public body, city, town or district):
Notice is hereby given that the undersigned (here insert the name of the laborer, mechanic or subcontractor, or material supplier, or person claiming to have furnished labor, materials or provisions for or upon such contract or work) has a claim in the sum of dollars (here insert the amount) against the bond taken from (here insert the name of the principal and surety or sureties upon such bond) for the work of (here insert a brief mention or description of the work concerning which said bond was taken).

(here to be signed)

Such notice shall be signed by the person or corporation making the claim or giving the notice, and said notice, after being presented and filed, shall be a public record open to inspection by any person, and in any suit or action brought against such surety or sureties by any such person or corporation to recover for any of the items hereinbefore specified, the claimant shall be entitled to recover in addition to all other costs, attorney's fees in such sum as the court shall adjudge reasonable: PROVIDED, HOWEVER, That no attorney's fees shall be allowed in any suit or action brought or instituted before the expiration of thirty days following the date of filing of the notice hereinbefore mentioned: PROVIDED FURTHER, That any city may avail itself of the provisions of RCW 39.08.010 through 39.08.030, notwithstanding any charter provisions in conflict herewith: AND PROVIDED FURTHER, That any city or town may impose any other or further conditions and obligations in such bond as may be deemed necessary for its proper protection in the fulfillment of the terms of the contract secured thereby, and not in conflict herewith.

(2) Under the job order contracting procedure described in *RCW 39.10.130, bonds will be in an amount not less than the dollar value of all open work orders. [2007 c 218 § 89; 2003 c 301 § 4; 1989 c 58 § 1; 1977 ex.s. c 166 § 4; 1915 c 28 § 2; 1909 c 207 § 3; RRS § 1161. Prior: 1899 c 105 § 1; 1888 p 16 § 3. Formerly RCW 39.08.030 through 39.08.060.]

*Reviser's note: RCW 39.10.130 was recodified as RCW 39.10.420 pursuant to 2007 c 494 § 511, effective July 1, 2007.

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

Severability—1977 ex.s. c 166: "If any provision of this 1977 amendatory act, or its application to any person or circumstance is held invalid, the remainder of the act, or the application of the provision to the other persons or circumstances is not affected." [1977 ex.s. c 166 § 9.]

Chapter 39.10 RCW

ALTERNATIVE PUBLIC WORKS CONTRACTING PROCEDURES

Sections

39.10.010	Recodified as RCW 39.10.200.
39.10.020	Recodified as RCW 39.10.210.
39.10.030	Repealed.
39.10.040	Repealed.
39.10.051	Recodified as RCW 39.10.300.
39.10.061	Recodified as RCW 39.10.340.
39.10.063	Repealed.
39.10.065	Repealed.
39.10.067	Repealed.
39.10.068	Repealed.
39.10.070	Recodified as RCW 39.10.320.
39.10.080	Recodified as RCW 39.10.310.
39.10.090	Recodified as RCW 39.10.480.
39.10.100	Recodified as RCW 39.10.470.
39.10.115	Repealed.
39.10.117	Repealed.
39.10.120	Recodified as RCW 39.10.490.
39.10.130	Recodified as RCW 39.10.420.
39.10.200	Finding—Purpose.
39.10.210	Definitions.
39.10.220	Board—Membership—Vacancies.
39.10.230	Board—Powers and duties.
39.10.240	Project review committee—Creation—Members.
39.10.250	Project review committee—Duties.
39.10.260	Project review committee—Meetings—Open and public.
39.10.270	Project review committee—Certification of public bodies.
39.10.280	Project review committee—Project approval process.
39.10.290	Appeal process.
39.10.300	Design-build procedure—Uses.

39.10.310	Design-build procedure—Negotiated adjustments to lowest bid or proposal—When allowed.
39.10.320	Design-build procedure—Project management and contracting requirements.
39.10.330	Design-build contract award process.
39.10.340	General contractor/construction manager procedure—Uses.
39.10.350	General contractor/construction manager procedure—Project management and contracting requirements.
39.10.360	General contractor/construction manager procedure—Contract award process.
39.10.370	General contractor/construction manager procedure—Maximum allowable construction cost.
39.10.380	General contractor/construction manager procedure—Subcontract bidding procedure.
39.10.390	General contractor/construction manager procedure—Subcontract work.
39.10.400	General contractor/construction manager procedure—Prebid determination of subcontractor eligibility.
39.10.410	General contractor/construction manager procedure—Subcontract agreements.
39.10.420	Job order procedure—Which public bodies may use—Authorized use.
39.10.430	Job order procedure—Contract award process.
39.10.440	Job order procedure—Contract requirements.
39.10.450	Job order procedure—Work orders.
39.10.460	Job order procedure—Required information to board.
39.10.470	Public inspection of certain records—Protection of trade secrets.
39.10.480	Construction of chapter—Waiver of other limits and requirements.
39.10.490	Application of chapter.
39.10.500	Exemptions.
39.10.510	Previously advertised projects.
39.10.800	Recodified as RCW 39.10.220.
39.10.810	Recodified as RCW 39.10.230.
39.10.902	Repealed.
39.10.903	Part headings and captions not law—2007 c 494.
39.10.904	Effective dates—2007 c 494.
39.10.905	Severability—2007 c 494.

Reviser's note—Sunset Act application: The alternative public works contracting procedures are subject to review, termination, and possible extension under chapter 43.131 RCW, the Sunset Act. See RCW 43.131.407. RCW 39.10.200 through 39.10.903 are scheduled for future repeal under RCW 43.131.408.

39.10.010 Recodified as RCW 39.10.200. See Supplementary Table of Disposition of Former RCW Sections, this volume.

39.10.020 Recodified as RCW 39.10.210. See Supplementary Table of Disposition of Former RCW Sections, this volume.

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

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

39.10.051 Recodified as RCW 39.10.300. See Supplementary Table of Disposition of Former RCW Sections, this volume.

39.10.061 Recodified as RCW 39.10.340. See Supplementary Table of Disposition of Former RCW Sections, this volume.

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

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

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

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

39.10.070 Recodified as RCW 39.10.320. See Supplementary Table of Disposition of Former RCW Sections, this volume.

39.10.080 Recodified as RCW 39.10.310. See Supplementary Table of Disposition of Former RCW Sections, this volume.

39.10.090 Recodified as RCW 39.10.480. See Supplementary Table of Disposition of Former RCW Sections, this volume.

39.10.100 Recodified as RCW 39.10.470. See Supplementary Table of Disposition of Former RCW Sections, this volume.

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

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

39.10.120 Recodified as RCW 39.10.490. See Supplementary Table of Disposition of Former RCW Sections, this volume.

39.10.130 Recodified as RCW 39.10.420. See Supplementary Table of Disposition of Former RCW Sections, this volume.

39.10.200 Finding—Purpose. The legislature finds that the traditional process of awarding public works contracts in lump sum to the lowest responsible bidder is a fair and objective method of selecting a contractor. However, under certain circumstances, alternative public works contracting procedures may best serve the public interest if such procedures are implemented in an open and fair process based on objective and equitable criteria. The purpose of this chapter is to authorize the use of certain supplemental alternative public works contracting procedures, to prescribe appropriate requirements to ensure that such contracting procedures serve the public interest, and to establish a process for evaluation of such contracting procedures. [2007 c 494 § 1; 1994 c 132 § 1. Formerly RCW 39.10.010.]

Sunset Act application: See note following chapter digest.

39.10.210 Definitions. Unless the context clearly requires otherwise, the definitions in this section apply throughout this chapter.

(1) "Alternative public works contracting procedure" means the design-build, general contractor/construction manager,

and job order contracting procedures authorized in RCW 39.10.300, 39.10.340, and 39.10.420, respectively.

(2) "Board" means the capital projects advisory review board.

(3) "Committee" means the project review committee.

(4) "Design-build procedure" means a contract between a public body and another party in which the party agrees to both design and build the facility, portion of the facility, or other item specified in the contract.

(5) "Total contract cost" means the fixed amount for the detailed specified general conditions work, the negotiated maximum allowable construction cost, and the percent fee on the negotiated maximum allowable construction cost.

(6) "General contractor/construction manager" means a firm with which a public body has selected and negotiated a maximum allowable construction cost to provide services during the design phase and to act as construction manager and general contractor during the construction phase.

(7) "Job order contract" means a contract in which the contractor agrees to a fixed period, indefinite quantity delivery order contract which provides for the use of negotiated, definitive work orders for public works as defined in RCW 39.04.010.

(8) "Job order contractor" means a registered or licensed contractor awarded a job order contract.

(9) "Maximum allowable construction cost" means the maximum cost of the work to construct the project including a percentage for risk contingency, negotiated support services, and approved change orders.

(10) "Negotiated support services" means items a general contractor would normally manage or perform on a construction project including, but not limited to surveying, hoisting, safety enforcement, provision of toilet facilities, temporary heat, cleanup, and trash removal.

(11) "Percent fee" means the percentage amount to be earned by the general contractor/construction manager as overhead and profit.

(12) "Public body" means any general or special purpose government, including but not limited to state agencies, institutions of higher education, counties, cities, towns, ports, school districts, and special purpose districts.

(13) "Certified public body" means a public body certified to use design-build or general contractor/construction manager contracting procedures, or both, under RCW 39.10.270.

(14) "Public works project" means any work for a public body within the definition of "public work" in RCW 39.04.010.

(15) "Total project cost" means the cost of the project less financing and land acquisition costs.

(16) "Unit price book" means a book containing specific prices, based on generally accepted industry standards and information, where available, for various items of work to be performed by the job order contractor. The prices may include: All the costs of materials; labor; equipment; overhead, including bonding costs; and profit for performing the items of work. The unit prices for labor must be at the rates in effect at the time the individual work order is issued.

(17) "Work order" means an order issued for a definite scope of work to be performed pursuant to a job order contract. [2007 c 494 § 101; 2005 c 469 § 3. Prior: 2003 c 352

§ 1; 2003 c 301 § 2; 2003 c 300 § 3; 2001 c 328 § 1; 2000 c 209 § 1; 1997 c 376 § 1; 1994 c 132 § 2. Formerly RCW 39.10.020.]

Sunset Act application: See note following chapter digest.

Effective date—2001 c 328: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect July 1, 2001." [2001 c 328 § 8.]

Effective date—1997 c 376: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect July 1, 1997." [1997 c 376 § 10.]

39.10.220 Board—Membership—Vacancies. (1) The board is created in the department of general administration to provide an evaluation of public capital projects construction processes, including the impact of contracting methods on project outcomes, and to advise the legislature on policies related to public works delivery methods.

(2)(a) The board shall consist of the following members appointed by the governor: Two representatives from construction general contracting; one representative from the architectural profession; one representative from the engineering profession; two representatives from construction specialty subcontracting; two representatives from construction trades labor organizations; one representative from the office of minority and women's business enterprises; one representative from a higher education institution; one representative from the department of general administration; two representatives from private industry; and one representative of a domestic insurer authorized to write surety bonds for contractors in Washington state. All appointed members must be knowledgeable about public works contracting procedures.

(b) Three members shall be positions representing different local public owners, selected by the association of Washington cities, the Washington state association of counties, and the Washington public ports association, respectively.

(c) One member shall be a representative from the public hospital districts, selected by the association of Washington public hospital districts.

(d) One member shall be a representative from school districts, selected by the Washington state school directors' association.

(e) The board shall include two members of the house of representatives, one from each major caucus, appointed by the speaker of the house of representatives, and two members of the senate, one from each major caucus, appointed by the president of the senate. Legislative members are nonvoting.

(3) Members selected under subsection (2)(a) of this section shall serve for terms of four years, with the terms expiring on June 30th on the fourth year of the term.

(4) The board chair is selected from among the appointed members by the majority vote of the voting members.

(5) Legislative members of the board shall be reimbursed for travel expenses in accordance with RCW 44.04.120. Nonlegislative members of the board, project review committee members, and subcommittee chairs shall be reimbursed for travel expenses as provided in RCW 43.03.050 and 43.03.060.

(6) If a vacancy occurs of the appointive members of the board, the governor shall fill the vacancy for the unexpired

term. Members of the board may be removed for malfeasance or misfeasance in office, upon specific written charges by the governor, under chapter 34.05 RCW.

(7) The board shall meet as often as necessary.

(8) Board members are expected to consistently attend board meetings. The chair of the board may ask the governor to remove any member who misses more than two meetings in any calendar year without cause.

(9) The department of general administration shall provide staff support as may be required for the proper discharge of the function of the board.

(10) The board may establish subcommittees as it desires and may invite nonmembers of the board to serve as committee members.

(11) The board shall encourage participation from persons and entities not represented on the board. [2007 c 494 § 102; 2005 c 377 § 1. Formerly RCW 39.10.800.]

Sunset Act application: See note following chapter digest.

39.10.230 Board—Powers and duties. The board has the following powers and duties:

(1) Develop and recommend to the legislature policies to further enhance the quality, efficiency, and accountability of capital construction projects through the use of traditional and alternative delivery methods in Washington, and make recommendations regarding expansion, continuation, elimination, or modification of the alternative public works contracting methods;

(2) Evaluate the use of existing contracting procedures and potential future use of other alternative contracting procedures including competitive negotiation contracts;

(3) Appoint members of the committee; and

(4) Develop and administer questionnaires designed to provide quantitative and qualitative data on alternative public works contracting procedures on which evaluations are based. [2007 c 494 § 103; 2005 c 377 § 2. Formerly RCW 39.10.810.]

Sunset Act application: See note following chapter digest.

39.10.240 Project review committee—Creation—Members. (1) The board shall establish a project review committee to review and approve public works projects using the design-build and general contractor/construction manager contracting procedures authorized in RCW 39.10.300 and 39.10.340 and to certify public bodies as provided in RCW 39.10.270.

(2) The board shall, by a majority vote of the board, appoint persons to the committee who are knowledgeable in the use of the design-build and general contractor/construction manager contracting procedures. Appointments must represent a balance among the industries and public owners on the board listed in RCW 39.10.220.

(a) When making initial appointments to the committee, the board shall consider for appointment former members of the school district project review board and the public hospital district project review board.

(b) Each member of the committee shall be appointed for a term of three years. However, for initial appointments, the board shall stagger the appointment of committee members so that the first members are appointed to serve terms of one,

two, or three years from the date of appointment. Appointees may be reappointed to serve more than one term.

(c) The committee shall, by a majority vote, elect a chair and vice-chair for the committee.

(d) The committee chair may select a person or persons on a temporary basis as a nonvoting member if project specific expertise is needed to assist in a review.

(3) The chair of the committee, in consultation with the vice-chair, may appoint one or more panels of at least six committee members to carry out the duties of the committee. Each panel shall have balanced representation of the private and public sector representatives serving on the committee.

(4) Any member of the committee directly or indirectly affiliated with a submittal before the committee must recuse himself or herself from the committee consideration of that submittal.

(5) Any person who sits on the committee or panel is not precluded from subsequently bidding on or participating in projects that have been reviewed by the committee.

(6) The committee shall meet as often as necessary to ensure that certification and approvals are completed in a timely manner. [2007 c 494 § 104.]

Sunset Act application: See note following chapter digest.

39.10.250 Project review committee—Duties. The committee shall:

(1) Certify, or recertify, public bodies for a period of three years to use the design-build or general contractor/construction manager, or both, contracting procedures for projects with a total project cost of ten million dollars or more;

(2) Review and approve the use of the design-build or general contractor/construction manager contracting procedures on a project by project basis for public bodies that are not certified under RCW 39.10.270; and

(3) Review and approve the use of the general contractor/construction manager contracting procedure by certified public bodies for projects with a total project cost under ten million dollars. [2007 c 494 § 105.]

Sunset Act application: See note following chapter digest.

39.10.260 Project review committee—Meetings—Open and public. (1) The committee shall hold regular public meetings to carry out its duties as described in RCW 39.10.250. Committee meetings are subject to chapter 42.30 RCW.

(2) The committee shall publish notice of its public meetings at least twenty days before the meeting in a legal newspaper circulated in the area where the public body seeking certification is located, or where each of the proposed projects under consideration will be constructed. All meeting notices must be posted on the committee's web site.

(3) The meeting notice must identify the public body that is seeking certification or project approval, and where applicable, a description of projects to be considered at the meeting. The notice must indicate when, where, and how the public may present comments regarding the committee's certification of a public body or approval of a project. Information submitted by a public body to be reviewed at the meeting

shall be available on the committee's web site at the time the notice is published.

(4) The committee must allow for public comment on the appropriateness of certification of a public body or on the appropriateness of the use of the proposed contracting procedure and the qualifications of a public body to use the contracting procedure. The committee shall receive and record both written and oral comments at the public hearing. [2007 c 494 § 106.]

Sunset Act application: See note following chapter digest.

39.10.270 Project review committee—Certification of public bodies. (1) A public body may apply for certification to use the design-build or general contractor/construction manager contracting procedure, or both. Once certified, a public body may use the contracting procedure for which it is certified on individual projects with a total project cost over ten million dollars without seeking committee approval. The certification period is three years. A public body seeking certification must submit to the committee an application in a format and manner as prescribed by the committee. The application must include a description of the public body's qualifications, its capital plan during the certification period, and its intended use of alternative contracting procedures.

(2) To certify a public body, the committee shall determine that the public body:

(a) Has the necessary experience and qualifications to determine which projects are appropriate for using alternative contracting procedures;

(b) Has the necessary experience and qualifications to carry out the alternative contracting procedure including, but not limited to: (i) Project delivery knowledge and experience; (ii) personnel with appropriate construction experience; (iii) a management plan and rationale for its alternative public works projects; (iv) demonstrated success in managing public works projects; (v) demonstrated success in managing at least one general contractor/construction manager or design-build project within the previous five years; (vi) the ability to properly manage its capital facilities plan including, but not limited to, appropriate project planning and budgeting experience; and (vii) the ability to meet requirements of this chapter; and

(c) Has resolved any audit findings on previous public works projects in a manner satisfactory to the committee.

(3) The committee shall, if practicable, make its determination at the public meeting during which an application for certification is reviewed. Public comments must be considered before a determination is made. Within ten business days of the public meeting, the committee shall provide a written determination to the public body, and make its determination available to the public on the committee's web site.

(4) The committee may revoke any public body's certification upon a finding, after a public hearing, that its use of design-build or general contractor/construction manager contracting procedures no longer serves the public interest.

(5) The committee may renew the certification of a public body for one additional three-year period. The public body must submit an application for recertification at least three months before the initial certification expires. The application shall include updated information on the public

body's capital plan for the next three years, its intended use of the procedures, and any other information requested by the committee. The committee must review the application for recertification at a meeting held before expiration of the applicant's initial certification period. A public body must reapply for certification under the process described in subsection (1) of this section once the period of recertification expires.

(6) Certified public bodies must submit project data information as required in RCW 39.10.320 and 39.10.350. [2007 c 494 § 107.]

Sunset Act application: See note following chapter digest.

39.10.280 Project review committee—Project approval process. (1) A public body not certified under RCW 39.10.270 must apply for approval from the committee to use the design-build or general contractor/construction manager contracting procedure on a project. A public body seeking approval must submit to the committee an application in a format and manner as prescribed by the committee. The application must include a description of the public body's qualifications, a description of the project, and its intended use of alternative contracting procedures.

(2) To approve a proposed project, the committee shall determine that:

(a) The alternative contracting procedure will provide a substantial fiscal benefit or the use of the traditional method of awarding contracts in lump sum to the low responsive bidder is not practical for meeting desired quality standards or delivery schedules;

(b) The proposed project meets the requirements for using the alternative contracting procedure as described in RCW 39.10.300 or 39.10.340;

(c) The public body has the necessary experience or qualified team to carry out the alternative contracting procedure including, but not limited to: (i) Project delivery knowledge and experience; (ii) sufficient personnel with construction experience to administer the contract; (iii) a written management plan that shows clear and logical lines of authority; (iv) the necessary and appropriate funding and time to properly manage the job and complete the project; (v) continuity of project management team, including personnel with experience managing projects of similar scope and size to the project being proposed; and (vi) necessary and appropriate construction budget;

(d) For design-build projects, construction personnel independent of the design-build team are knowledgeable in the design-build process and are able to oversee and administer the contract; and

(e) The public body has resolved any audit findings related to previous public works projects in a manner satisfactory to the committee.

(3) The committee shall, if practicable, make its determination at the public meeting during which a submittal is reviewed. Public comments must be considered before a determination is made.

(4) Within ten business days after the public meeting, the committee shall provide a written determination to the public body, and make its determination available to the public on the committee's web site. If the committee fails to make a

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written determination within ten business days of the public meeting, the request of the public body to use the alternative contracting procedure on the requested project shall be deemed approved.

(5) The requirements of subsection (1) of this section also apply to certified public bodies seeking to use the general contractor/construction manager contracting procedure on projects with a total project cost of less than ten million dollars.

(6) Failure of the committee to meet within sixty calendar days of a public body's application to use an alternative contracting procedure on a project shall be deemed an approval of the application. [2007 c 494 § 108.]

Sunset Act application: See note following chapter digest.

39.10.290 Appeal process. Final determinations by the committee may be appealed to the board within seven days by the public body or by an interested party. A written notice of an appeal must be provided to the committee and, as applicable, to the public body. The board shall resolve an appeal within forty-five days of receipt of the appeal and shall send a written determination of its decision to the party making the appeal and to the appropriate public body, as applicable. The public body shall comply with the determination of the board. [2007 c 494 § 109.]

Sunset Act application: See note following chapter digest.

39.10.300 Design-build procedure—Uses. (1) Subject to the process in RCW 39.10.270 or 39.10.280, public bodies may utilize the design-build procedure for public works projects in which the total project cost is over ten million dollars and where:

(a) The design and construction activities, technologies, or schedule to be used are highly specialized and a design-build approach is critical in developing the construction methodology or implementing the proposed technology; or

(b) The project design is repetitive in nature and is an incidental part of the installation or construction; or

(c) Regular interaction with and feedback from facilities users and operators during design is not critical to an effective facility design.

(2) Subject to the process in RCW 39.10.270 or 39.10.280, public bodies may use the design-build procedure for parking garages, regardless of cost.

(3) The design-build procedure also may be used for the construction or erection of preengineered metal buildings or prefabricated modular buildings, regardless of cost and is not subject to approval by the committee.

(4) Except for utility projects, the design-build procedure may not be used to procure operations and maintenance services for a period longer than three years. State agency projects that propose to use the design-build-operate-maintain procedure shall submit cost estimates for the construction portion of the project consistent with the office of financial management's capital budget requirements. Operations and maintenance costs must be shown separately and must not be included as part of the capital budget request. [2007 c 494 § 201. Prior: 2003 c 352 § 2; 2003 c 300 § 4; 2002 c 46 § 1; 2001 c 328 § 2. Formerly RCW 39.10.051.]

Sunset Act application: See note following chapter digest.

Effective date—2002 c 46: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately [March 14, 2002]." [2002 c 46 § 5.]

Effective date—2001 c 328: See note following RCW 39.10.020.

39.10.310 Design-build procedure—Negotiated adjustments to lowest bid or proposal—When allowed.

Notwithstanding the provisions of RCW 39.04.015, a public body using the design-build contracting procedure is authorized to negotiate an adjustment to the lowest bid or proposal price for a public works project based upon agreed changes to the contract plans and specifications under the following conditions:

- (1) All responsive bids or proposal prices exceed the available funds, as certified by an appropriate fiscal officer;
- (2) The apparent low-responsive bid or proposal does not exceed the available funds by the greater of one hundred twenty-five thousand dollars or two percent for projects valued over ten million dollars; and
- (3) The negotiated adjustment will bring the bid or proposal price within the amount of available funds. [2007 c 494 § 202; 1994 c 132 § 8. Formerly RCW 39.10.080.]

Sunset Act application: See note following chapter digest.

39.10.320 Design-build procedure—Project management and contracting requirements. (1) A public body utilizing the design-build contracting procedure shall provide for:

- (a) Reasonable budget contingencies totaling not less than five percent of the anticipated contract value;
- (b) Employment of staff or consultants with expertise and prior experience in the management of comparable projects;
- (c) Contract documents that include alternative dispute resolution procedures to be attempted prior to the initiation of litigation;
- (d) Submission of project information, as required by the board; and
- (e) Contract documents that require the contractor, subcontractors, and designers to submit project information required by the board.

(2) A public body utilizing the design-build contracting procedure may provide incentive payments to contractors for early completion, cost savings, or other goals if such payments are identified in the request for proposals. [2007 c 494 § 203; 1994 c 132 § 7. Formerly RCW 39.10.070.]

Sunset Act application: See note following chapter digest.

39.10.330 Design-build contract award process. (1) Contracts for design-build services shall be awarded through a competitive process using public solicitation of proposals for design-build services. The public body shall publish at least once in a legal newspaper of general circulation published in, or as near as possible to, that part of the county in which the public work will be done, a notice of its request for qualifications from proposers for design-build services, and the availability and location of the request for proposal documents. The request for qualifications documents shall include:

- (a) A general description of the project that provides sufficient information for proposers to submit qualifications;
 - (b) The reasons for using the design-build procedure;
 - (c) A description of the qualifications to be required of the proposer including, but not limited to, submission of the proposer's accident prevention program;
 - (d) A description of the process the public body will use to evaluate qualifications and finalists' proposals, including evaluation factors and the relative weight of factors and any specific forms to be used by the proposers;
 - (i) Evaluation factors for request for qualifications shall include, but not be limited to, technical qualifications, such as specialized experience and technical competence; capability to perform; past performance of the proposers' team, including the architect-engineer and construction members; and other appropriate factors. Cost or price-related factors are not permitted in the request for qualifications phase;
 - (ii) Evaluation factors for finalists' proposals shall include, but not be limited to, the factors listed in (d)(i) of this subsection, as well as technical approach design concept; proposal price; ability of professional personnel; past performance on similar projects; ability to meet time and budget requirements; ability to provide a performance and payment bond for the project; recent, current, and projected workloads of the firm; and location. Alternatively, if the public body determines that all finalists will be capable of producing a design that adequately meets project requirements, the public body may award the contract to the firm that submits the responsive proposal with the lowest price;
 - (e) The form of the contract to be awarded;
 - (f) The amount to be paid to finalists submitting responsive proposals and who are not awarded a design-build contract;
 - (g) The schedule for the procurement process and the project; and
 - (h) Other information relevant to the project.
- (2) The public body shall establish an evaluation committee to evaluate the responses to the request for qualifications based on the factors, weighting, and process identified in the request for qualifications. Based on the evaluation committee's findings, the public body shall select not more than five responsive and responsible finalists to submit proposals. The public body may, in its sole discretion, reject all proposals and shall provide its reasons for rejection in writing to all proposers.
- (3) Upon selection of the finalists, the public body shall issue a request for proposals to the finalists, which shall provide the following information:
- (a) A detailed description of the project including programmatic, performance, and technical requirements and specifications; functional and operational elements; minimum and maximum net and gross areas of any building; and, at the discretion of the public body, preliminary engineering and architectural drawings; and
 - (b) The target budget for the design-build portion of the project.
- (4) The public body shall establish an evaluation committee to evaluate the proposals submitted by the finalists. Design-build contracts shall be awarded using the procedures in (a) or (b) of this subsection. The public body must identify in the request for qualifications which procedure will be used.

(a) The finalists' proposals shall be evaluated and scored based on the factors, weighting, and process identified in the initial request for qualifications and in any addenda published by the public body. Public bodies may request best and final proposals from finalists. The public body shall initiate negotiations with the firm submitting the highest scored proposal. If the public body is unable to execute a contract with the firm submitting the highest scored proposal, negotiations with that firm may be suspended or terminated and the public body may proceed to negotiate with the next highest scored firm. Public bodies shall continue in accordance with this procedure until a contract agreement is reached or the selection process is terminated.

(b) If the public body determines that all finalists are capable of producing a design that adequately meets project requirements, the public body may award the contract to the firm that submits the responsive proposal with the lowest price.

(5) The firm awarded the contract shall provide a performance and payment bond for the contracted amount. The public body shall provide appropriate honorarium payments to finalists submitting best and final proposals that are not awarded a design-build contract. Honorarium payments shall be sufficient to generate meaningful competition among potential proposers on design-build projects. In determining the amount of the honorarium, the public body shall consider the level of effort required to meet the selection criteria. [2007 c 494 § 204.]

Sunset Act application: See note following chapter digest.

39.10.340 General contractor/construction manager procedure—Uses. Subject to the process in RCW 39.10.270 or 39.10.280, public bodies may utilize the general contractor/construction manager procedure for public works projects where:

(1) Implementation of the project involves complex scheduling, phasing, or coordination;

(2) The project involves construction at an occupied facility which must continue to operate during construction;

(3) The involvement of the general contractor/construction manager during the design stage is critical to the success of the project;

(4) The project encompasses a complex or technical work environment; or

(5) The project requires specialized work on a building that has historic significance. [2007 c 494 § 301. Prior: 2003 c 352 § 3; 2003 c 300 § 5; 2002 c 46 § 2; 2001 c 328 § 3. Formerly RCW 39.10.061.]

Sunset Act application: See note following chapter digest.

Effective date—2002 c 46: See note following RCW 39.10.051.

Effective date—2001 c 328: See note following RCW 39.10.020.

39.10.350 General contractor/construction manager procedure—Project management and contracting requirements. (1) A public body using the general contractor/construction manager contracting procedure shall provide for:

(a) The preparation of appropriate, complete, and coordinated design documents;

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(b) Confirmation that a constructability analysis of the design documents has been performed prior to solicitation of a subcontract bid package;

(c) Reasonable budget contingencies totaling not less than five percent of the anticipated contract value;

(d) To the extent appropriate, on-site architectural or engineering representatives during major construction or installation phases;

(e) Employment of staff or consultants with expertise and prior experience in the management of comparable projects, critical path method schedule review and analysis, and the administration, pricing, and negotiation of change orders;

(f) Contract documents that include alternative dispute resolution procedures to be attempted before the initiation of litigation;

(g) Contract documents that: (i) Obligate the public owner to accept or reject a request for equitable adjustment, change order, or claim within a specified time period but no later than sixty calendar days after the receipt by the public body of related documentation; and (ii) provide that if the public owner does not respond in writing to a request for equitable adjustment, change order, or claim within the specified time period, the request is deemed denied;

(h) Submission of project information, as required by the board; and

(i) Contract documents that require the contractor, subcontractors, and designers to submit project information required by the board.

(2) A public body using the general contractor/construction manager contracting procedure may include an incentive clause for early completion, cost savings, or other performance goals if such incentives are identified in the request for proposals. No incentives granted may exceed five percent of the maximum allowable construction cost. No incentives may be paid from any contingency fund established for coordination of the construction documents or coordination of the work.

(3) If the construction is completed for less than the maximum allowable construction cost, any savings not otherwise negotiated as part of an incentive clause shall accrue to the public body. If the construction is completed for more than the maximum allowable construction cost, the additional cost is the responsibility of the general contractor/construction manager.

(4) If the public body and the general contractor/construction manager agree, in writing, on a price for additional work, the public body must issue a change order within thirty days of the written agreement. If the public body does not issue a change order within the thirty days, interest shall accrue on the dollar amount of the additional work satisfactorily completed until a change order is issued. The public body shall pay this interest at a rate of one percent per month. [2007 c 494 § 302.]

Sunset Act application: See note following chapter digest.

39.10.360 General contractor/construction manager procedure—Contract award process. (1) Public bodies should select general contractor/construction managers early

in the life of public works projects, and in most situations no later than the completion of schematic design.

(2) Contracts for the services of a general contractor/construction manager under this section shall be awarded through a competitive process requiring the public solicitation of proposals for general contractor/construction manager services. The public solicitation of proposals shall include:

(a) A description of the project, including programmatic, performance, and technical requirements and specifications when available;

(b) The reasons for using the general contractor/construction manager procedure;

(c) A description of the qualifications to be required of the firm, including submission of the firm's accident prevention program;

(d) A description of the process the public body will use to evaluate qualifications and proposals, including evaluation factors and the relative weight of factors;

(e) The form of the contract, including any contract for preconstruction services, to be awarded;

(f) The estimated maximum allowable construction cost; and

(g) The bid instructions to be used by the general contractor/construction manager finalists.

(3) Evaluation factors for selection of the general contractor/construction [manager] shall include, but not be limited to:

(a) Ability of the firm's professional personnel;

(b) The firm's past performance in negotiated and complex projects;

(c) The firm's ability to meet time and budget requirements;

(d) The scope of work the firm proposes to self-perform and its ability to perform that work;

(e) The firm's proximity to the project location;

(f) Recent, current, and projected workloads of the firm; and

(g) The firm's approach to executing the project.

(4) A public body shall establish a committee to evaluate the proposals. After the committee has selected the most qualified finalists, these finalists shall submit final proposals, including sealed bids for the percent fee on the estimated maximum allowable construction cost and the fixed amount for the general conditions work specified in the request for proposal. The public body shall select the firm submitting the highest scored final proposal using the evaluation factors and the relative weight of factors published in the public solicitation of proposals. A public body shall not evaluate or disqualify a proposal based on the terms of a collective bargaining agreement.

(5) Public bodies may contract with the selected firm to provide services during the design phase that may include life-cycle cost design considerations, value engineering, scheduling, cost estimating, constructability, alternative construction options for cost savings, and sequencing of work, and to act as the construction manager and general contractor during the construction phase. [2007 c 494 § 303.]

Sunset Act application: See note following chapter digest.

39.10.370 General contractor/construction manager procedure—Maximum allowable construction cost. (1) The maximum allowable construction cost shall be used to establish a total contract cost for which the general contractor/construction manager shall provide a performance and payment bond. The maximum allowable construction cost shall be negotiated between the public body and the selected firm when the construction documents and specifications are at least ninety percent complete.

(2) Major bid packages may be bid in accordance with RCW 39.10.380 before agreement on the maximum allowable construction cost between the public body and the selected general contractor/construction manager. The general contractor/construction manager may issue an intent to award to the responsible bidder submitting the lowest responsive bid.

(3) The public body may, at its option, authorize the general contractor/construction manager to proceed with the bidding and award of bid packages and construction before receipt of complete project plans and specifications. Any contracts awarded under this subsection shall be incorporated in the negotiated maximum allowable construction cost.

(4) The total contract cost includes the fixed amount for the detailed specified general conditions work, the negotiated maximum allowable construction cost, the negotiated support services, and the percent fee on the negotiated maximum allowable construction cost. Negotiated support services may be included in the specified general conditions at the discretion of the public body.

(5) If the public body is unable to negotiate a satisfactory maximum allowable construction cost with the firm selected that the public body determines to be fair, reasonable, and within the available funds, negotiations with that firm shall be formally terminated and the public body shall negotiate with the next highest scored firm and continue until an agreement is reached or the process is terminated.

(6) If the maximum allowable construction cost varies more than fifteen percent from the bid estimated maximum allowable construction cost due to requested and approved changes in the scope by the public body, the percent fee shall be renegotiated. [2007 c 494 § 304.]

Sunset Act application: See note following chapter digest.

39.10.380 General contractor/construction manager procedure—Subcontract bidding procedure. (1) All subcontract work and equipment and material purchases shall be competitively bid with public bid openings. Subcontract bid packages and equipment and materials purchases shall be awarded to the responsible bidder submitting the lowest responsive bid. In preparing subcontract bid packages, the general contractor/construction manager shall not be required to violate or waive terms of a collective bargaining agreement.

(2) All subcontract bid packages in which bidder eligibility was not determined in advance shall include the specific objective criteria that will be used by the general contractor/construction manager and the public body to evaluate bidder responsibility. If the lowest bidder submitting a responsive bid is determined by the general contractor/construction manager and the public body not to be responsible, the general contractor/construction manager and the public body

must provide written documentation to that bidder explaining their intent to reject the bidder as not responsible and afford the bidder the opportunity to establish that it is a responsible bidder. Responsibility shall be determined in accordance with criteria listed in the bid documents. Protests concerning bidder responsibility determination by the general contractor/construction manager and the public body shall be in accordance with subsection (4) of this section.

(3) All subcontractors who bid work over three hundred thousand dollars shall post a bid bond. All subcontractors who are awarded a contract over three hundred thousand dollars shall provide a performance and payment bond for the contract amount. All other subcontractors shall provide a performance and payment bond if required by the general contractor/construction manager.

(4) If the general contractor/construction manager receives a written protest from a subcontractor bidder or an equipment or material supplier, the general contractor/construction manager shall not execute a contract for the subcontract bid package or equipment or material purchase order with anyone other than the protesting bidder without first providing at least two full business days' written notice to all bidders of the intent to execute a contract for the subcontract bid package. The protesting bidder must submit written notice of its protest no later than two full business days following the bid opening. Intermediate Saturdays, Sundays, and legal holidays are not counted.

(5) A low bidder who claims error and fails to enter into a contract is prohibited from bidding on the same project if a second or subsequent call for bids is made for the project.

(6) The general contractor/construction manager may negotiate with the lowest responsible and responsive bidder to negotiate an adjustment to the lowest bid or proposal price based upon agreed changes to the contract plans and specifications under the following conditions:

(a) All responsive bids or proposal prices exceed the available funds, as certified by an appropriate fiscal officer;

(b) The apparent low responsive bid or proposal does not exceed the available funds by the greater of one hundred twenty-five thousand dollars or two percent for projects valued over ten million dollars; and

(c) The negotiated adjustment will bring the bid or proposal price within the amount of available funds.

(7) If the negotiation is unsuccessful, the subcontract work or equipment or material purchases must be rebid.

(8) The general contractor/construction manager must provide a written explanation if all bids are rejected. [2007 c 494 § 305.]

Sunset Act application: See note following chapter digest.

39.10.390 General contractor/construction manager procedure—Subcontract work. (1) Except as provided in this section, bidding on subcontract work or for the supply of equipment or materials by the general contractor/construction manager or its subsidiaries is prohibited.

(2) The general contractor/construction manager, or its subsidiaries, may bid on subcontract work or for the supply of equipment or materials if:

(a) The work within the subcontract bid package or equipment or materials is customarily performed or supplied by the general contractor/construction manager;

(b) The bid opening is managed by the public body and is in compliance with RCW 39.10.380; and

(c) Notification of the general contractor/construction manager's intention to bid is included in the public solicitation of bids for the bid package or for the equipment or materials.

(3) In no event may the general contractor/construction manager or its subsidiaries purchase equipment or materials for assignment to subcontract bid package bidders for installation or warranty. The value of subcontract work performed and equipment and materials supplied by the general contractor/construction manager may not exceed thirty percent of the negotiated maximum allowable construction cost. Negotiated support services performed by the general contractor/construction manager shall not be considered subcontract work for purposes of this subsection. [2007 c 494 § 306.]

Sunset Act application: See note following chapter digest.

39.10.400 General contractor/construction manager procedure—Prebid determination of subcontractor eligibility. (1) If determination of subcontractor eligibility prior to seeking bids is in the best interest of the project and critical to the successful completion of a subcontract bid package, the general contractor/construction manager and the public body may determine subcontractor eligibility to bid. The general contractor/construction manager and the public body must:

(a) Conduct a hearing and provide an opportunity for any interested party to submit written and verbal comments regarding the justification for conducting bidder eligibility, the evaluation criteria, and weights for each criteria and subcriteria;

(b) Publish a notice of intent to evaluate and determine bidder eligibility in a legal newspaper published in or as near as possible to that part of the county where the public work will be constructed at least fourteen calendar days before conducting a public hearing;

(c) Ensure the public hearing notice includes the date, time, and location of the hearing, a statement justifying the basis and need for performing eligibility analysis before bid opening, and specific eligibility criteria and applicable weights given to each criteria and subcriteria that will be used during evaluation;

(d) After the public hearing, consider written and verbal comments received and determine if establishing bidder eligibility in advance of seeking bids is in the best interests of the project and critical to the successful completion of a subcontract bid package; and

(e) Issue a written final determination to all interested parties. All protests of the decision to establish bidder eligibility before issuing a subcontractor bid package must be filed with the superior court within seven calendar days of the final determination. Any modifications to the eligibility criteria and weights shall be based on comments received during the public hearing process and shall be included in the final determination.

(2) Determinations of bidder eligibility shall be in accordance with the evaluation criteria and weights for each crite-

ria established in the final determination and shall be provided to interested persons upon request. Any potential bidder determined not to meet eligibility criteria must be afforded the opportunity to establish its eligibility. Protests concerning bidder eligibility determinations shall be in accordance with subsection (1) of this section. [2007 c 494 § 307.]

Sunset Act application: See note following chapter digest.

39.10.410 General contractor/construction manager procedure—Subcontract agreements. Subcontract agreements used by the general contractor/construction manager shall not:

(1) Delegate, restrict, or assign the general contractor/construction manager's implied duty not to hinder or delay the subcontractor. Nothing in this subsection (1) prohibits the general contractor/construction manager from requiring subcontractors not to hinder or delay the work of the general contractor/construction manager or other subcontractors and to hold subcontractors responsible for such damages;

(2) Delegate, restrict, or assign the general contractor/construction manager's authority to resolve subcontractor conflicts. The general contractor/construction manager may delegate or assign coordination of specific elements of the work, including: (a) The coordination of shop drawings among subcontractors; (b) the coordination among subcontractors in ceiling spaces and mechanical rooms; and (c) the coordination of a subcontractor's lower tier subcontractors. Nothing in this subsection prohibits the general contractor/construction manager from imposing a duty on its subcontractors to cooperate with the general contractor/construction manager and other subcontractors in the coordination of the work;

(3) Restrict the subcontractor's right to damages for changes to the construction schedule or work to the extent that the delay or disruption is caused by the general contractor/construction manager or entities acting for it. The general contractor/construction manager may require the subcontractor to provide notice that rescheduling or resequencing will result in delays or additional costs;

(4) Require the subcontractor to bear the cost of trade damage repair except to the extent the subcontractor is responsible for the damage. Nothing in this subsection (4) precludes the general contractor/construction manager from requiring the subcontractor to take reasonable steps to protect the subcontractor's work from trade damage; or

(5) Require the subcontractor to execute progress payment applications that waive claims for additional time or compensation or bond or retainage rights as a condition of receipt of progress payment, except to the extent the subcontractor has received or will receive payment. Nothing in this section precludes the general contractor/construction manager from requiring the subcontractor to provide notice of claims for additional time or compensation as a condition precedent to right of recovery or to execute a full and final release, including a waiver of bond and retainage rights, as a condition of final payment. [2007 c 494 § 308.]

Sunset Act application: See note following chapter digest.

39.10.420 Job order procedure—Which public bodies may use—Authorized use. (1) The following public bodies are authorized to use the job order contracting procedure:

- (a) The department of general administration;
- (b) The University of Washington;
- (c) Washington State University;
- (d) Every city with a population greater than seventy thousand and any public authority chartered by such city under RCW 35.21.730 through 35.21.755;
- (e) Every county with a population greater than four hundred fifty thousand;
- (f) Every port district with total revenues greater than fifteen million dollars per year;
- (g) Every public utility district with revenues from energy sales greater than twenty-three million dollars per year;
- (h) Every school district; and
- (i) The state ferry system.

(2) The department of general administration may issue job order contract work orders for Washington state parks department projects.

(3) Public bodies may use a job order contract for public works projects when a determination is made that the use of job order contracts will benefit the public by providing an effective means of reducing the total lead-time and cost for the construction of public works projects for repair and renovation required at public facilities through the use of unit price books and work orders by eliminating time-consuming, costly aspects of the traditional public works process, which require separate contracting actions for each small project. [2007 c 494 § 401; 2003 c 301 § 1. Formerly RCW 39.10.130.]

Sunset Act application: See note following chapter digest.

39.10.430 Job order procedure—Contract award process. (1) Job order contracts shall be awarded through a competitive process using public requests for proposals.

(2) The public body shall make an effort to solicit proposals from certified minority or certified woman-owned contractors to the extent permitted by the Washington state civil rights act, RCW 49.60.400.

(3) The public body shall publish, at least once in a statewide publication and legal newspaper of general circulation published in every county in which the public works project is anticipated, a request for proposals for job order contracts and the availability and location of the request for proposal documents. The public body shall ensure that the request for proposal documents at a minimum includes:

- (a) A detailed description of the scope of the job order contract including performance, technical requirements and specifications, functional and operational elements, minimum and maximum work order amounts, duration of the contract, and options to extend the job order contract;
- (b) The reasons for using job order contracts;
- (c) A description of the qualifications required of the proposer;
- (d) The identity of the specific unit price book to be used;
- (e) The minimum contracted amount committed to the selected job order contractor;

(f) A description of the process the public body will use to evaluate qualifications and proposals, including evaluation factors and the relative weight of factors. The public body shall ensure that evaluation factors include, but are not limited to, proposal price and the ability of the proposer to perform the job order contract. In evaluating the ability of the proposer to perform the job order contract, the public body may consider: The ability of the professional personnel who will work on the job order contract; past performance on similar contracts; ability to meet time and budget requirements; ability to provide a performance and payment bond for the job order contract; recent, current, and projected workloads of the proposer; location; and the concept of the proposal;

(g) The form of the contract to be awarded;

(h) The method for pricing renewals of or extensions to the job order contract;

(i) A notice that the proposals are subject to RCW 39.10.470; and

(j) Other information relevant to the project.

(4) A public body shall establish a committee to evaluate the proposals. After the committee has selected the most qualified finalists, the finalists shall submit final proposals, including sealed bids based upon the identified unit price book. Such bids may be in the form of coefficient markups from listed price book costs. The public body shall award the contract to the firm submitting the highest scored final proposal using the evaluation factors and the relative weight of factors published in the public request for proposals and will notify the board of the award of the contract.

(5) The public body shall provide a protest period of at least ten business days following the day of the announcement of the apparent successful proposal to allow a protester to file a detailed statement of the grounds of the protest. The public body shall promptly make a determination on the merits of the protest and provide to all proposers a written decision of denial or acceptance of the protest. The public body shall not execute the contract until two business days following the public body's decision on the protest.

(6) The requirements of RCW 39.30.060 do not apply to requests for proposals for job order contracts. [2007 c 494 § 402.]

Sunset Act application: See note following chapter digest.

39.10.440 Job order procedure—Contract requirements. (1) The maximum total dollar amount that may be awarded under a job order contract is four million dollars per year for a maximum of three years.

(2) Job order contracts may be executed for an initial contract term of not to exceed two years, with the option of extending or renewing the job order contract for one year. All extensions or renewals must be priced as provided in the request for proposals. The extension or renewal must be mutually agreed to by the public body and the job order contractor.

(3) A public body may have no more than two job order contracts in effect at any one time, with the exception of the department of general administration, which may have four job order contracts in effect at any one time.

(4) At least ninety percent of work contained in a job order contract must be subcontracted to entities other than the

job order contractor. The job order contractor must distribute contracts as equitably as possible among qualified and available subcontractors including minority and woman-owned subcontractors to the extent permitted by law.

(5) The job order contractor shall publish notification of intent to perform public works projects at the beginning of each contract year in a statewide publication and in a legal newspaper of general circulation in every county in which the public works projects are anticipated.

(6) Job order contractors shall pay prevailing wages for all work that would otherwise be subject to the requirements of chapter 39.12 RCW. Prevailing wages for all work performed pursuant to each work order must be the rates in effect at the time the individual work order is issued.

(7) If, in the initial contract term, the public body, at no fault of the job order contractor, fails to issue the minimum amount of work orders stated in the public request for proposals, the public body shall pay the contractor an amount equal to the difference between the minimum work order amount and the actual total of the work orders issued multiplied by an appropriate percentage for overhead and profit contained in the contract award coefficient for services as specified in the request for proposals. This is the contractor's sole remedy.

(8) All job order contracts awarded under this section must be signed before July 1, 2013; however the job order contract may be extended or renewed as provided for in this section.

(9) Public bodies may amend job order contracts awarded prior to July 1, 2007, in accordance with this chapter. [2007 c 494 § 403.]

Sunset Act application: See note following chapter digest.

39.10.450 Job order procedure—Work orders. (1) The maximum dollar amount for a work order is three hundred fifty thousand dollars. For each job order contract, public bodies shall not issue more than two work orders equal to or greater than three hundred thousand dollars in a twelve-month contract period.

(2) All work orders issued for the same project shall be treated as a single work order for purposes of the dollar limit on work orders.

(3) No more than twenty percent of the dollar value of a work order may consist of items of work not contained in the unit price book.

(4) Any new permanent, enclosed building space constructed under a work order shall not exceed two thousand gross square feet.

(5) A public body may issue no work orders under a job order contract until it has approved, in consultation with the office of minority and women's business enterprises or the equivalent local agency, a plan prepared by the job order contractor that equitably spreads certified women and minority business enterprise subcontracting opportunities, to the extent permitted by the Washington state civil rights act, RCW 49.60.400, among the various subcontract disciplines.

(6) For purposes of chapters 39.08, 39.12, 39.76, and 60.28 RCW, each work order issued shall be treated as a separate contract. The alternate filing provisions of RCW 39.12.040(2) apply to each work order that otherwise meets the eligibility requirements of RCW 39.12.040(2).

(7) The job order contract shall not be used for the procurement of architectural or engineering services not associated with specific work orders. Architectural and engineering services shall be procured in accordance with RCW 39.80.040. [2007 c 494 § 404.]

Sunset Act application: See note following chapter digest.

39.10.460 Job order procedure—Required information to board. A public body shall provide to the board the following information for each job order contract at the end of each contract year:

- (1) A list of work orders issued;
- (2) The cost of each work order;
- (3) A list of subcontractors hired under each work order;
- (4) If requested by the board, a copy of the intent to pay prevailing wage and the affidavit of wages paid for each work order subcontract; and
- (5) Any other information requested by the board. [2007 c 494 § 405.]

Sunset Act application: See note following chapter digest.

39.10.470 Public inspection of certain records—Protection of trade secrets. (1) Except as provided in subsection (2) of this section, all proceedings, records, contracts, and other public records relating to alternative public works transactions under this chapter shall be open to the inspection of any interested person, firm, or corporation in accordance with chapter 42.56 RCW.

(2) Trade secrets, as defined in RCW 19.108.010, or other proprietary information submitted by a bidder, offeror, or contractor in connection with an alternative public works transaction under this chapter shall not be subject to chapter 42.56 RCW if the bidder, offeror, or contractor specifically states in writing the reasons why protection is necessary, and identifies the data or materials to be protected. [2005 c 274 § 275; 1994 c 132 § 10. Formerly RCW 39.10.100.]

Sunset Act application: See note following chapter digest.

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

39.10.480 Construction of chapter—Waiver of other limits and requirements. This chapter shall not be construed to affect or modify the existing statutory, regulatory, or charter powers of public bodies except to the extent that a procedure authorized by this chapter is adopted by a public body for a particular public works project. In that event, the normal contracting or procurement limits or requirements of a public body as imposed by statute, ordinance, resolution, or regulation shall be deemed waived or amended only to the extent necessary to accommodate such procedures for a particular public works project. [1994 c 132 § 9. Formerly RCW 39.10.090.]

Sunset Act application: See note following chapter digest.

39.10.490 Application of chapter. The alternative public works contracting procedures authorized under this chapter are limited to public works contracts signed before July 1, 2013. Methods of public works contracting authorized under this chapter shall remain in full force and effect until completion of contracts signed before July 1, 2013.

[2007 c 494 § 501; 2001 c 328 § 5. Prior: 1997 c 376 § 7; 1997 c 220 § 404 (Referendum Bill No. 48, approved June 17, 1997); 1995 3rd sp.s. c 1 § 305; 1994 c 132 § 12. Formerly RCW 39.10.120.]

Sunset Act application: See note following chapter digest.

Effective date—2001 c 328: See note following RCW 39.10.020.

Effective date—1997 c 376: See note following RCW 39.10.020.

Referendum—Other legislation limited—Legislators' personal intent not indicated—Reimbursements for election—Voters' pamphlet, election requirements—1997 c 220: See RCW 36.102.800 through 36.102.803.

Part headings not law—Severability—1997 c 220: See RCW 36.102.900 and 36.102.901.

Part headings not law—Effective date—1995 3rd sp.s. c 1: See notes following RCW 82.14.0485.

39.10.500 Exemptions. Projects approved by the school district project review board established under *RCW 39.10.115, and the hospital district project review board established under *RCW 39.10.117 before July 1, 2007, may proceed without the approval of the committee established in RCW 39.10.240. The board may grant an exemption from any provision of chapter 494, Laws of 2007 for projects advertised before July 1, 2007. A public body seeking an exemption must submit a request in writing to the board no later than December 31, 2007. The board must respond to the request within sixty calendar days. [2007 c 494 § 502.]

***Reviser's note:** RCW 39.10.115 and 39.10.117 were repealed by 2007 c 494 § 509, effective July 1, 2007.

Sunset Act application: See note following chapter digest.

39.10.510 Previously advertised projects. Projects using the design-build or general contractor/construction manager contracting procedures in which advertising for selection of a contractor has begun by July 1, 2007, but no contract has been awarded may proceed without seeking approval of the committee under the processes in RCW 39.10.270 and 39.10.280. [2007 c 494 § 503.]

Sunset Act application: See note following chapter digest.

39.10.800 Recodified as RCW 39.10.220. See Supplementary Table of Disposition of Former RCW Sections, this volume.

39.10.810 Recodified as RCW 39.10.230. See Supplementary Table of Disposition of Former RCW Sections, this volume.

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

39.10.903 Part headings and captions not law—2007 c 494. Part headings and captions used in chapter 494, Laws of 2007 are not any part of the law. [2007 c 494 § 510.]

Sunset Act application: See note following chapter digest.

39.10.904 Effective dates—2007 c 494. This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect July 1, 2007,

except for section 104 of this act, which takes effect immediately [May 15, 2007], and section 508 of this act, which takes effect June 30, 2007. [2007 c 494 § 512.]

39.10.905 Severability—2007 c 494. If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected. [2007 c 494 § 513.]

Chapter 39.12 RCW

PREVAILING WAGES ON PUBLIC WORKS

Sections

- 39.12.020 Prevailing rate to be paid on public works and under public building service maintenance contracts—Posting of statement of intent—Exception.
- 39.12.040 Statement of intent to pay prevailing wages, affidavit of wages paid—Alternative procedure.

39.12.020 Prevailing rate to be paid on public works and under public building service maintenance contracts—Posting of statement of intent—Exception. The hourly wages to be paid to laborers, workers, or mechanics, upon all public works and under all public building service maintenance contracts of the state or any county, municipality or political subdivision created by its laws, shall be not less than the prevailing rate of wage for an hour's work in the same trade or occupation in the locality within the state where such labor is performed. For a contract in excess of ten thousand dollars, a contractor required to pay the prevailing rate of wage shall post in a location readily visible to workers at the job site: PROVIDED, That on road construction, sewer line, pipeline, transmission line, street, or alley improvement projects for which no field office is needed or established, a contractor may post the prevailing rate of wage statement at the contractor's local office, gravel crushing, concrete, or asphalt batch plant as long as the contractor provides a copy of the wage statement to any employee on request:

(1) A copy of a statement of intent to pay prevailing wages approved by the industrial statistician of the department of labor and industries under RCW 39.12.040; and

(2) The address and telephone number of the industrial statistician of the department of labor and industries where a complaint or inquiry concerning prevailing wages may be made.

This chapter shall not apply to workers or other persons regularly employed by the state, or any county, municipality, or political subdivision created by its laws. [2007 c 169 § 1; 1989 c 12 § 7; 1982 c 130 § 1; 1981 c 46 § 1; 1967 ex.s. c 14 § 1; 1945 c 63 § 1; Rem. Supp. 1945 § 10322-20.]

39.12.040 Statement of intent to pay prevailing wages, affidavit of wages paid—Alternative procedure.

(1) Except as provided in subsection (2) of this section, before payment is made by or on behalf of the state, or any county, municipality, or political subdivision created by its laws, of any sum or sums due on account of a public works contract, it shall be the duty of the officer or person charged with the custody and disbursement of public funds to require the contractor and each and every subcontractor from the

contractor or a subcontractor to submit to such officer a "Statement of Intent to Pay Prevailing Wages". For a contract in excess of ten thousand dollars, the statement of intent to pay prevailing wages shall include:

- (a) The contractor's registration certificate number; and
 (b) The prevailing rate of wage for each classification of workers entitled to prevailing wages under RCW 39.12.020 and the estimated number of workers in each classification.

Each statement of intent to pay prevailing wages must be approved by the industrial statistician of the department of labor and industries before it is submitted to said officer. Unless otherwise authorized by the department of labor and industries, each voucher claim submitted by a contractor for payment on a project estimate shall state that the prevailing wages have been paid in accordance with the prefiled statement or statements of intent to pay prevailing wages on file with the public agency. Following the final acceptance of a public works project, it shall be the duty of the officer charged with the disbursement of public funds, to require the contractor and each and every subcontractor from the contractor or a subcontractor to submit to such officer an "Affidavit of Wages Paid" before the funds retained according to the provisions of RCW 60.28.010 are released to the contractor. Each affidavit of wages paid must be certified by the industrial statistician of the department of labor and industries before it is submitted to said officer.

(2) As an alternate to the procedures provided for in subsection (1) of this section, for public works projects of two thousand five hundred dollars or less and for projects where the limited public works process under RCW 39.04.155(3) is followed:

(a) An awarding agency may authorize the contractor or subcontractor to submit the statement of intent to pay prevailing wages directly to the officer or person charged with the custody or disbursement of public funds in the awarding agency without approval by the industrial statistician of the department of labor and industries. The awarding agency shall retain such statement of intent to pay prevailing wages for a period of not less than three years.

(b) Upon final acceptance of the public works project, the awarding agency shall require the contractor or subcontractor to submit an affidavit of wages paid. Upon receipt of the affidavit of wages paid, the awarding agency may pay the contractor or subcontractor in full, including funds that would otherwise be retained according to the provisions of RCW 60.28.010. Within thirty days of receipt of the affidavit of wages paid, the awarding agency shall submit the affidavit of wages paid to the industrial statistician of the department of labor and industries for approval.

(c) A statement of intent to pay prevailing wages and an affidavit of wages paid shall be on forms approved by the department of labor and industries.

(d) In the event of a wage claim and a finding for the claimant by the department of labor and industries where the awarding agency has used the alternative process provided for in subsection (2) of this section, the awarding agency shall pay the wages due directly to the claimant. If the contractor or subcontractor did not pay the wages stated in the affidavit of wages paid, the awarding agency may take action at law to seek reimbursement from the contractor or subcontractor of wages paid to the claimant, and may prohibit the

Performance-Based Contracts for Water Conservation, Solid Waste Reduction, and Energy Equipment

contractor or subcontractor from bidding on any public works contract of the awarding agency for up to one year.

(e) Nothing in this section shall be interpreted to allow an awarding agency to subdivide any public works project of more than two thousand five hundred dollars for the purpose of circumventing the procedures required by RCW 39.12.040(1). [2007 c 210 § 4; 1991 c 15 § 1; 1982 c 130 § 2; 1981 c 46 § 2; 1975-'76 2nd ex.s. c 49 § 1; 1965 ex.s. c 133 § 3; 1945 c 63 § 4; Rem. Supp. 1945 § 10322-23.]

Chapter 39.35A RCW

PERFORMANCE-BASED CONTRACTS FOR WATER CONSERVATION, SOLID WASTE REDUCTION, AND ENERGY EQUIPMENT

Sections

- 39.35A.010 Findings.
- 39.35A.020 Definitions.
- 39.35A.030 Performance-based contracts for water conservation services, solid waste reduction services, and energy equipment and services.

39.35A.010 Findings. The legislature finds that:

(1) Conserving energy and water in publicly owned buildings will have a beneficial effect on our overall supply of energy and water;

(2) Conserving energy and water in publicly owned buildings can result in cost savings for taxpayers; and

(3) Performance-based energy contracts are a means by which municipalities can achieve energy and water conservation without capital outlay.

Therefore, the legislature declares that it is the policy that a municipality may, after a competitive selection process, negotiate a performance-based energy contract with a firm that offers the best proposal. [2007 c 39 § 1; 1985 c 169 § 1.]

39.35A.020 Definitions. Unless the context clearly indicates otherwise, the definitions in this section shall apply throughout this chapter.

(1) "Energy equipment and services" means energy management systems and any equipment, materials, or supplies that are expected, upon installation, to reduce the energy use or energy cost of an existing building or facility, and the services associated with the equipment, materials, or supplies, including but not limited to design, engineering, financing, installation, project management, guarantees, operations, and maintenance. Reduction in energy use or energy cost may also include reductions in the use or cost of water, wastewater, or solid waste.

(2) "Energy management system" has the definition provided in RCW 39.35.030.

(3) "Municipality" has the definition provided in RCW 39.04.010.

(4) "Performance-based contract" means one or more contracts for water conservation services, solid waste reduction services, or energy equipment and services between a municipality and any other persons or entities, if the payment obligation for each year under the contract, including the year of installation, is either: (a) Set as a percentage of the annual energy cost savings, water cost savings, or solid waste cost

savings attributable under the contract; or (b) guaranteed by the other persons or entities to be less than the annual energy cost savings, water cost savings, or solid waste cost savings attributable under the contract. Such guarantee shall be, at the option of the municipality, a bond or insurance policy, or some other guarantee determined sufficient by the municipality to provide a level of assurance similar to the level provided by a bond or insurance policy.

(5) "Water conservation" means reductions in the use of water or wastewater. [2007 c 39 § 2; 2001 c 214 § 18; 1985 c 169 § 2.]

Severability—Effective date—2001 c 214: See notes following RCW 80.50.010.

Findings—2001 c 214: See note following RCW 39.35.010.

39.35A.030 Performance-based contracts for water conservation services, solid waste reduction services, and energy equipment and services. (1) Each municipality shall publish in advance its requirements to procure water conservation services, solid waste reduction services, or energy equipment and services under a performance-based contract. The announcement shall state concisely the scope and nature of the equipment and services for which a performance-based contract is required, and shall encourage firms to submit proposals to meet these requirements.

(2) The municipality may negotiate a fair and reasonable performance-based contract with the firm that is identified, based on the criteria that is established by the municipality, to be the firm that submits the best proposal.

(3) If the municipality is unable to negotiate a satisfactory contract with the firm that submits the best proposal, negotiations with that firm shall be formally terminated and the municipality may select another firm in accordance with this section and continue negotiation until a performance-based contract is reached or the selection process is terminated. [2007 c 39 § 3; 1985 c 169 § 3.]

Chapter 39.35B RCW

LIFE-CYCLE COST ANALYSIS OF PUBLIC FACILITIES

Sections

- 39.35B.050 Life-cycle cost model and analysis—Duties of the office of financial management.

39.35B.050 Life-cycle cost model and analysis—Duties of the office of financial management. The office of financial management shall:

(1) Design and implement a cost-effective life-cycle cost model by October 1, 2008, based on the work completed by the joint legislative audit and review committee in January 2007 and in consultation with legislative fiscal committees;

(2) Deploy the life-cycle cost model for use by state agencies once completed and tested;

(3) Update the life-cycle cost model periodically in consultation with legislative fiscal committees;

(4) Establish clear policies, standards, and procedures regarding the use of life-cycle cost analysis by state agencies including:

(a) When state agencies must use the life-cycle cost analysis, including the types of proposed capital projects and leased facilities to which it must be applied;

(b) Procedures state agencies must use to document the results of required life-cycle cost analyses;

(c) Standards regarding the discount rate and other key model assumptions; and

(d) A process to document and justify any deviation from the standard assumptions. [2007 c 506 § 3.]

Findings—Intent—2007 c 506: See note following RCW 43.82.035.

Chapter 39.35C RCW

ENERGY CONSERVATION PROJECTS

Sections

39.35C.010 Definitions.

39.35C.010 Definitions. Unless the context clearly requires otherwise, the definitions in this section apply throughout this chapter.

(1) "Cogeneration" means the sequential generation of two or more forms of energy from a common fuel or energy source. If these forms are electricity and thermal energy, then the operating and efficiency standards established by 18 C.F.R. Sec. 292.205 and the definitions established by 18 C.F.R. Sec. 292.202 (c) through (m) apply.

(2) "Conservation" means reduced energy consumption or energy cost, or increased efficiency in the use of energy, and activities, measures, or equipment designed to achieve such results, but does not include thermal or electric energy production from cogeneration. "Conservation" also means reductions in the use or cost of water, wastewater, or solid waste.

(3) "Cost-effective" means that the present value to a state agency or school district of the energy reasonably expected to be saved or produced by a facility, activity, measure, or piece of equipment over its useful life, including any compensation received from a utility or the Bonneville power administration, is greater than the net present value of the costs of implementing, maintaining, and operating such facility, activity, measure, or piece of equipment over its useful life, when discounted at the cost of public borrowing.

(4) "Energy" means energy as defined in RCW 43.21F.025(1).

(5) "Energy audit" has the definition provided in RCW 43.19.670, and may include a determination of the water or solid waste consumption characteristics of a facility.

(6) "Energy efficiency project" means a conservation or cogeneration project.

(7) "Energy efficiency services" means assistance furnished by the department to state agencies and school districts in identifying, evaluating, and implementing energy efficiency projects.

(8) "Department" means the state department of general administration.

(9) "Performance-based contracting" means contracts for which payment is conditional on achieving contractually specified energy savings.

(10) "Public agency" means every state office, officer, board, commission, committee, bureau, department, and all political subdivisions of the state.

(11) "Public facility" means a building or structure, or a group of buildings or structures at a single site, owned by a state agency or school district.

(12) "State agency" means every state office or department, whether elective or appointive, state institutions of higher education, and all boards, commissions, or divisions of state government, however designated.

(13) "State facility" means a building or structure, or a group of buildings or structures at a single site, owned by a state agency.

(14) "Utility" means privately or publicly owned electric and gas utilities, electric cooperatives and mutuals, whether located within or without Washington state.

(15) "Local utility" means the utility or utilities in whose service territory a public facility is located. [2007 c 39 § 4; 2001 c 214 § 20; 1996 c 186 § 405; 1991 c 201 § 2.]

Severability—Effective date—2001 c 214: See notes following RCW 80.50.010.

Findings—2001 c 214: See note following RCW 39.35.010.

Findings—Intent—Part headings not law—Effective date—1996 c 186: See notes following RCW 43.330.904.

Chapter 39.42 RCW

STATE BONDS, NOTES, AND OTHER EVIDENCES OF INDEBTEDNESS

Sections

39.42.070 Computation of general state revenues—Filing of certificate—Estimate of debt capacity. (*Effective if the proposed amendment to Article XVI of the state Constitution is approved at the November 2007 general election.*)

39.42.090 Certificates of indebtedness—Issued, when—Retirement. (*Effective if the proposed amendment to Article XVI of the state Constitution is approved at the November 2007 general election.*)

39.42.070 Computation of general state revenues—Filing of certificate—Estimate of debt capacity. (*Effective if the proposed amendment to Article XVI of the state Constitution is approved at the November 2007 general election.*)

(1) On or after *the effective date of this act, the treasurer shall compute general state revenues for the three fiscal years immediately preceding such date and shall determine the arithmetic mean thereof. As soon as is practicable after the close of each fiscal year thereafter, he or she shall do likewise. In determining the amount of general state revenues, the treasurer shall include all state money received in the treasury from each and every source whatsoever except: (a) Fees and revenues derived from the ownership or operation of any undertaking, facility or project; (b) moneys received as gifts, grants, donations, aid or assistance or otherwise from the United States or any department, bureau or corporation thereof, or any person, firm or corporation, public or private, when the terms and conditions of such gift, grant, donation, aid or assistance require the application and disbursement of such moneys otherwise than for the general purposes of the state of Washington; (c) moneys to be paid into and received from retirement system funds, and performance bonds and deposits; (d) moneys to be paid into and received from trust

funds including but not limited to moneys received from taxes levied for specific purposes and the several permanent funds of the state and the moneys derived therefrom but excluding bond redemption funds; (e) proceeds received from the sale of bonds or other evidences of indebtedness. Upon computing general state revenues, the treasurer shall make and file in the office of the secretary of state, a certificate containing the results of such computations. Copies of said certificate shall be sent to each elected official of the state and each member of the legislature. The treasurer shall, at the same time, advise each elected official and each member of the legislature of the current available debt capacity of the state, and may make estimated projections for one or more years concerning debt capacity.

(2) For purposes of this chapter, general state revenues shall also include revenues that are deposited in the general fund under RCW 82.45.180(2), lottery revenues as provided in RCW 67.70.240(3), revenues paid into the general fund under RCW 84.52.067, and revenues deposited into the student achievement fund and distributed to school districts as provided in RCW 84.52.068. [2007 c 215 § 2; 2003 1st sp.s. c 9 § 1; 2002 c 240 § 8; 1971 ex.s. c 184 § 7.]

***Reviser's note:** For "the effective date of this act," see RCW 39.42.900.

Finding—Intent—2007 c 215: "The legislature finds that after passage of a constitutional amendment (*House Joint Resolution No. 4215 or Senate Joint Resolution No. 8220), the state investment board will be permitted in accordance with RCW 43.33A.140 to invest a portion of the higher education permanent funds in equities. The legislature further recognizes that by investing in equities, the value of the higher education permanent funds may fluctuate over time due to market changes even if no disposition of the fund principal is made. The removal of the word "irreducible" in this act, describing the higher education permanent funds, is needed to clarify that the mere reduction in market value of a permanent fund due to such fluctuations would not violate the mandate of the statute. It is the intent of the legislature to clarify state law to permit equity investment of higher education permanent funds even if there is a decline in the value of a permanent fund due to market changes. It is not the intent of the legislature to change the requirement that unless otherwise allowed by law the principal amounts in the higher education permanent funds are to be held in perpetuity for the benefit of the designated institutions and future generations, and that only the earnings from a higher education permanent fund may be appropriated to support the benefited institution." [2007 c 215 § 1.]

***Reviser's note:** House Joint Resolution No. 4215 passed the legislature on April 11, 2007.

Contingent effective date—2007 c 215: "This act takes effect if the proposed amendment to Article XVI of the state Constitution regarding investment of certain state moneys is validly submitted to and is approved and ratified by the voters at the next general election. If the proposed amendment is not approved and ratified, this act is void in its entirety." [2007 c 215 § 10.]

Severability—Effective date—2002 c 240: See RCW 43.99G.902 and 43.99G.903.

39.42.090 Certificates of indebtedness—Issued, when—Retirement. (*Effective if the proposed amendment to Article XVI of the state Constitution is approved at the November 2007 general election.*) The state finance committee may issue certificates of indebtedness in such sum or sums that may be necessary to meet temporary deficiencies of the treasury. Such certificates may be issued only to provide for the appropriations already made by the legislature and such certificates must be retired and the debt discharged other than by refunding within twelve months after the date of issuance.

For the purposes of this section, the state treasury shall include all statutorily established funds and accounts except for any of the permanent funds of the state treasury. [2007 c 215 § 3; 1985 c 57 § 21; 1971 ex.s. c 184 § 9.]

Finding—Intent—Contingent effective date—2007 c 215: See notes following RCW 39.42.070.

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

Chapter 39.100 RCW HOSPITAL BENEFIT ZONES

Sections

39.100.010	Definitions.
39.100.020	Conditions for financing public improvements.
39.100.030	Benefit zone creation—Agreement, hearing, and notice requirements—Ordinance requirements.
39.100.040	Benefit zone ordinance, publicizing and delivery—Challenges to benefit zone formation.
39.100.050	Use of excess local excise tax—Boundary information—Definitions.

39.100.010 Definitions. The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

(1) "Benefit zone" means the geographic zone from which taxes are to be appropriated to finance public improvements authorized under this chapter and in which a hospital that has received a certificate of need is to be constructed.

(2) "Department" means the department of revenue.

(3) "Local government" means any city, town, county, or any combination thereof.

(4) "Ordinance" means any appropriate method of taking legislative action by a local government.

(5) "Participating taxing authority" means a taxing authority that has entered into a written agreement with a local government for the use of hospital benefit zone financing to the extent of allocating excess local excise taxes to the local government for the purpose of financing all or a portion of the costs of designated public improvements.

(6) "Public improvements" means infrastructure improvements within the benefit zone that include:

(a) Street and road construction and maintenance;

(b) Water and sewer system construction and improvements;

(c) Sidewalks and streetlights;

(d) Parking, terminal, and dock facilities;

(e) Park and ride facilities of a transit authority;

(f) Park facilities and recreational areas; and

(g) Storm water and drainage management systems.

(7) "Public improvement costs" means the costs of: (a) Design, planning, acquisition including land acquisition, site preparation including land clearing, construction, reconstruction, rehabilitation, improvement, and installation of public improvements; (b) demolishing, relocating, maintaining, and operating property pending construction of public improvements; (c) relocating utilities as a result of public improvements; and (d) financing public improvements, including interest during construction, legal and other professional services, taxes, insurance, principal and interest costs on indebtedness issued to finance public improvements, and any necessary reserves for indebtedness; and administrative expenses and feasibility studies reasonably necessary and

related to these costs, including related costs that may have been incurred before adoption of the ordinance authorizing the public improvements and the use of hospital benefit zone financing to fund the costs of the public improvements.

(8) "Tax allocation revenues" means those tax revenues derived from the receipt of excess local excise taxes under RCW 39.100.050 and distributed by a local government, participating taxing authority, or both, to finance public improvements.

(9) "Taxing authority" means a governmental entity that imposes a sales or use tax under chapter 82.14 RCW upon the occurrence of any taxable event within a proposed or approved benefit zone. [2007 c 266 § 2; 2006 c 111 § 1.]

Finding—2007 c 266: "The legislature finds that local governments need flexible financing for public improvements that do not increase the combined state and local sales tax rate." [2007 c 266 § 1.]

Application—2007 c 266: "This act applies retroactively to July 1, 2006." [2007 c 266 § 10.]

Effective date—2007 c 266: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect July 1, 2007." [2007 c 266 § 11.]

39.100.020 Conditions for financing public improvements. A local government may finance public improvements using hospital benefit zone financing subject to the following conditions:

(1) The local government adopts an ordinance designating a benefit zone within its boundaries and specifying the public improvements proposed to be financed in whole or in part with the use of hospital benefit zone financing;

(2) The public improvements proposed to be financed in whole or in part using hospital benefit zone financing are expected both to encourage private development within the benefit zone and to support the development of a hospital that has received a certificate of need;

(3) Private development that is anticipated to occur within the benefit zone, as a result of the public improvements, will be consistent with the county-wide planning policy adopted by the county under RCW 36.70A.210 and the local government's comprehensive plan and development regulations adopted under chapter 36.70A RCW;

(4) The governing body of the local government finds that the public improvements proposed to be financed in whole or in part using hospital benefit zone financing are reasonably likely to:

(a) Increase private investment within the benefit zone;

(b) Increase employment within the benefit zone; and

(c) Generate, over the period of time that the local sales and use tax will be imposed under RCW 82.14.465, excess state excise taxes that are equal to or greater than the state contributions made under this chapter;

(5) The boundaries of a hospital benefit zone may not overlap any part of the boundaries of another hospital benefit zone or a revenue development area defined in chapter 39.102 RCW; and

(6) The boundaries of a hospital benefit zone may not change once the hospital benefit zone is established and approved by the department. [2007 c 266 § 3; 2006 c 111 § 2.]

Finding—Application—Effective date—2007 c 266: See notes following RCW 39.100.010.

[2007 RCW Supp—page 354]

39.100.030 Benefit zone creation—Agreement, hearing, and notice requirements—Ordinance requirements.

(1) Before adopting an ordinance creating the benefit zone, a local government must:

(a) Obtain written agreement for the use of hospital benefit zone financing to finance all or a portion of the costs of the designated public improvements from any taxing authority that imposes a sales or use tax under chapter 82.14 RCW within the benefit zone if the taxing authority chooses to participate in the public improvements to the extent of providing limited funding under hospital benefit zone financing authorized under this chapter. The agreement must be authorized by the governing body of such participating taxing authorities; and

(b) Hold a public hearing on the proposed financing of the public improvement in whole or in part with hospital benefit zone financing.

(i) Notice of the public hearing must be published in a legal newspaper of general circulation within the proposed benefit zone at least ten days before the public hearing and posted in at least six conspicuous public places located in the proposed benefit zone.

(ii) Notices must describe the contemplated public improvements, estimate the costs of the public improvements, describe the portion of the costs of the public improvements to be borne by hospital benefit zone financing, describe any other sources of revenue to finance the public improvements, describe the boundaries of the proposed benefit zone, and estimate the period during which hospital benefit zone financing is contemplated to be used. The public hearing may be held by either the governing body of the local government, or a committee of the governing body that includes at least a majority of the whole governing body.

(2) In order to create a benefit zone, a local government must adopt an ordinance establishing the benefit zone that:

(a) Describes the public improvements;

(b) Describes the boundaries of the benefit zone;

(c) Estimates the cost of the public improvements and the portion of these costs to be financed by hospital benefit zone financing;

(d) Estimates the time during which excess local excise taxes are to be used to finance public improvement costs associated with the public improvements financed in whole or in part by hospital benefit zone financing;

(e) Estimates the average amount of tax revenue to be received in all fiscal years through the imposition of a sales and use tax under RCW 82.14.465;

(f) Provides the date when the use of excess local excise taxes will commence; and

(g) Finds that the conditions of RCW 39.100.020 are met.

(3) For purposes of this section, "fiscal year" means the year beginning July 1st and ending the following June 30th. [2007 c 266 § 4; 2006 c 111 § 3.]

Finding—Application—Effective date—2007 c 266: See notes following RCW 39.100.010.

39.100.040 Benefit zone ordinance, publicizing and delivery—Challenges to benefit zone formation. (1) A local government that adopts an ordinance creating a benefit

zone under this chapter shall, within ninety days of adopting the ordinance:

(a) Publish notice in a legal newspaper of general circulation within the benefit zone that describes the public improvement, describes the boundaries of the benefit zone, and identifies the location and times where the ordinance and other public information concerning the public improvement may be inspected; and

(b) Deliver a certified copy of the ordinance to the county treasurer, the county assessor, the department of revenue, and the governing body of each participating taxing authority within which the benefit zone is located.

(2) Any challenge to the formation shall be brought within sixty days of the later of the date of its formation or July 1, 2007. All parties, including the holders of bonds payable from tax revenue under chapter 266, Laws of 2007, may rely upon the presumption of validity of formation of the benefit zone following the expiration of the sixty-day period. [2007 c 266 § 5; 2006 c 111 § 4.]

Finding—Application—Effective date—2007 c 266: See notes following RCW 39.100.010.

39.100.050 Use of excess local excise tax—Boundary information—Definitions. (1) A local government that creates a benefit zone and has received approval from the department under RCW 82.32.700 to impose the local option sales and use tax authorized in RCW 82.14.465 may use annually any excess local excise taxes received by it from taxable activity within the benefit zone to finance public improvement costs associated with the public improvements financed in whole or in part by hospital benefit zone financing. The use of excess local excise taxes must cease when tax allocation revenues are no longer necessary or obligated to pay the costs of the public improvements. Any participating taxing authority is authorized to allocate excess local excise taxes to the local government as long as the local government has received approval from the department under RCW 82.32.700 to impose the local option sales and use tax authorized in RCW 82.14.465. The legislature declares that it is a proper purpose of a local government or participating taxing authority to allocate excess local excise taxes for purposes of financing public improvements under this chapter.

(2) A local government shall provide the department accurate information describing the geographical boundaries of the benefit zone at least seventy-five days before the effective date of the ordinance creating the benefit zone. The local government shall ensure that the boundary information provided to the department is kept current.

(3) The department shall provide the necessary information to calculate excess local excise taxes to each local government that has provided boundary information to the department as provided in this section and that has received approval from the department under RCW 82.32.700 to impose the local option sales and use tax authorized in RCW 82.14.465.

(4) The definitions in this subsection apply throughout this section unless the context clearly requires otherwise.

(a) "Base year" means the calendar year immediately following the creation of a benefit zone.

(b) "Excess local excise taxes" means the amount of local excise taxes received by the local government during

the measurement year from taxable activity within the benefit zone over and above the amount of local excise taxes received by the local government during the base year from taxable activity within the benefit zone. However, if a local government creates the benefit zone and reasonably determines that no activity subject to tax under chapters 82.08 and 82.12 RCW occurred in the twelve months immediately preceding the creation of the benefit zone within the boundaries of the area that became the benefit zone, "excess local excise taxes" means the entire amount of local excise taxes received by the local government during a calendar year period beginning with the calendar year immediately following the creation of the benefit zone and continuing with each measurement year thereafter.

(c) "Local excise taxes" means local revenues derived from the imposition of sales and use taxes authorized in RCW 82.14.030 at the tax rate that was in effect at the time the hospital benefit zone is approved by the department, except that if a local government reduces the rate of such tax after the revenue development area was approved, "local excise taxes" means the local revenues derived from the imposition of the sales and use taxes authorized in RCW 82.14.030 at the lower tax rate.

(d) "Measurement year" means a calendar year, beginning with the calendar year following the base year and each calendar year thereafter, that is used annually to measure the amount of excess state excise taxes and excess local excise taxes required to be used to finance public improvement costs associated with public improvements financed in whole or in part by hospital benefit zone financing. [2007 c 266 § 6; 2006 c 111 § 5.]

Finding—Application—Effective date—2007 c 266: See notes following RCW 39.100.010.

Chapter 39.102 RCW

LOCAL INFRASTRUCTURE FINANCING TOOL PROGRAM

Sections

39.102.020	Definitions. <i>(Expires June 30, 2039.)</i>
39.102.040	Application process—Board approval. <i>(Expires June 30, 2039.)</i>
39.102.050	Demonstration projects. <i>(Expires June 30, 2039.)</i>
39.102.060	Limitations on revenue development areas. <i>(Expires June 30, 2039.)</i>
39.102.090	Revenue development area adoption—Ordinance—Hearing and delivery requirements. <i>(Expires June 30, 2039.)</i>
39.102.110	Local excise tax allocation revenues. <i>(Expires June 30, 2039.)</i>
39.102.120	Local property tax allocation revenues. <i>(Expires June 30, 2039.)</i>
39.102.130	Use of sales and use tax funds. <i>(Expires June 30, 2039.)</i>
39.102.140	Reporting requirements. <i>(Expires June 30, 2039.)</i>
39.102.150	Issuance of general obligation bonds. <i>(Expires June 30, 2039.)</i>
39.102.180	Repealed.
39.102.195	Limitation on use of revenues. <i>(Expires June 30, 2039.)</i>
39.102.220	Administration by department and board. <i>(Expires June 30, 2039.)</i>

39.102.020 Definitions. *(Expires June 30, 2039.)* The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

(1) "Annual state contribution limit" means seven million five hundred thousand dollars statewide per fiscal year.

(2) "Assessed value" means the valuation of taxable real property as placed on the last completed assessment roll.

(3) "Base year" means the first calendar year following the calendar year in which a sponsoring local government, and any cosponsoring local government, receives approval by the board for a project award, provided that the approval is granted before October 15th. If approval by the board is received on or after October 15th but on or before December 31st, the "base year" is the second calendar year following the calendar year in which a sponsoring local government, and any cosponsoring local government, receives approval by the board for a project award.

(4) "Board" means the community economic revitalization board under chapter 43.160 RCW.

(5) "Demonstration project" means one of the following projects:

- (a) Bellingham waterfront redevelopment project;
- (b) Spokane river district project at Liberty Lake; and
- (c) Vancouver riverwest project.

(6) "Department" means the department of revenue.

(7) "Fiscal year" means the twelve-month period beginning July 1st and ending the following June 30th.

(8) "Local excise taxes" means local revenues derived from the imposition of sales and use taxes authorized in RCW 82.14.030 at the tax rate that was in effect at the time the revenue development area was approved by the board, except that if a local government reduces the rate of such tax after the revenue development area was approved by the board, "local excise taxes" means the local revenues derived from the imposition of the sales and use taxes authorized in RCW 82.14.030 at the lower tax rate.

(9) "Local excise tax allocation revenue" means the amount of local excise taxes received by the local government during the measurement year from taxable activity within the revenue development area over and above the amount of local excise taxes received by the local government during the base year from taxable activity within the revenue development area, except that:

(a) If a sponsoring local government adopts a revenue development area and reasonably determines that no activity subject to tax under chapters 82.08 and 82.12 RCW occurred within the boundaries of the revenue development area in the twelve months immediately preceding the approval of the revenue development area by the board, "local excise tax allocation revenue" means the entire amount of local excise taxes received by the sponsoring local government during a calendar year period beginning with the calendar year immediately following the approval of the revenue development area by the board and continuing with each measurement year thereafter; and

(b) For revenue development areas approved by the board in calendar years 2006 and 2007 that do not meet the requirements in (a) of this subsection and if legislation is enacted in this state during the 2007 legislative session that adopts the sourcing provisions of the streamlined sales and use tax agreement, "local excise tax allocation revenue" means the amount of local excise taxes received by the sponsoring local government during the measurement year from taxable activity within the revenue development area over and above an amount of local excise taxes received by the sponsoring local government during the 2007 or 2008 base year, as the case may be, adjusted by the department for any estimated impacts from retail sales and use tax sourcing

changes effective in 2008. The amount of base year adjustment determined by the department is final.

(10) "Local government" means any city, town, county, port district, and any federally recognized Indian tribe.

(11) "Local infrastructure financing" means the use of revenues received from local excise tax allocation revenues, local property tax allocation revenues, other revenues from local public sources, and revenues received from the local option sales and use tax authorized in RCW 82.14.475, dedicated to pay either the principal and interest on bonds authorized under RCW 39.102.150 or to pay public improvement costs on a pay-as-you-go basis subject to RCW 39.102.195, or both.

(12) "Local property tax allocation revenue" means those tax revenues derived from the receipt of regular property taxes levied on the property tax allocation revenue value and used for local infrastructure financing.

(13)(a) "Revenues from local public sources" means:

(i) Amounts of local excise tax allocation revenues and local property tax allocation revenues, dedicated by sponsoring local governments, participating local governments, and participating taxing districts, for local infrastructure financing; and

(ii) Any other local revenues, except as provided in (b) of this subsection, including revenues derived from federal and private sources.

(b) Revenues from local public sources do not include any local funds derived from state grants, state loans, or any other state moneys including any local sales and use taxes credited against the state sales and use taxes imposed under chapter 82.08 or 82.12 RCW.

(14) "Low-income housing" means residential housing for low-income persons or families who lack the means which is necessary to enable them, without financial assistance, to live in decent, safe, and sanitary dwellings, without overcrowding. For the purposes of this subsection, "low income" means income that does not exceed eighty percent of the median family income for the standard metropolitan statistical area in which the revenue development area is located.

(15) "Measurement year" means a calendar year, beginning with the calendar year following the base year and each calendar year thereafter, that is used annually to measure state and local excise tax allocation revenues.

(16) "Ordinance" means any appropriate method of taking legislative action by a local government.

(17) "Participating local government" means a local government having a revenue development area within its geographic boundaries that has entered into a written agreement with a sponsoring local government as provided in RCW 39.102.080 to allow the use of all or some of its local excise tax allocation revenues or other revenues from local public sources dedicated for local infrastructure financing.

(18) "Participating taxing district" means a local government having a revenue development area within its geographic boundaries that has entered into a written agreement with a sponsoring local government as provided in RCW 39.102.080 to allow the use of some or all of its local property tax allocation revenues or other revenues from local public sources dedicated for local infrastructure financing.

(19)(a)(i) "Property tax allocation revenue value" means seventy-five percent of any increase in the assessed value of real property in a revenue development area resulting from:

(A) The placement of new construction, improvements to property, or both, on the assessment roll, where the new construction and improvements are initiated after the revenue development area is approved by the board;

(B) The cost of new housing construction, conversion, and rehabilitation improvements, when such cost is treated as new construction for purposes of chapter 84.55 RCW as provided in RCW 84.14.020, and the new housing construction, conversion, and rehabilitation improvements are initiated after the revenue development area is approved by the board;

(C) The cost of rehabilitation of historic property, when such cost is treated as new construction for purposes of chapter 84.55 RCW as provided in RCW 84.26.070, and the rehabilitation is initiated after the revenue development area is approved by the board.

(ii) Increases in the assessed value of real property in a revenue development area resulting from (a)(i)(A) through (C) of this subsection are included in the property tax allocation revenue value in the initial year. These same amounts are also included in the property tax allocation revenue value in subsequent years unless the property becomes exempt from property taxation.

(b) "Property tax allocation revenue value" includes seventy-five percent of any increase in the assessed value of new construction consisting of an entire building in the years following the initial year, unless the building becomes exempt from property taxation.

(c) Except as provided in (b) of this subsection, "property tax allocation revenue value" does not include any increase in the assessed value of real property after the initial year.

(d) There is no property tax allocation revenue value if the assessed value of real property in a revenue development area has not increased as a result of any of the reasons specified in (a)(i)(A) through (C) of this subsection.

(e) For purposes of this subsection, "initial year" means:

(i) For new construction and improvements to property added to the assessment roll, the year during which the new construction and improvements are initially placed on the assessment roll;

(ii) For the cost of new housing construction, conversion, and rehabilitation improvements, when such cost is treated as new construction for purposes of chapter 84.55 RCW, the year when such cost is treated as new construction for purposes of levying taxes for collection in the following year; and

(iii) For the cost of rehabilitation of historic property, when such cost is treated as new construction for purposes of chapter 84.55 RCW, the year when such cost is treated as new construction for purposes of levying taxes for collection in the following year.

(20) "Taxing district" means a government entity that levies or has levied for it regular property taxes upon real property located within a proposed or approved revenue development area.

(21) "Public improvements" means:

(a) Infrastructure improvements within the revenue development area that include:

(i) Street, bridge, and road construction and maintenance, including highway interchange construction;

(ii) Water and sewer system construction and improvements, including wastewater reuse facilities;

(iii) Sidewalks, traffic controls, and streetlights;

(iv) Parking, terminal, and dock facilities;

(v) Park and ride facilities of a transit authority;

(vi) Park facilities and recreational areas, including trails; and

(vii) Storm water and drainage management systems;

(b) Expenditures for facilities and improvements that support affordable housing as defined in RCW 43.63A.510.

(22) "Public improvement costs" means the cost of: (a) Design, planning, acquisition including land acquisition, site preparation including land clearing, construction, reconstruction, rehabilitation, improvement, and installation of public improvements; (b) demolishing, relocating, maintaining, and operating property pending construction of public improvements; (c) the local government's portion of relocating utilities as a result of public improvements; (d) financing public improvements, including interest during construction, legal and other professional services, taxes, insurance, principal and interest costs on general indebtedness issued to finance public improvements, and any necessary reserves for general indebtedness; (e) assessments incurred in revaluing real property for the purpose of determining the property tax allocation revenue base value that are in excess of costs incurred by the assessor in accordance with the revaluation plan under chapter 84.41 RCW, and the costs of apportioning the taxes and complying with this chapter and other applicable law; (f) administrative expenses and feasibility studies reasonably necessary and related to these costs; and (g) any of the above-described costs that may have been incurred before adoption of the ordinance authorizing the public improvements and the use of local infrastructure financing to fund the costs of the public improvements.

(23) "Regular property taxes" means regular property taxes as defined in RCW 84.04.140, except: (a) Regular property taxes levied by public utility districts specifically for the purpose of making required payments of principal and interest on general indebtedness; (b) regular property taxes levied by the state for the support of the common schools under RCW 84.52.065; and (c) regular property taxes authorized by RCW 84.55.050 that are limited to a specific purpose. "Regular property taxes" do not include excess property tax levies that are exempt from the aggregate limits for junior and senior taxing districts as provided in RCW 84.52.043.

(24) "Property tax allocation revenue base value" means the assessed value of real property located within a revenue development area for taxes levied in the year in which the revenue development area is adopted for collection in the following year, plus one hundred percent of any increase in the assessed value of real property located within a revenue development area that is placed on the assessment rolls after the revenue development area is adopted, less the property tax allocation revenue value.

(25) "Relocating a business" means the closing of a business and the reopening of that business, or the opening of a new business that engages in the same activities as the previous business, in a different location within a one-year period,

when an individual or entity has an ownership interest in the business at the time of closure and at the time of opening or reopening. "Relocating a business" does not include the closing and reopening of a business in a new location where the business has been acquired and is under entirely new ownership at the new location, or the closing and reopening of a business in a new location as a result of the exercise of the power of eminent domain.

(26) "Revenue development area" means the geographic area adopted by a sponsoring local government and approved by the board, from which local excise and property tax allocation revenues are derived for local infrastructure financing.

(27) "Small business" has the same meaning as provided in RCW 19.85.020.

(28) "Sponsoring local government" means a city, town, or county, and for the purpose of this chapter a federally recognized Indian tribe or any combination thereof, that adopts a revenue development area and applies to the board to use local infrastructure financing.

(29) "State contribution" means the lesser of:

(a) One million dollars;

(b) The state excise tax allocation revenue and state property tax allocation revenue received by the state during the preceding calendar year;

(c) The total amount of local excise tax allocation revenues, local property tax allocation revenues, and other revenues from local public sources, that are dedicated by a sponsoring local government, any participating local governments, and participating taxing districts, in the preceding calendar year to the payment of principal and interest on bonds issued under RCW 39.102.150 or to pay public improvement costs on a pay-as-you-go basis subject to RCW 39.102.195, or both; or

(d) The amount of project award granted by the board in the notice of approval to use local infrastructure financing under RCW 39.102.040.

(30) "State excise taxes" means revenues derived from state retail sales and use taxes under chapters 82.08 and 82.12 RCW, less the amount of tax distributions from all local retail sales and use taxes, other than the local sales and use taxes authorized by RCW 82.14.475, imposed on the same taxable events that are credited against the state retail sales and use taxes under chapters 82.08 and 82.12 RCW.

(31) "State excise tax allocation revenue" means the amount of state excise taxes received by the state during the measurement year from taxable activity within the revenue development area over and above the amount of state excise taxes received by the state during the base year from taxable activity within the revenue development area, except that:

(a) If a sponsoring local government adopts a revenue development area and reasonably determines that no activity subject to tax under chapters 82.08 and 82.12 RCW occurred within the boundaries of the revenue development area in the twelve months immediately preceding the approval of the revenue development area by the board, "state excise tax allocation revenue" means the entire amount of state excise taxes received by the state during a calendar year period beginning with the calendar year immediately following the approval of the revenue development area by the board and continuing with each measurement year thereafter; and

(b) For revenue development areas approved by the board in calendar years 2006 and 2007 that do not meet the requirements in (a) of this subsection and if legislation is enacted in this state during the 2007 legislative session that adopts the sourcing provisions of the streamlined sales and use tax agreement, "state excise tax allocation revenue" means the amount of state excise taxes received by the state during the measurement year from taxable activity within the revenue development area over and above an amount of state excise taxes received by the state during the 2007 or 2008 base year, as the case may be, adjusted by the department for any estimated impacts from retail sales and use tax sourcing changes effective in 2008. The amount of base year adjustment determined by the department is final.

(32) "State property tax allocation revenue" means those tax revenues derived from the imposition of property taxes levied by the state for the support of common schools under RCW 84.52.065 on the property tax allocation revenue value.

(33) "Real property" has the same meaning as in RCW 84.04.090 and also includes any privately owned improvements located on publicly owned land that are subject to property taxation. [2007 c 229 § 1; 2006 c 181 § 102.]

Application—2007 c 229: "This act applies retroactively as well as prospectively." [2007 c 229 § 15.]

Severability—2007 c 229: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [2007 c 229 § 16.]

Expiration date—2007 c 229: "This act expires June 30, 2039." [2007 c 229 § 17.]

39.102.040 Application process—Board approval. (Expires June 30, 2039.) (1) Prior to applying to the board to use local infrastructure financing, a sponsoring local government shall:

(a) Designate a revenue development area within the limitations in RCW 39.102.060;

(b) Certify that the conditions in RCW 39.102.070 are met;

(c) Complete the process in RCW 39.102.080;

(d) Provide public notice as required in RCW 39.102.100; and

(e) Pass an ordinance adopting the revenue development area as required in RCW 39.102.090.

(2) Any local government that has created an increment area under chapter 39.89 RCW and has not issued bonds to finance any public improvement may apply to the board and have its increment area considered for approval as a revenue development area under this chapter without adopting a new revenue development area under RCW 39.102.090 and 39.102.100 if it amends its ordinance to comply with RCW 39.102.090(1) and otherwise meets the conditions and limitations under this chapter.

(3) As a condition to imposing a sales and use tax under RCW 82.14.475, a sponsoring local government, including any cosponsoring local government seeking authority to impose a sales and use tax under RCW 82.14.475, must apply to the board and be approved for a project award amount. The application shall be in a form and manner prescribed by the board and include but not be limited to information establishing that the applicant is an eligible candidate to impose

the local sales and use tax under RCW 82.14.475, the anticipated effective date for imposing the tax, the estimated number of years that the tax will be imposed, and the estimated amount of tax revenue to be received in each fiscal year that the tax will be imposed. The board shall make available forms to be used for this purpose. As part of the application, each applicant must provide to the board a copy of the ordinance or ordinances creating the revenue development area as required in RCW 39.102.090. A notice of approval to use local infrastructure financing shall contain a project award that represents the maximum amount of state contribution that the applicant, including any cosponsoring local governments, can earn each year that local infrastructure financing is used. The total of all project awards shall not exceed the annual state contribution limit. The determination of a project award shall be made based on information contained in the application and the remaining amount of annual state contribution limit to be awarded. Determination of a project award by the board is final.

(4)(a) Sponsoring local governments, and any cosponsoring local governments, applying in calendar year 2007 for a competitive project award, must submit completed applications to the board no later than July 1, 2007. By September 15, 2007, in consultation with the department of revenue and the department of community, trade, and economic development, the board shall approve competitive project awards from competitive applications submitted by the 2007 deadline. No more than two million five hundred thousand dollars in competitive project awards shall be approved in 2007. For projects not approved by the board in 2007, sponsoring and cosponsoring local governments may apply again to the board in 2008 for approval of a project.

(b) Sponsoring local governments, and any cosponsoring local governments, applying in calendar year 2008 for a competitive project award, must submit completed applications to the board no later than July 1, 2008. By September 18, 2008, in consultation with the department of revenue and the department of community, trade, and economic development, the board shall approve competitive project awards from competitive applications submitted by the 2008 deadline.

(c) Except as provided in RCW 39.102.050(2), a total of no more than five million dollars in competitive project awards shall be approved for local infrastructure financing.

(d) The project selection criteria and weighting developed prior to July 22, 2007, for the application evaluation and approval process shall apply to applications received prior to November 1, 2007. In evaluating applications for a competitive project award after November 1, 2007, the board shall, in consultation with the Washington state economic development commission, develop the relative weight to be assigned to the following criteria:

(i) The project's potential to enhance the sponsoring local government's regional and/or international competitiveness;

(ii) The project's ability to encourage mixed use and transit-oriented development and the redevelopment of a geographic area;

(iii) Achieving an overall distribution of projects statewide that reflect geographic diversity;

(iv) The estimated wages and benefits for the project is greater than the average labor market area;

(v) The estimated state and local net employment change over the life of the project;

(vi) The current economic health and vitality of the proposed revenue development area and the contiguous community and the estimated impact of the proposed project on the proposed revenue development area and contiguous community;

(vii) The estimated state and local net property tax change over the life of the project;

(viii) The estimated state and local sales and use tax increase over the life of the project;

(ix) An analysis that shows that, over the life of the project, neither the local excise tax allocation revenues nor the local property tax allocation revenues will constitute more than eighty percent of the total local funds as described in RCW 39.102.020(29)(c); and

(x) If a project is located within an urban growth area, evidence that the project utilizes existing urban infrastructure and that the transportation needs of the project will be adequately met through the use of local infrastructure financing or other sources.

(e)(i) Except as provided in this subsection (4)(e), the board may not approve the use of local infrastructure financing within more than one revenue development area per county.

(ii) In a county in which the board has approved the use of local infrastructure financing, the use of such financing in additional revenue development areas may be approved, subject to the following conditions:

(A) The sponsoring local government is located in more than one county; and

(B) The sponsoring local government designates a revenue development area that comprises portions of a county within which the use of local infrastructure financing has not yet been approved.

(iii) In a county where the local infrastructure financing tool is authorized under RCW 39.102.050, the board may approve additional use of the local infrastructure financing tool.

(5) Once the board has approved the sponsoring local government, and any cosponsoring local governments, to use local infrastructure financing, notification must be sent by the board to the sponsoring local government, and any cosponsoring local governments, authorizing the sponsoring local government, and any cosponsoring local governments, to impose the local sales and use tax authorized under RCW 82.14.475, subject to the conditions in RCW 82.14.475. [2007 c 229 § 2; 2006 c 181 § 202.]

Application—Severability—Expiration date—2007 c 229: See notes following RCW 39.102.020.

39.102.050 Demonstration projects. (Expires June 30, 2039.) (1) In addition to a competitive process, demonstration projects are provided to determine the feasibility of the local infrastructure financing tool. Notwithstanding RCW 39.102.040, the board shall approve each demonstration project. Demonstration project applications must be received by the board no later than July 1, 2008. The Bellingham waterfront redevelopment project award shall not exceed one million dollars per year, the Spokane river district project award shall not exceed one million dollars per year,

and the Vancouver riverwest project award shall not exceed five hundred thousand dollars per year. The board shall approve by September 15, 2007, demonstration project applications submitted no later than July 1, 2007. The board shall approve by September 18, 2008, demonstration project applications submitted by July 1, 2008.

(2) If before board approval of the final competitive project award in 2008, a demonstration project has not received approval by the board, the state dollars set aside for the demonstration project in subsection (1) of this section shall be available for the competitive application process. If a demonstration project has received a partial award before the approval of the final competitive project award, the remaining state dollars set aside for the demonstration project in subsection (1) of this section shall be available for the competitive process. [2007 c 229 § 3; 2006 c 181 § 203.]

Application—Severability—Expiration date—2007 c 229: See notes following RCW 39.102.020.

39.102.060 Limitations on revenue development areas. (Expires June 30, 2039.) The designation of a revenue development area is subject to the following limitations:

(1) The taxable real property within the revenue development area boundaries may not exceed one billion dollars in assessed value at the time the revenue development area is designated;

(2) The average assessed value per square foot of taxable land within the revenue development area boundaries, as of January 1st of the year the application is submitted to the board under RCW 39.102.040, may not exceed seventy dollars at the time the revenue development area is designated;

(3) No revenue development area shall have within its geographic boundaries any part of a hospital benefit zone under chapter 39.100 RCW or any part of another revenue development area created under this chapter;

(4) A revenue development area is limited to contiguous tracts, lots, pieces, or parcels of land without the creation of islands of property not included in the revenue development area;

(5) The boundaries may not be drawn to purposely exclude parcels where economic growth is unlikely to occur;

(6) The public improvements financed through local infrastructure financing must be located in the revenue development area;

(7) A revenue development area cannot comprise an area containing more than twenty-five percent of the total assessed value of the taxable real property within the boundaries of the sponsoring local government, including any cosponsoring local government, at the time the revenue development area is designated;

(8) The boundaries of the revenue development area shall not be changed for the time period that local infrastructure financing is used; and

(9) A revenue development area cannot include any part of an increment area created under chapter 39.89 RCW, except those increment areas created prior to January 1, 2006. [2007 c 229 § 4; 2006 c 181 § 204.]

Application—Severability—Expiration date—2007 c 229: See notes following RCW 39.102.020.

[2007 RCW Supp—page 360]

39.102.090 Revenue development area adoption—Ordinance—Hearing and delivery requirements. (Expires June 30, 2039.) (1) To adopt a revenue development area, a sponsoring local government, and any cosponsoring local government, must adopt an ordinance establishing the revenue development area that:

(a) Describes the public improvements proposed to be made in the revenue development area;

(b) Describes the boundaries of the revenue development area, subject to the limitations in RCW 39.102.060;

(c) Estimates the cost of the proposed public improvements and the portion of these costs to be financed by local infrastructure financing;

(d) Estimates the time during which local excise tax allocation revenues, local property tax allocation revenues, and other revenues from local public sources are to be used for local infrastructure financing;

(e) Provides the date when the use of local excise tax allocation revenues and local property tax allocation revenues will commence; and

(f) Finds that the conditions in RCW 39.102.070 are met and the findings in RCW 39.102.080 are complete.

(2) The sponsoring local government, and any cosponsoring local government, must hold a public hearing on the proposed financing of the public improvements in whole or in part with local infrastructure financing before passage of the ordinance establishing the revenue development area. The public hearing may be held by either the governing body of the sponsoring local government and the governing body of any cosponsoring local government, or by a committee of those governing bodies that includes at least a majority of the whole governing body or bodies. The public hearing is subject to the notice requirements in RCW 39.102.100.

(3) The sponsoring local government, and any cosponsoring local government, shall deliver a certified copy of the adopted ordinance to the county treasurer, the governing body of each participating local government and participating taxing district within which the revenue development area is located, the board, and the department. [2007 c 229 § 5; 2006 c 181 § 207.]

Application—Severability—Expiration date—2007 c 229: See notes following RCW 39.102.020.

39.102.110 Local excise tax allocation revenues. (Expires June 30, 2039.) (1) A sponsoring local government or participating local government that has received approval by the board to use local infrastructure financing may use annually its local excise tax allocation revenues to finance public improvements in the revenue development area financed in whole or in part by local infrastructure financing. The use of local excise tax allocation revenues dedicated by participating local governments must cease on the date specified in the written agreement required in RCW 39.102.080(1), or if no date is specified then the date when the local tax under RCW 82.14.475 expires. Any participating local government is authorized to dedicate local excise tax allocation revenues to the sponsoring local government as authorized in RCW 39.102.080(1).

(2) A sponsoring local government shall provide the board accurate information describing the geographical boundaries of the revenue development area at the time of

application. The information shall be provided in an electronic format or manner as prescribed by the department. The sponsoring local government shall ensure that the boundary information provided to the board and department is kept current.

(3) In the event a city annexes a county area located within a county-sponsored revenue development area, the city shall remit to the county the portion of the local excise tax allocation revenue that the county would have received had the area not been annexed to the county. The city shall remit such revenues until such time as the bonds issued under RCW 39.102.150 are retired. [2007 c 229 § 6; 2006 c 181 § 301.]

Application—Severability—Expiration date—2007 c 229: See notes following RCW 39.102.020.

39.102.120 Local property tax allocation revenues. (Expires June 30, 2039.) (1) Commencing in the second calendar year following board approval of a revenue development area, the county treasurer shall distribute receipts from regular taxes imposed on real property located in the revenue development area as follows:

(a) Each participating taxing district and the sponsoring local government shall receive that portion of its regular property taxes produced by the rate of tax levied by or for the taxing district on the property tax allocation revenue base value for that local infrastructure financing project in the taxing district, or upon the total assessed value of real property in the taxing district, whichever is smaller; and

(b) The sponsoring local government shall receive an additional portion of the regular property taxes levied by it and by or for each participating taxing district upon the property tax allocation revenue value within the revenue development area. However, if there is no property tax allocation revenue value, the sponsoring local government shall not receive any additional regular property taxes under this subsection (1)(b). The sponsoring local government may agree to receive less than the full amount of the additional portion of regular property taxes under this subsection (1)(b) as long as bond debt service, reserve, and other bond covenant requirements are satisfied, in which case the balance of these tax receipts shall be allocated to the participating taxing districts that levied regular property taxes, or have regular property taxes levied for them, in the revenue development area for collection that year in proportion to their regular tax levy rates for collection that year. The sponsoring local government may request that the treasurer transfer this additional portion of the property taxes to its designated agent. The portion of the tax receipts distributed to the sponsoring local government or its agent under this subsection (1)(b) may only be expended to finance public improvement costs associated with the public improvements financed in whole or in part by local infrastructure financing.

(2) The county assessor shall allocate any increase in the assessed value of real property occurring in the revenue development area to the property tax allocation revenue value and property tax allocation revenue base value as appropriate. This section does not authorize revaluations of real property by the assessor for property taxation that are not made in accordance with the assessor's revaluation plan under chapter

84.41 RCW or under other authorized revaluation procedures.

(3) The apportionment of increases in assessed valuation in a revenue development area, and the associated distribution to the sponsoring local government of receipts from regular property taxes that are imposed on the property tax allocation revenue value, must cease when property tax allocation revenues are no longer obligated to pay the costs of the public improvements. Any excess local property tax allocation revenues derived from regular property taxes and earnings on these tax allocation revenues, remaining at the time the allocation of tax receipts terminates, must be returned to the county treasurer and distributed to the participating taxing districts that imposed regular property taxes, or had regular property taxes imposed for it, in the revenue development area for collection that year, in proportion to the rates of their regular property tax levies for collection that year.

(4) The allocation to the revenue development area of portions of the local regular property taxes levied by or for each taxing district upon the property tax allocation revenue value within that revenue development area is declared to be a public purpose of and benefit to each such taxing district.

(5) The allocation of local property tax allocation revenues pursuant to this section shall not affect or be deemed to affect the rate of taxes levied by or within any taxing district or the consistency of any such levies with the uniformity requirement of Article VII, section 1 of the state Constitution.

(6) This section does not apply to those revenue development areas that include any part of an increment area created under chapter 39.89 RCW. [2007 c 229 § 7; 2006 c 181 § 302.]

Application—Severability—Expiration date—2007 c 229: See notes following RCW 39.102.020.

39.102.130 Use of sales and use tax funds. (Expires June 30, 2039.) Money collected from the taxes imposed under RCW 82.14.475 may be used only for the purpose of paying debt service on bonds issued under the authority of RCW 39.102.150 or to pay public improvement costs on a pay-as-you-go basis as provided in RCW 39.102.195, or both. [2007 c 229 § 11; 2006 c 181 § 402.]

Application—Severability—Expiration date—2007 c 229: See notes following RCW 39.102.020.

39.102.140 Reporting requirements. (Expires June 30, 2039.) (1) A sponsoring local government shall provide a report to the board and the department by March 1st of each year. The report shall contain the following information:

(a) The amount of local excise tax allocation revenues, local property tax allocation revenues, other revenues from local public sources, and taxes under RCW 82.14.475 received by the sponsoring local government during the preceding calendar year that were dedicated to pay the public improvements financed in whole or in part with local infrastructure financing, and a summary of how these revenues were expended;

(b) The names of any businesses locating within the revenue development area as a result of the public improvements undertaken by the sponsoring local government and financed in whole or in part with local infrastructure financing;

(c) The total number of permanent jobs created in the revenue development area as a result of the public improvements undertaken by the sponsoring local government and financed in whole or in part with local infrastructure financing;

(d) The average wages and benefits received by all employees of businesses locating within the revenue development area as a result of the public improvements undertaken by the sponsoring local government and financed in whole or in part with local infrastructure financing; and

(e) That the sponsoring local government is in compliance with RCW 39.102.070.

(2) The board shall make a report available to the public and the legislature by June 1st of each year. The report shall include a list of public improvements undertaken by sponsoring local governments and financed in whole or in part with local infrastructure financing and it shall also include a summary of the information provided to the department by sponsoring local governments under subsection (1) of this section. [2007 c 229 § 9; 2006 c 181 § 403.]

Application—Severability—Expiration date—2007 c 229: See notes following RCW 39.102.020.

39.102.150 Issuance of general obligation bonds. (Expires June 30, 2039.) (1) A sponsoring local government that has designated a revenue development area and been authorized the use of local infrastructure financing may incur general indebtedness, and issue general obligation bonds, to finance the public improvements and retire the indebtedness in whole or in part from local excise tax allocation revenues, local property tax allocation revenues, and sales and use taxes imposed under the authority of RCW 82.14.475 that it receives, subject to the following requirements:

(a) The ordinance adopted by the sponsoring local government and authorizing the use of local infrastructure financing indicates an intent to incur this indebtedness and the maximum amount of this indebtedness that is contemplated; and

(b) The sponsoring local government includes this statement of the intent in all notices required by RCW 39.102.100.

(2)(a) Except as provided in (b) of this subsection, the general indebtedness incurred under subsection (1) of this section may be payable from other tax revenues, the full faith and credit of the local government, and nontax income, revenues, fees, and rents from the public improvements, as well as contributions, grants, and nontax money available to the local government for payment of costs of the public improvements or associated debt service on the general indebtedness.

(b) A sponsoring local government that issues bonds under this section shall not pledge any money received from the state of Washington for the payment of such bonds, other than the local sales and use taxes imposed under the authority of RCW 82.14.475 and collected by the department.

(3) In addition to the requirements in subsection (1) of this section, a sponsoring local government designating a revenue development area and authorizing the use of local infrastructure financing may require the nonpublic participant to provide adequate security to protect the public investment in the public improvement within the revenue development area.

(4) Bonds issued under this section shall be authorized by ordinance of the governing body of the sponsoring local government and may be issued in one or more series and shall bear such date or dates, be payable upon demand or mature at such time or times, bear interest at such rate or rates, be in such denomination or denominations, be in such form either coupon or registered as provided in RCW 39.46.030, carry such conversion or registration privileges, have such rank or priority, be executed in such manner, be payable in such medium of payment, at such place or places, and be subject to such terms of redemption with or without premium, be secured in such manner, and have such other characteristics, as may be provided by such ordinance or trust indenture or mortgage issued pursuant thereto.

(5) The sponsoring local government may annually pay into a fund to be established for the benefit of bonds issued under this section a fixed proportion or a fixed amount of any local excise tax allocation revenues and local property tax allocation revenues derived from property or business activity within the revenue development area containing the public improvements funded by the bonds, such payment to continue until all bonds payable from the fund are paid in full. The local government may also annually pay into the fund established in this section a fixed proportion or a fixed amount of any revenues derived from taxes imposed under RCW 82.14.475, such payment to continue until all bonds payable from the fund are paid in full. Revenues derived from taxes imposed under RCW 82.14.475 are subject to the use restriction in RCW 39.102.130.

(6) In case any of the public officials of the sponsoring local government whose signatures appear on any bonds or any coupons issued under this chapter shall cease to be such officials before the delivery of such bonds, such signatures shall, nevertheless, be valid and sufficient for all purposes, the same as if such officials had remained in office until such delivery. Any provision of any law to the contrary notwithstanding, any bonds issued under this chapter are fully negotiable.

(7) Notwithstanding subsections (4) through (6) of this section, bonds issued under this section may be issued and sold in accordance with chapter 39.46 RCW. [2007 c 229 § 10; 2006 c 181 § 501.]

Application—Severability—Expiration date—2007 c 229: See notes following RCW 39.102.020.

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

39.102.195 Limitation on use of revenues. (Expires June 30, 2039.) Local excise tax allocation revenues, local property tax allocation revenues, other revenues from local public sources, that are dedicated to local infrastructure financing, and revenues received from the local option sales and use tax authorized in RCW 82.14.475, may not be used to pay for public improvement costs on a pay-as-you-go basis after the date that the sponsoring local government that issued the bonds as provided in RCW 39.102.150 is required to begin paying debt service on those bonds. [2007 c 229 § 14.]

Application—Severability—Expiration date—2007 c 229: See notes following RCW 39.102.020.

39.102.220 Administration by department and board. (*Expires June 30, 2039.*) The department of revenue and the community economic revitalization board may adopt any rules under chapter 34.05 RCW they consider necessary for the administration of this chapter. [2007 c 229 § 13.]

Application—Severability—Expiration date—2007 c 229: See notes following RCW 39.102.020.

Title 40

PUBLIC DOCUMENTS, RECORDS, AND PUBLICATIONS

Chapters

40.04 Public documents.

Chapter 40.04 RCW

PUBLIC DOCUMENTS

Sections

40.04.031 Session laws—Distribution, sale, exchange.

40.04.031 Session laws—Distribution, sale, exchange. The statute law committee, after each legislative session, shall distribute, sell, or exchange session laws as required under this section.

(1) One set shall be given to the following: The United States supreme court library; each state adult correctional institution; each state mental institution; the state historical society; the state bar association; the Olympia press corps library; the University of Washington library; the library of each of the regional universities; The Evergreen State College library; the Washington State University library; each county law library; and the municipal reference branch of the Seattle public library.

(2) One set shall be given to the following upon their request: Each member of the legislature; each state agency and its divisions; each state commission, committee, board, and council; each community college; each assistant attorney general; each member of the United States senate and house of representatives from this state; each state official whose office is created by the Constitution; each prosecuting attorney; and each public library in cities of the first class.

(3) Two sets shall be given to the following: The administrator for the courts; the library of congress; the law libraries of any accredited law schools established in this state; and the governor.

(4) Two sets shall be given to the following upon their request: Each United States district court in the state; and each office and branch office of the United States district attorneys in this state.

(5) Three sets shall be given to the library of the circuit court of appeals of the ninth circuit, upon its request.

(6) The following may request, and receive at no charge, as many sets as are needed for their official business: The senate and house of representatives; each county auditor, who shall receive and distribute sets for use by his or her county's officials; the office of the code reviser; the secretary of the senate; the chief clerk of the house of representatives; the

supreme court; each court of appeals in the state; the superior courts; the state library; and the state law library.

(7) Surplus copies of the session laws shall be sold and delivered by the statute law committee, in which case the price of the bound volumes shall be sufficient to cover costs. All money received from the sale of the session law sets shall be paid into the statute law committee publications account.

(8) The statute law committee may exchange session law sets for similar laws or legal materials of other states, territories, and governments, and make such other distribution of the sets as in its judgment seems proper. [2007 c 456 § 1; 2006 c 46 § 3.]

Title 41

PUBLIC EMPLOYMENT, CIVIL SERVICE, AND PENSIONS

Chapters

- 41.04** General provisions.
- 41.05** State health care authority.
- 41.06** State civil service law.
- 41.08** Civil service for city firefighters.
- 41.12** Civil service for city police.
- 41.14** Civil service for sheriff's office.
- 41.16** Firefighters' relief and pensions—1947 act.
- 41.18** Firefighters' relief and pensions—1955 act.
- 41.24** Volunteer firefighters' and reserve officers' relief and pensions.
- 41.26** Law enforcement officers' and firefighters' retirement system.
- 41.31** Extraordinary investment gains—Plan 1.
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- 41.32** Teachers' retirement.
- 41.35** Washington school employees' retirement system.
- 41.37** Washington public safety employees' retirement system.
- 41.40** Washington public employees' retirement system.
- 41.44** Statewide city employees' retirement.
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Chapter 41.04 RCW

GENERAL PROVISIONS

Sections

- 41.04.007 "Veteran" defined for certain purposes.
- 41.04.010 Veterans' scoring criteria status in examinations.
- 41.04.017 Death benefit—Course of employment—Occupational disease or infection.
- 41.04.190 Hospitalization and medical aid for county, municipal and other political subdivision employees or elected officials—Cost not additional compensation—Disbursement.
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- 41.04.410 Consolidation of local governmental unit and first-class city retirement system—Membership in public employees' or public safety employees' retirement system.
- 41.04.440 Members' retirement contributions—Pick up by employer—Purpose—Benefits not contractual right.
- 41.04.445 Members' retirement contributions—Pick up by employer—Implementation.

- 41.04.450 Members' retirement contributions—Pick up by employer—Optional implementation and withdrawal.
- 41.04.665 Leave sharing program—When employee may receive leave—When employee may transfer accrued leave—Transfer of leave between employees of different agencies. (Effective until October 1, 2007.)
- 41.04.666 Leave sharing program—When employee may receive leave—When employee may transfer accrued leave—Transfer of leave between employees of different agencies. (Effective October 1, 2007.)
- 41.04.685 Uniformed service shared leave pool—Creation—Administration—Restrictions—Definitions. (Effective October 1, 2007.)
- 41.04.810 Title not applicable to individual providers, family child care providers, and adult family home providers.

41.04.007 "Veteran" defined for certain purposes.

"Veteran" includes every person, who at the time he or she seeks the benefits of RCW 46.16.30920, 72.36.030, 41.04.010, 73.04.090, 73.04.110, 73.08.010, 73.08.070, 73.08.080, or 43.180.250 has received an honorable discharge or received a discharge for medical reasons with an honorable record, where applicable, and who has served in at least one of the following capacities:

(1) As a member in any branch of the armed forces of the United States, including the national guard and armed forces reserves, and has fulfilled his or her initial military service obligation;

(2) As a member of the women's air forces service pilots;

(3) As a member of the armed forces reserves, national guard, or coast guard, and has been called into federal service by a presidential select reserve call up for at least one hundred eighty cumulative days;

(4) As a civil service crewmember with service aboard a U.S. army transport service or U.S. naval transportation service vessel in oceangoing service from December 7, 1941, through December 31, 1946;

(5) As a member of the Philippine armed forces/scouts during the period of armed conflict from December 7, 1941, through August 15, 1945; or

(6) A United States documented merchant mariner with service aboard an oceangoing vessel operated by the department of defense, or its agents, from both June 25, 1950, through July 27, 1953, in Korean territorial waters and from August 5, 1964, through May 7, 1975, in Vietnam territorial waters, and who received a military commendation. [2007 c 448 § 1; 2006 c 252 § 2. Prior: 2005 c 251 § 1; 2005 c 216 § 7; 2002 c 292 § 2.]

41.04.010 Veterans' scoring criteria status in examinations. In all competitive examinations, unless otherwise provided in this section, to determine the qualifications of applicants for public offices, positions, or employment, either the state, and all of its political subdivisions and all municipal corporations, or private companies or agencies contracted with by the state to give the competitive examinations shall give a scoring criteria status to all veterans as defined in RCW 41.04.007, by adding to the passing mark, grade or rating only, based upon a possible rating of one hundred points as perfect a percentage in accordance with the following:

(1) Ten percent to a veteran who served during a period of war or in an armed conflict as defined in RCW 41.04.005 and does not receive military retirement. The percentage shall be added to the passing mark, grade, or rating of com-

petitive examinations until the veteran's first appointment. The percentage shall not be utilized in promotional examinations;

(2) Five percent to a veteran who did not serve during a period of war or in an armed conflict as defined in RCW 41.04.005 or is receiving military retirement. The percentage shall be added to the passing mark, grade, or rating of competitive examinations until the veteran's first appointment. The percentage shall not be utilized in promotional examinations;

(3) Five percent to a veteran who was called to active military service for one or more years from employment with the state or any of its political subdivisions or municipal corporations. The percentage shall be added to promotional examinations until the first promotion only;

(4) All veterans' scoring criteria may be claimed upon release from active military service. [2007 c 449 § 1; 2003 c 45 § 1; 2002 c 292 § 4; 2000 c 140 § 1; 1974 ex.s. c 170 § 1; 1969 ex.s. c 269 § 2; 1953 ex.s. c 9 § 1; 1949 c 134 § 1; 1947 c 119 § 1; 1945 c 189 § 1; Rem. Supp. 1949 § 9963-5.]

Veterans and veterans' affairs: Title 73 RCW.

41.04.017 Death benefit—Course of employment—Occupational disease or infection.

A one hundred fifty thousand dollar death benefit shall be paid as a sundry claim to the estate of an employee of any state agency, the common school system of the state, or institution of higher education who dies as a result of (1) injuries sustained in the course of employment; or (2) an occupational disease or infection that arises naturally and proximately out of employment covered under this chapter, and is not otherwise provided a death benefit through coverage under their enrolled retirement system under chapter 402, Laws of 2003. The determination of eligibility for the benefit shall be made consistent with Title 51 RCW by the department of labor and industries. The department of labor and industries shall notify the director of the department of general administration by order under RCW 51.52.050. [2007 c 487 § 1; 2003 c 402 § 4.]

41.04.190 Hospitalization and medical aid for county, municipal and other political subdivision employees or elected officials—Cost not additional compensation—Disbursement.

The cost of a policy or plan to a public agency or body is not additional compensation to the employees or elected officials covered thereby. The elected officials to whom this section applies include but are not limited to commissioners elected under chapters 28A.315, 52.14, 53.12, 54.12, 57.12, 70.44, and 87.03 RCW, as well as any county elected officials who are provided insurance coverage under RCW 41.04.180, and city officials elected under chapters 35.17, 35.22, 35.23, 35.27, 35A.12, and 35A.13 RCW. Any officer authorized to disburse such funds may pay in whole or in part to an insurance carrier or health care service contractor the amount of the premiums due under the contract. [2007 c 42 § 1; 1996 c 230 § 1610; 1992 c 146 § 13; 1983 1st ex.s. c 37 § 1; 1965 c 57 § 2; 1963 c 75 § 2.]

Part headings not law—Effective date—1996 c 230: See notes following RCW 57.02.001.

Action disqualifying legislators proscribed—Severability—1965 c 57: "No board of county commissioners shall take any action under this 1965 amendatory act which shall disqualify members of the present legisla-

ture, under Article II, section 13, of the Constitution, from being candidates for or being elected or appointed to county elected offices.

If any provision of the action of a board of county commissioners is held invalid under the preceding paragraph of this section, the remainder of the action or the application of the provision to other persons or circumstances shall not be affected." [1965 c 57 § 3.]

41.04.230 Payroll deductions authorized. Any official of the state authorized to disburse funds in payment of salaries and wages of public officers or employees is authorized, upon written request of the officer or employee, to deduct from the salaries or wages of the officers or employees, the amount or amounts of subscription payments, premiums, contributions, or continuation thereof, for payment of the following:

(1) Credit union deductions: PROVIDED, That twenty-five or more employees of a single state agency or a total of one hundred or more state employees of several agencies have authorized such a deduction for payment to the same credit union. An agency may, in its own discretion, establish a minimum participation requirement of fewer than twenty-five employees.

(2) Parking fee deductions: PROVIDED, That payment is made for parking facilities furnished by the agency or by the department of general administration.

(3) U.S. savings bond deductions: PROVIDED, That a person within the particular agency shall be appointed to act as trustee. The trustee will receive all contributions; purchase and deliver all bond certificates; and keep such records and furnish such bond or security as will render full accountability for all bond contributions.

(4) Board, lodging or uniform deductions when such board, lodging and uniforms are furnished by the state, or deductions for academic tuitions or fees or scholarship contributions payable to the employing institution.

(5) Dues and other fees deductions: PROVIDED, That the deduction is for payment of membership dues to any professional organization formed primarily for public employees or college and university professors: AND PROVIDED, FURTHER, That twenty-five or more employees of a single state agency, or a total of one hundred or more state employees of several agencies have authorized such a deduction for payment to the same professional organization.

(6) Labor, employee, or retiree organization dues, and voluntary employee contributions to any funds, committees, or subsidiary organizations maintained by labor, employee, or retiree organizations, may be deducted in the event that a payroll deduction is not provided under a collective bargaining agreement under the provisions of chapter 41.80 RCW: PROVIDED, That each labor, employee, or retiree organization chooses only one fund for voluntary employee contributions: PROVIDED, FURTHER, That twenty-five or more officers or employees of a single agency, or a total of one hundred or more officers or employees of several agencies have authorized such a deduction for payment to the same labor, employee, or retiree organization: PROVIDED, FURTHER, That labor, employee, or retiree organizations with five hundred or more members in state government may have payroll deduction for employee benefit programs.

(7) Insurance contributions to the authority for payment of premiums under contracts authorized by the state health care authority. However, enrollment or assignment by the

state health care authority to participate in a health care benefit plan, as required by RCW 41.05.065(7), shall authorize a payroll deduction of premium contributions without a written consent under the terms and conditions established by the public employees' benefits board.

(8) Deductions to a bank, savings bank, or savings and loan association if (a) the bank, savings bank, or savings and loan association is authorized to do business in this state; and (b) twenty-five or more employees of a single agency, or fewer, if a lesser number is established by such agency, or a total of one hundred or more state employees of several agencies have authorized a deduction for payment to the same bank, savings bank, or savings and loan association.

Deductions from salaries and wages of public officers and employees other than those enumerated in this section or by other law, may be authorized by the director of financial management for purposes clearly related to state employment or goals and objectives of the agency and for plans authorized by the state health care authority.

(9) Contributions to the Washington state combined fund drive.

The authority to make deductions from the salaries and wages of public officers and employees as provided for in this section shall be in addition to such other authority as may be provided by law: PROVIDED, That the state or any department, division, or separate agency of the state shall not be liable to any insurance carrier or contractor for the failure to make or transmit any such deduction. [2007 c 99 § 1; 2006 c 216 § 1; 2002 c 61 § 5; 1995 1st sp.s. c 6 § 21. Prior: 1993 c 2 § 26 (Initiative Measure No. 134, approved November 3, 1992); 1992 c 192 § 1; 1988 c 107 § 19; 1985 c 271 § 1; 1983 1st ex.s. c 28 § 3; 1980 c 120 § 1; 1979 c 151 § 54; 1973 1st ex.s. c 147 § 5; 1970 ex.s. c 39 § 11; 1969 c 59 § 5.]

Effective date—2006 c 216: "This act takes effect January 1, 2007." [2006 c 216 § 2.]

Effective date—1995 1st sp.s. c 6: See note following RCW 28A.400.410.

Implementation—Effective dates—1988 c 107: See RCW 41.05.901.

Application—1983 1st ex.s. c 28: See note following RCW 42.16.010.

Effective date—Effect of veto—Savings—Severability—1973 1st ex.s. c 147: See notes following RCW 41.05.050.

Severability—1970 ex.s. c 39: See note following RCW 41.05.050.

41.04.410 Consolidation of local governmental unit and first-class city retirement system—Membership in public employees' or public safety employees' retirement system. If a consolidated employer is a participating member in the public employees' retirement system under chapter 41.40 RCW prior to the consolidation or in the public safety employees' retirement system under chapter 41.37 RCW prior to the consolidation:

(1) All existing employees of the consolidated employer who are active members of the public employees' or public safety employees' retirement system immediately prior to the consolidation shall continue to be members of that retirement system while employed by the consolidated employer.

(2) All existing employees of the consolidated employer who are active members of a first class city retirement system under chapter 41.28 RCW immediately prior to the consolidation shall cease to be members of that system at the time of the consolidation and, if eligible, shall immediately become

members of the public employees' or public safety employees' retirement system. However, any such active member may, by a writing filed with the consolidated employer within thirty days after the consolidation or within thirty days after March 15, 1984, whichever is later, irrevocably elect instead to continue to be a member of the first class city retirement system, thereby forever waiving any rights under the public employees' or public safety employees' retirement system based upon employment with the consolidated employer.

(3) Only prospective periods of qualifying service under the public employees' or public safety employees' retirement system may be established under this section. [2007 c 492 § 2; 1984 c 184 § 24.]

Severability—1984 c 184: See note following RCW 41.50.150.

41.04.440 Members' retirement contributions—Pick up by employer—Purpose—Benefits not contractual right. (1) The sole purpose of RCW 41.04.445 and 41.04.450 is to allow the members of the retirement systems created in chapters 2.10, 2.12, 41.26, 41.32, 41.35, 41.37, 41.40, 41.34, and 43.43 RCW to enjoy the tax deferral benefits allowed under 26 U.S.C. 414(h). Chapter 227, Laws of 1984 does not alter in any manner the provisions of RCW 41.45.060, 41.45.061, and 41.45.067 which require that the member contribution rates shall be set so as to provide fifty percent of the cost of the respective retirement plans.

(2) Should the legislature revoke any benefit allowed under 26 U.S.C. 414(h), no affected employee shall be entitled thereafter to receive such benefit as a matter of contractual right. [2007 c 492 § 3; 2000 c 247 § 1101; 1995 c 239 § 322; 1984 c 227 § 1.]

Effective dates—Subchapter headings not law—2000 c 247: See RCW 41.40.931 and 41.40.932.

Intent—Purpose—1995 c 239: See note following RCW 41.32.831.

Effective date—Part and subchapter headings not law—1995 c 239: See notes following RCW 41.32.005.

Effective date—1984 c 227: "This act shall take effect on September 1, 1984." [1984 c 227 § 4.]

Conflict with federal requirements—1984 c 227: "If any part of this act is found to be in conflict with federal requirements, the conflicting part of the act is hereby declared to be inoperative solely to the extent of the conflict and such finding or determination shall not affect the operation of the remainder of the act in its application: PROVIDED, That the employee proportional contributions required under RCW 41.26.450, 41.32.775 and 41.40.650 may not be altered in any manner. The rules under this act shall meet federal requirements." [1984 c 227 § 6.]

Severability—1984 c 227: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected: PROVIDED, That the employee proportional contributions required under RCW 41.26.450, 41.32.775 and 41.40.650 may not be altered in any manner." [1984 c 227 § 7.]

Benefits not contractual right until date specified: RCW 41.34.100.

41.04.445 Members' retirement contributions—Pick up by employer—Implementation. (1) This section applies to all members who are:

(a) Judges under the retirement system established under chapter 2.10, 2.12, or 2.14 RCW;

(b) Employees of the state under the retirement system established by chapter 41.32, 41.37, 41.40, or 43.43 RCW;

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(c) Employees of school districts under the retirement system established by chapter 41.32 or 41.40 RCW, except for substitute teachers as defined by RCW 41.32.010;

(d) Employees of educational service districts under the retirement system established by chapter 41.32 or 41.40 RCW; or

(e) Employees of community college districts under the retirement system established by chapter 41.32 or 41.40 RCW.

(2) Only for compensation earned after the effective date of the implementation of this section and as provided by section 414(h) of the federal internal revenue code, the employer of all the members specified in subsection (1) of this section shall pick up only those member contributions as required under:

(a) RCW 2.10.090(1);

(b) RCW 2.12.060;

(c) RCW 2.14.090;

(d) RCW 41.32.263;

(e) RCW 41.32.350;

(f) RCW 41.40.330 (1) and (3);

(g) RCW 41.45.061 and 41.45.067;

(h) RCW 41.34.070;

(i) *RCW 43.43.300; and

(j) RCW 41.34.040.

(3) Only for the purposes of federal income taxation, the gross income of the member shall be reduced by the amount of the contribution to the respective retirement system picked up by the employer.

(4) All member contributions to the respective retirement system picked up by the employer as provided by this section, plus the accrued interest earned thereon, shall be paid to the member upon the withdrawal of funds or lump-sum payment of accumulated contributions as provided under the provisions of the retirement systems.

(5) At least forty-five days prior to implementing this section, the employer shall provide:

(a) A complete explanation of the effects of this section to all members; and

(b) Notification of such implementation to the director of the department of retirement systems. [2007 c 492 § 4; 2000 c 247 § 1102; 1995 c 239 § 323; 1992 c 212 § 15; 1990 c 274 § 6; 1988 c 109 § 24; 1985 c 13 § 2; 1984 c 227 § 2.]

*Reviser's note: RCW 43.43.300 was repealed by 2001 c 329 § 12.

Effective dates—Subchapter headings not law—2000 c 247: See RCW 41.40.931 and 41.40.932.

Intent—Purpose—1995 c 239: See note following RCW 41.32.831.

Effective date—Part and subchapter headings not law—1995 c 239: See notes following RCW 41.32.005.

Findings—Effective date—Construction—1990 c 274: See notes following RCW 41.32.010.

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

Purpose—Application—1985 c 13: "The sole purpose of this 1985 act is to clarify and more explicitly state the intent of the legislature in enacting chapter 227, Laws of 1984. This 1985 act makes no substantive changes in the meaning or impact of that chapter and the provisions of this 1985 act shall be deemed to have retrospective application to September 1, 1984." [1985 c 13 § 1.]

Retrospective application—1985 c 13: "This act shall have retrospective application to September 1, 1984." [1985 c 13 § 8.]

Effective date—Conflict with federal requirements—Severability—1984 c 227: See notes following RCW 41.04.440.

Benefits not contractual right until date specified: RCW 41.34.100.

41.04.450 Members' retirement contributions—Pick up by employer—Optional implementation and withdrawal. (1) Employers of those members under chapters 41.26, 41.34, 41.35, 41.37, and 41.40 RCW who are not specified in RCW 41.04.445 may choose to implement the employer pick up of all member contributions without exception under RCW 41.26.080(1)(a), 41.26.450, 41.40.330(1), 41.45.060, 41.45.061, and 41.45.067 and chapter 41.34 RCW. If the employer does so choose, the employer and members shall be subject to the conditions and limitations of RCW 41.04.445 (3), (4), and (5) and 41.04.455.

(2) An employer exercising the option under this section may later choose to withdraw from and/or reestablish the employer pick up of member contributions only once in a calendar year following forty-five days prior notice to the director of the department of retirement systems. [2007 c 492 § 5; 2003 c 294 § 1; 2000 c 247 § 1103; 1995 c 239 § 324; 1985 c 13 § 3; 1984 c 227 § 3.]

Effective dates—Subchapter headings not law—2000 c 247: See RCW 41.40.931 and 41.40.932.

Intent—Purpose—1995 c 239: See note following RCW 41.32.831.

Effective date—Part and subchapter headings not law—1995 c 239: See notes following RCW 41.32.005.

Purpose—Application—Retrospective application—1985 c 13: See notes following RCW 41.04.445.

Effective date—Conflict with federal requirements—Severability—1984 c 227: See notes following RCW 41.04.440.

Benefits not contractual right until date specified: RCW 41.34.100.

41.04.665 Leave sharing program—When employee may receive leave—When employee may transfer accrued leave—Transfer of leave between employees of different agencies. (Effective until October 1, 2007.) (1) An agency head may permit an employee to receive leave under this section if:

(a)(i) The employee suffers from, or has a relative or household member suffering from, an illness, injury, impairment, or physical or mental condition which is of an extraordinary or severe nature;

(ii) The employee has been called to service in the uniformed services; or

(iii) A state of emergency has been declared anywhere within the United States by the federal or any state government and the employee has needed skills to assist in responding to the emergency or its aftermath and volunteers his or her services to either a governmental agency or to a nonprofit organization engaged in humanitarian relief in the devastated area, and the governmental agency or nonprofit organization accepts the employee's offer of volunteer services;

(b) The illness, injury, impairment, condition, call to service, or emergency volunteer service has caused, or is likely to cause, the employee to:

(i) Go on leave without pay status; or

(ii) Terminate state employment;

(c) The employee's absence and the use of shared leave are justified;

(d) The employee has depleted or will shortly deplete his or her:

(i) Annual leave and sick leave reserves if he or she qualifies under (a)(i) of this subsection;

(ii) Annual leave and paid military leave allowed under RCW 38.40.060 if he or she qualifies under (a)(ii) of this subsection; or

(iii) Annual leave if he or she qualifies under (a)(iii) of this subsection;

(e) The employee has abided by agency rules regarding:

(i) Sick leave use if he or she qualifies under (a)(i) of this subsection; or

(ii) Military leave if he or she qualifies under (a)(ii) of this subsection; and

(f) The employee has diligently pursued and been found to be ineligible for benefits under chapter 51.32 RCW if he or she qualifies under (a)(i) of this subsection.

(2) The agency head shall determine the amount of leave, if any, which an employee may receive under this section. However, an employee shall not receive a total of more than two hundred sixty-one days of leave.

(3) An employee may transfer annual leave, sick leave, and his or her personal holiday, as follows:

(a) An employee who has an accrued annual leave balance of more than ten days may request that the head of the agency for which the employee works transfer a specified amount of annual leave to another employee authorized to receive leave under subsection (1) of this section. In no event may the employee request a transfer of an amount of leave that would result in his or her annual leave account going below ten days. For purposes of this subsection (3)(a), annual leave does not accrue if the employee receives compensation in lieu of accumulating a balance of annual leave.

(b) An employee may transfer a specified amount of sick leave to an employee requesting shared leave only when the donating employee retains a minimum of one hundred seventy-six hours of sick leave after the transfer.

(c) An employee may transfer, under the provisions of this section relating to the transfer of leave, all or part of his or her personal holiday, as that term is defined under RCW 1.16.050, or as such holidays are provided to employees by agreement with a school district's board of directors if the leave transferred under this subsection does not exceed the amount of time provided for personal holidays under RCW 1.16.050.

(4) An employee of an institution of higher education under RCW 28B.10.016, school district, or educational service district who does not accrue annual leave but does accrue sick leave and who has an accrued sick leave balance of more than twenty-two days may request that the head of the agency for which the employee works transfer a specified amount of sick leave to another employee authorized to receive leave under subsection (1) of this section. In no event may such an employee request a transfer that would result in his or her sick leave account going below twenty-two days. Transfers of sick leave under this subsection are limited to transfers from employees who do not accrue annual leave. Under this subsection, "sick leave" also includes leave accrued pursuant to RCW 28A.400.300(2) or 28A.310.240(1) with compensation for illness, injury, and emergencies.

(5) Transfers of leave made by an agency head under subsections (3) and (4) of this section shall not exceed the requested amount.

(6) Leave transferred under this section may be transferred from employees of one agency to an employee of the same agency or, with the approval of the heads of both agencies, to an employee of another state agency. However, leave transferred to or from employees of school districts or educational service districts is limited to transfers to or from employees within the same employing district.

(7) While an employee is on leave transferred under this section, he or she shall continue to be classified as a state employee and shall receive the same treatment in respect to salary, wages, and employee benefits as the employee would normally receive if using accrued annual leave or sick leave.

(a) All salary and wage payments made to employees while on leave transferred under this section shall be made by the agency employing the person receiving the leave. The value of leave transferred shall be based upon the leave value of the person receiving the leave.

(b) In the case of leave transferred by an employee of one agency to an employee of another agency, the agencies involved shall arrange for the transfer of funds and credit for the appropriate value of leave.

(i) Pursuant to rules adopted by the office of financial management, funds shall not be transferred under this section if the transfer would violate any constitutional or statutory restrictions on the funds being transferred.

(ii) The office of financial management may adjust the appropriation authority of an agency receiving funds under this section only if and to the extent that the agency's existing appropriation authority would prevent it from expending the funds received.

(iii) Where any questions arise in the transfer of funds or the adjustment of appropriation authority, the director of financial management shall determine the appropriate transfer or adjustment.

(8) Leave transferred under this section shall not be used in any calculation to determine an agency's allocation of full time equivalent staff positions.

(9) The value of any leave transferred under this section which remains unused shall be returned at its original value to the employee or employees who transferred the leave when the agency head finds that the leave is no longer needed or will not be needed at a future time in connection with the illness or injury for which the leave was transferred or for any other qualifying condition. Before the agency head makes a determination to return unused leave in connection with an illness or injury, or any other qualifying condition, he or she must receive from the affected employee a statement from the employee's doctor verifying that the illness or injury is resolved. To the extent administratively feasible, the value of unused leave which was transferred by more than one employee shall be returned on a pro rata basis.

(10) An employee who uses leave that is transferred to him or her under this section may not be required to repay the value of the leave that he or she used. [2007 c 454 § 1; 2003 1st sp.s. c 12 § 3; 1999 c 25 § 1; 1996 c 176 § 1; 1990 c 23 § 2; 1989 c 93 § 4.]

Effective date—2003 1st sp.s. c 12: See note following RCW 41.04.655.

Severability—1989 c 93: See note following RCW 41.04.650.

41.04.665 Leave sharing program—When employee may receive leave—When employee may transfer accrued leave—Transfer of leave between employees of different agencies. (Effective October 1, 2007.) (1) An agency head may permit an employee to receive leave under this section if:

(a)(i) The employee suffers from, or has a relative or household member suffering from, an illness, injury, impairment, or physical or mental condition which is of an extraordinary or severe nature;

(ii) The employee has been called to service in the uniformed services; or

(iii) A state of emergency has been declared anywhere within the United States by the federal or any state government and the employee has needed skills to assist in responding to the emergency or its aftermath and volunteers his or her services to either a governmental agency or to a nonprofit organization engaged in humanitarian relief in the devastated area, and the governmental agency or nonprofit organization accepts the employee's offer of volunteer services;

(b) The illness, injury, impairment, condition, call to service, or emergency volunteer service has caused, or is likely to cause, the employee to:

(i) Go on leave without pay status; or

(ii) Terminate state employment;

(c) The employee's absence and the use of shared leave are justified;

(d) The employee has depleted or will shortly deplete his or her:

(i) Annual leave and sick leave reserves if he or she qualifies under (a)(i) of this subsection;

(ii) Annual leave and paid military leave allowed under RCW 38.40.060 if he or she qualifies under (a)(ii) of this subsection; or

(iii) Annual leave if he or she qualifies under (a)(iii) of this subsection;

(e) The employee has abided by agency rules regarding:

(i) Sick leave use if he or she qualifies under (a)(i) of this subsection; or

(ii) Military leave if he or she qualifies under (a)(ii) of this subsection; and

(f) The employee has diligently pursued and been found to be ineligible for benefits under chapter 51.32 RCW if he or she qualifies under (a)(i) of this subsection.

(2) The agency head shall determine the amount of leave, if any, which an employee may receive under this section. However, an employee shall not receive a total of more than two hundred sixty-one days of leave, except that shared leave received under the uniformed service shared leave pool in RCW 41.04.685 is not included in this total.

(3) An employee may transfer annual leave, sick leave, and his or her personal holiday, as follows:

(a) An employee who has an accrued annual leave balance of more than ten days may request that the head of the agency for which the employee works transfer a specified amount of annual leave to another employee authorized to receive leave under subsection (1) of this section. In no event

may the employee request a transfer of an amount of leave that would result in his or her annual leave account going below ten days. For purposes of this subsection (3)(a), annual leave does not accrue if the employee receives compensation in lieu of accumulating a balance of annual leave.

(b) An employee may transfer a specified amount of sick leave to an employee requesting shared leave only when the donating employee retains a minimum of one hundred seventy-six hours of sick leave after the transfer.

(c) An employee may transfer, under the provisions of this section relating to the transfer of leave, all or part of his or her personal holiday, as that term is defined under RCW 1.16.050, or as such holidays are provided to employees by agreement with a school district's board of directors if the leave transferred under this subsection does not exceed the amount of time provided for personal holidays under RCW 1.16.050.

(4) An employee of an institution of higher education under RCW 28B.10.016, school district, or educational service district who does not accrue annual leave but does accrue sick leave and who has an accrued sick leave balance of more than twenty-two days may request that the head of the agency for which the employee works transfer a specified amount of sick leave to another employee authorized to receive leave under subsection (1) of this section. In no event may such an employee request a transfer that would result in his or her sick leave account going below twenty-two days. Transfers of sick leave under this subsection are limited to transfers from employees who do not accrue annual leave. Under this subsection, "sick leave" also includes leave accrued pursuant to RCW 28A.400.300(2) or 28A.310.240(1) with compensation for illness, injury, and emergencies.

(5) Transfers of leave made by an agency head under subsections (3) and (4) of this section shall not exceed the requested amount.

(6) Leave transferred under this section may be transferred from employees of one agency to an employee of the same agency or, with the approval of the heads of both agencies, to an employee of another state agency. However, leave transferred to or from employees of school districts or educational service districts is limited to transfers to or from employees within the same employing district.

(7) While an employee is on leave transferred under this section, he or she shall continue to be classified as a state employee and shall receive the same treatment in respect to salary, wages, and employee benefits as the employee would normally receive if using accrued annual leave or sick leave.

(a) All salary and wage payments made to employees while on leave transferred under this section shall be made by the agency employing the person receiving the leave. The value of leave transferred shall be based upon the leave value of the person receiving the leave.

(b) In the case of leave transferred by an employee of one agency to an employee of another agency, the agencies involved shall arrange for the transfer of funds and credit for the appropriate value of leave.

(i) Pursuant to rules adopted by the office of financial management, funds shall not be transferred under this section if the transfer would violate any constitutional or statutory restrictions on the funds being transferred.

(ii) The office of financial management may adjust the appropriation authority of an agency receiving funds under this section only if and to the extent that the agency's existing appropriation authority would prevent it from expending the funds received.

(iii) Where any questions arise in the transfer of funds or the adjustment of appropriation authority, the director of financial management shall determine the appropriate transfer or adjustment.

(8) Leave transferred under this section shall not be used in any calculation to determine an agency's allocation of full time equivalent staff positions.

(9) The value of any leave transferred under this section which remains unused shall be returned at its original value to the employee or employees who transferred the leave when the agency head finds that the leave is no longer needed or will not be needed at a future time in connection with the illness or injury for which the leave was transferred or for any other qualifying condition. Before the agency head makes a determination to return unused leave in connection with an illness or injury, or any other qualifying condition, he or she must receive from the affected employee a statement from the employee's doctor verifying that the illness or injury is resolved. To the extent administratively feasible, the value of unused leave which was transferred by more than one employee shall be returned on a pro rata basis.

(10) An employee who uses leave that is transferred to him or her under this section may not be required to repay the value of the leave that he or she used. [2007 c 454 § 1; 2007 c 25 § 2; 2003 1st sp.s. c 12 § 3; 1999 c 25 § 1; 1996 c 176 § 1; 1990 c 23 § 2; 1989 c 93 § 4.]

Reviser's note: This section was amended by 2007 c 25 § 2 and by 2007 c 454 § 1, each without reference to the other. Both amendments are incorporated in the publication of this section under RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

Severability—Effective date—2007 c 25: See notes following RCW 41.04.685.

Effective date—2003 1st sp.s. c 12: See note following RCW 41.04.655.

Severability—1989 c 93: See note following RCW 41.04.650.

41.04.685 Uniformed service shared leave pool—Creation—Administration—Restrictions—Definitions. (Effective October 1, 2007.) (1) The uniformed service shared leave pool is created to allow employees to donate leave to be used as shared leave for any employee who has been called to service in the uniformed services and who meets the requirements of RCW 41.04.665. Participation in the pool shall, at all times, be voluntary on the part of the employee. The military department, in consultation with the department of personnel and the office of financial management, shall administer the uniformed service shared leave pool.

(2) Employees as defined in subsection (10) of this section who are eligible to donate leave under RCW 41.04.665 may donate leave to the uniformed service shared leave pool.

(3) An employee as defined in subsection (10) of this section who has been called to service in the uniformed services and is eligible for shared leave under RCW 41.04.665 may request shared leave from the uniformed service shared leave pool.

(4) It shall be the responsibility of the employee who has been called to service to provide an earnings statement verifying military salary, orders of service, and notification of a change in orders of service or military salary.

(5) Shared leave under this section may not be granted unless the pool has a sufficient balance to fund the requested shared leave for the expected term of service.

(6) Shared leave paid under this section, in combination with military salary, shall not exceed the level of the employee's state monthly salary.

(7) Any leave donated shall be removed from the personally accumulated leave balance of the employee donating the leave.

(8) An employee who receives shared leave from the pool is not required to retribute such leave to the pool, except as otherwise provided in this section.

(9) Leave that may be donated or received by any one employee shall be calculated as in RCW 41.04.665.

(10) As used in this section:

(a) "Employee" has the meaning provided in RCW 41.04.655, except that "employee" as used in this section does not include employees of school districts and educational service districts.

(b) "Service in the uniformed services" has the meaning provided in RCW 41.04.655.

(c) "Military salary" includes base, specialty, and other pay, but does not include allowances such as the basic allowance for housing.

(d) "Monthly salary" includes monthly salary and special pay and shift differential, or the monthly equivalent for hourly employees. "Monthly salary" does not include:

- (i) Overtime pay;
- (ii) Call back pay;
- (iii) Standby pay; or
- (iv) Performance bonuses.

(11) The department of personnel, in consultation with the military department and the office of financial management, shall adopt rules and policies governing the donation and use of shared leave from the uniformed service shared leave pool, including definitions of pay and allowances and guidelines for agencies to use in recordkeeping concerning shared leave.

(12) Agencies shall investigate any alleged abuse of the uniformed service shared leave pool and on a finding of wrongdoing, the employee may be required to repay all of the shared leave received from the uniformed service shared leave pool.

(13) Higher education institutions shall adopt policies consistent with the needs of the employees under their respective jurisdictions. [2007 c 25 § 1.]

Severability—2007 c 25: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [2007 c 25 § 4.]

Effective date—2007 c 25: "This act takes effect October 1, 2007." [2007 c 25 § 5.]

41.04.810 Title not applicable to individual providers, family child care providers, and adult family home providers. Individual providers, as defined in RCW 74.39A.240, family child care providers, as defined in RCW

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41.56.030, and adult family home providers, as defined in RCW 41.56.030, are not employees of the state or any of its political subdivisions and are specifically and entirely excluded from all provisions of this title, except as provided in RCW 74.39A.270, 41.56.028, and 41.56.029. [2007 c 184 § 4; 2006 c 54 § 4; 2004 c 3 § 3.]

Part headings not law—Severability—Conflict with federal requirements—2007 c 184: See notes following RCW 41.56.029.

Part headings not law—Severability—Conflict with federal requirements—Short title—Effective date—2006 c 54: See RCW 41.56.911 through 41.56.915.

Severability—Effective date—2004 c 3: See notes following RCW 74.39A.270.

Chapter 41.05 RCW

STATE HEALTH CARE AUTHORITY

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41.05.011 Definitions. (Effective until January 1, 2009.) Unless the context clearly requires otherwise, the definitions in this section shall apply throughout this chapter.

(1) "Administrator" means the administrator of the authority.

(2) "State purchased health care" or "health care" means medical and health care, pharmaceuticals, and medical equipment purchased with state and federal funds by the depart-

ment of social and health services, the department of health, the basic health plan, the state health care authority, the department of labor and industries, the department of corrections, the department of veterans affairs, and local school districts.

(3) "Authority" means the Washington state health care authority.

(4) "Insuring entity" means an insurer as defined in chapter 48.01 RCW, a health care service contractor as defined in chapter 48.44 RCW, or a health maintenance organization as defined in chapter 48.46 RCW.

(5) "Flexible benefit plan" means a benefit plan that allows employees to choose the level of health care coverage provided and the amount of employee contributions from among a range of choices offered by the authority.

(6) "Employee" includes all full-time and career seasonal employees of the state, whether or not covered by civil service; elected and appointed officials of the executive branch of government, including full-time members of boards, commissions, or committees; and includes any or all part-time and temporary employees under the terms and conditions established under this chapter by the authority; justices of the supreme court and judges of the court of appeals and the superior courts; and members of the state legislature or of the legislative authority of any county, city, or town who are elected to office after February 20, 1970. "Employee" also includes: (a) Employees of a county, municipality, or other political subdivision of the state if the legislative authority of the county, municipality, or other political subdivision of the state seeks and receives the approval of the authority to provide any of its insurance programs by contract with the authority, as provided in RCW 41.04.205; (b) employees of employee organizations representing state civil service employees, at the option of each such employee organization, and, effective October 1, 1995, employees of employee organizations currently pooled with employees of school districts for the purpose of purchasing insurance benefits, at the option of each such employee organization; and (c) employees of a school district if the authority agrees to provide any of the school districts' insurance programs by contract with the authority as provided in RCW 28A.400.350.

(7) "Board" means the public employees' benefits board established under RCW 41.05.055.

(8) "Retired or disabled school employee" means:

(a) Persons who separated from employment with a school district or educational service district and are receiving a retirement allowance under chapter 41.32 or 41.40 RCW as of September 30, 1993;

(b) Persons who separate from employment with a school district or educational service district on or after October 1, 1993, and immediately upon separation receive a retirement allowance under chapter 41.32, 41.35, or 41.40 RCW;

(c) Persons who separate from employment with a school district or educational service district due to a total and permanent disability, and are eligible to receive a deferred retirement allowance under chapter 41.32, 41.35, or 41.40 RCW.

(9) "Benefits contribution plan" means a premium only contribution plan, a medical flexible spending arrangement, or a cafeteria plan whereby state and public employees may

agree to a contribution to benefit costs which will allow the employee to participate in benefits offered pursuant to 26 U.S.C. Sec. 125 or other sections of the internal revenue code.

(10) "Salary" means a state employee's monthly salary or wages.

(11) "Participant" means an individual who fulfills the eligibility and enrollment requirements under the benefits contribution plan.

(12) "Plan year" means the time period established by the authority.

(13) "Separated employees" means persons who separate from employment with an employer as defined in:

(a) RCW 41.32.010(11) on or after July 1, 1996; or

(b) RCW 41.35.010 on or after September 1, 2000; or

(c) RCW 41.40.010 on or after March 1, 2002;

and who are at least age fifty-five and have at least ten years of service under the teachers' retirement system plan 3 as defined in RCW 41.32.010(40), the Washington school employees' retirement system plan 3 as defined in RCW 41.35.010, or the public employees' retirement system plan 3 as defined in RCW 41.40.010.

(14) "Emergency service personnel killed in the line of duty" means law enforcement officers and fire fighters as defined in RCW 41.26.030, members of the Washington state patrol retirement fund as defined in RCW 43.43.120, and reserve officers and fire fighters as defined in RCW 41.24.010 who die as a result of injuries sustained in the course of employment as determined consistent with Title 51 RCW by the department of labor and industries.

(15) "Employer" means the state of Washington.

(16) "Employing agency" means a division, department, or separate agency of state government and a county, municipality, school district, educational service district, or other political subdivision, covered by this chapter. [2007 c 488 § 2; 2005 c 143 § 1; 2001 c 165 § 2. Prior: 2000 c 247 § 604; 2000 c 230 § 3; 1998 c 341 § 706; 1996 c 39 § 21; 1995 1st sp.s. c 6 § 2; 1994 c 153 § 2; prior: 1993 c 492 § 214; 1993 c 386 § 5; 1990 c 222 § 2; 1988 c 107 § 3.]

Short title—2007 c 488: See note following RCW 43.43.285.

Effective date—2001 c 165 § 2: "Section 2 of this act takes effect March 1, 2002." [2001 c 165 § 5.]

Effective date—Application—2001 c 165: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and except for section 2 of this act takes effect immediately [May 7, 2001]. This act applies to all surviving spouses and dependent children of (1) emergency service personnel and (2) members of the law enforcement officers' and firefighters' retirement system plan 2, killed in the line of duty." [2006 c 345 § 2; 2001 c 165 § 6.]

Reviser's note: Contractual right not granted—2006 c 345: See note following RCW 41.26.510.

Effective date—2000 c 230: See note following RCW 41.35.630.

Effective date—1998 c 341: See RCW 41.35.901.

Effective dates—1996 c 39: See note following RCW 41.32.010.

Effective date—1995 1st sp.s. c 6: See note following RCW 28A.400.410.

Intent—1994 c 153: "It is the intent of the legislature to increase access to health insurance for retired and disabled state and school district employees and to increase equity between state and school employees and between state and school retirees." [1994 c 153 § 1.]

Effective dates—1994 c 153: "This act shall take effect January 1, 1995, except section 15 of this act, which takes effect October 1, 1995." [1994 c 153 § 16.]

Findings—Intent—1993 c 492: See notes following RCW 43.20.050.

Short title—Severability—Savings—Captions not law—Reservation of legislative power—Effective dates—1993 c 492: See RCW 43.72.910 through 43.72.915.

Intent—1993 c 386: See note following RCW 28A.400.391.

Effective date—1993 c 386 §§ 1, 2, 4-6, 8-10, and 12-16: See note following RCW 28A.400.391.

41.05.011 Definitions. (Effective January 1, 2009.)

The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

(1) "Administrator" means the administrator of the authority.

(2) "State purchased health care" or "health care" means medical and health care, pharmaceuticals, and medical equipment purchased with state and federal funds by the department of social and health services, the department of health, the basic health plan, the state health care authority, the department of labor and industries, the department of corrections, the department of veterans affairs, and local school districts.

(3) "Authority" means the Washington state health care authority.

(4) "Insuring entity" means an insurer as defined in chapter 48.01 RCW, a health care service contractor as defined in chapter 48.44 RCW, or a health maintenance organization as defined in chapter 48.46 RCW.

(5) "Flexible benefit plan" means a benefit plan that allows employees to choose the level of health care coverage provided and the amount of employee contributions from among a range of choices offered by the authority.

(6) "Employee" includes all full-time and career seasonal employees of the state, whether or not covered by civil service; elected and appointed officials of the executive branch of government, including full-time members of boards, commissions, or committees; and includes any or all part-time and temporary employees under the terms and conditions established under this chapter by the authority; justices of the supreme court and judges of the court of appeals and the superior courts; and members of the state legislature or of the legislative authority of any county, city, or town who are elected to office after February 20, 1970. "Employee" also includes: (a) Employees of a county, municipality, or other political subdivision of the state if the legislative authority of the county, municipality, or other political subdivision of the state seeks and receives the approval of the authority to provide any of its insurance programs by contract with the authority, as provided in RCW 41.04.205 and 41.05.021(1)(g); (b) employees of employee organizations representing state civil service employees, at the option of each such employee organization, and, effective October 1, 1995, employees of employee organizations currently pooled with employees of school districts for the purpose of purchasing insurance benefits, at the option of each such employee organization; (c) employees of a school district if the authority agrees to provide any of the school districts' insurance programs by contract with the authority as provided in RCW 28A.400.350; and (d) employees of a tribal government, if

the governing body of the tribal government seeks and receives the approval of the authority to provide any of its insurance programs by contract with the authority, as provided in RCW 41.05.021(1) (f) and (g).

(7) "Board" means the public employees' benefits board established under RCW 41.05.055.

(8) "Retired or disabled school employee" means:

(a) Persons who separated from employment with a school district or educational service district and are receiving a retirement allowance under chapter 41.32 or 41.40 RCW as of September 30, 1993;

(b) Persons who separate from employment with a school district or educational service district on or after October 1, 1993, and immediately upon separation receive a retirement allowance under chapter 41.32, 41.35, or 41.40 RCW;

(c) Persons who separate from employment with a school district or educational service district due to a total and permanent disability, and are eligible to receive a deferred retirement allowance under chapter 41.32, 41.35, or 41.40 RCW.

(9) "Benefits contribution plan" means a premium only contribution plan, a medical flexible spending arrangement, or a cafeteria plan whereby state and public employees may agree to a contribution to benefit costs which will allow the employee to participate in benefits offered pursuant to 26 U.S.C. Sec. 125 or other sections of the internal revenue code.

(10) "Salary" means a state employee's monthly salary or wages.

(11) "Participant" means an individual who fulfills the eligibility and enrollment requirements under the benefits contribution plan.

(12) "Plan year" means the time period established by the authority.

(13) "Separated employees" means persons who separate from employment with an employer as defined in:

(a) RCW 41.32.010(11) on or after July 1, 1996; or

(b) RCW 41.35.010 on or after September 1, 2000; or

(c) RCW 41.40.010 on or after March 1, 2002;

and who are at least age fifty-five and have at least ten years of service under the teachers' retirement system plan 3 as defined in RCW 41.32.010(40), the Washington school employees' retirement system plan 3 as defined in RCW 41.35.010, or the public employees' retirement system plan 3 as defined in RCW 41.40.010.

(14) "Emergency service personnel killed in the line of duty" means law enforcement officers and fire fighters as defined in RCW 41.26.030, members of the Washington state patrol retirement fund as defined in RCW 43.43.120, and reserve officers and fire fighters as defined in RCW 41.24.010 who die as a result of injuries sustained in the course of employment as determined consistent with Title 51 RCW by the department of labor and industries.

(15) "Employer" means the state of Washington.

(16) "Employing agency" means a division, department, or separate agency of state government; a county, municipality, school district, educational service district, or other political subdivision; and a tribal government covered by this chapter.

(17) "Tribal government" means an Indian tribal government as defined in section 3(32) of the employee retirement income security act of 1974, as amended, or an agency or instrumentality of the tribal government, that has government offices principally located in this state. [2007 c 488 § 2; 2007 c 114 § 2; 2005 c 143 § 1; 2001 c 165 § 2. Prior: 2000 c 247 § 604; 2000 c 230 § 3; 1998 c 341 § 706; 1996 c 39 § 21; 1995 1st sp.s. c 6 § 2; 1994 c 153 § 2; prior: 1993 c 492 § 214; 1993 c 386 § 5; 1990 c 222 § 2; 1988 c 107 § 3.]

Reviser's note: This section was amended by 2007 c 114 § 2 and by 2007 c 488 § 2, each without reference to the other. Both amendments are incorporated in the publication of this section under RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

Short title—2007 c 488: See note following RCW 43.43.285.

Intent—2007 c 114: "Consistent with the centennial accord, the new millennium agreement, related treaties, and federal and state law, it is the intent of the legislature to authorize tribal governments to participate in public employees' benefits board programs to the same extent that counties, municipalities, and other political subdivisions of the state are authorized to do so." [2007 c 114 § 1.]

Effective date—2007 c 114: "This act takes effect January 1, 2009." [2007 c 114 § 8.]

Effective date—2001 c 165 § 2: "Section 2 of this act takes effect March 1, 2002." [2001 c 165 § 5.]

Effective date—Application—2001 c 165: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and except for section 2 of this act takes effect immediately [May 7, 2001]. This act applies to all surviving spouses and dependent children of (1) emergency service personnel and (2) members of the law enforcement officers' and fire fighters' retirement system plan 2, killed in the line of duty." [2006 c 345 § 2; 2001 c 165 § 6.]

Reviser's note: Contractual right not granted—2006 c 345: See note following RCW 41.26.510.

Effective date—2000 c 230: See note following RCW 41.35.630.

Effective date—1998 c 341: See RCW 41.35.901.

Effective dates—1996 c 39: See note following RCW 41.32.010.

Effective date—1995 1st sp.s. c 6: See note following RCW 28A.400.410.

Intent—1994 c 153: "It is the intent of the legislature to increase access to health insurance for retired and disabled state and school district employees and to increase equity between state and school employees and between state and school retirees." [1994 c 153 § 1.]

Effective dates—1994 c 153: "This act shall take effect January 1, 1995, except section 15 of this act, which takes effect October 1, 1995." [1994 c 153 § 16.]

Findings—Intent—1993 c 492: See notes following RCW 43.20.050.

Short title—Severability—Savings—Captions not law—Reservation of legislative power—Effective dates—1993 c 492: See RCW 43.72.910 through 43.72.915.

Intent—1993 c 386: See note following RCW 28A.400.391.

Effective date—1993 c 386 §§ 1, 2, 4-6, 8-10, and 12-16: See note following RCW 28A.400.391.

41.05.017 Provisions applicable to health plans offered under this chapter. (Effective January 1, 2008.) Each health plan that provides medical insurance offered under this chapter, including plans created by insuring entities, plans not subject to the provisions of Title 48 RCW, and plans created under RCW 41.05.140, are subject to the provisions of RCW 48.43.500, 70.02.045, 48.43.505 through 48.43.535, 43.70.235, 48.43.545, 48.43.550, 70.02.110, 70.02.900, and 48.43.083. [2007 c 502 § 2; 2000 c 5 § 20.]

Savings—Severability—Effective date—2007 c 502: See notes following RCW 48.43.083.

Intent—Purpose—2000 c 5: See RCW 48.43.500.

Application—Short title—Captions not law—Construction—Severability—Application to contracts—Effective dates—2000 c 5: See notes following RCW 48.43.500.

41.05.021 State health care authority—Administration—Cost control and delivery strategies—Health information technology—Managed competition. (Effective until January 1, 2009.) (1) The Washington state health care authority is created within the executive branch. The authority shall have an administrator appointed by the governor, with the consent of the senate. The administrator shall serve at the pleasure of the governor. The administrator may employ up to seven staff members, who shall be exempt from chapter 41.06 RCW, and any additional staff members as are necessary to administer this chapter. The administrator may delegate any power or duty vested in him or her by this chapter, including authority to make final decisions and enter final orders in hearings conducted under chapter 34.05 RCW. The primary duties of the authority shall be to: Administer state employees' insurance benefits and retired or disabled school employees' insurance benefits; administer the basic health plan pursuant to chapter 70.47 RCW; study state-purchased health care programs in order to maximize cost containment in these programs while ensuring access to quality health care; implement state initiatives, joint purchasing strategies, and techniques for efficient administration that have potential application to all state-purchased health services; and administer grants that further the mission and goals of the authority. The authority's duties include, but are not limited to, the following:

(a) To administer health care benefit programs for employees and retired or disabled school employees as specifically authorized in RCW 41.05.065 and in accordance with the methods described in RCW 41.05.075, 41.05.140, and other provisions of this chapter;

(b) To analyze state-purchased health care programs and to explore options for cost containment and delivery alternatives for those programs that are consistent with the purposes of those programs, including, but not limited to:

(i) Creation of economic incentives for the persons for whom the state purchases health care to appropriately utilize and purchase health care services, including the development of flexible benefit plans to offset increases in individual financial responsibility;

(ii) Utilization of provider arrangements that encourage cost containment, including but not limited to prepaid delivery systems, utilization review, and prospective payment methods, and that ensure access to quality care, including assuring reasonable access to local providers, especially for employees residing in rural areas;

(iii) Coordination of state agency efforts to purchase drugs effectively as provided in RCW 70.14.050;

(iv) Development of recommendations and methods for purchasing medical equipment and supporting services on a volume discount basis;

(v) Development of data systems to obtain utilization data from state-purchased health care programs in order to identify cost centers, utilization patterns, provider and hospital practice patterns, and procedure costs, utilizing the information obtained pursuant to RCW 41.05.031; and

(vi) In collaboration with other state agencies that administer state purchased health care programs, private health care purchasers, health care facilities, providers, and carriers:

(A) Use evidence-based medicine principles to develop common performance measures and implement financial incentives in contracts with insuring entities, health care facilities, and providers that:

(I) Reward improvements in health outcomes for individuals with chronic diseases, increased utilization of appropriate preventive health services, and reductions in medical errors; and

(II) Increase, through appropriate incentives to insuring entities, health care facilities, and providers, the adoption and use of information technology that contributes to improved health outcomes, better coordination of care, and decreased medical errors;

(B) Through state health purchasing, reimbursement, or pilot strategies, promote and increase the adoption of health information technology systems, including electronic medical records, by hospitals as defined in RCW 70.41.020(4), integrated delivery systems, and providers that:

(I) Facilitate diagnosis or treatment;

(II) Reduce unnecessary duplication of medical tests;

(III) Promote efficient electronic physician order entry;

(IV) Increase access to health information for consumers and their providers; and

(V) Improve health outcomes;

(C) Coordinate a strategy for the adoption of health information technology systems using the final health information technology report and recommendations developed under chapter 261, Laws of 2005;

(c) To analyze areas of public and private health care interaction;

(d) To provide information and technical and administrative assistance to the board;

(e) To review and approve or deny applications from counties, municipalities, and other political subdivisions of the state to provide state-sponsored insurance or self-insurance programs to their employees in accordance with the provisions of RCW 41.04.205, setting the premium contribution for approved groups as outlined in RCW 41.05.050;

(f) To establish billing procedures and collect funds from school districts in a way that minimizes the administrative burden on districts;

(g) To publish and distribute to nonparticipating school districts and educational service districts by October 1st of each year a description of health care benefit plans available through the authority and the estimated cost if school districts and educational service district employees were enrolled;

(h) To apply for, receive, and accept grants, gifts, and other payments, including property and service, from any governmental or other public or private entity or person, and make arrangements as to the use of these receipts to implement initiatives and strategies developed under this section;

(i) To issue, distribute, and administer grants that further the mission and goals of the authority; and

(j) To adopt rules consistent with this chapter as described in RCW 41.05.160.

(2) On and after January 1, 1996, the public employees' benefits board may implement strategies to promote managed

competition among employee health benefit plans. Strategies may include but are not limited to:

(a) Standardizing the benefit package;

(b) Soliciting competitive bids for the benefit package;

(c) Limiting the state's contribution to a percent of the lowest priced qualified plan within a geographical area;

(d) Monitoring the impact of the approach under this subsection with regards to: Efficiencies in health service delivery, cost shifts to subscribers, access to and choice of managed care plans statewide, and quality of health services. The health care authority shall also advise on the value of administering a benchmark employer-managed plan to promote competition among managed care plans. [2007 c 274 § 1; 2006 c 103 § 2; 2005 c 446 § 1; 2002 c 142 § 1; 1999 c 372 § 4; 1997 c 274 § 1; 1995 1st sp.s. c 6 § 7; 1994 c 309 § 1. Prior: 1993 c 492 § 215; 1993 c 386 § 6; 1990 c 222 § 3; 1988 c 107 § 4.]

Intent—2006 c 103: "(1) The legislature recognizes that improvements in the quality of health care lead to better health care outcomes for the residents of Washington state and contain health care costs. The improvements are facilitated by the adoption of electronic medical records and other health information technologies.

(2) It is the intent of the legislature to encourage all hospitals, integrated delivery systems, and providers in the state of Washington to adopt health information technologies by the year 2012." [2006 c 103 § 1.]

Effective date—1997 c 274: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect July 1, 1997." [1997 c 274 § 10.]

Effective date—1995 1st sp.s. c 6: See note following RCW 28A.400.410.

Findings—Intent—1993 c 492: See notes following RCW 43.20.050.

Short title—Severability—Savings—Captions not law—Reservation of legislative power—Effective dates—1993 c 492: See RCW 43.72.910 through 43.72.915.

Intent—1993 c 386: See note following RCW 28A.400.391.

Effective date—1993 c 386 §§ 1, 2, 4-6, 8-10, and 12-16: See note following RCW 28A.400.391.

41.05.021 State health care authority—Administrator—Cost control and delivery strategies—Health information technology—Managed competition. (Effective January 1, 2009.) (1) The Washington state health care authority is created within the executive branch. The authority shall have an administrator appointed by the governor, with the consent of the senate. The administrator shall serve at the pleasure of the governor. The administrator may employ up to seven staff members, who shall be exempt from chapter 41.06 RCW, and any additional staff members as are necessary to administer this chapter. The administrator may delegate any power or duty vested in him or her by this chapter, including authority to make final decisions and enter final orders in hearings conducted under chapter 34.05 RCW. The primary duties of the authority shall be to: Administer state employees' insurance benefits and retired or disabled school employees' insurance benefits; administer the basic health plan pursuant to chapter 70.47 RCW; study state-purchased health care programs in order to maximize cost containment in these programs while ensuring access to quality health care; implement state initiatives, joint purchasing strategies, and techniques for efficient administration that have potential application to all state-purchased health services; and administer grants that further the mission and goals of the authority.

The authority's duties include, but are not limited to, the following:

(a) To administer health care benefit programs for employees and retired or disabled school employees as specifically authorized in RCW 41.05.065 and in accordance with the methods described in RCW 41.05.075, 41.05.140, and other provisions of this chapter;

(b) To analyze state-purchased health care programs and to explore options for cost containment and delivery alternatives for those programs that are consistent with the purposes of those programs, including, but not limited to:

(i) Creation of economic incentives for the persons for whom the state purchases health care to appropriately utilize and purchase health care services, including the development of flexible benefit plans to offset increases in individual financial responsibility;

(ii) Utilization of provider arrangements that encourage cost containment, including but not limited to prepaid delivery systems, utilization review, and prospective payment methods, and that ensure access to quality care, including assuring reasonable access to local providers, especially for employees residing in rural areas;

(iii) Coordination of state agency efforts to purchase drugs effectively as provided in RCW 70.14.050;

(iv) Development of recommendations and methods for purchasing medical equipment and supporting services on a volume discount basis;

(v) Development of data systems to obtain utilization data from state-purchased health care programs in order to identify cost centers, utilization patterns, provider and hospital practice patterns, and procedure costs, utilizing the information obtained pursuant to RCW 41.05.031; and

(vi) In collaboration with other state agencies that administer state purchased health care programs, private health care purchasers, health care facilities, providers, and carriers:

(A) Use evidence-based medicine principles to develop common performance measures and implement financial incentives in contracts with insuring entities, health care facilities, and providers that:

(I) Reward improvements in health outcomes for individuals with chronic diseases, increased utilization of appropriate preventive health services, and reductions in medical errors; and

(II) Increase, through appropriate incentives to insuring entities, health care facilities, and providers, the adoption and use of information technology that contributes to improved health outcomes, better coordination of care, and decreased medical errors;

(B) Through state health purchasing, reimbursement, or pilot strategies, promote and increase the adoption of health information technology systems, including electronic medical records, by hospitals as defined in RCW 70.41.020(4), integrated delivery systems, and providers that:

(I) Facilitate diagnosis or treatment;

(II) Reduce unnecessary duplication of medical tests;

(III) Promote efficient electronic physician order entry;

(IV) Increase access to health information for consumers and their providers; and

(V) Improve health outcomes;

(C) Coordinate a strategy for the adoption of health information technology systems using the final health information technology report and recommendations developed under chapter 261, Laws of 2005;

(c) To analyze areas of public and private health care interaction;

(d) To provide information and technical and administrative assistance to the board;

(e) To review and approve or deny applications from counties, municipalities, and other political subdivisions of the state to provide state-sponsored insurance or self-insurance programs to their employees in accordance with the provisions of RCW 41.04.205 and (g) of this subsection, setting the premium contribution for approved groups as outlined in RCW 41.05.050;

(f) To review and approve or deny the application when the governing body of a tribal government applies to transfer their employees to an insurance or self-insurance program administered under this chapter. In the event of an employee transfer pursuant to this subsection (1)(f), members of the governing body are eligible to be included in such a transfer if the members are authorized by the tribal government to participate in the insurance program being transferred from and subject to payment by the members of all costs of insurance for the members. The authority shall: (i) Establish the conditions for participation; (ii) have the sole right to reject the application; and (iii) set the premium contribution for approved groups as outlined in RCW 41.05.050. Approval of the application by the authority transfers the employees and dependents involved to the insurance, self-insurance, or health care program approved by the authority;

(g) To ensure the continued status of the employee insurance or self-insurance programs administered under this chapter as a governmental plan under section 3(32) of the employee retirement income security act of 1974, as amended, the authority shall limit the participation of employees of a county, municipal, school district, educational service district, or other political subdivision, or a tribal government, including providing for the participation of those employees whose services are substantially all in the performance of essential governmental functions, but not in the performance of commercial activities;

(h) To establish billing procedures and collect funds from school districts in a way that minimizes the administrative burden on districts;

(i) To publish and distribute to nonparticipating school districts and educational service districts by October 1st of each year a description of health care benefit plans available through the authority and the estimated cost if school districts and educational service district employees were enrolled;

(j) To apply for, receive, and accept grants, gifts, and other payments, including property and service, from any governmental or other public or private entity or person, and make arrangements as to the use of these receipts to implement initiatives and strategies developed under this section;

(k) To issue, distribute, and administer grants that further the mission and goals of the authority; and

(l) To adopt rules consistent with this chapter as described in RCW 41.05.160.

(2) On and after January 1, 1996, the public employees' benefits board may implement strategies to promote managed

competition among employee health benefit plans. Strategies may include but are not limited to:

- (a) Standardizing the benefit package;
- (b) Soliciting competitive bids for the benefit package;
- (c) Limiting the state's contribution to a percent of the lowest priced qualified plan within a geographical area;
- (d) Monitoring the impact of the approach under this subsection with regards to: Efficiencies in health service delivery, cost shifts to subscribers, access to and choice of managed care plans statewide, and quality of health services. The health care authority shall also advise on the value of administering a benchmark employer-managed plan to promote competition among managed care plans. [2007 c 274 § 1; 2007 c 114 § 3; 2006 c 103 § 2; 2005 c 446 § 1; 2002 c 142 § 1; 1999 c 372 § 4; 1997 c 274 § 1; 1995 1st sp.s. c 6 § 7; 1994 c 309 § 1. Prior: 1993 c 492 § 215; 1993 c 386 § 6; 1990 c 222 § 3; 1988 c 107 § 4.]

Reviser's note: This section was amended by 2007 c 114 § 3 and by 2007 c 274 § 1, each without reference to the other. Both amendments are incorporated in the publication of this section under RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

Intent—Effective date—2007 c 114: See notes following RCW 41.05.011.

Intent—2006 c 103: "(1) The legislature recognizes that improvements in the quality of health care lead to better health care outcomes for the residents of Washington state and contain health care costs. The improvements are facilitated by the adoption of electronic medical records and other health information technologies.

(2) It is the intent of the legislature to encourage all hospitals, integrated delivery systems, and providers in the state of Washington to adopt health information technologies by the year 2012." [2006 c 103 § 1.]

Effective date—1997 c 274: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect July 1, 1997." [1997 c 274 § 10.]

Effective date—1995 1st sp.s. c 6: See note following RCW 28A.400.410.

Findings—Intent—1993 c 492: See notes following RCW 43.20.050.

Short title—Severability—Savings—Captions not law—Reservation of legislative power—Effective dates—1993 c 492: See RCW 43.72.910 through 43.72.915.

Intent—1993 c 386: See note following RCW 28A.400.391.

Effective date—1993 c 386 §§ 1, 2, 4-6, 8-10, and 12-16: See note following RCW 28A.400.391.

41.05.023 Chronic care management program—Uniform medical plan—Definitions. (1) The health care authority, in collaboration with the department of health, shall design and implement a chronic care management program for state employees enrolled in the state's self-insured uniform medical plan. Programs must be evidence based, facilitating the use of information technology to improve quality of care and must improve coordination of primary, acute, and long-term care for those enrollees with multiple chronic conditions. The authority shall consider expansion of existing medical home and chronic care management programs. The authority shall use best practices in identifying those employees best served under a chronic care management model using predictive modeling through claims or other health risk information.

(2) For purposes of this section:

(a) "Medical home" means a site of care that provides comprehensive preventive and coordinated care centered on

the patient needs and assures high-quality, accessible, and efficient care.

(b) "Chronic care management" means the authority's program that provides care management and coordination activities for health plan enrollees determined to be at risk for high medical costs. "Chronic care management" provides education and training and/or coordination that assist program participants in improving self-management skills to improve health outcomes and reduce medical costs by educating clients to better utilize services. [2007 c 259 § 6.]

Severability—Subheadings not law—2007 c 259: See notes following RCW 41.05.033.

41.05.029 Washington state quality forum—Established—Duties. The Washington state quality forum is established within the authority. In collaboration with the Puget Sound health alliance and other local organizations, the forum shall:

(1) Collect and disseminate research regarding health care quality, evidence-based medicine, and patient safety to promote best practices, in collaboration with the technology assessment program and the prescription drug program;

(2) Coordinate the collection of health care quality data among state health care purchasing agencies;

(3) Adopt a set of measures to evaluate and compare health care cost and quality and provider performance;

(4) Identify and disseminate information regarding variations in clinical practice patterns across the state; and

(5) Produce an annual quality report detailing clinical practice patterns for purchasers, providers, insurers, and policymakers. The agencies shall report to the legislature by September 1, 2007. [2007 c 259 § 9.]

Severability—Subheadings not law—2007 c 259: See notes following RCW 41.05.033.

41.05.033 Shared decision-making demonstration project—Preference-sensitive care. (1) The legislature finds that there is growing evidence that, for preference-sensitive care involving elective surgery, patient-practitioner communication is improved through the use of high-quality decision aids that detail the benefits, harms, and uncertainty of available treatment options. Improved communication leads to more fully informed patient decisions. The legislature intends to increase the extent to which patients make genuinely informed, preference-based treatment decisions, by promoting public/private collaborative efforts to broaden the development, certification, use, and evaluation of effective decision aids and by recognition of shared decision making and patient decision aids in the state's laws on informed consent.

(2) The health care authority shall implement a shared decision-making demonstration project. The demonstration project shall be conducted at one or more multispecialty group practice sites providing state purchased health care in the state of Washington, and may include other practice sites providing state purchased health care. The demonstration project shall include the following elements:

(a) Incorporation into clinical practice of one or more decision aids for one or more identified preference-sensitive care areas combined with ongoing training and support of

involved practitioners and practice teams, preferably at sites with necessary supportive health information technology;

(b) An evaluation of the impact of the use of shared decision making with decision aids, including the use of preference-sensitive health care services selected for the demonstration project and expenditures for those services, the impact on patients, including patient understanding of the treatment options presented and concordance between patient values and the care received, and patient and practitioner satisfaction with the shared decision-making process; and

(c) As a condition of participating in the demonstration project, a participating practice site must bear the cost of selecting, purchasing, and incorporating the chosen decision aids into clinical practice.

(3) The health care authority may solicit and accept funding and in-kind contributions to support the demonstration and evaluation, and may scale the evaluation to fall within resulting resource parameters. [2007 c 259 § 2.]

Severability—2007 c 259: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [2007 c 259 § 68.]

Subheadings not law—2007 c 259: "Subheadings used in this act are not any part of the law." [2007 c 259 § 71.]

41.05.035 Exchange of health information—Pilot—Advisory board, discretionary—Administrator's authority. (1) The administrator shall design and pilot a consumer-centric health information infrastructure and the first health record banks that will facilitate the secure exchange of health information when and where needed and shall:

(a) Complete the plan of initial implementation, including but not limited to determining the technical infrastructure for health record banks and the account locator service, setting criteria and standards for health record banks, and determining oversight of health record banks;

(b) Implement the first health record banks in pilot sites as funding allows;

(c) Involve health care consumers in meaningful ways in the design, implementation, oversight, and dissemination of information on the health record bank system; and

(d) Promote adoption of electronic medical records and health information exchange through continuation of the Washington health information collaborative, and by working with private payors and other organizations in restructuring reimbursement to provide incentives for providers to adopt electronic medical records in their practices.

(2) The administrator may establish an advisory board, a stakeholder committee, and subcommittees to assist in carrying out the duties under this section. The administrator may reappoint health information infrastructure advisory board members to assure continuity and shall appoint any additional representatives that may be required for their expertise and experience.

(a) The administrator shall appoint the chair of the advisory board, chairs, and co-chairs of the stakeholder committee, if formed;

(b) Meetings of the board, stakeholder committee, and any advisory group are subject to chapter 42.30 RCW, the open public meetings act, including RCW 42.30.110(1)(l), which authorizes an executive session during a regular or

special meeting to consider proprietary or confidential non-published information; and

(c) The members of the board, stakeholder committee, and any advisory group:

(i) Shall agree to the terms and conditions imposed by the administrator regarding conflicts of interest as a condition of appointment;

(ii) Are immune from civil liability for any official acts performed in good faith as members of the board, stakeholder committee, or any advisory group.

(3) Members of the board may be compensated for participation in accordance with a personal services contract to be executed after appointment and before commencement of activities related to the work of the board. Members of the stakeholder committee shall not receive compensation but shall be reimbursed under RCW 43.03.050 and 43.03.060.

(4) The administrator may work with public and private entities to develop and encourage the use of personal health records which are portable, interoperable, secure, and respectful of patients' privacy.

(5) The administrator may enter into contracts to issue, distribute, and administer grants that are necessary or proper to carry out this section. [2007 c 259 § 10.]

Severability—Subheadings not law—2007 c 259: See notes following RCW 41.05.033.

41.05.037 Nurse hotline, when funded. To the extent that sufficient funding is provided specifically for this purpose, the administrator, in collaboration with the department of social and health services, shall provide all persons enrolled in health plans under this chapter and chapter 70.47 RCW with access to a twenty-four hour, seven day a week nurse hotline. [2007 c 259 § 15.]

Severability—Subheadings not law—2007 c 259: See notes following RCW 41.05.033.

41.05.050 Contributions for employees and dependents. (Effective January 1, 2009.) (1) Every: (a) Department, division, or separate agency of state government; (b) county, municipal, school district, educational service district, or other political subdivisions; and (c) tribal governments as are covered by this chapter, shall provide contributions to insurance and health care plans for its employees and their dependents, the content of such plans to be determined by the authority. Contributions, paid by the county, the municipality, other political subdivision, or a tribal government for their employees, shall include an amount determined by the authority to pay such administrative expenses of the authority as are necessary to administer the plans for employees of those groups, except as provided in subsection (4) of this section.

(2) If the authority at any time determines that the participation of a county, municipal, other political subdivision, or a tribal government covered under this chapter adversely impacts insurance rates for state employees, the authority shall implement limitations on the participation of additional county, municipal, other political subdivisions, or a tribal government.

(3) The contributions of any: (a) Department, division, or separate agency of the state government; (b) county, municipal, or other political subdivisions; and (c) any tribal

government as are covered by this chapter, shall be set by the authority, subject to the approval of the governor for availability of funds as specifically appropriated by the legislature for that purpose. Insurance and health care contributions for ferry employees shall be governed by RCW 47.64.270.

(4)(a) Beginning September 1, 2003, the authority shall collect from each participating school district and educational service district an amount equal to the composite rate charged to state agencies, plus an amount equal to the employee premiums by plan and family size as would be charged to state employees, for groups of district employees enrolled in authority plans as of January 1, 2003. However, during the 2005-07 fiscal biennium, the authority shall collect from each participating school district and educational service district an amount equal to the insurance benefit allocations provided in section 504, chapter 518, Laws of 2005, plus any additional funding provided by the legislature for school employee health benefits, plus an amount equal to the employee premiums by plan and family size as would be charged to state employees, for groups of district employees enrolled in authority plans as of July 1, 2005.

(b) For all groups of district employees enrolling in authority plans for the first time after September 1, 2003, the authority shall collect from each participating school district an amount equal to the composite rate charged to state agencies, plus an amount equal to the employee premiums by plan and by family size as would be charged to state employees, only if the authority determines that this method of billing the districts will not result in a material difference between revenues from districts and expenditures made by the authority on behalf of districts and their employees.

(c) If the authority determines at any time that the conditions in (b) of this subsection cannot be met, the authority shall offer enrollment to additional groups of district employees on a tiered rate structure until such time as the authority determines there would be no material difference between revenues and expenditures under a composite rate structure for all district employees enrolled in authority plans.

(d) The authority may charge districts a one-time set-up fee for employee groups enrolling in authority plans for the first time.

(e) For the purposes of this subsection:

(i) "District" means school district and educational service district; and

(ii) "Tiered rates" means the amounts the authority must pay to insuring entities by plan and by family size.

(f) Notwithstanding this subsection and RCW 41.05.065(3), the authority may allow districts enrolled on a tiered rate structure prior to September 1, 2002, to continue participation based on the same rate structure and under the same conditions and eligibility criteria.

(5) The authority shall transmit a recommendation for the amount of the employer contribution to the governor and the director of financial management for inclusion in the proposed budgets submitted to the legislature. [2007 c 114 § 4; 2005 c 518 § 919; 2003 c 158 § 1. Prior: 2002 c 319 § 4; 2002 c 142 § 2; prior: 1995 1st sp.s. c 6 § 22; 1994 c 309 § 2; 1994 c 153 § 4; prior: 1993 c 492 § 216; 1993 c 386 § 7; 1988 c 107 § 18; 1987 c 122 § 4; 1984 c 107 § 1; 1983 c 15 § 20; 1983 c 2 § 9; prior: 1982 1st ex.s. c 34 § 2; 1981 c 344 § 6; 1979 c 151 § 55; 1977 ex.s. c 136 § 4; 1975-'76 2nd ex.s. c

106 § 4; 1975 1st ex.s. c 38 § 2; 1973 1st ex.s. c 147 § 3; 1970 ex.s. c 39 § 5.]

Intent—Effective date—2007 c 114: See notes following RCW 41.05.011.

Severability—Effective date—2005 c 518: See notes following RCW 28A.305.210.

Intent—2002 c 319: See note following RCW 41.04.208.

Effective date—1995 1st sp.s. c 6: See note following RCW 28A.400.410.

Intent—Effective dates—1994 c 153: See notes following RCW 41.05.011.

Findings—Intent—1993 c 492: See notes following RCW 43.20.050.

Short title—Severability—Savings—Captions not law—Reservation of legislative power—Effective dates—1993 c 492: See RCW 43.72.910 through 43.72.915.

Effective date—1993 c 386 §§ 3, 7, and 11: See note following RCW 41.04.205.

Intent—1993 c 386: See note following RCW 28A.400.391.

Severability—1983 c 15: See RCW 47.64.910.

Severability—1983 c 2: See note following RCW 18.71.030.

Severability—1981 c 344: See note following RCW 47.60.326.

Effective date—Conditions prerequisite to implementing sections—1977 ex.s. c 136: "This 1977 amendatory act is necessary for the immediate preservation of the public peace, health, and safety, the support of the state government and its existing public institutions, and shall take effect on July 1, 1977: PROVIDED, That if the state operating budget appropriations act does not contain the funds necessary for the implementation of this 1977 amendatory act in an appropriated amount sufficient to fully fund the employer's contribution to the state employee insurance benefits program which is established by the board in accordance with RCW 41.05.050 (2) and (3) as now or hereafter amended, sections 1, 5, and 6 of this 1977 amendatory act shall be null and void." [1977 ex.s. c 136 § 8.]

Effective date—Effect of veto—1973 1st ex.s. c 147: "This bill shall not take effect until the funds necessary for its implementation have been specifically appropriated by the legislature and such appropriation itself has become law. It is the intention of the legislature that if the governor shall veto this section or any item thereof, none of the provisions of this bill shall take effect." [1973 1st ex.s. c 147 § 10.]

Savings—1973 1st ex.s. c 147: "Nothing contained in this 1973 amendatory act shall be deemed to amend, alter or affect the provisions of Chapter 23, Laws of 1972, Extraordinary Session, and RCW 28B.10.840 through 28B.10.844 as now or hereafter amended." [1973 1st ex.s. c 147 § 13.]

Severability—1973 1st ex.s. c 147: "If any provision of this 1973 amendatory act, or its application to any person or circumstances is held invalid, the remainder of the act, or the application of the provision to other persons or circumstances is not affected." [1973 1st ex.s. c 147 § 9.]

Severability—1970 ex.s. c 39: "If any provision of this act, or its application to any person or circumstance is held invalid, the remainder of the act, or the application of the provision to other persons or circumstances is not affected." [1970 ex.s. c 39 § 14.]

41.05.053 Community and technical colleges—Part-time academic employees—Continuous health care eligibility—Employer contributions. (1) Part-time academic employees, as defined in RCW 28B.50.489, who have established eligibility as determined from the payroll records of the employing community or technical college districts, for employer contributions for benefits under this chapter and who have worked an average of half-time or more in each of the two preceding academic years, through employment at one or more community or technical college districts, are eligible for continuation of employer contributions for the subsequent summer quarter period including the break between summer and fall quarters.

(2) Once a part-time academic employee meets the criteria in subsection (1) of this section, the employee shall con-

continue to receive uninterrupted employer contributions for benefits if the employee works at least two quarters of the academic year with an average academic workload of half-time or more for three quarters of the academic year. Benefits provided under this section cease if this criteria is not met. Continuous benefits shall be reinstated once the employee reestablishes eligibility under subsection (1) of this section.

(3) As used in this section, "academic year" means summer, fall, winter, and spring quarters.

(4) This section does not modify rules in existence on June 7, 2006, adopted under this chapter regarding the initial establishment of eligibility for benefits.

(5) This section does not preclude individuals from being eligible for benefits under other laws or rules that may apply or for which they may be eligible.

(6) The employer must notify part-time academic employees of their potential right to benefits under this section.

(7) To be eligible for maintenance of benefits through averaging, part-time academic employees must notify their employers of their potential eligibility. The state board for community and technical colleges shall report back to the legislature by November 15, 2009, on the feasibility of eliminating the self-reporting requirement for employees. [2007 c 302 § 2; 2006 c 308 § 2.]

Intent—2006 c 308: "Part-time academic employees at community and technical colleges are currently eligible for full health care benefits beginning the second consecutive quarter of employment, at half-time or more of an academic workload, as defined in RCW 28B.50.489. They are also eligible for health benefits through the summer even if they receive no work at all that quarter, if they have worked half-time or more of an academic workload in each of the three preceding quarters. However, workload fluctuations below these thresholds may result in the loss of employer contributions for health care benefits. It is the intent of the legislature to provide for continuous health care eligibility for part-time academic employees based on averaging workload gained during the two preceding academic years." [2007 c 302 § 1; 2006 c 308 § 1.]

41.05.065 Public employees' benefits board—Duties.
(Effective until January 1, 2009.)

(1) The board shall study all matters connected with the provision of health care coverage, life insurance, liability insurance, accidental death and dismemberment insurance, and disability income insurance or any of, or a combination of, the enumerated types of insurance for employees and their dependents on the best basis possible with relation both to the welfare of the employees and to the state. However, liability insurance shall not be made available to dependents.

(2) The board shall develop employee benefit plans that include comprehensive health care benefits for all employees. In developing these plans, the board shall consider the following elements:

(a) Methods of maximizing cost containment while ensuring access to quality health care;

(b) Development of provider arrangements that encourage cost containment and ensure access to quality care, including but not limited to prepaid delivery systems and prospective payment methods;

(c) Wellness incentives that focus on proven strategies, such as smoking cessation, injury and accident prevention, reduction of alcohol misuse, appropriate weight reduction,

exercise, automobile and motorcycle safety, blood cholesterol reduction, and nutrition education;

(d) Utilization review procedures including, but not limited to a cost-efficient method for prior authorization of services, hospital inpatient length of stay review, requirements for use of outpatient surgeries and second opinions for surgeries, review of invoices or claims submitted by service providers, and performance audit of providers;

(e) Effective coordination of benefits;

(f) Minimum standards for insuring entities; and

(g) Minimum scope and content of public employee benefit plans to be offered to enrollees participating in the employee health benefit plans. To maintain the comprehensive nature of employee health care benefits, employee eligibility criteria related to the number of hours worked and the benefits provided to employees shall be substantially equivalent to the state employees' health benefits plan and eligibility criteria in effect on January 1, 1993. Nothing in this subsection (2)(g) shall prohibit changes or increases in employee point-of-service payments or employee premium payments for benefits or the administration of a high deductible health plan in conjunction with a health savings account.

(3) The board shall design benefits and determine the terms and conditions of employee and retired employee participation and coverage, including establishment of eligibility criteria subject to the requirements of RCW 41.05.066. The same terms and conditions of participation and coverage, including eligibility criteria, shall apply to state employees and to school district employees and educational service district employees.

(4) The board may authorize premium contributions for an employee and the employee's dependents in a manner that encourages the use of cost-efficient managed health care systems. During the 2005-2007 fiscal biennium, the board may only authorize premium contributions for an employee and the employee's dependents that are the same, regardless of an employee's status as represented or nonrepresented by a collective bargaining unit under the personnel system reform act of 2002. The board shall require participating school district and educational service district employees to pay at least the same employee premiums by plan and family size as state employees pay.

(5) The board shall develop a health savings account option for employees that conform to section 223, Part VII of subchapter B of chapter 1 of the internal revenue code of 1986. The board shall comply with all applicable federal standards related to the establishment of health savings accounts.

(6) Notwithstanding any other provision of this chapter, the board shall develop a high deductible health plan to be offered in conjunction with a health savings account developed under subsection (5) of this section.

(7) Employees shall choose participation in one of the health care benefit plans developed by the board and may be permitted to waive coverage under terms and conditions established by the board.

(8) The board shall review plans proposed by insuring entities that desire to offer property insurance and/or accident and casualty insurance to state employees through payroll deduction. The board may approve any such plan for payroll deduction by insuring entities holding a valid certificate of

authority in the state of Washington and which the board determines to be in the best interests of employees and the state. The board shall promulgate rules setting forth criteria by which it shall evaluate the plans.

(9) Before January 1, 1998, the public employees' benefits board shall make available one or more fully insured long-term care insurance plans that comply with the requirements of chapter 48.84 RCW. Such programs shall be made available to eligible employees, retired employees, and retired school employees as well as eligible dependents which, for the purpose of this section, includes the parents of the employee or retiree and the parents of the spouse of the employee or retiree. Employees of local governments and employees of political subdivisions not otherwise enrolled in the public employees' benefits board sponsored medical programs may enroll under terms and conditions established by the administrator, if it does not jeopardize the financial viability of the public employees' benefits board's long-term care offering.

(a) Participation of eligible employees or retired employees and retired school employees in any long-term care insurance plan made available by the public employees' benefits board is voluntary and shall not be subject to binding arbitration under chapter 41.56 RCW. Participation is subject to reasonable underwriting guidelines and eligibility rules established by the public employees' benefits board and the health care authority.

(b) The employee, retired employee, and retired school employee are solely responsible for the payment of the premium rates developed by the health care authority. The health care authority is authorized to charge a reasonable administrative fee in addition to the premium charged by the long-term care insurer, which shall include the health care authority's cost of administration, marketing, and consumer education materials prepared by the health care authority and the office of the insurance commissioner.

(c) To the extent administratively possible, the state shall establish an automatic payroll or pension deduction system for the payment of the long-term care insurance premiums.

(d) The public employees' benefits board and the health care authority shall establish a technical advisory committee to provide advice in the development of the benefit design and establishment of underwriting guidelines and eligibility rules. The committee shall also advise the board and authority on effective and cost-effective ways to market and distribute the long-term care product. The technical advisory committee shall be comprised, at a minimum, of representatives of the office of the insurance commissioner, providers of long-term care services, licensed insurance agents with expertise in long-term care insurance, employees, retired employees, retired school employees, and other interested parties determined to be appropriate by the board.

(e) The health care authority shall offer employees, retired employees, and retired school employees the option of purchasing long-term care insurance through licensed agents or brokers appointed by the long-term care insurer. The authority, in consultation with the public employees' benefits board, shall establish marketing procedures and may consider all premium components as a part of the contract negotiations with the long-term care insurer.

(f) In developing the long-term care insurance benefit designs, the public employees' benefits board shall include an alternative plan of care benefit, including adult day services, as approved by the office of the insurance commissioner.

(g) The health care authority, with the cooperation of the office of the insurance commissioner, shall develop a consumer education program for the eligible employees, retired employees, and retired school employees designed to provide education on the potential need for long-term care, methods of financing long-term care, and the availability of long-term care insurance products including the products offered by the board.

(h) By December 1998, the health care authority, in consultation with the public employees' benefits board, shall submit a report to the appropriate committees of the legislature, including an analysis of the marketing and distribution of the long-term care insurance provided under this section. [2007 c 156 § 10; 2006 c 299 § 2. Prior: 2005 c 518 § 920; 2005 c 195 § 1; 2003 c 158 § 2; 2002 c 142 § 3; 1996 c 140 § 1; 1995 1st sp.s. c 6 § 5; 1994 c 153 § 5; prior: 1993 c 492 § 218; 1993 c 386 § 9; 1988 c 107 § 8.]

Severability—Effective date—2005 c 518: See notes following RCW 28A.305.210.

Effective date—2005 c 195: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect July 1, 2005." [2005 c 195 § 4.]

Effective date—1995 1st sp.s. c 6: See note following RCW 28A.400.410.

Intent—Effective dates—1994 c 153: See notes following RCW 41.05.011.

Findings—Intent—1993 c 492: See notes following RCW 43.20.050.

Short title—Severability—Savings—Captions not law—Reservation of legislative power—Effective dates—1993 c 492: See RCW 43.72.910 through 43.72.915.

Intent—1993 c 386: See note following RCW 28A.400.391.

Effective date—1993 c 386 §§ 1, 2, 4-6, 8-10, and 12-16: See note following RCW 28A.400.391.

41.05.065 Public employees' benefits board—Duties. (Effective January 1, 2009.)

(1) The board shall study all matters connected with the provision of health care coverage, life insurance, liability insurance, accidental death and dismemberment insurance, and disability income insurance or any of, or a combination of, the enumerated types of insurance for employees and their dependents on the best basis possible with relation both to the welfare of the employees and to the state. However, liability insurance shall not be made available to dependents.

(2) The board shall develop employee benefit plans that include comprehensive health care benefits for all employees. In developing these plans, the board shall consider the following elements:

(a) Methods of maximizing cost containment while ensuring access to quality health care;

(b) Development of provider arrangements that encourage cost containment and ensure access to quality care, including but not limited to prepaid delivery systems and prospective payment methods;

(c) Wellness incentives that focus on proven strategies, such as smoking cessation, injury and accident prevention,

reduction of alcohol misuse, appropriate weight reduction, exercise, automobile and motorcycle safety, blood cholesterol reduction, and nutrition education;

(d) Utilization review procedures including, but not limited to a cost-efficient method for prior authorization of services, hospital inpatient length of stay review, requirements for use of outpatient surgeries and second opinions for surgeries, review of invoices or claims submitted by service providers, and performance audit of providers;

(e) Effective coordination of benefits;

(f) Minimum standards for insuring entities; and

(g) Minimum scope and content of public employee benefit plans to be offered to enrollees participating in the employee health benefit plans. To maintain the comprehensive nature of employee health care benefits, employee eligibility criteria related to the number of hours worked and the benefits provided to employees shall be substantially equivalent to the state employees' health benefits plan and eligibility criteria in effect on January 1, 1993. Nothing in this subsection (2)(g) shall prohibit changes or increases in employee point-of-service payments or employee premium payments for benefits or the administration of a high deductible health plan in conjunction with a health savings account.

(3) The board shall design benefits and determine the terms and conditions of employee and retired employee participation and coverage, including establishment of eligibility criteria subject to the requirements of RCW 41.05.066. The same terms and conditions of participation and coverage, including eligibility criteria, shall apply to state employees and to school district employees and educational service district employees.

(4) The board may authorize premium contributions for an employee and the employee's dependents in a manner that encourages the use of cost-efficient managed health care systems. During the 2005-2007 fiscal biennium, the board may only authorize premium contributions for an employee and the employee's dependents that are the same, regardless of an employee's status as represented or nonrepresented by a collective bargaining unit under the personnel system reform act of 2002. The board shall require participating school district and educational service district employees to pay at least the same employee premiums by plan and family size as state employees pay.

(5) The board shall develop a health savings account option for employees that conform to section 223, Part VII of subchapter B of chapter 1 of the internal revenue code of 1986. The board shall comply with all applicable federal standards related to the establishment of health savings accounts.

(6) Notwithstanding any other provision of this chapter, the board shall develop a high deductible health plan to be offered in conjunction with a health savings account developed under subsection (5) of this section.

(7) Employees shall choose participation in one of the health care benefit plans developed by the board and may be permitted to waive coverage under terms and conditions established by the board.

(8) The board shall review plans proposed by insuring entities that desire to offer property insurance and/or accident and casualty insurance to state employees through payroll deduction. The board may approve any such plan for payroll

deduction by insuring entities holding a valid certificate of authority in the state of Washington and which the board determines to be in the best interests of employees and the state. The board shall adopt rules setting forth criteria by which it shall evaluate the plans.

(9) Before January 1, 1998, the public employees' benefits board shall make available one or more fully insured long-term care insurance plans that comply with the requirements of chapter 48.84 RCW. Such programs shall be made available to eligible employees, retired employees, and retired school employees as well as eligible dependents which, for the purpose of this section, includes the parents of the employee or retiree and the parents of the spouse of the employee or retiree. Employees of local governments, political subdivisions, and tribal governments not otherwise enrolled in the public employees' benefits board sponsored medical programs may enroll under terms and conditions established by the administrator, if it does not jeopardize the financial viability of the public employees' benefits board's long-term care offering.

(a) Participation of eligible employees or retired employees and retired school employees in any long-term care insurance plan made available by the public employees' benefits board is voluntary and shall not be subject to binding arbitration under chapter 41.56 RCW. Participation is subject to reasonable underwriting guidelines and eligibility rules established by the public employees' benefits board and the health care authority.

(b) The employee, retired employee, and retired school employee are solely responsible for the payment of the premium rates developed by the health care authority. The health care authority is authorized to charge a reasonable administrative fee in addition to the premium charged by the long-term care insurer, which shall include the health care authority's cost of administration, marketing, and consumer education materials prepared by the health care authority and the office of the insurance commissioner.

(c) To the extent administratively possible, the state shall establish an automatic payroll or pension deduction system for the payment of the long-term care insurance premiums.

(d) The public employees' benefits board and the health care authority shall establish a technical advisory committee to provide advice in the development of the benefit design and establishment of underwriting guidelines and eligibility rules. The committee shall also advise the board and authority on effective and cost-effective ways to market and distribute the long-term care product. The technical advisory committee shall be comprised, at a minimum, of representatives of the office of the insurance commissioner, providers of long-term care services, licensed insurance agents with expertise in long-term care insurance, employees, retired employees, retired school employees, and other interested parties determined to be appropriate by the board.

(e) The health care authority shall offer employees, retired employees, and retired school employees the option of purchasing long-term care insurance through licensed agents or brokers appointed by the long-term care insurer. The authority, in consultation with the public employees' benefits board, shall establish marketing procedures and may consider all premium components as a part of the contract negotiations with the long-term care insurer.

(f) In developing the long-term care insurance benefit designs, the public employees' benefits board shall include an alternative plan of care benefit, including adult day services, as approved by the office of the insurance commissioner.

(g) The health care authority, with the cooperation of the office of the insurance commissioner, shall develop a consumer education program for the eligible employees, retired employees, and retired school employees designed to provide education on the potential need for long-term care, methods of financing long-term care, and the availability of long-term care insurance products including the products offered by the board. [2007 c 156 § 10; 2007 c 114 § 5; 2006 c 299 § 2. Prior: 2005 c 518 § 920; 2005 c 195 § 1; 2003 c 158 § 2; 2002 c 142 § 3; 1996 c 140 § 1; 1995 1st sp.s. c 6 § 5; 1994 c 153 § 5; prior: 1993 c 492 § 218; 1993 c 386 § 9; 1988 c 107 § 8.]

Reviser's note: This section was amended by 2007 c 114 § 5 and by 2007 c 156 § 10, each without reference to the other. Both amendments are incorporated in the publication of this section under RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

Intent—Effective date—2007 c 114: See notes following RCW 41.05.011.

Severability—Effective date—2005 c 518: See notes following RCW 28A.305.210.

Effective date—2005 c 195: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect July 1, 2005." [2005 c 195 § 4.]

Effective date—1995 1st sp.s. c 6: See note following RCW 28A.400.410.

Intent—Effective dates—1994 c 153: See notes following RCW 41.05.011.

Findings—Intent—1993 c 492: See notes following RCW 43.20.050.

Short title—Severability—Savings—Captions not law—Reservation of legislative power—Effective dates—1993 c 492: See RCW 43.72.910 through 43.72.915.

Intent—1993 c 386: See note following RCW 28A.400.391.

Effective date—1993 c 386 §§ 1, 2, 4-6, 8-10, and 12-16: See note following RCW 28A.400.391.

41.05.066 Same sex domestic partner benefits. A certificate of domestic partnership issued to a couple of the same sex under the provisions of RCW 26.60.030 shall be recognized as evidence of a qualified same sex domestic partnership fulfilling all necessary eligibility criteria for the partner of the employee to receive benefits. Nothing in this section affects the requirements of same sex domestic partners to complete documentation related to federal tax status that may currently be required by the board for employees choosing to make premium payments on a pretax basis. [2007 c 156 § 9.]

41.05.075 Employee benefit plans—Contracts with insuring entities—Performance measures—Financial incentives—Health information technology. (1) The administrator shall provide benefit plans designed by the board through a contract or contracts with insuring entities, through self-funding, self-insurance, or other methods of providing insurance coverage authorized by RCW 41.05.140.

(2) The administrator shall establish a contract bidding process that:

(a) Encourages competition among insuring entities;

(b) Maintains an equitable relationship between premiums charged for similar benefits and between risk pools including premiums charged for retired state and school district employees under the separate risk pools established by RCW 41.05.022 and 41.05.080 such that insuring entities may not avoid risk when establishing the premium rates for retirees eligible for medicare;

(c) Is timely to the state budgetary process; and

(d) Sets conditions for awarding contracts to any insuring entity.

(3) The administrator shall establish a requirement for review of utilization and financial data from participating insuring entities on a quarterly basis.

(4) The administrator shall centralize the enrollment files for all employee and retired or disabled school employee health plans offered under chapter 41.05 RCW and develop enrollment demographics on a plan-specific basis.

(5) All claims data shall be the property of the state. The administrator may require of any insuring entity that submits a bid to contract for coverage all information deemed necessary including:

(a) Subscriber or member demographic and claims data necessary for risk assessment and adjustment calculations in order to fulfill the administrator's duties as set forth in this chapter; and

(b) Subscriber or member demographic and claims data necessary to implement performance measures or financial incentives related to performance under subsection (7) of this section.

(6) All contracts with insuring entities for the provision of health care benefits shall provide that the beneficiaries of such benefit plans may use on an equal participation basis the services of practitioners licensed pursuant to chapters 18.22, 18.25, 18.32, 18.53, 18.57, 18.71, 18.74, 18.83, and 18.79 RCW, as it applies to registered nurses and advanced registered nurse practitioners. However, nothing in this subsection may preclude the administrator from establishing appropriate utilization controls approved pursuant to RCW 41.05.065(2) (a), (b), and (d).

(7) The administrator shall, in collaboration with other state agencies that administer state purchased health care programs, private health care purchasers, health care facilities, providers, and carriers:

(a) Use evidence-based medicine principles to develop common performance measures and implement financial incentives in contracts with insuring entities, health care facilities, and providers that:

(i) Reward improvements in health outcomes for individuals with chronic diseases, increased utilization of appropriate preventive health services, and reductions in medical errors; and

(ii) Increase, through appropriate incentives to insuring entities, health care facilities, and providers, the adoption and use of information technology that contributes to improved health outcomes, better coordination of care, and decreased medical errors;

(b) Through state health purchasing, reimbursement, or pilot strategies, promote and increase the adoption of health information technology systems, including electronic medical records, by hospitals as defined in RCW 70.41.020(4), integrated delivery systems, and providers that:

(i) Facilitate diagnosis or treatment;
 (ii) Reduce unnecessary duplication of medical tests;
 (iii) Promote efficient electronic physician order entry;
 (iv) Increase access to health information for consumers and their providers; and
 (v) Improve health outcomes;
 (c) Coordinate a strategy for the adoption of health information technology systems using the final health information technology report and recommendations developed under chapter 261, Laws of 2005.

(8) The administrator may permit the Washington state health insurance pool to contract to utilize any network maintained by the authority or any network under contract with the authority. [2007 c 259 § 34; 2006 c 103 § 3; 2005 c 446 § 2; 2002 c 142 § 4. Prior: 1994 sp.s. c 9 § 724; 1994 c 309 § 3; 1994 c 153 § 6; 1993 c 386 § 10; 1988 c 107 § 9.]

Severability—Subheadings not law—2007 c 259: See notes following RCW 41.05.033.

Intent—2006 c 103: See note following RCW 41.05.021.

Severability—Headings and captions not law—Effective date—1994 sp.s. c 9: See RCW 18.79.900 through 18.79.902.

Intent—Effective dates—1994 c 153: See notes following RCW 41.05.011.

Intent—1993 c 386: See note following RCW 28A.400.391.

Effective date—1993 c 386 §§ 1, 2, 4-6, 8-10, and 12-16: See note following RCW 28A.400.391.

41.05.080 Participation in insurance plans and contracts—Retired, disabled, or separated employees—Certain surviving spouses and dependent children. (Effective January 1, 2009.) (1) Under the qualifications, terms, conditions, and benefits set by the board:

(a) Retired or disabled state employees, retired or disabled school employees, retired or disabled employees of county, municipal, or other political subdivisions, or retired or disabled employees of tribal governments covered by this chapter may continue their participation in insurance plans and contracts after retirement or disablement;

(b) Separated employees may continue their participation in insurance plans and contracts if participation is selected immediately upon separation from employment;

(c) Surviving spouses and dependent children of emergency service personnel killed in the line of duty may participate in insurance plans and contracts.

(2) Rates charged surviving spouses of emergency service personnel killed in the line of duty, retired or disabled employees, separated employees, spouses, or dependent children who are not eligible for parts A and B of medicare shall be based on the experience of the community rated risk pool established under RCW 41.05.022.

(3) Rates charged to surviving spouses of emergency service personnel killed in the line of duty, retired or disabled employees, separated employees, spouses, or children who are eligible for parts A and B of medicare shall be calculated from a separate experience risk pool comprised only of individuals eligible for parts A and B of medicare; however, the premiums charged to medicare-eligible retirees and disabled employees shall be reduced by the amount of the subsidy provided under RCW 41.05.085.

(4) Surviving spouses and dependent children of emergency service personnel killed in the line of duty and retired

or disabled and separated employees shall be responsible for payment of premium rates developed by the authority which shall include the cost to the authority of providing insurance coverage including any amounts necessary for reserves and administration in accordance with this chapter. These self pay rates will be established based on a separate rate for the employee, the spouse, and the children.

(5) The term "retired state employees" for the purpose of this section shall include but not be limited to members of the legislature whether voluntarily or involuntarily leaving state office. [2007 c 114 § 6; 2001 c 165 § 3; 1996 c 39 § 22; 1994 c 153 § 7; 1993 c 386 § 11; 1977 ex.s. c 136 § 6; 1975-'76 2nd ex.s. c 106 § 6; 1973 1st ex.s. c 147 § 7; 1970 ex.s. c 39 § 8.]

Intent—Effective date—2007 c 114: See notes following RCW 41.05.011.

Effective date—Application—2001 c 165: See note following RCW 41.05.011.

Effective dates—1996 c 39: See note following RCW 41.32.010.

Intent—Effective dates—1994 c 153: See notes following RCW 41.05.011.

Effective date—1993 c 386 §§ 3, 7, and 11: See note following RCW 41.04.205.

Intent—1993 c 386: See note following RCW 28A.400.391.

Effective date—Conditions prerequisite to implementing sections—1977 ex.s. c 136: See note following RCW 41.05.050.

Effective date—Effect of veto—Savings—Severability—1973 1st ex.s. c 147: See notes following RCW 41.05.050.

Severability—1970 ex.s. c 39: See note following RCW 41.05.050.

41.05.095 Unmarried dependents under the age of twenty-five. (Effective January 1, 2009.) (1) Any plan offered to employees under this chapter must offer each employee the option of covering any unmarried dependent of the employee under the age of twenty-five.

(2) Any employee choosing under subsection (1) of this section to cover a dependent who is: (a) Age twenty through twenty-three and not a registered student at an accredited secondary school, college, university, vocational school, or school of nursing; or (b) age twenty-four, shall be required to pay the full cost of such coverage.

(3) Any employee choosing under subsection (1) of this section to cover a dependent with disabilities, developmental disabilities, mental illness, or mental retardation, who is incapable of self-support, may continue covering that dependent under the same premium and payment structure as for dependents under the age of twenty, irrespective of age. [2007 c 259 § 18.]

Effective date—2007 c 259 §§ 18-22: "Sections 18 through 22 of this act take effect January 1, 2009." [2007 c 259 § 72.]

Severability—Subheadings not law—2007 c 259: See notes following RCW 41.05.033.

41.05.143 Uniform medical plan benefits administration account—Uniform dental plan benefits administration account—Public employees' benefits board medical benefits administration account. (1) The uniform medical plan benefits administration account is created in the custody of the state treasurer. Only the administrator or the administrator's designee may authorize expenditures from the account. Moneys in the account shall be used exclusively for

contracted expenditures for uniform medical plan claims administration, data analysis, utilization management, preferred provider administration, and activities related to benefits administration where the level of services provided pursuant to a contract fluctuate as a direct result of changes in uniform medical plan enrollment. Moneys in the account may also be used for administrative activities required to respond to new and unforeseen conditions that impact the uniform medical plan, but only when the authority and the office of financial management jointly agree that such activities must be initiated prior to the next legislative session.

(2) Receipts from amounts due from or on behalf of uniform medical plan enrollees for expenditures related to benefits administration, including moneys disbursed from the public employees' and retirees' insurance account, shall be deposited into the account. The account is subject to allotment procedures under chapter 43.88 RCW, but no appropriation is required for expenditures. All proposals for allotment increases shall be provided to the house of representatives appropriations committee and to the senate ways and means committee at the same time as they are provided to the office of financial management.

(3) The uniform dental plan benefits administration account is created in the custody of the state treasurer. Only the administrator or the administrator's designee may authorize expenditures from the account. Moneys in the account shall be used exclusively for contracted expenditures related to benefits administration for the uniform dental plan as established under RCW 41.05.140. Receipts from amounts due from or on behalf of uniform dental plan enrollees for expenditures related to benefits administration, including moneys disbursed from the public employees' and retirees' insurance account, shall be deposited into the account. The account is subject to allotment procedures under chapter 43.88 RCW, but no appropriation is required for expenditures.

(4) The public employees' benefits board medical benefits administration account is created in the custody of the state treasurer. Only the administrator or the administrator's designee may authorize expenditures from the account. Moneys in the account shall be used exclusively for contracted expenditures related to claims administration, data analysis, utilization management, preferred provider administration, and other activities related to benefits administration for self-insured medical plans other than the uniform medical plan. Receipts from amounts due from or on behalf of enrollees for expenditures related to benefits administration, including moneys disbursed from the public employees' and retirees' insurance account, shall be deposited into the account. The account is subject to allotment procedures under chapter 43.88 RCW, but an appropriation is not required for expenditures. [2007 c 507 § 1; 2000 2nd sp.s. c 1 § 901.]

Severability—2000 2nd sp.s. c 1: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [2000 2nd sp.s. c 1 § 1047.]

Effective date—2000 2nd sp.s. c 1: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately [May 2, 2000]." [2000 2nd sp.s. c 1 § 1048.]

[2007 RCW Supp—page 384]

41.05.195 Medicare supplemental insurance policies. *(Effective January 1, 2009.)* Notwithstanding any other provisions of this chapter or rules or procedures adopted by the authority, the authority shall make available to retired or disabled employees who are enrolled in parts A and B of medicare one or more medicare supplemental insurance policies that conform to the requirements of chapter 48.66 RCW. The policies shall be chosen in consultation with the public employees' benefits board. These policies shall be made available to retired or disabled state employees; retired or disabled school district employees; retired employees of county, municipal, or other political subdivisions or retired employees of tribal governments eligible for coverage available under the authority; or surviving spouses of emergency service personnel killed in the line of duty. [2007 c 114 § 7; 2005 c 47 § 1; 1993 c 492 § 222.]

Intent—Effective date—2007 c 114: See notes following RCW 41.05.011.

Findings—Intent—1993 c 492: See notes following RCW 43.20.050.

Short title—Severability—Savings—Captions not law—Reservation of legislative power—Effective dates—1993 c 492: See RCW 43.72.910 through 43.72.915.

41.05.320 Benefits contribution plan—Eligibility—Participation, withdrawal. (1) Elected officials and all permanent employees of the state are eligible to participate in the benefits contribution plan and contribute amount(s) by agreement with the authority. The authority may adopt rules to permit participation in the plan by temporary employees of the state.

(2) Persons eligible under subsection (1) of this section may enter into benefits contribution agreements with the state.

(3)(a) In the initial year of the medical flexible spending arrangement or cafeteria plan, if authorized, an eligible person may become a participant after the adoption of the plan and before its effective date by agreeing to have a portion of his or her gross salary contributed and deposited into a health care and other benefits account to be used for reimbursement of expenses covered by the plan.

(b) After the initial year of the medical flexible spending arrangement or cafeteria plan, if authorized, an eligible person may become a participant for a full plan year, with annual benefit selection for each new plan year made before the beginning of the plan year, as determined by the authority, or upon becoming eligible.

(c) Once an eligible person elects to participate and the amount of gross salary that he or she shall contribute and the benefit for which the funds are to be used during the plan year is determined, the agreement shall be irrevocable and may not be amended during the plan year except as provided in (d) of this subsection. Prior to making an election to participate in the benefits contribution plan, the eligible person shall be informed in writing of all the benefits and contributions that will occur as a result of such election.

(d) The authority shall provide in the benefits contribution plan that a participant may enroll, terminate, or change his or her election after the plan year has begun if there is a significant change in a participant's status, as provided by 26 U.S.C. Sec. 125 and the regulations adopted under that section and defined by the authority.

(4) The authority shall establish as part of the benefits contribution plan the procedures for and effect of withdrawal from the plan by reason of retirement, death, leave of absence, or termination of employment. To the extent possible under federal law, the authority shall protect participants from forfeiture of rights under the plan.

(5) Any contribution under the benefits contribution plan shall continue to be included as reportable compensation for the purpose of computing the state retirement and pension benefits earned by the employee pursuant to chapters 41.26, 41.32, 41.35, 41.37, 41.40, and 43.43 RCW. [2007 c 492 § 6; 1995 1st sp.s. c 6 § 13.]

Effective date—1995 1st sp.s. c 6: See note following RCW 28A.400.410.

41.05.540 State employee health program—Requirements—Report. (1) The health care authority, in coordination with the department of health, health plans participating in public employees' benefits board programs, and the University of Washington's center for health promotion, shall establish and maintain a state employee health program focused on reducing the health risks and improving the health status of state employees, dependents, and retirees enrolled in the public employees' benefits board. The program shall use public and private sector best practices to achieve goals of measurable health outcomes, measurable productivity improvements, positive impact on the cost of medical care, and positive return on investment. The program shall establish standards for health promotion and disease prevention activities, and develop a mechanism to update standards as evidence-based research brings new information and best practices forward.

(2) The state employee health program shall:

(a) Provide technical assistance and other services as needed to wellness staff in all state agencies and institutions of higher education;

(b) Develop effective communication tools and ongoing training for wellness staff;

(c) Contract with outside vendors for evaluation of program goals;

(d) Strongly encourage the widespread completion of online health assessment tools for all state employees, dependents, and retirees. The health assessment tool must be voluntary and confidential. Health assessment data and claims data shall be used to:

(i) Engage state agencies and institutions of higher education in providing evidence-based programs targeted at reducing identified health risks;

(ii) Guide contracting with third-party vendors to implement behavior change tools for targeted high-risk populations; and

(iii) Guide the benefit structure for state employees, dependents, and retirees to include covered services and medications known to manage and reduce health risks.

(3) The health care authority shall report to the legislature in December 2008 and December 2010 on outcome goals for the employee health program. [2007 c 259 § 40; 2005 c 360 § 8.]

Severability—Subheadings not law—2007 c 259: See notes following RCW 41.05.033.

Findings—Intent—2005 c 360: See note following RCW 36.70A.070.

41.05.541 State employee health demonstration project—Required elements—Reports. (*Expires June 30, 2011.*) (1) The health care authority through the state employee health program shall implement a state employee health demonstration project. The agencies selected must: (a) Show a high rate of health risk assessment completion; (b) document an infrastructure capable of implementing employee health programs using current and emerging best practices; (c) show evidence of senior management support; and (d) together employ a total of no more than eight thousand employees who are enrolled in health plans of the public employees' benefits board. Demonstration project agencies shall operate employee health programs for their employees in collaboration with the state employee health program.

(2) Agency demonstration project employee health programs:

(a) Shall include but are not limited to the following key elements: Outreach to all staff with efforts made to reach the largest percentage of employees possible; awareness-building information that promotes health; motivational opportunities that encourage employees to improve their health; behavior change opportunities that demonstrate and support behavior change; and tools to improve employee health care decisions;

(b) Must have wellness staff with direct accountability to agency senior management;

(c) Shall initiate and maintain employee health programs using current and emerging best practices in the field of health promotion;

(d) May offer employees such incentives as cash for completing health risk assessments, free preventive screenings, training in behavior change tools, improved nutritional standards on agency campuses, bike racks, walking maps, on-site weight reduction programs, and regular communication to promote personal health awareness.

(3) The state employee health program shall evaluate each of the four programs separately and compare outcomes for each of them with the entire state employee population to assess effectiveness of the programs. Specifically, the program shall measure at least the following outcomes in the demonstration population: The reduction in the percent of the population that is overweight or obese, the reduction in risk factors related to diabetes, the reduction in risk factors related to absenteeism, the reduction in tobacco consumption, the reduction in high blood pressure and high cholesterol, and the increase in appropriate use of preventive health services. The state employee health program shall report to the legislature in December 2008 and December 2010 on the demonstration project.

(4) This section expires June 30, 2011. [2007 c 259 § 41.]

Severability—Subheadings not law—2007 c 259: See notes following RCW 41.05.033.

Chapter 41.06 RCW

STATE CIVIL SERVICE LAW

Sections

- 41.06.098 Puget Sound partnership—Certain personnel exempted from chapter.
- 41.06.152 Job classification revisions, class studies, salary adjustments—Limitations.

- 41.06.395 Training programs on sexual harassment.
 41.06.475 Employees with unsupervised access to children—Rules for background investigation.
 41.06.550 Volunteer firefighters—Call to duty.

41.06.098 Puget Sound partnership—Certain personnel exempted from chapter. In addition to the exemptions under RCW 41.06.070, the provisions of this chapter shall not apply in the Puget Sound partnership to the executive director, to one confidential secretary, and to all professional staff. [2007 c 341 § 45.]

Severability—Effective date—2007 c 341: See RCW 90.71.906 and 90.71.907.

41.06.152 Job classification revisions, class studies, salary adjustments—Limitations. (1) The director shall adopt only those job classification revisions, class studies, and salary adjustments under RCW 41.06.150(4) that:

(a) As defined by the director, are due to documented recruitment or retention difficulties, salary compression or inversion, classification plan maintenance, higher level duties and responsibilities, or inequities; and

(b) Are such that the office of financial management has reviewed the affected agency's fiscal impact statement and has concurred that the affected agency can absorb the biennialized cost of the reclassification, class study, or salary adjustment within the agency's current authorized level of funding for the current fiscal biennium and subsequent fiscal biennia.

(2) This section does not apply to the higher education hospital special pay plan or to any adjustments to the classification plan under RCW 41.06.150(4) that are due to emergent conditions. Emergent conditions are defined as emergency conditions requiring the establishment of positions necessary for the preservation of the public health, safety, or general welfare. [2007 c 489 § 1; 2002 c 354 § 241; 2002 c 354 § 240; 1999 c 309 § 914; 1996 c 319 § 1.]

Short title—Headings, captions not law—Severability—Effective dates—2002 c 354: See RCW 41.80.907 through 41.80.910.

Severability—1999 c 309: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1999 c 309 § 2001.]

Effective date—1999 c 309: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect July 1, 1999, except as provided in section 2002 of this act." [1999 c 309 § 2003.]

41.06.395 Training programs on sexual harassment. The director shall adopt rules establishing guidelines for policies, procedures, and mandatory training programs on sexual harassment for state employees to be adopted by state agencies and establishing reporting requirements for state agencies on compliance with RCW 43.01.135. [2007 c 76 § 1.]

41.06.475 Employees with unsupervised access to children—Rules for background investigation. The director shall adopt rules, in cooperation with the director of the department of early learning, for the background investigation of current employees and of persons being actively considered for positions with the department who will or may have unsupervised access to children. The director shall also adopt rules, in cooperation with the director of the depart-

ment of early learning, for background investigation of positions otherwise required by federal law to meet employment standards. "Considered for positions" includes decisions about (1) initial hiring, layoffs, reallocations, transfers, promotions, or demotions, or (2) other decisions that result in an individual being in a position that will or may have unsupervised access to children as an employee, an intern, or a volunteer. [2007 c 387 § 8; 2002 c 354 § 222; 1993 c 281 § 38; 1986 c 269 § 2.]

Short title—Headings, captions not law—Severability—Effective dates—2002 c 354: See RCW 41.80.907 through 41.80.910.

Effective date—1993 c 281: See note following RCW 41.06.022.

Children and vulnerable adults: RCW 43.43.830 through 43.43.842.

State hospitals: RCW 72.23.035.

Supervision, care, or treatment of children or individuals with developmental disabilities or other vulnerable persons—State employment—Investigation of conviction records or pending charges: RCW 43.20A.710.

41.06.550 Volunteer firefighters—Call to duty. An agency must allow an employee who is a volunteer firefighter to respond, without pay, to a fire, natural disaster, or medical emergency when called to duty. The agency may choose to grant leave with pay. [2007 c 112 § 1.]

Chapter 41.08 RCW

CIVIL SERVICE FOR CITY FIREFIGHTERS

Sections

- 41.08.020 Excluded cities—Repeal of local law—Effect.
 41.08.030 Civil service commission created—Appointment—Terms—Removal—Quorum.
 41.08.075 Residency as condition of employment—Discrimination because of lack of residency—Prohibited.
 41.08.080 Tenure of employment—Grounds for discharge, reduction, or deprivation of privileges.
 41.08.090 Procedure for removal, suspension, demotion or discharge—Investigation—Hearing—Appeal.
 41.08.100 Filling of vacancies—Probationary period.
 41.08.150 Deceptive practices, false marks, etc., prohibited.
 41.08.220 Definitions.

41.08.020 Excluded cities—Repeal of local law—Effect. If any of the cities or towns referred to in RCW 41.08.010 shall at any time repeal the charter provisions or other local acts of said cities or towns providing for civil service for firefighters as referred to in RCW 41.08.010, in that event this chapter shall apply to all of such cities and towns which have at any time abolished civil service for members of the fire department. [2007 c 218 § 2; 1935 c 31 § 2; RRS § 9558-2.]

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

41.08.030 Civil service commission created—Appointment—Terms—Removal—Quorum. There is hereby created in every city, town or municipality except those referred to in RCW 41.08.010, having a full paid fire department a civil service commission which shall be composed of three persons.

The members of such commission shall be appointed by the person or group of persons who, acting singly or in conjunction, as a mayor, city manager, council, common council, commission, or otherwise, is or are vested by law with power and authority to select, appoint, or employ the chief of a fire

department in any such city, prior to the enactment of this chapter. The members of such commission shall serve without compensation. No person shall be appointed a member of such commission who is not a citizen of the United States, a resident of such city for at least three years immediately preceding such appointment, and an elector of the county wherein he or she resides. The term of office of such commissioners shall be for six years, except that the first three members of such commission shall be appointed for different terms, as follows: One to serve for a period of two years, one to serve for a period of four years, and one to serve for a period of six years. Any member of such commission may be removed from office for incompetency, incompatibility or dereliction of duty, or malfeasance in office, or other good cause: PROVIDED, HOWEVER, That no member of the commission shall be removed until charges have been preferred, in writing, due notice and a full hearing had. The members of such commission shall devote due time and attention to the performance of the duties hereinafter specified and imposed upon them by this chapter. Two members of such commission shall constitute a quorum and the votes of any two members of such commission concurring shall be sufficient for the decision of all matters and the transaction of all business to be decided or transacted by the commission under or by virtue of the provisions of this chapter. Confirmation of said appointment or appointments of commissioners by any legislative body shall not be required. At the time of any appointment not more than two commissioners shall be adherents of the same political party. [2007 c 218 § 3; 1935 c 31 § 3; RRS § 9558-3.]

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

41.08.075 Residency as condition of employment—Discrimination because of lack of residency—Prohibited. No city, town, or municipality shall require any person applying for or holding an office, place, position, or employment under the provisions of this chapter or under any local charter or other regulations described in RCW 41.08.010 to reside within the limits of such municipal corporation as a condition of employment, or to discriminate in any manner against any such person because of his or her residence outside of the limits of such city, town, or municipality. [2007 c 218 § 4; 1972 ex.s. c 37 § 4.]

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

Purpose—1972 ex.s. c 37: See note following RCW 41.08.070.

41.08.080 Tenure of employment—Grounds for discharge, reduction, or deprivation of privileges. The tenure of every one holding an office, place, position or employment under the provisions of this chapter shall be only during good behavior, and any such person may be removed or discharged, suspended without pay, demoted, or reduced in rank, or deprived of vacation privileges or other special privileges for any of the following reasons:

(1) Incompetency, inefficiency or inattention to or dereliction of duty;

(2) Dishonesty, intemperance, immoral conduct, insubordination, discourteous treatment of the public, or a fellow employee, or any other act of omission or commission tending to injure the public service; or any other willful failure on

the part of the employee to properly conduct himself or herself; or any willful violation of the provisions of this chapter or the rules and regulations to be adopted hereunder;

(3) Mental or physical unfitness for the position which the employee holds;

(4) Dishonest, disgraceful, immoral or prejudicial conduct;

(5) Drunkenness or use of intoxicating liquors, narcotics, or any other habit forming drug, liquid or preparation to such extent that the use thereof interferes with the efficiency or mental or physical fitness of the employee, or which precludes the employee from properly performing the functions and duties of any position under civil service;

(6) Conviction of a felony, or a misdemeanor, involving moral turpitude;

(7) Any other act or failure to act which in the judgment of the civil service commissioners is sufficient to show the offender to be an unsuitable and unfit person to be employed in the public service. [2007 c 218 § 5; 1935 c 31 § 8; RRS § 9558-8.]

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

41.08.090 Procedure for removal, suspension, demotion or discharge—Investigation—Hearing—Appeal. No person in the classified civil service who shall have been permanently appointed or inducted into civil service under provisions of this chapter, shall be removed, suspended, demoted or discharged except for cause, and only upon the written accusation of the appointing power, or any citizen or taxpayer, a written statement of which accusation, in general terms, shall be served upon the accused, and a duplicate filed with the commission. Any person so removed, suspended, demoted or discharged may within ten days from the time of his or her removal, suspension, demotion or discharge, file with the commission a written demand for an investigation, whereupon the commission shall conduct such investigation. The investigation shall be confined to the determination of the question of whether such removal, suspension, demotion or discharge was or was not made for political or religious reasons and was or was not made in good faith for cause. After such investigation the commission may affirm the removal, or if it shall find that the removal, suspension, or demotion was made for political or religious reasons, or was not made in good faith for cause, shall order the immediate reinstatement or reemployment of such person in the office, place, position or employment from which such person was removed, suspended, demoted or discharged, which reinstatement shall, if the commission so provides in its discretion, be retroactive, and entitle such person to pay or compensation from the time of such removal, suspension, demotion or discharge. The commission upon such investigation, in lieu of affirming the removal, suspension, demotion or discharge may modify the order of removal, suspension, demotion or discharge by directing a suspension, without pay, for a given period, and subsequent restoration to duty, or demotion in classification, grade, or pay; the findings of the commission shall be certified, in writing to the appointing power, and shall be forthwith enforced by such officer.

All investigations made by the commission pursuant to the provisions of this section shall be by public hearing, after

reasonable notice to the accused of the time and place of such hearing, at which hearing the accused shall be afforded an opportunity of appearing in person and by counsel, and presenting his or her defense. If such judgment or order be concurred in by the commission or a majority thereof, the accused may appeal therefrom to the court of original and unlimited jurisdiction in civil suits of the county wherein he or she resides. Such appeal shall be taken by serving the commission, within thirty days after the entry of such judgment or order, a written notice of appeal, stating the grounds thereof, and demanding that a certified transcript of the record and of all papers on file in the office of the commission affecting or relating to such judgment or order, be filed by the commission with such court. The commission shall, within ten days after the filing of such notice, make, certify and file such transcript with such court. The court of original and unlimited jurisdiction in civil suits shall thereupon proceed to hear and determine such appeal in a summary manner: PROVIDED, HOWEVER, That such hearing shall be confined to the determination of whether the judgment or order of removal, discharge, demotion or suspension made by the commission, was or was not made in good faith for cause, and no appeal to such court shall be taken except upon such ground or grounds. [2007 c 218 § 6; 1935 c 31 § 9; RRS § 9558-9.]

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

41.08.100 Filling of vacancies—Probationary period.

Whenever a position in the classified service becomes vacant, the appointing power, if it desires to fill the vacancy, shall make requisition upon the commission for the name and address of a person eligible for appointment thereto. The commission shall certify the name of the person highest on the eligible list for the class to which the vacant position has been allocated, who is willing to accept employment. If there is no appropriate eligible list for the class, the commission shall certify the name of the person standing highest on said list held appropriate for such class. If more than one vacancy is to be filled an additional name shall be certified for each additional vacancy. The appointing power shall forthwith appoint such person to such vacant position.

Whenever requisition is to be made, or whenever a position is held by a temporary appointee and an eligible list for the class of such position exists, the commission shall forthwith certify the name of the person eligible for appointment to the appointing power, and said appointing power shall forthwith appoint the person so certified to said position. No person so certified shall be laid off, suspended, or given leave of absence from duty, transferred or reduced in pay or grade, except for reasons which will promote the good of the service, specified in writing, and after an opportunity to be heard by the commission and then only with its consent and approval.

To enable the appointing power to exercise a choice in the filling of positions, no appointment, employment or promotion in any position in the classified service shall be deemed complete until after the expiration of a period of three to six months' probationary service, as may be provided in the rules of the civil service commission during which the appointing power may terminate the employment of the per-

son certified to him or her, or it, if during the performance test thus afforded, upon observation or consideration of the performance of duty, the appointing power deems him or her unfit or unsatisfactory for service in the department. Whereupon the appointing power shall designate the person certified as standing next highest on any such list and such person shall likewise enter upon said duties until some person is found who is deemed fit for appointment, employment or promotion for the probationary period provided therefor, whereupon the appointment, employment or promotion shall be deemed to be complete. [2007 c 218 § 7; 1935 c 31 § 11; RRS § 9558-11.]

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

41.08.150 Deceptive practices, false marks, etc., prohibited. No commissioner or any other person shall, by himself or herself, or in cooperation with one or more persons, defeat, deceive, or obstruct any person in respect of his or her right of examination or registration according to the rules and regulations of this chapter, or falsely mark, grade, estimate or report upon the examination or proper standing of any person examined, registered or certified pursuant to the provisions of this chapter, or aid in so doing, or make any false representation concerning the same, or concerning the person examined, or furnish any person any special or secret information for the purpose of improving or injuring the prospects or chances of any person so examined, registered or certified, or to be examined, registered or certified or persuade any other person, or permit or aid in any manner any other person to personate him or her, in connection with any examination or registration or application or request to be examined or registered. [2007 c 218 § 8; 1935 c 31 § 16; RRS § 9558-16.]

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

41.08.220 Definitions. As used in this chapter, the following mentioned terms shall have the following described meanings:

The term "commission" means the civil service commission herein created, and the term "commissioner" means any one of the three commissioners of that commission.

The term "appointing power" includes every person or group of persons who, acting singly or in conjunction, as a mayor, city manager, council, common council, commission, or otherwise, is or are, vested by law with power and authority to select, appoint, or employ any person to hold any office, place, position or employment subject to civil service.

The term "appointment" includes all means of selection, appointing or employing any person to hold any office, place, position or employment subject to civil service.

The term "city" includes all cities, towns and municipalities having a full paid fire department.

The term "full paid fire department" means that the officers and firefighters employed in such are paid regularly by the city and devote their whole time to firefighting. [2007 c 218 § 9; 1935 c 31 § 24; RRS § 9558-24.]

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

Chapter 41.12 RCW

CIVIL SERVICE FOR CITY POLICE

Sections

41.12.020	Excluded cities—Repeal of local law—Effect.
41.12.030	Civil service commission—Appointment—Terms—Removal—Quorum.
41.12.075	Residency as condition of employment—Discrimination because of lack of residency—Prohibited.
41.12.080	Tenure of employment—Grounds for discharge, reduction, or deprivation of privileges.
41.12.090	Procedure for removal, suspension, demotion or discharge—Investigation—Hearing—Appeal.
41.12.100	Filling of vacancies—Probationary period.
41.12.150	Deceptive practices, false marks, etc., prohibited.
41.12.220	Definitions.

41.12.020 Excluded cities—Repeal of local law—Effect. If any of the cities or towns referred to in RCW 41.12.010 shall at any time repeal the charter provisions or other local acts of said cities or towns providing for civil service for police officers as referred to in RCW 41.12.010, in that event this chapter shall apply to all of such cities and towns which have at any time abolished civil service for members of the police department. [2007 c 218 § 10; 1937 c 13 § 2; RRS § 9558a-2.]

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

41.12.030 Civil service commission—Appointment—Terms—Removal—Quorum. There is hereby created in every city, town or municipality except those referred to in RCW 41.12.010, having fully paid police officers a civil service commission which shall be composed of three persons.

The members of such commission shall be appointed by the person or group of persons who, acting singly or in conjunction, as a mayor, city manager, council, common council, commission, or otherwise, is or are vested by law with the power and authority to select, appoint, or employ the chief of a police department in any such city, prior to the enactment of this chapter. The members of such commission shall serve without compensation. No person shall be appointed a member of such commission who is not a citizen of the United States, a resident of such city for at least three years immediately preceding such appointment, and an elector of the county wherein he or she resides. The term of office of such commissioners shall be for six years, except that the first three members of such commission shall be appointed for different terms, as follows: One to serve for a period of two years, one to serve for a period of four years, and one to serve for a period of six years. Any member of such commission may be removed from office for incompetency, incompatibility or dereliction of duty, or malfeasance in office, or other good cause: PROVIDED, HOWEVER, That no member of the commission shall be removed until charges have been preferred, in writing, due notice and a full hearing had. The members of such commission shall devote due time and attention to the performance of the duties hereinafter specified and imposed upon them by this chapter. Two members of such commission shall constitute a quorum and the votes of any two members of such commission concurring shall be sufficient for the decision of all matters and the transaction of all business to be decided or transacted by the commission under or by virtue of the provisions of this chapter. Confirmation of said appointment or appointments of commission-

ers by any legislative body shall not be required. At the time of any appointment not more than two commissioners shall be adherents of the same political party. [2007 c 218 § 11; 1937 c 13 § 3; RRS § 9558a-3.]

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

41.12.075 Residency as condition of employment—Discrimination because of lack of residency—Prohibited. No city, town, or municipality shall require any person applying for or holding an office, place, position, or employment under the provisions of this chapter or under any local charter or other regulations described in RCW 41.12.010 to reside within the limits of such municipal corporation as a condition of employment or to discriminate in any manner against any such person because of his or her residence outside of the limits of such city, town, or municipality. [2007 c 218 § 12; 1972 ex.s. c 37 § 5.]

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

Purpose—1972 ex.s. c 37: See note following RCW 41.08.070.

41.12.080 Tenure of employment—Grounds for discharge, reduction, or deprivation of privileges. The tenure of everyone holding an office, place, position or employment under the provisions of this chapter shall be only during good behavior, and any such person may be removed or discharged, suspended without pay, demoted, or reduced in rank, or deprived of vacation privileges or other special privileges for any of the following reasons:

(1) Incompetency, inefficiency or inattention to or dereliction of duty;

(2) Dishonesty, intemperance, immoral conduct, insubordination, discourteous treatment of the public, or a fellow employee, or any other act of omission or commission tending to injure the public service; or any other willful failure on the part of the employee to properly conduct himself or herself; or any willful violation of the provisions of this chapter or the rules and regulation to be adopted hereunder;

(3) Mental or physical unfitness for the position which the employee holds;

(4) Dishonest, disgraceful, immoral or prejudicial conduct;

(5) Drunkenness or use of intoxicating liquors, narcotics, or any other habit forming drug, liquid or preparation to such extent that the use thereof interferes with the efficiency or mental or physical fitness of the employee, or which precludes the employee from properly performing the function and duties of any position under civil service;

(6) Conviction of a felony, or a misdemeanor, involving moral turpitude;

(7) Any other act or failure to act which in the judgment of the civil service commissioners is sufficient to show the offender to be an unsuitable and unfit person to be employed in the public service. [2007 c 218 § 13; 1937 c 13 § 8; RRS § 9558a-8.]

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

41.12.090 Procedure for removal, suspension, demotion or discharge—Investigation—Hearing—Appeal. No person in the classified civil service who shall have been permanently appointed or inducted into civil service under pro-

visions of this chapter, shall be removed, suspended, demoted or discharged except for cause, and only upon written accusation of the appointing power, or any citizen or taxpayer; a written statement of which accusation, in general terms, shall be served upon the accused, and a duplicate filed with the commission. Any person so removed, suspended, demoted or discharged may within ten days from the time of his or her removal, suspension, demotion or discharge, file with the commission a written demand for an investigation, whereupon the commission shall conduct such investigation. The investigation shall be confined to the determination of the question of whether such removal, suspension, demotion or discharge was or was not made for political or religious reasons and was or was not made in good faith for cause. After such investigation the commission may affirm the removal, or if it shall find that the removal, suspension, or demotion was made for political or religious reasons, or was not made in good faith for cause, shall order the immediate reinstatement or reemployment of such person in the office, place, position or employment from which such person was removed, suspended, demoted or discharged, which reinstatement shall, if the commission so provides in its discretion, be retroactive, and entitle such person to pay or compensation from the time of such removal, suspension, demotion or discharge. The commission upon such investigation, in lieu of affirming the removal, suspension, demotion or discharge may modify the order of removal, suspension, demotion or discharge by directing a suspension, without pay, for a given period, and subsequent restoration to duty, or demotion in classification, grade, or pay; the findings of the commission shall be certified, in writing to the appointing power, and shall be forthwith enforced by such officer.

All investigations made by the commission pursuant to the provisions of this section shall be had by public hearing, after reasonable notice to the accused of the time and place of such hearing, at which hearing the accused shall be afforded an opportunity of appearing in person and by counsel, and presenting his or her defense. If such judgment or order be concurred in by the commission or a majority thereof, the accused may appeal therefrom to the court of original and unlimited jurisdiction in civil suits of the county wherein he or she resides. Such appeal shall be taken by serving the commission, within thirty days after the entry of such judgment or order, a written notice of appeal, stating the grounds thereof, and demanding that a certified transcript of the record and of all papers on file in the office of the commission affecting or relating to such judgment or order, be filed by the commission with such court. The commission shall, within ten days after the filing of such notice, make, certify and file such transcript with such court. The court of original and unlimited jurisdiction in civil suits shall thereupon proceed to hear and determine such appeal in a summary manner: PROVIDED, HOWEVER, That such hearing shall be confined to the determination of whether the judgment or order of removal, discharge, demotion or suspension made by the commission, was or was not made in good faith for cause, and no appeal to such court shall be taken except upon such ground or grounds. [2007 c 218 § 14; 1937 c 13 § 9; RRS § 9558a-9.]

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

41.12.100 Filling of vacancies—Probationary period.

Whenever a position in the classified service becomes vacant, the appointing power, if it desires to fill the vacancy, shall make requisition upon the commission for the name and address of a person eligible for appointment thereto. The commission shall certify the name of the person highest on the eligible list for the class to which the vacant position has been allocated, who is willing to accept employment. If there is no appropriate eligible list for the class, the commission shall certify the name of the person standing highest on said list held appropriate for such class. If more than one vacancy is to be filled an additional name shall be certified for each additional vacancy. The appointing power shall forthwith appoint such person to such vacant position.

Whenever requisition is to be made, or whenever a position is held by a temporary appointee and an eligible list for the class of such position exists, the commission shall forthwith certify the name of the person eligible for appointment to the appointing power, and said appointing power shall forthwith appoint the person so certified to said position. No person so certified shall be laid off, suspended, or given leave of absence from duty, transferred or reduced in pay or grade, except for reasons which will promote the good of the service, specified in writing, and after an opportunity to be heard by the commission and then only with its consent and approval.

To enable the appointing power to exercise a choice in the filling of positions, no appointment, employment or promotion in any position in the classified service shall be deemed complete until after the expiration of a period of three to six months' probationary service, as may be provided in the rules of the civil service commission during which the appointing power may terminate the employment of the person certified to him or her, or it, if during the performance test thus afforded, upon observation or consideration of the performance of duty, the appointing power deems him or her unfit or unsatisfactory for service in the department, whereupon the appointing power shall designate the person certified as standing next highest on any such list and such person shall likewise enter upon said duties until some person is found who is deemed fit for appointment, employment or promotion for the probationary period provided therefor, whereupon the appointment, employment or promotion shall be deemed to be complete. [2007 c 218 § 15; 1937 c 13 § 11; RRS § 9558a-11.]

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

41.12.150 Deceptive practices, false marks, etc., prohibited.

No commissioner or any other person shall, by himself or herself, or in cooperation with one or more persons, defeat, deceive, or obstruct any person in respect of his or her right of examination or registration according to the rules and regulations of this chapter, or falsely mark, grade, estimate or report upon the examination or proper standing of any person examined, registered or certified pursuant to the provisions of this chapter, or aid in so doing, or make any false representation concerning the same, or concerning the person examined, or furnish any person any special or secret information for the purpose of improving or injuring the prospects or chances of any person so examined, registered or certified, or to be examined, registered or certified or persuade any other

person, or permit or aid in any manner any other person to personate him or her, in connection with any examination or registration of application or request to be examined or registered. [2007 c 218 § 16; 1937 c 13 § 16; RRS § 9558a-16.]

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

41.12.220 Definitions. As used in this chapter, the following mentioned terms shall have the following described meanings:

The term "commission" means the civil service commission herein created, and the term "commissioner" means any one of the three commissioners of that commission.

The term "appointing power" includes every person or group of persons who, acting singly or in conjunction, as a mayor, city manager, council, common council, commission, or otherwise, is or are, invested by law with power and authority to select, appoint, or employ any person to hold any office, place, position or employment subject to civil service.

The term "appointment" includes all means of selection, appointing or employing any person to hold any office, place, position or employment subject to civil service.

The term "city" includes all cities, towns and municipalities having a full paid police department.

The term "full paid police department" means that the officers and police officers employed in such are paid regularly by the city and devote their whole time to police duty: PROVIDED, "full paid police department" whenever used in this chapter shall also mean "full paid police officers." [2007 c 218 § 17; 1937 c 13 § 24; RRS § 9558a-24.]

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

Chapter 41.14 RCW

CIVIL SERVICE FOR SHERIFF'S OFFICE

Sections

41.14.050 Commission—Organization, meetings—Chief examiner, qualifications, duties.

41.14.050 Commission—Organization, meetings—Chief examiner, qualifications, duties. Immediately after appointment the commission shall organize by electing one of its members as chair and shall hold regular meetings at least once a month, and such additional meetings as may be required for the proper discharge of its duties.

The commission shall appoint a chief examiner who shall also serve as secretary of the commission and such assistants as may be necessary. The commission has supervisory responsibility over the chief examiner. The chief examiner shall keep the records for the commission, preserve all reports made to it, superintend and keep a record of all examinations held under its direction, and perform such other duties as the commission may prescribe.

The chief examiner shall be appointed as a result of competitive examination, which examination must be open to all properly qualified citizens of the county: PROVIDED, That no appointee of the commission, either as chief examiner or as an assistant to the chief examiner, shall be an employee of the sheriff's department. The chief examiner may be subject to suspension, reduction, or discharge in the same manner and subject to the same limitations as are provided in the case

of members of the classified service. [2007 c 12 § 1; 1979 ex.s. c 153 § 1; 1959 c 1 § 5 (Initiative Measure No. 23, approved November 4, 1958).]

Chapter 41.16 RCW

FIREFIGHTERS' RELIEF AND PENSIONS—1947 ACT

Sections

41.16.010 Terms defined.
 41.16.020 Pension board created—Members—Terms—Vacancies—Officers—Quorum.
 41.16.030 Meetings.
 41.16.040 Powers and duties.
 41.16.050 Firefighters' pension fund—How constituted.
 41.16.070 Contributions by firefighters.
 41.16.080 Retirement for service.
 41.16.100 Payment on death of retired firefighter.
 41.16.110 Payment on death of eligible pensioner before retirement.
 41.16.120 Payment on death in line of duty.
 41.16.130 Payment upon disablement in line of duty.
 41.16.140 Payment upon disablement not in line of duty.
 41.16.145 Annual increase in benefits payable on retirement for service, death in line of duty, and disability—Appeals.
 41.16.150 Payment on separation from service.
 41.16.160 Payment on death not in line of duty.
 41.16.170 Payment on death of firefighter with no dependents.
 41.16.180 Funeral expense.
 41.16.190 Waiting period—Disability retirement.
 41.16.200 Examination of disability pensioners—Restoration to duty.
 41.16.210 Transfer of assets to new fund—Assumption of obligations.
 41.16.220 Credit for military service.
 41.16.230 Repeal does not affect accrued rights.
 41.16.250 Retirement and job security rights preserved upon annexation, etc., of district.

41.16.010 Terms defined. For the purpose of this chapter, unless clearly indicated by the context, words and phrases shall have the following meaning:

(1) "Beneficiary" shall mean any person or persons designated by a firefighter in a writing filed with the board, and who shall be entitled to receive any benefits of a deceased firefighter under this chapter.

(2) "Board" shall mean the municipal firefighters' pension board.

(3) "Child or children" shall mean a child or children unmarried and under eighteen years of age.

(4) "Contributions" shall mean and include all sums deducted from the salary of firefighters and paid into the fund as hereinafter provided.

(5) "Disability" shall mean and include injuries or sickness sustained as a result of the performance of duty.

(6) "Firefighter" shall mean any person regularly or temporarily, or as a substitute, employed and paid as a member of a fire department, who has passed a civil service examination for firefighter and who is actively employed as a firefighter; and shall include any "prior firefighter."

(7) "Fire department" shall mean the regularly organized, full time, paid, and employed force of firefighters of the municipality.

(8) "Fund" shall mean the firefighters' pension fund created herein.

(9) "Municipality" shall mean every city and town having a regularly organized full time, paid, fire department employing firefighters.

(10) "Performance of duty" shall mean the performance of work and labor regularly required of firefighters and shall

include services of an emergency nature rendered while off regular duty, but shall not include time spent in traveling to work before answering roll call or traveling from work after dismissal at roll call.

(11) "Prior firefighter" shall mean a firefighter who was actively employed as a firefighter of a fire department prior to the first day of January, 1947, and who continues such employment thereafter.

(12) "Retired firefighter" shall mean and include a person employed as a firefighter and retired under the provisions of chapter 50, Laws of 1909, as amended.

(13) "Widow or widower" means the surviving wife or husband of a retired firefighter who was retired on account of length of service and who was lawfully married to such firefighter; and whenever that term is used with reference to the wife or former wife or husband or former husband of a retired firefighter who was retired because of disability, it shall mean his or her lawfully married wife or husband on the date he or she sustained the injury or contracted the illness that resulted in his or her disability. Said term shall not mean or include a surviving wife or husband who by process of law within one year prior to the retired firefighter's death, collected or attempted to collect from him or her funds for the support of herself or himself or for his or her children. [2007 c 218 § 18; 2003 c 30 § 1; 1973 1st ex.s. c 154 § 61; 1947 c 91 § 1; Rem. Supp. 1947 § 9578-40.]

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

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

41.16.020 Pension board created—Members—Terms—Vacancies—Officers—Quorum. There is hereby created in each city and town a municipal firefighters' pension board to consist of the following five members, ex officio, the mayor, or in a city of the first class, the mayor or a designated representative who shall be an elected official of the city, who shall be chairperson of the board, the city comptroller or clerk, the chairperson of finance of the city council, or if there is no chairperson of finance, the city treasurer, and in addition, two regularly employed or retired firefighters elected by secret ballot of those employed and retired firefighters who are subject to the jurisdiction of the board. The members to be elected by the firefighters shall be elected annually for a two year term. The two firefighters elected as members shall, in turn, select a third eligible member who shall serve as an alternate in the event of an absence of one of the regularly elected members. In case a vacancy occurs in the membership of the firefighters or retired members, the members shall in the same manner elect a successor to serve the unexpired term. The board may select and appoint a secretary who may, but need not be a member of the board. In case of absence or inability of the chairperson to act, the board may select a chairperson pro tempore who shall during such absence or inability perform the duties and exercise the powers of the chairperson. A majority of the members of the board shall constitute a quorum and have power to transact business. [2007 c 218 § 19; 2003 c 30 § 2; 1988 c 164 § 2; 1973 1st ex.s. c 19 § 1; 1961 c 255 § 10; 1947 c 91 § 2; Rem. Supp. 1947 § 9578-41. Prior: 1935 c 39 § 1; 1919 c 196 § 3; 1909 c 50 §§ 1, 2.]

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

41.16.030 Meetings. The board shall meet at least once quarterly, the date to be fixed by regulation of the board, at such other regular times as may be fixed by a regulation of the board; and at any time upon call of the chairperson, of which due advance notice shall be given the other members of the board. [2007 c 218 § 20; 2002 c 15 § 1; 1947 c 91 § 3; Rem. Supp. 1947 § 9578-42. Prior: 1929 c 86 § 1; 1919 c 196 § 3; 1909 c 50 § 3.]

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

41.16.040 Powers and duties. The board shall have such general powers as are vested in it by the provisions of this chapter, and in addition thereto, the power to:

(1) Generally supervise and control the administration of this chapter and the firefighters' pension fund created hereby.

(2) Pass upon and allow or disallow all applications for pensions or other benefits provided by this chapter.

(3) Provide for payment from said fund of necessary expenses of maintenance and administration of said pension system and fund.

(4) Invest the moneys of the fund in a manner consistent with the investment policies outlined in RCW 35.39.060. Authorized investments shall include investment grade securities issued by the United States, state, municipal corporations, other public bodies, corporate bonds, and other investments authorized by RCW 35.39.030, 35.58.510, 35.81.070, 35.82.070, 36.29.020, 39.58.020, 39.58.080, 39.58.130, 39.60.010, 39.60.020, 68.52.060, 68.52.065, and 72.19.120.

(5) Employ such agents, employees and other personnel as the board may deem necessary for the proper administration of this chapter.

(6) Compel witnesses to appear and testify before it, in the same manner as is or may be provided by law for the taking of depositions in the superior court. Any member of the board may administer oaths to witnesses who testify before the board of a nature and in a similar manner to oaths administered by superior courts of the state of Washington.

(7) Issue vouchers approved by the chairperson and secretary and to cause warrants therefor to be issued and paid from said fund for the payment of claims allowed by it.

(8) Keep a record of all its proceedings, which record shall be public; and prepare and file with the city treasurer and city clerk or comptroller prior to the date when any payments are to be made from the fund, a list of all persons entitled to payment from the fund, stating the amount and purpose of such payment, said list to be certified to and signed by the chairperson and secretary of the board and attested under oath.

(9) Make rules and regulations not inconsistent with this chapter for the purpose of carrying out and effecting the same.

(10) Appoint one or more duly licensed and practicing physicians who shall examine and report to the board upon all applications for relief and pension under this chapter. Such physicians shall visit and examine all sick firefighters and firefighters who are disabled when, in their judgment, the best interests of the relief and pension fund require it or when ordered by the board. They shall perform all operations on such sick and injured firefighters and render all medical aid and care necessary for the recovery of such firefighters on account of sickness or disability received while in the perfor-

mance of duty as defined in this chapter. Such physicians shall be paid from said fund, the amount of said fees or salary to be set and agreed upon by the board and the physicians. No physician not regularly appointed or specially appointed and employed, as hereinafter provided, shall receive or be entitled to any fees or compensation from said fund as attending physician to a sick or injured firefighter. If any sick or injured firefighter refuses the services of the appointed physicians, or the specially appointed and employed physician, he or she shall be personally liable for the fees of any other physician employed by him or her. No person shall have a right of action against the board or the municipality for negligence of any physician employed by it. The board shall have the power and authority to select and employ, besides the regularly appointed physician, such other physician, surgeon or specialist for consultation with, or assistance to the regularly appointed physician, or for the purpose of performing operations or rendering services and treatment in particular cases, as it shall deem advisable, and to pay fees for such services from said fund. Said board shall hear and decide all applications for such relief or pensions under this chapter, and its decisions on such applications shall be final and conclusive and not subject to revision or reversal except by the board. [2007 c 218 § 21; 1992 c 89 § 1; 1967 ex.s. c 91 § 1; 1947 c 91 § 4; Rem. Supp. 1947 § 9578-43. Prior: 1929 c 86 § 1; 1919 c 196 § 3; 1909 c 50 § 3.]

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

41.16.050 Firefighters' pension fund—How constituted. There is hereby created and established in the treasury of each municipality a fund which shall be known and designated as the firefighters' pension fund, which shall consist of: (1) All bequests, fees, gifts, emoluments, or donations given or paid thereto; (2) twenty-five percent of all moneys received by the state from taxes on fire insurance premiums; (3) taxes paid pursuant to the provisions of RCW 41.16.060; (4) interest on the investments of the fund; and (5) contributions by firefighters as provided for herein. The moneys received from the tax on fire insurance premiums under the provisions of this chapter shall be distributed in the proportion that the number of paid firefighters in the city, town, or fire protection district bears to the total number of paid firefighters throughout the state to be ascertained in the following manner: The secretary of the firefighters' pension board of each city, town, and fire protection district now or hereafter coming under the provisions of this chapter shall within thirty days after June 7, 1961, and on or before the fifteenth day of January thereafter, certify to the state treasurer the number of paid firefighters in the fire department in such city, town, or fire protection district. For any city or town annexed by a fire protection district at any time before, on, or after June 9, 1994, the city or town shall continue to certify to the state treasurer the number of paid firefighters in the city or town fire department immediately before annexation until all obligations against the firefighters' pension fund in the city or town have been satisfied. For the purposes of the calculation in this section, the state treasurer shall subtract the number certified by the annexed city or town from the number of paid firefighters certified by an annexing fire protection district. The state treasurer shall on or before the first day of

June of each year deliver to the treasurer of each city, town, and fire protection district coming under the provisions of this chapter his or her warrant, payable to each city, town, or fire protection district for the amount due such city, town or fire protection district ascertained as herein provided and the treasurer of each such city, town, or fire protection district shall place the amount thereof to the credit of the firefighters' pension fund of such city, town, or fire protection district. [2007 c 218 § 22; 1999 c 117 § 3; 1994 c 273 § 23; 1986 c 296 § 3; 1982 1st ex.s. c 35 § 16; 1967 c 42 § 1; 1961 c 255 § 8; 1949 c 45 § 1; 1947 c 91 § 5; Rem. Supp. 1949 § 9578-44. Prior: 1929 c 86 § 11; 1919 c 196 § 14.]

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

Severability—Effective date—1986 c 296: See notes following RCW 48.14.020.

Severability—Effective dates—1982 1st ex.s. c 35: See notes following RCW 82.08.020.

Insurance premiums taxes: RCW 48.14.020.

41.16.070 Contributions by firefighters. (1) Every firefighter employed on and after January 1, 1947, shall contribute to the fund and there shall be deducted from his or her pay and placed in the fund an amount in accordance with the following table:

Firefighter whose age at last birthday at time of entry of service was:	Contributions and deductions from salary
21 and under	5.00%
22	5.24%
23	5.50%
24	5.77%
25	6.07%
26	6.38%
27	6.72%
28	7.09%
29	7.49%
30 and over	7.92%

(2) Every firefighter employed prior to January 1, 1947, and continuing active employment shall contribute to the fund and there shall be deducted from his or her salary and placed in the fund, five percent of his or her salary.

(3) Every firefighter actively employed and eligible for retirement and not retired shall contribute to the fund and there shall be deducted from his or her salary and placed in the fund, four percent of his or her salary. [2007 c 218 § 23; 1947 c 91 § 7; Rem. Supp. 1947 § 9578-46. Prior: 1929 c 86 § 14; 1919 c 196 § 18.]

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

41.16.080 Retirement for service. Any firefighter employed in a fire department on and before the first day of January, 1947, hereinafter in this section and RCW 41.16.090 to 41.16.190 inclusive, referred to as "firefighter," and who shall have served twenty-five or more years and having attained the age of fifty-five years, as a member of the fire department, shall be eligible for retirement and shall be retired by the board upon his or her written request. Upon his or her retirement any firefighter shall be paid a pension based

upon the average monthly salary drawn for the five calendar years before retirement, the number of years of his or her service and a percentage factor based upon his or her age on entering service, as follows:

Entrance age at last birthday	Salary percentage factor
20 and under	1.50%
21	1.55%
22	1.60%
23	1.65%
24	1.70%
25	1.75%
26	1.80%
27	1.85%
28	1.90%
29	1.95%
30 and over	2.00%

Said monthly pension shall be in the amount of his or her average monthly salary for the five calendar years before retirement, times the number of years of service, times the applicable percentage factor. [2007 c 218 § 24; 1959 c 5 § 2; 1957 c 82 § 2. Prior: 1947 c 91 § 8, part; 1935 c 39 § 2, part; 1929 c 86 § 2, part; 1919 c 196 § 4, part; 1909 c 50 § 4, part; Rem. Supp. 1947 § 9578-47, part.]

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

41.16.100 Payment on death of retired firefighter.

The widow or widower, child, children or beneficiary of any firefighter retired under this chapter shall receive an amount equal to his or her accumulated contributions to the fund, plus earned interest thereon compounded semiannually: PROVIDED, That there shall be deducted from said sum the amount paid to decedent in pensions and the remainder shall be paid to his or her widow or widower, child, children or beneficiary: PROVIDED FURTHER, That the amount paid shall not be less than one thousand dollars. [2007 c 218 § 25; 1973 1st ex.s. c 154 § 62; 1959 c 5 § 4; 1957 c 82 § 4. Prior: 1947 c 91 § 8, part; 1935 c 39 § 2, part; 1929 c 86 § 2, part; 1919 c 196 § 4, part; 1909 c 50 § 4, part; Rem. Supp. 1947 § 9578-47, part.]

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

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

41.16.110 Payment on death of eligible pensioner before retirement.

Whenever any firefighter shall die while eligible to retirement on account of years of service, and shall not have been retired, benefits shall be paid in accordance with RCW 41.16.100. [2007 c 218 § 26; 1959 c 5 § 5; 1957 c 82 § 5. Prior: 1947 c 91 § 8, part; 1935 c 39 § 2, part; 1929 c 86 § 2, part; 1919 c 196 § 4, part; 1909 c 50 § 4, part; Rem. Supp. 1947 § 9578-47, part.]

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

41.16.120 Payment on death in line of duty. Whenever any active firefighter or firefighter retired for disability shall die as the result of an accident or other fortuitous event occurring while in the performance of his or her duty, his widow or her widower may elect to accept a monthly pension equal to one-half the deceased firefighter's salary but in no

case in excess of one hundred fifty dollars per month, or the sum of five thousand dollars cash. The right of election must be exercised within sixty days of the firefighter's death. If not so exercised, the pension benefits shall become fixed and shall be paid from the date of death. Such pension shall cease if, and when, he or she remarries. If there is no widow or widower, then such pension benefits shall be paid to his or her child or children. [2007 c 218 § 27; 1973 1st ex.s. c 154 § 63; 1959 c 5 § 6; 1957 c 82 § 6. Prior: 1947 c 91 § 8, part; 1935 c 39 § 2, part; 1929 c 86 § 2, part; 1919 c 196 § 5, part; 1909 c 50 § 4, part; Rem. Supp. 1947 § 9578-47, part.]

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

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

41.16.130 Payment upon disablement in line of duty.

(1) Any firefighter who shall become disabled as a result of the performance of his or her duty or duties as defined in this chapter, may be retired at the expiration of six months from the date of his or her disability, upon his or her written request filed with his or her retirement board. The board may upon such request being filed, consult such medical advice as it sees fit, and may have the applicant examined by such physicians as it deems desirable. If from the reports of such physicians the board finds the applicant capable of performing his or her duties in the fire department, the board may refuse to recommend his or her retirement.

(2) If the board deems it for the good of the fire department or the pension fund, it may recommend the applicant's retirement without any request therefor by him or her, after giving him or her a thirty days' notice. Upon his or her retirement he or she shall be paid a monthly disability pension in [an] amount equal to one-half of his or her monthly salary at date of retirement, but which shall not exceed one hundred fifty dollars a month. If he or she recovers from his or her disability he or she shall thereupon be restored to active service, with the same rank he or she held when he or she retired.

(3) If the firefighter dies during disability and not as a result thereof, RCW 41.16.160 shall apply. [2007 c 218 § 28; 1959 c 5 § 7; 1957 c 82 § 7. Prior: 1947 c 91 § 8, part; 1935 c 39 § 3, part; 1929 c 86 § 3, part; 1919 c 196 § 5, part; 1909 c 50 § 5, part; Rem. Supp. 1947 § 9578-47, part.]

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

41.16.140 Payment upon disablement not in line of duty.

Any firefighter who has served more than fifteen years and sustains a disability not in the performance of his or her duty which renders him or her unable to continue his or her service, shall within sixty days exercise his or her choice either to receive his or her contribution to the fund, plus earned interest compounded semiannually, or be retired and paid a monthly pension based on the factor of his or her age shown in RCW 41.16.080, times his or her average monthly salary as a member of the fire department of his or her municipality at the date of his or her retirement, times the number of years of service rendered at the time he or she sustained such disability. If such firefighter shall die leaving surviving him a wife or surviving her a husband, or child or children, then such wife or husband, or if he leaves no wife or she leaves no husband, then his or her child or children shall receive the sum of his or her contributions, plus accumulated

compound interest, and such payment shall be reduced in the amount of the payments made to deceased. [2007 c 218 § 29; 1973 1st ex.s. c 154 § 64; 1959 c 5 § 8; 1957 c 82 § 8. Prior: 1947 c 91 § 8, part; 1935 c 39 § 6, part; 1929 c 86 § 7, part; 1919 c 196 § 9, part; 1909 c 50 § 9, part; Rem. Supp. 1947 § 9578-47, part.]

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

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

41.16.145 Annual increase in benefits payable on retirement for service, death in line of duty, and disability—Appeals. The amount of all benefits payable under the provisions of RCW 41.16.080, 41.16.120, 41.16.130, 41.16.140 and 41.16.230 shall be increased annually as hereafter in this section provided. The local pension board shall meet subsequent to March 31st but prior to June 30th of each year for the purposes of adjusting benefit allowances payable pursuant to the aforementioned sections. The local board shall determine the increase in the consumer price index between January 1st and December 31st of the previous year and increase in dollar amount the benefits payable subsequent to July 1st of the year in which said board makes such determination by a dollar amount proportionate to the increase in the consumer price index: PROVIDED, That regardless of the change in the consumer price index, such increase shall be at least two percent each year such adjustment is made.

Each year effective with the July payment all benefits specified herein, shall be increased by this section. This benefit increase shall be paid monthly as part of the regular pension payment and shall be cumulative. The increased benefits authorized by this section shall not affect any benefit payable under the provisions of chapter 41.16 RCW in which the benefit payment is attached to a current salary of the rank held at time of retirement. A beneficiary of benefit increases provided for pursuant to this section is hereby authorized to appeal a decision on such increases or the failure of the local pension board to order such increased benefits or the amount of such benefits to the Washington law enforcement officers' and firefighters' system retirement board provided for in *RCW 41.26.050.

For the purpose of this section the term "consumer price index" shall mean, for any calendar year, the consumer price index for the Seattle, Washington area as compiled by the bureau of labor statistics of the United States department of labor. [2007 c 218 § 30; 1975-'76 2nd ex.s. c 44 § 1; 1975 1st ex.s. c 178 § 1; 1974 ex.s. c 190 § 1; 1970 ex.s. c 37 § 3; 1969 ex.s. c 209 § 38.]

***Reviser's note:** RCW 41.26.050 was repealed by 1982 c 163 § 23. Powers, duties, and functions of the Washington law enforcement officers' and firefighters' retirement board were transferred to the director of retirement systems by RCW 41.26.051, which has been decodified.

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

Construction of RCW 41.16.145—Severability—1975 1st ex.s. c 178: See RCW 41.16.921, 41.16.911.

Construction—1970 ex.s. c 37: See note following RCW 41.18.104.

Effective date—Construction—Severability—1969 ex.s. c 209: See RCW 41.26.3901, 41.26.3902, and 41.26.3903.

41.16.150 Payment on separation from service. (1) Any firefighter who has served twenty years or more and who

shall resign or be dismissed, shall have the option of receiving all his or her contributions plus earned interest compounded semiannually, or a monthly pension in the amount of his or her average monthly salary times the number of years of service rendered, times one and one-half percent. Payment of such pension shall commence at the time of severance from the fire department, or at the age of fifty-five years, whichever shall be later. The firefighter shall have sixty days from the severance date to elect which option he or she will take. In the event he or she fails to exercise his or her right of election then he or she shall receive the amount of his or her contributions plus accrued compounded interest. In the event he or she elects such pension, but dies before attaining the age of fifty-five, his widow or her widower, or if he leaves no widow or she leaves no widower, then his or her child or children shall receive only his or her contribution, plus accrued compounded interest. In the event he or she elects to take a pension and dies after attaining the age of fifty-five, his widow or her widower, or if he leaves no widow or she leaves no widower, then child or children shall receive his or her contributions, plus accrued compounded interest, less the amount of pension payments made to such firefighter during his or her lifetime.

(2) Any firefighter who shall have served for a period of less than twenty years, and shall resign or be dismissed, shall be paid the amount of his or her contributions, plus accrued compounded interest. [2007 c 218 § 31; 1973 1st ex.s. c 154 § 65; 1959 c 5 § 9; 1957 c 82 § 9. Prior: 1947 c 91 § 8, part; Rem. Supp. 1947 § 9578-47, part.]

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

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

41.16.160 Payment on death not in line of duty. Whenever any firefighter, after four years of service, shall die from natural causes, or from an injury not sustained in the performance of his or her duty and for which no pension is provided in this chapter, and who has not been retired on account of disability, his widow or her widower, if he or she was his wife or her husband at the time he or she was stricken with his or her last illness, or at the time he or she received the injuries from which he or she died; or if there is no such widow, then his or her child or children shall be entitled to the amount of his or her contributions, plus accrued compounded interest, or the sum of one thousand dollars, whichever sum shall be the greater. In case of death as above stated, before the end of four years of service, an amount based on the proportion of the time of service to four years shall be paid such beneficiaries. [2007 c 218 § 32; 1973 1st ex.s. c 154 § 66; 1959 c 5 § 10; 1957 c 82 § 10. Prior: 1947 c 91 § 8, part; 1929 c 86 § 7, part; 1919 c 196 § 9, part; 1909 c 50 § 9, part; Rem. Supp. 1947 § 9578-47, part.]

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

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

41.16.170 Payment on death of firefighter with no dependents. Whenever a firefighter dies leaving no widow or widower or children, the amount of his or her accumulated contributions, plus accrued compounded interest only, shall be paid his or her beneficiary. [2007 c 218 § 33; 1973 1st ex.s. c 154 § 67; 1959 c 5 § 11; 1957 c 82 § 11. Prior: 1947

c 91 § 8, part; 1935 c 39 § 5; 1929 c 86 § 6, part; 1919 c 196 § 8, part; 1909 c 50 § 8, part; Rem. Supp. 1947 § 9578-47, part.]

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

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

41.16.180 Funeral expense. Upon the death of any active firefighter, firefighter who is disabled, or retired firefighter, the board shall pay from the fund the sum of two hundred dollars to assist in defraying the funeral expenses of such firefighter. [2007 c 218 § 34; 1959 c 5 § 12; 1957 c 82 § 12. Prior: 1947 c 91 § 8, part; 1935 c 39 § 10; 1929 c 86 § 15; 1919 c 196 § 18; Rem. Supp. 1947 § 9578-47, part.]

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

41.16.190 Waiting period—Disability retirement. No firefighter disabled in the performance of duty shall receive a pension until six months has elapsed after such disability was sustained. Therefore, whenever the retirement board, pursuant to examination by the board's physician and such other evidence as it may require, shall find a firefighter has been disabled while in the performance of his or her duties, it shall declare him or her inactive. For a period of six months from the time he or she became disabled, he or she shall continue to draw full pay from his or her municipality and in addition thereto he or she shall, at the expense of the municipality, be provided with such medical, hospital and nursing care as the retirement board deems proper. If the board finds at the expiration of six months that the firefighter is unable to return to and perform his or her duties, then he or she shall be retired as herein provided. [2007 c 218 § 35; 1959 c 5 § 13; 1957 c 82 § 13. Prior: 1947 c 91 § 8, part; 1935 c 39 § 4, part; 1929 c 86 § 5, part; 1919 c 196 § 7, part; 1909 c 50 § 7, part; Rem. Supp. 1947 § 9578-47, part.]

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

41.16.200 Examination of disability pensioners—Restoration to duty. The board shall require all firefighters receiving disability pensions to be examined every six months. All such examinations shall be made by physicians duly appointed by the board. If a firefighter shall fail to submit to such examination within ten days of having been so ordered in writing by said retirement board all pensions or benefits paid to said firefighter under this chapter, shall immediately cease and the disbursing officer in charge of such payments shall issue no further payments to such firefighter. If such firefighter fails to present himself or herself for examination within thirty days after being ordered so to do, he or she shall forfeit all rights under this chapter. If such firefighter, upon examination as aforesaid, shall be found fit for service, he or she shall be restored to duty in the same rank held at the time of his or her retirement, or if unable to perform the duties of said rank, then, at his or her request, in such other rank, the duties of which he or she is then able to perform. The board shall thereupon so notify the firefighter and shall require him or her to resume his or her duties as a member of the fire department. If, upon being so notified, such member shall fail to report for employment within ten days, he or she shall forfeit all rights to any benefits under this chapter. [2007 c 218 § 36; 1947 c 91 § 9; Rem. Supp.

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1947 § 9578-48. Prior: 1929 c 86 § 8; 1919 c 196 § 10; 1909 c 50 § 10.]

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

41.16.210 Transfer of assets to new fund—Assumption of obligations. (1) Funds or assets on hand in the firefighters' relief and pension fund of any municipality established under the provisions of chapter 50, Laws of 1909, as amended, after payment of warrants drawn upon and payable therefrom, shall, by the city treasurer, be transferred to and placed in the firefighters' pension fund created by this chapter; and the firefighters' pension fund created by this chapter shall be liable for and there shall be paid therefrom in the order of their issuance any and all unpaid warrants drawn upon said firefighters' relief and pension fund.

(2) Any moneys loaned or advanced by a municipality from the general or any other fund of such municipality to the firefighters' relief and pension fund created under the provisions of chapter 50, Laws of 1909, as amended, and not repaid shall be an obligation of the firefighters' pension fund created under this chapter, and shall at such times and in such amounts as is directed by the board be repaid. [2007 c 218 § 37; 1947 c 91 § 10; Rem. Supp. 1947 § 9578-49.]

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

41.16.220 Credit for military service. Any person who was a member of the fire department and within the provisions of chapter 50, Laws of 1909, as amended, at the time he or she entered, and who is a veteran, as defined in RCW 41.04.005, shall have added and accredited to his or her period of employment as a firefighter as computed under this chapter his or her period of war service in such armed forces upon payment by him or her of his or her contribution for the period of his or her absence, at the rate provided by chapter 50, Laws of 1909, as amended, for other members: PROVIDED, HOWEVER, Such accredited service shall not in any case exceed five years. [2007 c 218 § 38; 1969 ex.s. c 269 § 7; 1947 c 91 § 11; Rem. Supp. 1947 § 9578-50.]

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

41.16.230 Repeal does not affect accrued rights. Chapter 50, Laws of 1909; chapter 196, Laws of 1919; chapter 86, Laws of 1929, and chapter 39, Laws of 1935 (secs. 9559 to 9578, incl., Rem. Rev. Stat.; secs. 396-1 to 396-43, incl., PPC) and all other acts or parts of acts in conflict herewith are hereby repealed: PROVIDED, That the repeal of said laws shall not affect any "prior firefighter," his widow, her widower, child or children, any firefighter eligible for retirement but not retired, his widow, her widower, child or children, or the rights of any retired firefighter, his widow, her widower, child or children, to receive payments and benefits from the firefighters' pension fund created under this chapter, in the amount, and in the manner provided by said laws which are hereby repealed and as if said laws had not been repealed. [2007 c 218 § 39; 1973 1st ex.s. c 154 § 68; 1947 c 91 § 12; Rem. Supp. 1947 § 9578-51.]

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

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

41.16.250 Retirement and job security rights preserved upon annexation, etc., of district. If all or any portion of a fire protection district is annexed to or incorporated into a city or town, or is succeeded by a metropolitan municipal corporation or county fire department, no full time paid firefighter affected by such annexation, incorporation or succession shall receive a reduction in his or her retirement and job security rights: PROVIDED, That this section shall not apply to any retirement and job security rights authorized under chapter 41.24 RCW. [2007 c 218 § 40; 1963 c 63 § 1.]

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

Chapter 41.18 RCW

FIREFIGHTERS' RELIEF AND PENSIONS—1955 ACT

Sections

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41.18.010 Definitions. For the purpose of this chapter, unless clearly indicated otherwise by the context, words and phrases shall have the meaning hereinafter ascribed.

(1) "Beneficiary" shall mean any person or persons designated by a firefighter in a writing filed with the board, and who shall be entitled to receive any benefits of a deceased firefighter under this chapter.

(2) "Firefighter" means any person hereafter regularly or temporarily, or as a substitute newly employed and paid as a member of a fire department, who has passed a civil service examination for firefighters and who is actively employed as a firefighter or, if provided by the municipality by appropriate local legislation, as a fire dispatcher: PROVIDED, Nothing in chapter 209, Laws of 1969 ex. sess. shall impair or permit the impairment of any vested pension rights of persons who are employed as fire dispatchers at the time chapter 209, Laws of 1969 ex. sess. takes effect; and any person heretofore regularly or temporarily, or as a substitute, employed and paid as a member of a fire department, and who has contrib-

uted under and been covered by the provisions of chapter 41.16 RCW as now or hereafter amended and who has come under the provisions of this chapter in accordance with RCW 41.18.170 and who is actively engaged as a firefighter or as a member of the fire department as a firefighter or fire dispatcher.

(3) "Retired firefighter" means and includes a person employed as a firefighter and retired under the provisions of this chapter.

(4) "Basic salary" means the basic monthly salary, including longevity pay, attached to the rank held by the retired firefighter at the date of his or her retirement, without regard to extra compensation which such firefighter may have received for special duties assignments not acquired through civil service examination: PROVIDED, That such basic salary shall not be deemed to exceed the salary of a battalion chief.

(5) "Widow or widower" means the surviving spouse of a firefighter and shall include the surviving wife or husband of a firefighter, retired on account of length of service, who was lawfully married to him or to her for a period of five years prior to the time of his or her retirement; and the surviving wife or husband of a firefighter, retired on account of disability, who was lawfully married to him or her at and prior to the time he or she sustained the injury or contracted the illness resulting in his or her disability. The word shall not mean the divorced wife or husband of an active or retired firefighter.

(6) "Child" or "children" means a firefighter's child or children under the age of eighteen years, unmarried, and in the legal custody of such firefighter at the time of his death or her death.

(7) "Earned interest" means and includes all annual increments to the firefighters' pension fund from income earned by investment of the fund. The earned interest payable to any firefighter when he or she leaves the service and accepts his or her contributions, shall be that portion of the total earned income of the fund which is directly attributable to each individual firefighter's contributions. Earnings of the fund for the preceding year attributable to individual contributions shall be allocated to individual firefighters' accounts as of January 1st of each year.

(8) "Board" shall mean the municipal firefighters' pension board.

(9) "Contributions" shall mean and include all sums deducted from the salary of firefighters and paid into the fund as hereinafter provided.

(10) "Disability" shall mean and include injuries or sickness sustained by a firefighter.

(11) "Fire department" shall mean the regularly organized, full time, paid, and employed force of firefighters of the municipality.

(12) "Fund" shall have the same meaning as in RCW 41.16.010 as now or hereafter amended. Such fund shall be created in the manner and be subject to the provisions specified in chapter 41.16 RCW as now or hereafter amended.

(13) "Municipality" shall mean every city, town and fire protection district having a regularly organized full time, paid, fire department employing firefighters.

(14) "Performance of duty" shall mean the performance of work or labor regularly required of firefighters and shall

include services of an emergency nature normally rendered while off regular duty. [2007 c 218 § 41; 1973 1st ex.s. c 154 § 69; 1969 ex.s. c 209 § 40; 1965 ex.s. c 45 § 2; 1961 c 255 § 1; 1955 c 382 § 1.]

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

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

Effective date—Severability—Construction—1969 ex.s. c 209: See RCW 41.26.3901, 41.26.3902, and 41.26.3903.

Severability—1961 c 255: "If any clause, part or section of this act shall be adjudged in violation of the constitution, or for any reason invalid, such judgment shall not affect nor invalidate the remainder of the act, nor any clause, part or section thereof, but such judgment shall be confined in its operation to the clause, part or section directly involved in the controversy in which judgment was rendered, and the balance of the act shall remain in full force and effect." [1961 c 255 § 13.]

41.18.015 Pension boards in fire districts created—Members—Terms—Vacancies—Officers—Quorum. There is hereby created in each fire protection district which qualifies under this chapter, a firefighters' pension board to consist of the following five members, the chairperson of the fire commissioners for said district who shall be chairperson of the board, the county auditor, county treasurer, and in addition, two regularly employed or retired firefighters elected by secret ballot of the employed and retired firefighters. Retired members who are subject to the jurisdiction of the pension board have both the right to elect and the right to be elected under this section. The first members to be elected by the firefighters shall be elected annually for a two-year term. The two firefighter elected members shall, in turn, select a third eligible member who shall serve in the event of an absence of one of the regularly elected members. In case a vacancy occurs in the membership of the firefighter or retired members, the members shall in the same manner elect a successor to serve the unexpired term. The board may select and appoint a secretary who may, but need not be a member of the board. In case of absence or inability of the chairperson to act, the board may select a chairperson pro tempore who shall during such absence or inability perform the duties and exercise the powers of the chairperson. A majority of the members of said board shall constitute a quorum and have power to transact business. [2007 c 218 § 42; 1992 c 6 § 1; 1961 c 255 § 11.]

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

41.18.020 Powers and duties of board. The board, in addition to such general and special powers as are vested in it by the provisions of chapter 41.16 RCW, which powers the board shall have with respect to this chapter shall have power to:

- (1) Generally supervise and control the administration of this chapter;
- (2) Pass upon and allow or disallow applications for pensions or other benefits provided by this chapter;
- (3) Provide for payment from the firefighters' pension fund of necessary expenses of maintenance and administration required by the provisions of this chapter;
- (4) Make rules and regulations not inconsistent with this chapter for the purpose of carrying out and effecting the same;
- (5) Require the physicians appointed under the provisions of chapter 41.16 RCW, to examine and report to the

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board upon all applications for relief and pensions under this chapter; and

(6) Perform such acts, receive such compensation and enjoy such immunity as provided in RCW 41.16.040. [2007 c 218 § 43; 1955 c 382 § 2.]

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

41.18.030 Contributions by firefighters. Every firefighter to whom this chapter applies shall contribute to the firefighters' pension fund a sum equal to six percent of his or her basic salary which shall be deducted therefrom and placed in the fund. [2007 c 218 § 44; 1961 c 255 § 2; 1955 c 382 § 3.]

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

41.18.040 Retirement for service—Widow's or widower's pension—Payments to children. Whenever any firefighter, *at the time of taking effect of this act or thereafter, shall have been appointed under civil service rules and have served for a period of twenty-five years or more as a member in any capacity of the regularly constituted fire department of any city, town or fire protection district which may be subject to the provisions of this chapter, and shall have attained the age of fifty years, he or she shall be eligible for retirement and shall be retired by the board upon his or her written request. Upon his or her retirement such firefighter shall be paid a monthly pension which shall be equal to fifty percent of the basic salary now or hereafter attached to the same rank and status held by the said firefighter at the date of his or her retirement: PROVIDED, That a firefighter hereafter retiring who has served as a member for more than twenty-five years, shall have his or her pension payable under this section increased by two percent of the basic salary per year for each full year of such additional service to a maximum of five additional years.

Upon the death of any such retired firefighter, his or her pension shall be paid to his widow or her widower, at the same monthly rate that the retired firefighter would have received had he or she lived, if such widow or widower was his wife or her husband for a period of five years prior to the time of his or her retirement. If there be no widow or widower, then such monthly payments shall be distributed to and divided among his or her children, share and share alike, until they reach the age of eighteen or are married, whichever occurs first. [2007 c 218 § 45; 1973 1st ex.s. c 154 § 70; 1969 ex.s. c 209 § 29; 1965 ex.s. c 45 § 3; 1961 c 255 § 3; 1955 c 382 § 4.]

***Reviser's note:** The phrase "at the time of taking effect of this act or thereafter" first appears in the 1961 amendment, which became effective at midnight June 7, 1961 (see preface, 1961 session laws). The basic act, 1955 c 382, became effective at midnight June 8, 1955 (see preface, 1955 session laws).

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

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

Applicability—1969 ex.s. c 209: See RCW 41.18.102.

Effective date—Severability—Construction—1969 ex.s. c 209: See RCW 41.26.3901, 41.26.3902, and 41.26.3903.

41.18.045 Pension benefits for widows or widowers of unretired, eligible firefighters—Retroactive. Upon the death of a firefighter who is eligible to retire under RCW

41.18.040 as now or hereafter amended, but who has not retired, a pension shall be paid to his widow or her widower at the same monthly rate that he or she was eligible to receive at the time of his or her death, if such widow or widower was his wife or her husband for a period of five years prior to his or her death. If there be no widow or widower, then such monthly payments shall be distributed to and divided among his or her children, share and share alike, until they reach the age of eighteen or are married, whichever comes first.

This section shall apply retroactively for the benefit of all widows or widowers and survivors of firefighters who died after January 1, 1967, if such firefighters were otherwise eligible to retire on the date of death. [2007 c 218 § 46; 1973 1st ex.s. c 154 § 71; 1969 ex.s. c 209 § 25.]

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

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

Effective date—Severability—Construction—1969 ex.s. c 209: See RCW 41.26.3901, 41.26.3902, and 41.26.3903.

41.18.050 Disablement in line of duty—Retirement.

Every firefighter who shall become disabled as a result of the performance of duty may be retired at the expiration of six months from the date of his or her disability, upon his or her written request filed with his or her retirement board. The board may, upon such request being filed, consult such medical advice as it sees fit, and may have the applicant examined by such physicians as it deems desirable. If from the reports of such physicians the board finds the applicant capable of performing his or her duties in the fire department, the board may refuse to recommend his or her retirement. If, after the expiration of six months from the date of his or her disability, the board deems it for the good of the fire department or the pension fund it may recommend the retirement of a firefighter disabled as a result of the performance of duty without any request for the same by him or her, and after having been given by the board a thirty days' written notice of such recommendation he or she shall be retired. [2007 c 218 § 47; 1955 c 382 § 5.]

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

41.18.060 Disablement in line of duty—Inactive period—Allowance—Medical, hospital, nursing care.

Whenever the retirement board, pursuant to examination by the board's physician and such other evidence as it may require, shall find a firefighter has been disabled while in the performance of his or her duties it shall declare the firefighter inactive. For a period of six months from the time of the disability the firefighter shall draw from the pension fund a disability allowance equal to his or her basic monthly salary and, in addition, shall be provided with medical, hospital and nursing care as long as the disability exists. The board may, at its discretion, elect to reimburse the firefighter who is disabled for premiums the firefighter has paid for medical insurance that supplements medicare, including premiums the firefighter has paid for medicare part B coverage. If the board finds at the expiration of six months that the firefighter is unable to return to and perform his or her duties, the firefighter shall be retired at a monthly sum equal to fifty percent of the amount of his or her basic salary at any time thereafter attached to the rank which he or she held at the date of retire-

ment: PROVIDED, That where, at the time of retirement hereafter for disability under this section, the firefighter has served honorably for a period of more than twenty-five years as a member, in any capacity of the regularly constituted fire department of a municipality, the firefighter shall have his or her pension payable under this section increased by two percent of his or her basic salary per year for each full year of additional service to a maximum of five additional years. [2007 c 218 § 48; 1992 c 22 § 1; 1969 ex.s. c 209 § 30; 1961 c 255 § 4; 1955 c 382 § 6.]

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

Effective date—Severability—Construction—1969 ex.s. c 209: See RCW 41.26.3901, 41.26.3902, and 41.26.3903.

41.18.080 Payment upon disablement not in line of duty.

Any firefighter who has completed his or her probationary period and has been permanently appointed, and sustains a disability not in the performance of his or her duty which renders him or her unable to continue his or her service, may request to be retired by filing a written request with his or her retirement board within sixty days from the date of his or her disability. The board may, upon such request being filed, consult such medical advice as it deems fit and proper. If the board finds the firefighter capable of performing his or her duties, it may refuse to recommend retirement and order the firefighter back to duty. If no request for retirement has been received after the expiration of sixty days from the date of his or her disability, the board may recommend retirement of the firefighter. The board shall give the firefighter a thirty-day written notice of its recommendation, and he or she shall be retired upon expiration of said notice. Upon retirement he or she shall receive a pension equal to fifty percent of his or her basic salary. For a period of ninety days following such disability the firefighter shall receive an allowance from the fund equal to his or her basic salary. He or she shall during said ninety days be provided with such medical, hospital, and nursing care as the board deems proper. No funds shall be expended for such disability if the board determines that the firefighter was gainfully employed or engaged for compensation in other than fire department duty when the disability occurred, or if such disability was the result of dissipation or abuse. Whenever any firefighter shall die as a result of a disability sustained not in the line of duty, his widow or her widower shall receive a monthly pension equal to one-third of his or her basic salary until remarried; if such widow or widower has dependent upon her or him for support a child or children of such deceased firefighter, he or she shall receive an additional pension as follows: One child, one-eighth of the deceased's basic salary; two children, one-seventh; three or more children, one-sixth. If there be no widow or widower, monthly payments equal to one-third of the deceased firefighter's basic salary shall be made to his or her child or children. The widow or widower may elect at any time in writing to receive a cash settlement, and if the board after hearing finds it financially beneficial to the pension fund, he or she may receive the sum of five thousand dollars cash in lieu of all future monthly pension payments, and other benefits, including benefits to any child and/or children. [2007 c 218 § 49; 1973 1st ex.s. c 154 § 72; 1965 c 109 § 1; 1961 c 255 § 5; 1955 c 382 § 9.]

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

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

41.18.090 Examination of disability pensioners—Restoration to active duty. The board shall require all firefighters receiving disability pensions to be examined every six months: PROVIDED, That no such examinations shall be required if upon certification by physicians the board shall formally enter upon its records a finding of fact that the disability is and will continue to be of such a nature that return to active duty can never reasonably be expected. All examinations shall be made by physicians duly appointed by the board. If a firefighter shall willfully fail to present himself or herself for examination, within thirty days after being ordered so to do, he or she shall forfeit all rights under this chapter. If such firefighter, upon examination as aforesaid, shall be found fit for service, he or she shall be restored to duty in the same rank held at the time of his or her retirement, or if unable to perform the duties of said rank then, at his or her request, in such other like or lesser rank as may be or become open and available, the duties of which he or she is then able to perform. The board shall thereupon so notify the firefighter and shall require him or her to resume his or her duties as a member of the fire department. If, upon being so notified, such member shall willfully fail to report for employment within ten days, he or she shall forfeit all rights to any benefit under this chapter. [2007 c 218 § 50; 1955 c 382 § 15.]

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

41.18.100 Payment on death in line of duty or while retired on account of service connected disability. In the event a firefighter is killed in the performance of duty, or in the event a firefighter retired on account of service connected disability shall die from any cause, his widow or her widower shall receive a monthly pension under one of the following applicable provisions: (1) If a firefighter is killed in the line of duty his widow or her widower shall receive a monthly pension equal to fifty percent of his or her basic salary at the time of his or her death; (2) if a firefighter who has retired on account of a service connected disability dies, his widow or her widower shall receive a monthly pension equal to the amount of the monthly pension such retired firefighter was receiving at the time of his or her death. If she or he at any time so elects in writing and the board after hearing finds it to be financially beneficial to the pension fund, he or she may receive in lieu of all future monthly pension and other benefits, including benefits to child or children, the sum of five thousand dollars in cash. If there be no widow or widower at the time of such firefighter's death or upon the widow's or widower's death the monthly pension benefits hereinabove provided for shall be paid to and divided among his or her child or children share and share alike, until they reach the age of eighteen or are married, whichever occurs first. The widow's or widower's monthly pension benefit, including increased benefits to his or her children shall cease if and when he or she remarries: PROVIDED, That no pension payable under the provisions of this section shall be less than that specified under RCW 41.18.200. [2007 c 218 § 51; 1975 1st ex.s. c 178 § 4; 1973 1st ex.s. c 154 § 73; 1969 ex.s. c 209 § 28; 1965 ex.s. c 45 § 4; 1955 c 382 § 8.]

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

Construction—Severability—1975 1st ex.s. c 178: See RCW 41.16.911, 41.16.921.

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

Effective date—Severability—Construction—1969 ex.s. c 209: See RCW 41.26.3901, 41.26.3902, and 41.26.3903.

41.18.102 Applicability of RCW 41.18.040 and 41.18.100. The provisions of RCW 41.18.040 and 41.18.100 shall be applicable to all firefighters employed prior to March 1, 1970, but shall not apply to any former firefighter who has terminated his or her employment prior to July 1, 1969. [2007 c 218 § 52; 1969 ex.s. c 209 § 32.]

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

Effective date—Severability—Construction—1969 ex.s. c 209: See RCW 41.26.3901, 41.26.3902, and 41.26.3903.

41.18.130 Payment on separation—With less than twenty-five years service or less than fifty years of age—Option to be classified as vested firefighter. Any firefighter who shall have served for a period of less than twenty-five years, or who shall be less than fifty years of age, and shall resign, or be dismissed from the fire department for a reason other than conviction for a felony, shall be paid the amount of his or her contributions to the fund plus earned interest: PROVIDED, That in the case of any firefighter who has completed twenty years of service, such firefighter, upon termination for any cause except for a conviction of a felony, shall have the option of electing, in lieu of recovery of his or her contributions as herein provided, to be classified as a vested firefighter in accordance with the following provisions:

(1) Written notice of such election shall be filed with the board within thirty days after the effective date of such firefighter's termination;

(2) During the period between the date of his or her termination and the date upon which he or she becomes a retired firefighter as hereinafter provided, such vested firefighter and his or her spouse or dependent children shall be entitled to all benefits available under chapter 41.18 RCW to a retired firefighter and his or her spouse or dependent children with the exception of the service retirement allowance as herein provided for: PROVIDED, That any claim for medical coverage under RCW 41.18.060 shall be attributable to service connected illness or injury;

(3) Any firefighter electing to become a vested firefighter shall be entitled at such time as he or she otherwise would have completed twenty-five years of service had he or she not terminated, to receive a service retirement allowance computed on the following basis: Two percent of the amount of salary attached to the position held by the vested firefighter for the year preceding the date of his or her termination, for each year of service rendered prior to the date of his or her termination. [2007 c 218 § 53; 1969 ex.s. c 209 § 31; 1961 c 255 § 6; 1955 c 382 § 11.]

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

Effective date—Severability—Construction—1969 ex.s. c 209: See RCW 41.26.3901, 41.26.3902, and 41.26.3903.

41.18.140 Funeral expenses. The board shall pay from the firefighters' pension fund upon the death of any active or

retired firefighter the sum of five hundred dollars, to assist in defraying the funeral expenses of such firefighter. [2007 c 218 § 54; 1961 c 255 § 7; 1955 c 382 § 13.]

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

41.18.150 Credit for military service. Every person who was a member of the fire department at the time he or she entered and served in the armed forces of the United States in time of war, whether as a draftee, or inductee, and who shall have been discharged from such armed forces under conditions other than dishonorable, shall have added and accredited to his or her period of employment as a firefighter his or her period of war or peacetime service in the armed forces: PROVIDED, That such added and accredited service shall not as to any individual exceed five years. [2007 c 218 § 55; 1955 c 382 § 14.]

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

41.18.160 Certain firefighters may elect to be covered under other law. Every firefighter as defined in this chapter heretofore employed as a member of a fire department, whether or not as a prior firefighter as defined in chapter 41.16 RCW, who desires to make the contributions and avail himself or herself of the pension and other benefits of said chapter 41.16 RCW, can do so by handing to and leaving with the firefighters' pension board of his or her municipality a written notice of such intention within sixty days of the effective date of this chapter, or if he or she was on disability retirement under chapter 41.16 RCW, at the effective date of this chapter and has been recalled to active duty by the retirement board, shall give such notice within sixty days of his or her return to active duty, and not otherwise. [2007 c 218 § 56; 1955 c 382 § 17.]

Reviser's note: Effective date of chapter 41.18 RCW is midnight June 8, 1955; see preface 1955 session laws.

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

41.18.165 Credit for membership in private organization acquired by municipality. Every person who was a member of a fire-fighting organization operated by a private enterprise, which fire-fighting organization shall be hereafter acquired before September 1, 1959, by a municipality as its fire department as a matter of public convenience or necessity, where it is in the public interest to retain the trained personnel of such fire-fighting organization, shall have added and accredited to his or her period of employment as a firefighter his or her period of service with said private enterprise, except that this shall apply only to those persons who are in the service of such fire-fighting organization at the time of its acquisition by the municipality and who remain in the service of that municipality until this chapter shall become applicable to such persons.

No such person shall have added and accredited to his or her period of employment as a firefighter his or her period of service with said private enterprise unless he, she, or a third party shall pay to the municipality his or her contribution for the period of such service with the private enterprise at the rate provided in RCW 41.18.030, or, if he or she shall be entitled to any private pension or retirement benefits as a result of such service with the private enterprise, unless he or she

agrees at the time of his or her employment by the municipality to accept a reduction in the payment of any benefits payable under this chapter that are based in whole or in part on such added and accredited service by the amount of those private pension or retirement benefits received. For the purposes of RCW 41.18.030, the date of entry of service shall be deemed the date of entry into service with the private enterprise, which service is accredited by this section, and the amount of contributions for the period of accredited service shall be based on the wages or salary of such person during that added and accredited period of service with the private enterprise.

The city may receive payments for these purposes from a third party and shall make from such payments contributions with respect to such prior service as may be necessary to enable the fund to assume its obligations. [2007 c 218 § 57; 1959 c 69 § 1.]

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

41.18.170 Application of chapter. The provisions of this chapter governing contributions, pensions, and benefits shall have exclusive application (1) to firefighters as defined in this chapter hereafter becoming members of a fire department, (2) to firefighters as defined in this chapter heretofore employed in a department who have not otherwise elected as provided for in RCW 41.18.160, and (3) to firefighters on disability retirement under chapter 41.16 RCW, at the effective date of this chapter, who thereafter shall have been returned to active duty by the retirement board, and who have not otherwise elected as provided for in RCW 41.18.160 within sixty days after return to active duty. [2007 c 218 § 58; 1955 c 382 § 16.]

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

41.18.180 Firefighter contributor under prior law may obtain benefits of chapter—Refunds. Any firefighter who has made contributions under any prior act may elect to avail himself or herself of the benefits provided by this chapter or under such prior act by filing written notice with the board within sixty days from June 7, 1961: PROVIDED, That any firefighter who has received refunds by reason of selecting the benefits of prior acts shall return the amount of such refunds as a condition to coverage under chapter 255, Laws of 1961. [2007 c 218 § 59; 1961 c 255 § 12.]

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

41.18.190 Transfer of membership authorized. Any firefighter as defined in RCW 41.18.010 who has prior to July 1, 1969 been employed as a member of a fire department and who desires to make contributions and avail himself or herself of the pension and other benefits of chapter 41.18 RCW as now law or hereafter amended, may transfer his or her membership from any other pension fund, except the Washington law enforcement officers' and firefighters' retirement system, to the pension fund provided in chapter 41.18 RCW: PROVIDED, That such firefighter transmits written notice of his or her intent to transfer to the pension board of his or her municipality prior to September 1, 1969. [2007 c 218 § 60; 1969 ex.s. c 209 § 41.]

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

Effective date—Severability—Construction—1969 ex.s. c 209: See RCW 41.26.3901, 41.26.3902, and 41.26.3903.

Law enforcement officers' and firefighters' retirement system: Chapter 41.26 RCW.

41.18.210 Transfer of credit from city employees' retirement system to firefighters' pension system. Any former employee of a department of a city of the first class, who (1) was a member of the employees' retirement system of such city, and (2) is now employed within the fire department of such city, may transfer his or her former membership credit from the city employees' retirement system to the firefighter's pension system created by chapters 41.16 and 41.18 RCW by filing a written request with the board of administration and the municipal firefighters' pension board, respectively.

Upon the receipt of such request, the transfer of membership to the city's firefighter's pension system shall be made, together with a transfer of all accumulated contributions credited to such member. The board of administration shall transmit to the municipal firefighters' pension board a record of service credited to such member which shall be computed and credited to such member as a part of his or her period of employment in the city's firefighter's pension system. For the purpose of the transfer contemplated by this section, those affected individuals who have formerly withdrawn funds from the city employees' retirement system shall be allowed to restore contributions withdrawn from that retirement system directly to the firefighter's pension system and receive credit in the firefighter's pension system for their former membership service in the prior system.

Any employee so transferring shall have all the rights, benefits, and privileges that he or she would have been entitled to had he or she been a member of the city's firefighter's pension system from the beginning of his or her employment with the city.

No person so transferring shall thereafter be entitled to any other public pension, except that provided by chapter 41.26 RCW or social security, which is based upon such service with the city.

The right of any employee to file a written request for transfer of membership as set forth in this section shall expire December 31, 1974. [2007 c 218 § 61; 1974 ex.s. c 148 § 1.]

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

Chapter 41.24 RCW

VOLUNTEER FIREFIGHTERS' AND RESERVE OFFICERS' RELIEF AND PENSIONS

Sections

- 41.24.155 Vocational rehabilitation—Purpose—Costs—Administration—Discretion of state board.
- 41.24.250 State board for volunteer firefighters and reserve officers—Composition—Terms—Vacancies—Oath.
- 41.24.400 Reserve officers—Enrollment—Limitations.

41.24.155 Vocational rehabilitation—Purpose—Costs—Administration—Discretion of state board. (1) One of the primary purposes of this section is to enable injured participants to return to their regular occupation, business, or profession, or to engage in any occupation or perform any work for compensation or profit. To this end, the state

board shall utilize the services of individuals and organizations, public or private, whose experience, training, and interests in vocational rehabilitation and retraining qualify them to lend expert assistance to the state board in such programs of vocational rehabilitation as may be reasonable to make the participant return to his or her regular occupation, business, or profession, or to engage in any occupation or perform any work for compensation or profit consistent with his or her physical and mental status. After evaluation and recommendation by such individuals or organizations and prior to final evaluation of the participant's permanent disability, if in the sole opinion of the state board, whether or not medical treatment has been concluded, vocational rehabilitation is both necessary and likely to enable the injured participant to return to his or her regular occupation, business, or profession, or to engage in any occupation or perform any work for compensation or profit, the state board may, in its sole discretion, pay the cost as provided in subsection (3) or (4) of this section.

(2) When, in the sole discretion of the state board, vocational rehabilitation is both necessary and likely to make the participant return to his or her regular occupation, business, or profession, or to engage in any occupation or perform any work for compensation or profit, then the following order of priorities shall be used:

- (a) Return to the previous job with the same employer;
- (b) Modification of the previous job with the same employer including transitional return to work;
- (c) A new job with the same employer in keeping with any limitations or restrictions;
- (d) Modification of a new job with the same employer including transitional return to work;
- (e) Modification of the previous job with a new employer;
- (f) A new job with a new employer or self-employment based upon transferable skills;
- (g) Modification of a new job with a new employer;
- (h) A new job with a new employer or self-employment involving on-the-job training;
- (i) Short-term retraining and job placement.

(3)(a) Except as provided in (b) of this subsection, costs for vocational rehabilitation benefits allowed by the state board under subsection (1) of this section may include the cost of books, tuition, fees, supplies, equipment, transportation, child or dependent care, and other necessary expenses in an amount not to exceed four thousand dollars. This amount must be used within fifty-two weeks of the determination that vocational rehabilitation is permitted under this section.

(b) The expenses allowed under (a) of this subsection may include training fees for on-the-job training and the cost of furnishing tools and other equipment necessary for self-employment or reemployment. However, compensation or payment of retraining with job placement expenses under (a) of this subsection may not be authorized for a period of more than fifty-two weeks, except that such period may, in the sole discretion of the state board, after its review, be extended for an additional fifty-two weeks or portion thereof by written order of the state board. However, under no circumstances shall the total amount of benefit paid under this section exceed four thousand dollars.

(4) In addition to the vocational rehabilitation expenditures provided for under subsection (3) of this section, an

additional five thousand dollars may, upon authorization of the state board, be expended for: (a) Accommodations for an injured participant that are medically necessary for participation in an approved retraining plan; and (b) accommodations necessary to perform the essential functions of an occupation in which an injured participant is seeking employment, consistent with the retraining plan or the recommendations of a vocational evaluation. The injured participant's attending physician or licensed advanced registered nurse practitioner must verify the necessity of the modifications or accommodations. The total expenditures authorized in this subsection shall not exceed five thousand dollars.

(5) The state board shall follow the established criteria set forth by the department of labor and industries to monitor the quality and effectiveness of rehabilitation services provided by the individuals and organizations used under subsection (1) of this section. The state board shall make referrals for vocational rehabilitation services based on these performance criteria.

(6) The state board may engage, where feasible and cost-effective, in a cooperative program with the state employment security department to provide job placement services under this section.

(7) Except as otherwise provided in this section, the vocational benefits provided for in this section are available to participants who have claims currently pending as of April 17, 2007, or whose injury occurred on or after January 1, 2006. [2007 c 57 § 1.]

Effective date—2007 c 57: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately [April 17, 2007]." [2007 c 57 § 2.]

41.24.250 State board for volunteer firefighters and reserve officers—Composition—Terms—Vacancies—Oath. The state board for volunteer firefighters and reserve officers is created to consist of five members who are participants under this chapter, at least three of whom are not receiving relief or retirement pension payments under this chapter, no two of whom shall be from the same congressional district. The members are appointed by the governor to serve overlapping terms of six years. Of members first appointed, one shall be appointed for a term of six years, one for five years, one for four years, one for three years, and one for two years. The governor may consider participants who are recommended for appointment by the appropriate state associations. Upon the expiration of a term, a successor shall be appointed by the governor for a term of six years. Any vacancy shall be filled by the governor for the unexpired term. Each member of the state board, before entering on the performance of his or her duties, shall take an oath that he or she will not knowingly violate or willingly permit the violation of any provision of law applicable to this chapter, which oath shall be filed with the secretary of state.

The state board is not unlawfully constituted and a member of the board is not ineligible to serve the remainder of the member's unexpired term on the board solely by reason of the establishment of new or revised boundaries for congressional districts. [2007 c 56 § 1; 1999 c 148 § 23; 1989 c 91 § 22; 1982 1st ex.s. c 30 § 11; 1955 c 263 § 2.]

Effective date—1989 c 91: See note following RCW 41.24.010.

41.24.400 Reserve officers—Enrollment—Limitations. (1) Except as provided in subsection (2) of this section, any municipality may make provision by appropriate legislation and payment of fees required by RCW 41.24.030(1) solely for the purpose of enabling any reserve officer to enroll under the retirement pension provisions of this chapter or fees required under RCW 41.24.030(1) to pay for the costs of extending the relief provisions of this chapter to its reserve officers.

(2) A reserve officer is not eligible to receive a benefit under the retirement provisions of this chapter for service under chapter 41.26, 41.32, 41.35, 41.37, or 41.40 RCW.

(3) Every municipality shall make provisions for the collection and payment of the fees required under this chapter, and shall continue to make provisions for all reserve officers who come under this chapter as long as they continue to be employed as reserve officers.

(4) Except as provided under RCW 41.24.450, a reserve officer is not eligible to receive a benefit under the relief provisions of this chapter. [2007 c 492 § 7; 1999 c 148 § 31; 1998 c 307 § 4; 1995 c 11 § 2.]

Chapter 41.26 RCW

LAW ENFORCEMENT OFFICERS' AND FIREFIGHTERS' RETIREMENT SYSTEM

Sections

41.26.048	Special death benefit—Death in the course of employment—Death from disease or infection arising from employment.
41.26.080	Funding total liability of plan 1 system.
41.26.195	Transfer of service credit from other retirement system—Irrevocable election allowed.
41.26.473	Disabled in the line of duty—Continuation of service credit—Conditions.
41.26.547	Emergency medical technicians—Job relocation—Retirement options. (<i>Expires July 1, 2023.</i>)
41.26.715	Board of trustees—Created—Selection of trustees—Terms of office—Vacancies.
41.26.7151	Board of trustees—Political party representation.

41.26.048 Special death benefit—Death in the course of employment—Death from disease or infection arising from employment. (1) A one hundred fifty thousand dollar death benefit shall be paid to the member's estate, or such person or persons, trust or organization as the member shall have nominated by written designation duly executed and filed with the department. If there be no such designated person or persons still living at the time of the member's death, such member's death benefit shall be paid to the member's surviving spouse as if in fact such spouse had been nominated by written designation, or if there be no such surviving spouse, then to such member's legal representatives.

(2) The benefit under this section shall be paid only when death occurs: (a) As a result of injuries sustained in the course of employment; or (b) as a result of an occupational disease or infection that arises naturally and proximately out of employment covered under this chapter. The determination of eligibility for the benefit shall be made consistent with Title 51 RCW by the department of labor and industries. The department of labor and industries shall notify the department of retirement systems by order under RCW 51.52.050. [2007 c 487 § 2; 2006 c 351 § 1; 1996 c 226 § 1.]

Effective date—1996 c 226: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and shall take effect immediately [March 28, 1996]." [1996 c 226 § 4.]

41.26.080 Funding total liability of plan 1 system. (1) Except as set forth under subsection (2) of this section, the total liability of the plan 1 system shall be funded as follows:

(a) Every plan 1 member shall have deducted from each payroll a sum equal to six percent of his or her basic salary for each pay period.

(b) Every employer shall contribute monthly a sum equal to six percent of the basic salary of each plan 1 employee who is a member of this retirement system. The employer shall transmit the employee and employer contributions with a copy of the payroll to the retirement system monthly.

(c) The remaining liabilities of the plan 1 system shall be funded as provided in chapter 41.45 RCW.

(d) Every member shall be deemed to consent and agree to the contribution made and provided for herein, and shall receipt in full for his or her salary or compensation. Payment less said contributions shall be a complete discharge of all claims and demands whatsoever for the services rendered by such person during the period covered by such payments, except his or her claim to the benefits to which he or she may be entitled under the provisions of this chapter.

(2) No employer or member contribution is required after June 30, 2000, unless the most recent valuation study for law enforcement officers' and fire fighters' retirement system plan 1 indicates the plan has unfunded liabilities. The legislature clarifies the enactment of section 907, chapter 1, Laws of 2000 2nd sp. sess. and affirms the suspension of employer and member contributions to plan 1 of the law enforcement officers' and firefighters' retirement system, effective June 30, 2000, as provided in this subsection. The legislature intends this 2007 amendment of this subsection to be curative, remedial, and retrospectively applicable to June 30, 2000. [2007 c 492 § 8; 2000 2nd sp.s. c 1 § 907; 1991 c 35 § 17; 1989 c 273 § 13; 1969 ex.s. c 209 § 8.]

Severability—Effective date—2000 2nd sp.s. c 1: See notes following RCW 41.05.143.

Intent—1991 c 35: See note following RCW 41.26.005.

Severability—1989 c 273: See RCW 41.45.900.

41.26.195 Transfer of service credit from other retirement system—Irrevocable election allowed. Any member of the teachers' retirement system plans 1, 2, or 3, the public employees' retirement system plans 1, 2, or 3, the public safety employees' retirement system plan 2, the school employees' retirement system plans 2 or 3, or the Washington state patrol retirement system plans 1 or 2 who has previously established service credit in the law enforcement officers' and fire fighters' retirement system plan 1 may make an irrevocable election to have such service transferred to their current retirement system and plan subject to the following conditions:

(1) If the individual is employed by an employer in an eligible position, as of July 1, 1997, the election to transfer service must be filed in writing with the department no later than July 1, 1998. If the individual is not employed by an employer in an eligible position, as of July 1, 1997, the elec-

tion to transfer service must be filed in writing with the department no later than one year from the date they are employed by an employer in an eligible position.

(2) An individual transferring service under this section forfeits the rights to all benefits as a member of the law enforcement officers' and fire fighters' retirement system plan 1 and will be permanently excluded from membership.

(3) Any individual choosing to transfer service under this section will have transferred to their current retirement system and plan: (a) All the individual's accumulated contributions; (b) an amount sufficient to ensure that the employer contribution rate in the individual's current system and plan will not increase due to the transfer; and (c) all applicable months of service, as defined in RCW 41.26.030(14)(a).

(4) If an individual has withdrawn contributions from the law enforcement officers' and fire fighters' retirement system plan 1, the individual may restore the contributions, together with interest as determined by the director, and recover the service represented by the contributions for the sole purpose of transferring service under this section. The contributions must be restored before the transfer can occur and the restoration must be completed within the time limitations specified in subsection (1) of this section.

(5) Any service transferred under this section does not apply to the eligibility requirements for military service credit as defined in RCW 41.40.170(3) or 43.43.260(3).

(6) If an individual does not meet the time limitations of subsection (1) of this section, the individual may elect to restore any withdrawn contributions and transfer service under this section by paying the amount required under subsection (3)(b) of this section less any employee contributions transferred. [2007 c 492 § 9; 2003 c 294 § 2; 1997 c 122 § 1.]

41.26.473 Disabled in the line of duty—Continuation of service credit—Conditions. Those members subject to this chapter who became disabled in the line of duty on or after July 1, 2002, and who received or are receiving benefits under Title 51 RCW or a similar federal workers' compensation program shall receive or continue to receive service credit subject to the following:

(1) No member may receive more than one month's service credit in a calendar month.

(2) No service credit under this section may be allowed after a member separates or is separated without leave of absence.

(3) Employer contributions shall be paid by the employer at the rate in effect for the period of the service credited.

(4) Employee contributions shall be collected by the employer and paid to the department at the rate in effect for the period of service credited.

(5) State contribution shall be as provided in RCW 41.45.060 and 41.45.067.

(6) Contributions shall be based on the regular compensation which the member would have received had the disability not occurred. If contribution payments are made retroactively, interest shall be charged at the rate set by the director on both employee and employer contributions. Service credit shall not be granted until the employee contribution has been paid.

(7) The service and compensation credit shall not be granted for a period to exceed twenty-four consecutive months.

(8) This section does not abridge service credit rights granted in RCW 41.26.470(3). However, members receiving service credit under RCW 41.26.470(3) may not receive service credit under this section.

(9) Should the legislature revoke the service credit authorized under this section or repeal this section, no affected employee is entitled to receive the credit as a matter of contractual right. [2007 c 49 § 1.]

41.26.547 Emergency medical technicians—Job relocation—Retirement options. (Expires July 1, 2023.) (1) A member of plan 2 who was a member of the public employees' retirement system while employed providing emergency medical services for a city, town, county, or district and whose job was relocated from another department of a city, town, county, or district to a fire department, or a member of the public employees' retirement system who is eligible for membership in plan 2 under RCW 41.26.030(4)(h), has the following options:

(a) Remain a member of the public employees' retirement system; or

(b) Leave any service credit earned as a member of the public employees' retirement system in the public employees' retirement system, and have all future service earned in the law enforcement officers' and firefighters' retirement system plan 2, becoming a dual member under the provisions of chapter 41.54 RCW; or

(c) Make an election no later than June 30, 2013, filed in writing with the department of retirement systems, to transfer service credit previously earned as an emergency medical technician for a city, town, county, or district in the public employees' retirement system plan 1 or plan 2 to the law enforcement officers' and firefighters' retirement system plan 2 as defined in RCW 41.26.030. Service credit that a member elects to transfer from the public employees' retirement system to the law enforcement officers' and firefighters' retirement system under this section shall be transferred no earlier than five years after the effective date the member elects to transfer except under subsection (3) of this section, and only after the member earns five years of service credit as a firefighter following the effective date the member elects to transfer except under subsection (3) of this section.

(2) A member of plan 1 who was a member of the public employees' retirement system while employed providing emergency medical services for a city, town, county, or district and whose job was relocated from another department of a city, town, county, or district to a fire department has the following options:

(a) Remain a member of the public employees' retirement system; or

(b) Leave any service credit earned as a member of the public employees' retirement system in the public employees' retirement system, and have all future service earned in the law enforcement officers' and firefighters' retirement system plan 1.

(3)(a) A member who elects to transfer service credit under subsection (1)(c) of this section shall make the payments required by this subsection prior to having service

credit earned as an emergency medical technician for a city, town, county, or district under the public employees' retirement system plan 1 or plan 2 transferred to the law enforcement officers' and firefighters' retirement system plan 2. However, in no event shall service credit be transferred earlier than five years after the effective date the member elects to transfer, or prior to the member earning five years of service credit as a firefighter following the effective date the member elects to transfer, except under (e) of this subsection.

(b) A member who elects to transfer service credit under this subsection shall pay, for the applicable period of service, the difference between the contributions the employee paid to the public employees' retirement system plan 1 or plan 2 and the contributions that would have been paid by the employee had the employee been a member of the law enforcement officers' and firefighters' retirement system plan 2, plus interest on this difference as determined by the director. This payment must be made no later than five years from the effective date of the election made under subsection (1)(c) of this section and must be made prior to retirement, except under (e) of this subsection.

(c) For a period of service transferred by a member eligible for membership in plan 2 under RCW 41.26.030(4)(h), the employer shall pay an amount sufficient to ensure that the contribution level to the law enforcement officers' and firefighters' retirement system will not increase due to this transfer. This payment must be made within five years of the completion of the employee payment in (b) of this subsection.

(d) No earlier than five years after the effective date the member elects to transfer service credit under this section and upon completion of the payment required in (b) of this subsection except under (e) of this subsection, the department shall transfer from the public employees' retirement system plan 1 or plan 2 to the law enforcement officers' and firefighters' retirement system plan 2: (i) All of the employee's applicable accumulated contributions plus interest and an equal amount of employer contributions; and (ii) all applicable months of service, as defined in RCW 41.26.030(14)(b), credited to the employee under this chapter for service as an emergency services provider for a city, town, county, or district as though that service was rendered as a member of the law enforcement officers' and firefighters' retirement system plan 2.

(e) If a member who elected to transfer pursuant to this section dies or retires for disability prior to five years from their election date, the member's benefit is calculated as follows:

(i) All of the applicable service credit, accumulated contributions, and interest is transferred to the law enforcement officers' and firefighters' retirement system plan 2 and used in the calculation of a benefit.

(ii) If a member's obligation under (b) of this subsection has not been paid in full at the time of death or disability retirement, the member, or in the case of death the surviving spouse or eligible minor children, have the following options:

(A) Pay the bill in full;

(B) If a continuing monthly benefit is chosen, have the benefit actuarially reduced to reflect the amount of the unpaid obligation under (b) of this subsection; or

(C) Continue to make payment against the obligation under (b) of this subsection, provided that payment in full is made no later than five years from the member's original election date.

(f) Upon transfer of service credit, contributions, and interest under this subsection, the employee is permanently excluded from membership in the public employees' retirement system for all service transfers related to their time served as an emergency medical technician for a city, town, county, or district under the public employees' retirement system plan 1 or plan 2. [2007 c 304 § 1; 2005 c 459 § 2; 2003 c 293 § 1.]

Expiration date—2007 c 304: "This act expires July 1, 2023." [2007 c 304 § 4.]

Expiration date—2005 c 459 § 2: "Section 2 of this act expires July 1, 2023." [2007 c 304 § 2; 2005 c 459 § 3.]

Expiration date—2003 c 293: "This act expires July 1, 2023." [2007 c 304 § 3; 2003 c 293 § 2.]

41.26.715 Board of trustees—Created—Selection of trustees—Terms of office—Vacancies. (1) An eleven member board of trustees is hereby created.

(a) Before January 1, 2007, three of the board members shall be active law enforcement officers who are participants in the plan. Beginning with the first vacancy on or after January 1, 2007, two board members shall be active law enforcement officers who are participants in the plan and one board member shall be either an active or a retired law enforcement officer who is a participant of the plan. The law enforcement officer board members shall be appointed by the governor from a list provided by a recognized statewide council whose membership consists exclusively of guilds, associations, and unions representing state and local government police officers, deputies, and sheriffs and excludes federal law enforcement officers.

(b) Before January 1, 2007, three of the board members shall be active firefighters who are participants in the plan. Beginning with the first vacancy on or after January 1, 2007, two board members shall be active firefighters who are participants in the plan and one board member shall be either an active or a retired firefighter who is a participant of the plan. The firefighter board members shall be appointed by the governor from a list provided by a recognized statewide council, affiliated with an international association representing the interests of firefighters.

(c) Three of the board members shall be representatives of employers and shall be appointed by the governor.

(d) One board member shall be a member of the house of representatives who is appointed by the governor based on the recommendation of the speaker of the house of representatives.

(e) One board member shall be a member of the senate who is appointed by the governor based on the recommendation of the majority leader of the senate.

(f) After January 1, 2008, at least one board member must be a retired participant of the law enforcement officers' and firefighters' retirement system plan 2. This member may be appointed under (a) through (e) of this subsection.

(2) The initial law enforcement officer and firefighter board members shall serve terms of six, four, and two years, respectively. Thereafter, law enforcement officer and fire-

fighter board members serve terms of six years. The initial employer representative board members shall serve terms of four, five, and six years, respectively. Thereafter, employer representative board members serve terms of four years. The initial legislative board members shall serve terms of five years and six months. Thereafter, legislative board members serve terms of two years, which begin on January 1st of odd-numbered years. Board members may be reappointed to succeeding terms without limitation. Board members shall serve until their successors are appointed and seated.

(3) In the event of a vacancy on the board, the vacancy shall be filled in the same manner as prescribed for an initial appointment. [2007 c 303 § 1; 2003 c 2 § 4 (Initiative Measure No. 790, approved November 5, 2002).]

41.26.7151 Board of trustees—Political party representation. The legislative board members appointed under RCW 41.26.715 must include one member from the two largest political parties. The speaker of the house of representatives shall request a recommendation from the minority leader of the house of representatives if a member from the opposite party must be recommended for appointment. The majority leader of the senate shall request a recommendation from the minority leader of the senate if a member from the opposite party must be recommended for appointment. [2007 c 303 § 2.]

Chapter 41.31 RCW

EXTRAORDINARY INVESTMENT GAINS—PLAN 1

Sections

41.31.010	Repealed. (<i>Effective January 2, 2008.</i>)
41.31.020	Repealed. (<i>Effective January 2, 2008.</i>)
41.31.030	Repealed. (<i>Effective January 2, 2008.</i>)

41.31.010 Repealed. (*Effective January 2, 2008.*)
See Supplementary Table of Disposition of Former RCW Sections, this volume.

41.31.020 Repealed. (*Effective January 2, 2008.*)
See Supplementary Table of Disposition of Former RCW Sections, this volume.

41.31.030 Repealed. (*Effective January 2, 2008.*)
See Supplementary Table of Disposition of Former RCW Sections, this volume.

Chapter 41.31A RCW

EXTRAORDINARY INVESTMENT GAINS—PLAN 3

Sections

41.31A.010	Repealed. (<i>Effective January 2, 2008.</i>)
41.31A.020	Extraordinary investment gain—Credited to member accounts—Persons eligible—Calculation of amount—Contractual right not granted (<i>as amended by 2007 c 491</i>).
41.31A.020	Extraordinary investment gain—Credited to member accounts—Persons eligible—Calculation of amount—Contractual right not granted (<i>as amended by 2007 c 492</i>).
41.31A.020	Extraordinary investment gain—Credited to member accounts—Persons eligible—Calculation of amount—Contractual right not granted.
41.31A.030	Repealed. (<i>Effective January 2, 2008.</i>)
41.31A.040	Repealed. (<i>Effective January 2, 2008.</i>)

41.31A.010 Repealed. (Effective January 2, 2008.)

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

41.31A.020 Extraordinary investment gain—Credited to member accounts—Persons eligible—Calculation of amount—Contractual right not granted (as amended by 2007 c 491). (1) On January 1, 2004, and on January 1st of even-numbered years thereafter, the member account of a person meeting the requirements of this section shall be credited by the extraordinary investment gain amount.

(2) The following persons, hired prior to July 1, 2007, shall be eligible for the benefit provided in subsection (1) of this section:

(a) Any member of the teachers' retirement system plan 3, the Washington school employees' retirement system plan 3, or the public employees' retirement system plan 3 who earned service credit during the twelve-month period from September 1st to August 31st immediately preceding the distribution and had a balance of at least one thousand dollars in their member account on August 31st of the year immediately preceding the distribution; or

(b) Any person in receipt of a benefit pursuant to RCW 41.32.875, 41.35.680, or 41.40.820; or

(c) Any person who is a retiree pursuant to RCW 41.34.020(8) and who:

(i) Completed ten service credit years; or

(ii) Completed five service credit years, including twelve service months after attaining age fifty-four; or

(d) Any teacher who is a retiree pursuant to RCW 41.34.020(8) and who has completed five service credit years by July 1, 1996, under plan 2 and who transferred to plan 3 under RCW 41.32.817; or

(e) Any classified employee who is a retiree pursuant to RCW 41.34.020(8) and who has completed five service credit years by September 1, 2000, and who transferred to plan 3 under RCW 41.35.510; or

(f) Any public employee who is a retiree pursuant to RCW 41.34.020(8) and who has completed five service credit years by March 1, 2002, and who transferred to plan 3 under RCW 41.40.795; or

(g) Any person who had a balance of at least one thousand dollars in their member account on August 31st of the year immediately preceding the distribution and who:

(i) Completed ten service credit years; or

(ii) Completed five service credit years, including twelve service months after attaining age fifty-four; or

(h) Any teacher who had a balance of at least one thousand dollars in their member account on August 31st of the year immediately preceding the distribution and who has completed five service credit years by July 1, 1996, under plan 2 and who transferred to plan 3 under RCW 41.32.817; or

(i) Any classified employee who had a balance of at least one thousand dollars in their member account on August 31st of the year immediately preceding the distribution and who has completed five service credit years by September 1, 2000, and who transferred to plan 3 under RCW 41.35.510; or

(j) Any public employee who had a balance of at least one thousand dollars in their member account on August 31st of the year immediately preceding the distribution and who has completed five service credit years by March 1, 2002, and who transferred to plan 3 under RCW 41.40.795.

(3) The extraordinary investment gain amount shall be calculated as follows:

(a) One-half of the sum of the value of the net assets held in trust for pension benefits in the teachers' retirement system combined plan 2 and 3 fund, the Washington school employees' retirement system combined plan 2 and 3 fund, and the public employees' retirement system combined plan 2 and 3 fund at the close of the previous state fiscal year not including the amount attributable to member accounts;

(b) Multiplied by the amount which the compound average of investment returns on those assets over the previous four state fiscal years exceeds ten percent;

(c) Multiplied by the proportion of:

(i) The sum of the service credit on August 31st of the previous year of all persons eligible for the benefit provided in subsection (1) of this section; to

(ii) The sum of the service credit on August 31st of the previous year of:

(A) All persons eligible for the benefit provided in subsection (1) of this section;

(B) Any person who earned service credit in the teachers' retirement system plan 2, the Washington school employees' retirement system plan 2, or the public employees' retirement system plan 2 during the twelve-month

period from September 1st to August 31st immediately preceding the distribution;

(C) Any person in receipt of a benefit pursuant to RCW 41.32.765, 41.35.420, or 41.40.630; and

(D) Any person with five or more years of service in the teachers' retirement system plan 2, the Washington school employees' retirement system plan 2, or the public employees' retirement system plan 2;

(d) Divided proportionally among persons eligible for the benefit provided in subsection (1) of this section on the basis of their service credit total on August 31st of the previous year.

(4) The legislature reserves the right to amend or repeal this section in the future and no member or beneficiary has a contractual right to receive this distribution not granted prior to that time. [2007 c 491 § 1; 2003 c 294 § 4; 2000 c 247 § 408; 1998 c 341 § 312.]

Effective date—2007 c 491 §§ 1, 3, and 7: See note following RCW 41.32.835.

Severability—Conflict with federal requirements—2007 c 491: See notes following RCW 41.32.765.

41.31A.020 Extraordinary investment gain—Credited to member accounts—Persons eligible—Calculation of amount—Contractual right not granted (as amended by 2007 c 492). (1) On January 1, 2004, and on January 1st of even-numbered years thereafter, the member account of a person meeting the requirements of this section shall be credited by the extraordinary investment gain amount.

(2) The following persons shall be eligible for the benefit provided in subsection (1) of this section:

(a) Any member of the teachers' retirement system plan 3, the Washington school employees' retirement system plan 3, or the public employees' retirement system plan 3 who earned service credit during the twelve-month period from September 1st to August 31st immediately preceding the distribution and had a balance of at least one thousand dollars in their member account on August 31st of the year immediately preceding the distribution; or

(b) Any person in receipt of a benefit pursuant to RCW 41.32.875, 41.35.680, or 41.40.820; or

(c) Any person who is a retiree pursuant to RCW 41.34.020(8) and who:

(i) Completed ten service credit years; or

(ii) Completed five service credit years, including twelve service months after attaining age (~~forty-four~~) forty-four; or

(d) Any teacher who is a retiree pursuant to RCW 41.34.020(8) and who has completed five service credit years by July 1, 1996, under plan 2 and who transferred to plan 3 under RCW 41.32.817; or

(e) Any classified employee who is a retiree pursuant to RCW 41.34.020(8) and who has completed five service credit years by September 1, 2000, and who transferred to plan 3 under RCW 41.35.510; or

(f) Any public employee who is a retiree pursuant to RCW 41.34.020(8) and who has completed five service credit years by March 1, 2002, and who transferred to plan 3 under RCW 41.40.795; or

(g) Any person who had a balance of at least one thousand dollars in their member account on August 31st of the year immediately preceding the distribution and who:

(i) Completed ten service credit years; or

(ii) Completed five service credit years, including twelve service months after attaining age (~~forty-four~~) forty-four; or

(h) Any teacher who had a balance of at least one thousand dollars in their member account on August 31st of the year immediately preceding the distribution and who has completed five service credit years by July 1, 1996, under plan 2 and who transferred to plan 3 under RCW 41.32.817; or

(i) Any classified employee who had a balance of at least one thousand dollars in their member account on August 31st of the year immediately preceding the distribution and who has completed five service credit years by September 1, 2000, and who transferred to plan 3 under RCW 41.35.510; or

(j) Any public employee who had a balance of at least one thousand dollars in their member account on August 31st of the year immediately preceding the distribution and who has completed five service credit years by March 1, 2002, and who transferred to plan 3 under RCW 41.40.795.

(3) The extraordinary investment gain amount shall be calculated as follows:

(a) One-half of the sum of the value of the net assets held in trust for pension benefits in the teachers' retirement system combined plan 2 and 3 fund, the Washington school employees' retirement system combined plan 2 and 3 fund, and the public employees' retirement system combined plan 2

and 3 fund at the close of the previous state fiscal year not including the amount attributable to member accounts;

(b) Multiplied by the amount which the compound average of investment returns on those assets over the previous four state fiscal years exceeds ten percent;

(c) Multiplied by the proportion of:

(i) The sum of the service credit on August 31st of the previous year of all persons eligible for the benefit provided in subsection (1) of this section; to

(ii) The sum of the service credit on August 31st of the previous year of:

(A) All persons eligible for the benefit provided in subsection (1) of this section;

(B) Any person who earned service credit in the teachers' retirement system plan 2, the Washington school employees' retirement system plan 2, or the public employees' retirement system plan 2 during the twelve-month period from September 1st to August 31st immediately preceding the distribution;

(C) Any person in receipt of a benefit pursuant to RCW 41.32.765, 41.35.420, or 41.40.630; and

(D) Any person with five or more years of service in the teachers' retirement system plan 2, the Washington school employees' retirement system plan 2, or the public employees' retirement system plan 2;

(d) Divided proportionally among persons eligible for the benefit provided in subsection (1) of this section on the basis of their service credit total on August 31st of the previous year.

(4) The legislature reserves the right to amend or repeal this section in the future and no member or beneficiary has a contractual right to receive this distribution not granted prior to that time. [2007 c 492 § 10; 2003 c 294 § 4; 2000 c 247 § 408; 1998 c 341 § 312.]

Reviser's note: RCW 41.31A.020 was also repealed by 2007 c 491 § 13 without cognizance of its amendment by 2007 c 491 § 1 and 2007 c 492 § 10. For rule of construction concerning sections amended and repealed in the same legislative session, see RCW 1.12.025.

Contingency—2007 c 492 § 10: "Section 10 of this act is null and void, if legislation is enacted during 2007 repealing RCW 41.31A.020." [2007 c 492 § 13.]

Effective date—2003 c 294 § 4: "Section 4 of this act takes effect January 1, 2004." [2003 c 294 § 17.]

Effective dates—Subchapter headings not law—2000 c 247: See RCW 41.40.931 and 41.40.932.

Effective date—1998 c 341: See RCW 41.35.901.

41.31A.020 Extraordinary investment gain—Credited to member accounts—Persons eligible—Calculation of amount—Contractual right not granted. [2003 c 294 § 4; 2000 c 247 § 408; 1998 c 341 § 312.]

Reviser's note: RCW 41.31A.020 was also repealed by 2007 c 491 § 13 without cognizance of its amendment by 2007 c 491 § 1 and 2007 c 492 § 10. For rule of construction concerning sections amended and repealed in the same legislative session, see RCW 1.12.025.

41.31A.030 Repealed. (Effective January 2, 2008.)
See Supplementary Table of Disposition of Former RCW Sections, this volume.

41.31A.040 Repealed. (Effective January 2, 2008.)
See Supplementary Table of Disposition of Former RCW Sections, this volume.

Chapter 41.32 RCW

TEACHERS' RETIREMENT

Sections

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41.32.010 Definitions. As used in this chapter, unless a different meaning is plainly required by the context:

(1)(a) "Accumulated contributions" for plan 1 members, means the sum of all regular annuity contributions and, except for the purpose of withdrawal at the time of retirement, any amount paid under RCW 41.50.165(2) with regular interest thereon.

(b) "Accumulated contributions" for plan 2 members, means the sum of all contributions standing to the credit of a member in the member's individual account, including any amount paid under RCW 41.50.165(2), together with the regular interest thereon.

(2) "Actuarial equivalent" means a benefit of equal value when computed upon the basis of such mortality tables and regulations as shall be adopted by the director and regular interest.

(3) "Annuity" means the moneys payable per year during life by reason of accumulated contributions of a member.

(4) "Member reserve" means the fund in which all of the accumulated contributions of members are held.

(5)(a) "Beneficiary" for plan 1 members, means any person in receipt of a retirement allowance or other benefit provided by this chapter.

(b) "Beneficiary" for plan 2 and plan 3 members, means any person in receipt of a retirement allowance or other benefit provided by this chapter resulting from service rendered to an employer by another person.

(6) "Contract" means any agreement for service and compensation between a member and an employer.

(7) "Creditable service" means membership service plus prior service for which credit is allowable. This subsection shall apply only to plan 1 members.

(8) "Dependent" means receiving one-half or more of support from a member.

(9) "Disability allowance" means monthly payments during disability. This subsection shall apply only to plan 1 members.

(10)(a) "Earnable compensation" for plan 1 members, means:

(i) All salaries and wages paid by an employer to an employee member of the retirement system for personal services rendered during a fiscal year. In all cases where compensation includes maintenance the employer shall fix the value of that part of the compensation not paid in money.

(ii) For an employee member of the retirement system teaching in an extended school year program, two consecutive extended school years, as defined by the employer school district, may be used as the annual period for determining earnable compensation in lieu of the two fiscal years.

(iii) "Earnable compensation" for plan 1 members also includes the following actual or imputed payments, which are not paid for personal services:

(A) Retroactive payments to an individual by an employer on reinstatement of the employee in a position, or

payments by an employer to an individual in lieu of reinstatement in a position which are awarded or granted as the equivalent of the salary or wages which the individual would have earned during a payroll period shall be considered earnable compensation and the individual shall receive the equivalent service credit.

(B) If a leave of absence, without pay, is taken by a member for the purpose of serving as a member of the state legislature, and such member has served in the legislature five or more years, the salary which would have been received for the position from which the leave of absence was taken shall be considered as compensation earnable if the employee's contribution thereon is paid by the employee. In addition, where a member has been a member of the state legislature for five or more years, earnable compensation for the member's two highest compensated consecutive years of service shall include a sum not to exceed thirty-six hundred dollars for each of such two consecutive years, regardless of whether or not legislative service was rendered during those two years.

(iv) For members employed less than full time under written contract with a school district, or community college district, in an instructional position, for which the member receives service credit of less than one year in all of the years used to determine the earnable compensation used for computing benefits due under RCW 41.32.497, 41.32.498, and 41.32.520, the member may elect to have earnable compensation defined as provided in RCW 41.32.345. For the purposes of this subsection, the term "instructional position" means a position in which more than seventy-five percent of the member's time is spent as a classroom instructor (including office hours), a librarian, a psychologist, a social worker, a nurse, a physical therapist, an occupational therapist, a speech language pathologist or audiologist, or a counselor. Earnable compensation shall be so defined only for the purpose of the calculation of retirement benefits and only as necessary to insure that members who receive fractional service credit under RCW 41.32.270 receive benefits proportional to those received by members who have received full-time service credit.

(v) "Earnable compensation" does not include:

(A) Remuneration for unused sick leave authorized under RCW 41.04.340, 28A.400.210, or 28A.310.490;

(B) Remuneration for unused annual leave in excess of thirty days as authorized by RCW 43.01.044 and 43.01.041;

(C) Bonuses for certification from the national board for professional teaching standards authorized under RCW 28A.405.415.

(b) "Earnable compensation" for plan 2 and plan 3 members, means salaries or wages earned by a member during a payroll period for personal services, including overtime payments, and shall include wages and salaries deferred under provisions established pursuant to sections 403(b), 414(h), and 457 of the United States Internal Revenue Code, but shall exclude lump sum payments for deferred annual sick leave, unused accumulated vacation, unused accumulated annual leave, bonuses for certification from the national board for professional teaching standards authorized under RCW 28A.405.415, or any form of severance pay.

"Earnable compensation" for plan 2 and plan 3 members also includes the following actual or imputed payments

which, except in the case of (b)(ii)(B) of this subsection, are not paid for personal services:

(i) Retroactive payments to an individual by an employer on reinstatement of the employee in a position or payments by an employer to an individual in lieu of reinstatement in a position which are awarded or granted as the equivalent of the salary or wages which the individual would have earned during a payroll period shall be considered earnable compensation, to the extent provided above, and the individual shall receive the equivalent service credit.

(ii) In any year in which a member serves in the legislature the member shall have the option of having such member's earnable compensation be the greater of:

(A) The earnable compensation the member would have received had such member not served in the legislature; or

(B) Such member's actual earnable compensation received for teaching and legislative service combined. Any additional contributions to the retirement system required because compensation earnable under (b)(ii)(A) of this subsection is greater than compensation earnable under (b)(ii)(B) of this subsection shall be paid by the member for both member and employer contributions.

(11) "Employer" means the state of Washington, the school district, or any agency of the state of Washington by which the member is paid.

(12) "Fiscal year" means a year which begins July 1st and ends June 30th of the following year.

(13) "Former state fund" means the state retirement fund in operation for teachers under chapter 187, Laws of 1923, as amended.

(14) "Local fund" means any of the local retirement funds for teachers operated in any school district in accordance with the provisions of chapter 163, Laws of 1917 as amended.

(15) "Member" means any teacher included in the membership of the retirement system who has not been removed from membership under RCW 41.32.878 or 41.32.768. Also, any other employee of the public schools who, on July 1, 1947, had not elected to be exempt from membership and who, prior to that date, had by an authorized payroll deduction, contributed to the member reserve.

(16) "Membership service" means service rendered subsequent to the first day of eligibility of a person to membership in the retirement system: PROVIDED, That where a member is employed by two or more employers the individual shall receive no more than one service credit month during any calendar month in which multiple service is rendered. The provisions of this subsection shall apply only to plan 1 members.

(17) "Pension" means the moneys payable per year during life from the pension reserve.

(18) "Pension reserve" is a fund in which shall be accumulated an actuarial reserve adequate to meet present and future pension liabilities of the system and from which all pension obligations are to be paid.

(19) "Prior service" means service rendered prior to the first date of eligibility to membership in the retirement system for which credit is allowable. The provisions of this subsection shall apply only to plan 1 members.

(20) "Prior service contributions" means contributions made by a member to secure credit for prior service. The provisions of this subsection shall apply only to plan 1 members.

(21) "Public school" means any institution or activity operated by the state of Washington or any instrumentality or political subdivision thereof employing teachers, except the University of Washington and Washington State University.

(22) "Regular contributions" means the amounts required to be deducted from the compensation of a member and credited to the member's individual account in the member reserve. This subsection shall apply only to plan 1 members.

(23) "Regular interest" means such rate as the director may determine.

(24)(a) "Retirement allowance" for plan 1 members, means monthly payments based on the sum of annuity and pension, or any optional benefits payable in lieu thereof.

(b) "Retirement allowance" for plan 2 and plan 3 members, means monthly payments to a retiree or beneficiary as provided in this chapter.

(25) "Retirement system" means the Washington state teachers' retirement system.

(26)(a) "Service" for plan 1 members means the time during which a member has been employed by an employer for compensation.

(i) If a member is employed by two or more employers the individual shall receive no more than one service credit month during any calendar month in which multiple service is rendered.

(ii) As authorized by RCW 28A.400.300, up to forty-five days of sick leave may be creditable as service solely for the purpose of determining eligibility to retire under RCW 41.32.470.

(iii) As authorized in RCW 41.32.065, service earned in an out-of-state retirement system that covers teachers in public schools may be applied solely for the purpose of determining eligibility to retire under RCW 41.32.470.

(b) "Service" for plan 2 and plan 3 members, means periods of employment by a member for one or more employers for which earnable compensation is earned subject to the following conditions:

(i) A member employed in an eligible position or as a substitute shall receive one service credit month for each month of September through August of the following year if he or she earns earnable compensation for eight hundred ten or more hours during that period and is employed during nine of those months, except that a member may not receive credit for any period prior to the member's employment in an eligible position except as provided in RCW 41.32.812 and 41.50.132;

(ii) If a member is employed either in an eligible position or as a substitute teacher for nine months of the twelve month period between September through August of the following year but earns earnable compensation for less than eight hundred ten hours but for at least six hundred thirty hours, he or she will receive one-half of a service credit month for each month of the twelve month period;

(iii) All other members in an eligible position or as a substitute teacher shall receive service credit as follows:

(A) A service credit month is earned in those calendar months where earnable compensation is earned for ninety or more hours;

(B) A half-service credit month is earned in those calendar months where earnable compensation is earned for at least seventy hours but less than ninety hours; and

(C) A quarter-service credit month is earned in those calendar months where earnable compensation is earned for less than seventy hours.

(iv) Any person who is a member of the teachers' retirement system and who is elected or appointed to a state elective position may continue to be a member of the retirement system and continue to receive a service credit month for each of the months in a state elective position by making the required member contributions.

(v) When an individual is employed by two or more employers the individual shall only receive one month's service credit during any calendar month in which multiple service for ninety or more hours is rendered.

(vi) As authorized by RCW 28A.400.300, up to forty-five days of sick leave may be creditable as service solely for the purpose of determining eligibility to retire under RCW 41.32.470. For purposes of plan 2 and plan 3 "forty-five days" as used in RCW 28A.400.300 is equal to two service credit months. Use of less than forty-five days of sick leave is creditable as allowed under this subsection as follows:

(A) Less than eleven days equals one-quarter service credit month;

(B) Eleven or more days but less than twenty-two days equals one-half service credit month;

(C) Twenty-two days equals one service credit month;

(D) More than twenty-two days but less than thirty-three days equals one and one-quarter service credit month;

(E) Thirty-three or more days but less than forty-five days equals one and one-half service credit month.

(vii) As authorized in RCW 41.32.065, service earned in an out-of-state retirement system that covers teachers in public schools may be applied solely for the purpose of determining eligibility to retire under RCW 41.32.470.

(viii) The department shall adopt rules implementing this subsection.

(27) "Service credit year" means an accumulation of months of service credit which is equal to one when divided by twelve.

(28) "Service credit month" means a full service credit month or an accumulation of partial service credit months that are equal to one.

(29) "Teacher" means any person qualified to teach who is engaged by a public school in an instructional, administrative, or supervisory capacity. The term includes state, educational service district, and school district superintendents and their assistants and all employees certificated by the superintendent of public instruction; and in addition thereto any full time school doctor who is employed by a public school and renders service of an instructional or educational nature.

(30) "Average final compensation" for plan 2 and plan 3 members, means the member's average earnable compensation of the highest consecutive sixty service credit months prior to such member's retirement, termination, or death. Periods constituting authorized leaves of absence may not be

used in the calculation of average final compensation except under RCW 41.32.810(2).

(31) "Retiree" means any person who has begun accruing a retirement allowance or other benefit provided by this chapter resulting from service rendered to an employer while a member.

(32) "Department" means the department of retirement systems created in chapter 41.50 RCW.

(33) "Director" means the director of the department.

(34) "State elective position" means any position held by any person elected or appointed to statewide office or elected or appointed as a member of the legislature.

(35) "State actuary" or "actuary" means the person appointed pursuant to RCW 44.44.010(2).

(36) "Substitute teacher" means:

(a) A teacher who is hired by an employer to work as a temporary teacher, except for teachers who are annual contract employees of an employer and are guaranteed a minimum number of hours; or

(b) Teachers who either (i) work in ineligible positions for more than one employer or (ii) work in an ineligible position or positions together with an eligible position.

(37)(a) "Eligible position" for plan 2 members from June 7, 1990, through September 1, 1991, means a position which normally requires two or more uninterrupted months of creditable service during September through August of the following year.

(b) "Eligible position" for plan 2 and plan 3 on and after September 1, 1991, means a position that, as defined by the employer, normally requires five or more months of at least seventy hours of earnable compensation during September through August of the following year.

(c) For purposes of this chapter an employer shall not define "position" in such a manner that an employee's monthly work for that employer is divided into more than one position.

(d) The elected position of the superintendent of public instruction is an eligible position.

(38) "Plan 1" means the teachers' retirement system, plan 1 providing the benefits and funding provisions covering persons who first became members of the system prior to October 1, 1977.

(39) "Plan 2" means the teachers' retirement system, plan 2 providing the benefits and funding provisions covering persons who first became members of the system on and after October 1, 1977, and prior to July 1, 1996.

(40) "Plan 3" means the teachers' retirement system, plan 3 providing the benefits and funding provisions covering persons who first become members of the system on and after July 1, 1996, or who transfer under RCW 41.32.817.

(41) "Index" means, for any calendar year, that year's annual average consumer price index, Seattle, Washington area, for urban wage earners and clerical workers, all items compiled by the bureau of labor statistics, United States department of labor.

(42) "Index A" means the index for the year prior to the determination of a postretirement adjustment.

(43) "Index B" means the index for the year prior to index A.

(44) "Index year" means the earliest calendar year in which the index is more than sixty percent of index A.

(45) "Adjustment ratio" means the value of index A divided by index B.

(46) "Annual increase" means, initially, fifty-nine cents per month per year of service which amount shall be increased each July 1st by three percent, rounded to the nearest cent.

(47) "Member account" or "member's account" for purposes of plan 3 means the sum of the contributions and earnings on behalf of the member in the defined contribution portion of plan 3.

(48) "Separation from service or employment" occurs when a person has terminated all employment with an employer. Separation from service or employment does not occur, and if claimed by an employer or employee may be a violation of RCW 41.32.055, when an employee and employer have a written or oral agreement to resume employment with the same employer following termination. Mere expressions or inquiries about postretirement employment by an employer or employee that do not constitute a commitment to reemploy the employee after retirement are not an agreement under this section.

(49) "Employed" or "employee" means a person who is providing services for compensation to an employer, unless the person is free from the employer's direction and control over the performance of work. The department shall adopt rules and interpret this subsection consistent with common law. [2007 c 398 § 3; 2007 c 50 § 1. Prior: 2005 c 131 § 8; 2005 c 23 § 1; 2003 c 31 § 1; 1997 c 254 § 3; 1996 c 39 § 1; prior: 1995 c 345 § 9; 1995 c 239 § 102; prior: 1994 c 298 § 3; 1994 c 247 § 2; 1994 c 197 § 12; 1993 c 95 § 7; prior: 1992 c 212 § 1; 1992 c 3 § 3; prior: 1991 c 343 § 3; 1991 c 35 § 31; 1990 c 274 § 2; 1987 c 265 § 1; 1985 c 13 § 6; prior: 1984 c 256 § 1; 1984 c 5 § 1; 1983 c 5 § 1; 1982 1st ex.s. c 52 § 6; 1981 c 256 § 5; 1979 ex.s. c 249 § 5; 1977 ex.s. c 293 § 18; 1975 1st ex.s. c 275 § 149; 1974 ex.s. c 199 § 1; 1969 ex.s. c 176 § 95; 1967 c 50 § 11; 1965 ex.s. c 81 § 1; 1963 ex.s. c 14 § 1; 1955 c 274 § 1; 1947 c 80 § 1; Rem. Supp. 1947 § 4995-20; prior: 1941 c 97 § 1; 1939 c 86 § 1; 1937 c 221 § 1; 1931 c 115 § 1; 1923 c 187 § 1; 1917 c 163 § 1; Rem. Supp. 1941 § 4995-1.]

Reviser's note: This section was amended by 2007 c 50 § 1 and by 2007 c 398 § 3, each without reference to the other. Both amendments are incorporated in the publication of this section under RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

Findings—2007 c 398: See note following RCW 28A.405.415.

Effective date—2005 c 131: See note following RCW 41.40.823.

Intent—Construction—Application—1997 c 254: See notes following RCW 41.26.490.

Effective dates—1996 c 39: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and shall take effect July 1, 1996, with the exception of section 23 of this act, which shall take effect immediately [March 13, 1996]." [1996 c 39 § 25.]

Intent—Effective date—1995 c 345: See notes following RCW 41.32.489.

Intent—Purpose—1995 c 239: See note following RCW 41.32.831.

Effective date—Part and subchapter headings not law—1995 c 239: See notes following RCW 41.32.005.

Intent—1994 c 298: See note following RCW 41.40.010.

Effective date—1994 c 247: See note following RCW 41.32.4991.

Intent—Severability—Effective date—1994 c 197: See notes following RCW 41.50.165.

Retroactive application—Effective date—1993 c 95: See notes following RCW 41.40.175.

Findings—Effective dates—1991 c 343: See notes following RCW 41.50.005.

Intent—1991 c 35: See note following RCW 41.26.005.

Findings—1990 c 274: "(1) The current system for calculating service credit for school district employees is difficult and costly to administer. By changing from the current hours per month calculation to an hours per year calculation, the accumulation of service credit by school district employees will be easier to understand and to administer.

(2) The current system for granting service credit for substitute teachers is difficult and costly to administer. By notifying substitute teachers of their eligibility for service credit and allowing the substitute teacher to apply for service credit, the accumulation of service credit by substitute teachers will be easier to understand and to administer.

(3) Currently, temporary employees in eligible positions in the public employees' retirement system are exempted from membership in the system for up to six months. If the position lasts for longer than six months the employee is made a member retroactively. This conditional exemption causes tracking problems for the department of retirement systems and places a heavy financial burden for back contributions on a temporary employee who crosses the six-month barrier. Under the provisions of this act all persons, other than retirees, who are hired in an eligible position will become members immediately, thereby alleviating the problems described in this section.

(4) The legislature finds that retirees from the plan 2 systems of the law enforcement officers' and firefighters' retirement system, the teachers' retirement system, and the public employees' retirement system, may not work for a nonfederal public employer without suffering a suspension of their retirement benefits. This fails to recognize the current and projected demographics indicating the decreasing workforce and that the expertise possessed by retired workers can provide a substantial benefit to the state. At the same time, the legislature recognizes that a person who is working full time should have his or her pension delayed until he or she enters full or partial retirement. By allowing plan 2 retirees to work in ineligible positions, the competing concerns listed above are both properly addressed." [1990 c 274 § 1.]

Intent—Reservation—1990 c 274 §§ 2, 4: "(1) The 1990 amendments to RCW 41.32.010(27)(b) and 41.40.450 are intended by the legislature to effect administrative, rather than substantive, changes to the affected retirement plan. The legislature therefore reserves the right to revoke or amend the 1990 amendments to RCW 41.32.010(27)(b) and 41.40.450. No member is entitled to have his or her service credit calculated under the 1990 amendments to RCW 41.32.010(27)(b) and 41.40.450 as a matter of contractual right.

(2) The department's retroactive application of the changes made in RCW 41.32.010(27)(b) to all service rendered between October 1, 1977, and August 31, 1990, is consistent with the legislative intent of the 1990 changes to RCW 41.32.010(27)(b)." [1994 c 177 § 10; 1990 c 274 § 18.]

Effective date—1990 c 274: "Sections 1 through 8 of this act shall take effect September 1, 1990." [1990 c 274 § 21.]

Construction—1990 c 274: "This act shall not be construed as affecting any existing right acquired or liability or obligation incurred under the sections amended or repealed in this act or under any rule or order adopted under those sections, nor as affecting any proceeding instituted under those sections." [1990 c 274 § 17.]

Purpose—Application—Retrospective application—1985 c 13: See notes following RCW 41.04.445.

Effective dates—1982 1st ex.s. c 52: See note following RCW 2.10.180.

Purpose—Severability—1981 c 256: See notes following RCW 41.26.030.

Effective date—Severability—1977 ex.s. c 293: See notes following RCW 41.32.755.

Emergency—1974 ex.s. c 199: "This 1974 amendatory act is necessary for the immediate preservation of the public peace, health and safety, the support of the state government and its existing public institutions, and shall take effect immediately." [1974 ex.s. c 199 § 7.]

Severability—1974 ex.s. c 199: "If any provision of this 1974 amendatory act, or its application to any person or circumstance is held invalid, the remainder of the act, or the application of the provision to other persons or circumstances is not affected." [1974 ex.s. c 199 § 8.]

Construction—1974 ex.s. c 199: "(1) Subsection (3) of section 4 of this 1974 amendatory act relating to elected and appointed officials shall be retroactive to January 1, 1973.

(2) Amendatory language contained in subsection (11) of section 1 relating to members as members of the legislature and in provisos (2) and (3) of section 2 of this 1974 amendatory act shall only apply to those members who are serving as a state senator, state representative or state superintendent of public instruction on or after the effective date of this 1974 amendatory act.

(3) Notwithstanding any other provision of this 1974 amendatory act, RCW 41.32.497 as last amended by section 2, chapter 189, Laws of 1973 1st ex. sess. shall be applicable to any member serving as a state senator, state representative or superintendent of public instruction on the effective date of this 1974 amendatory act." [1974 ex.s. c 199 § 5.]

Reviser's note: (1) "Subsection (3) of section 4 of this 1974 amendatory act" is codified as RCW 41.32.498(3).

(2) Sections 1 and 2 of 1974 ex.s. c 199 consist of amendments to RCW 41.32.010 and 41.32.260. For amendatory language, a portion of which was vetoed, see the 1973-1974 session laws.

(3) "this 1974 amendatory act" [1974 ex.s. c 199] is codified in RCW 41.32.010, 41.32.260, 41.32.497, 41.32.498, and 41.32.4945. The effective date of 1974 ex.s. c 199 is May 6, 1974.

Effective date—1969 ex.s. c 176: The effective date of the amendments to this section and RCW 41.32.420 is April 25, 1969.

Effective date—1967 c 50: "This 1967 amendatory act shall take effect on July 1, 1967." [1967 c 50 § 12.]

Severability—1967 c 50: "If any provision of this 1967 amendatory act, or its application to any person or circumstance is held invalid, the remainder of this 1967 amendatory act, or the application of the provision to other persons or circumstances is not affected." [1967 c 50 § 13.]

Severability—1965 ex.s. c 81: "If any provision of this act is held to be invalid the remainder of this act shall not be affected." [1965 ex.s. c 81 § 9.]

Effective date—1965 ex.s. c 81: "The effective date of this act is July 1, 1965." [1965 ex.s. c 81 § 10.]

Savings—1963 ex.s. c 14: "The amendment of any section by this 1963 act shall not be construed as impairing any existing right acquired or any liability incurred by any member under the provisions of the section amended; nor shall it affect any vested right of any former member who reenters public school employment or becomes reinstated as a member subsequent to the effective date of such act." [1963 ex.s. c 14 § 23.]

Severability—1963 ex.s. c 14: "If any provision of this act is held to be invalid the remainder of the act shall not be affected." [1963 ex.s. c 14 § 24.]

Effective date—1963 ex.s. c 14: "The effective date of this act is July 1, 1964." [1963 ex.s. c 14 § 26.]

41.32.053 Death benefit—Course of employment—Occupational disease or infection. (1) A one hundred fifty thousand dollar death benefit shall be paid to the member's estate, or such person or persons, trust or organization as the member has nominated by written designation duly executed and filed with the department. If no such designated person or persons are still living at the time of the member's death, the member's death benefit shall be paid to the member's surviving spouse as if in fact the spouse had been nominated by written designation, or if there is no surviving spouse, then to the member's legal representatives.

(2) The benefit under this section shall be paid only where death occurs as a result of (a) injuries sustained in the course of employment; or (b) an occupational disease or infection that arises naturally and proximately out of employment covered under this chapter. The determination of eligibility for the benefit shall be made consistent with Title 51 RCW by the department of labor and industries. The department of labor and industries shall notify the department of retirement systems by order under RCW 51.52.050. [2007 c 487 § 3; 2003 c 402 § 2.]

41.32.055 Falsification—Penalty. (1) Any person who shall knowingly make false statements or shall falsify or permit to be falsified any record or records of the retirement system, except under subsection (2) of this section, in any attempt to defraud such system as a result of such act, is guilty of a class B felony punishable according to chapter 9A.20 RCW.

(2) Any person who shall knowingly make false statements or shall falsify or permit to be falsified any record or records of the retirement systems related to a member's separation from service and qualification for a retirement allowance under RCW 41.32.480 in any attempt to defraud that system as a result of such an act, is guilty of a gross misdemeanor. [2007 c 50 § 2; 2003 c 53 § 218; 1947 c 80 § 67; Rem. Supp. 1947 § 4995-86. Prior: 1937 c 221 § 10. Formerly RCW 41.32.670.]

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

41.32.0641 Disabled in the line of duty—Continuation of service credit—Conditions. Those members subject to this chapter who became disabled in the line of duty and who received or are receiving benefits under Title 51 RCW or a similar federal workers' compensation program shall receive or continue to receive service credit subject to the following:

(1) No member may receive more than one month's service credit in a calendar month.

(2) No service credit under this section may be allowed after a member separates or is separated without leave of absence.

(3) Employer contributions shall be paid by the employer at the rate in effect for the period of the service credited.

(4) Employee contributions shall be collected by the employer and paid to the department at the rate in effect for the period of service credited.

(5) Contributions shall be based on the regular compensation which the member would have received had the disability not occurred. If contribution payments are made retroactively, interest shall be charged at the rate set by the director on both employee and employer contributions. Service credit shall not be granted until the employee contribution has been paid.

(6) The service and compensation credit shall not be granted for a period to exceed twenty-four consecutive months.

(7) Should the legislature revoke the service credit authorized under this section or repeal this section, no affected employee is entitled to receive the credit as a matter of contractual right. [2007 c 49 § 2.]

41.32.483 Annual increase amount—Legislature's rights reserved. (1) Beginning July 1, 2009, the annual increase amount as defined in RCW 41.32.010(46) shall be increased by an amount equal to \$0.40 per month per year of service minus the 2008 gain-sharing increase amount under *RCW 41.31.010 as it exists on July 22, 2007. This adjustment shall not decrease the annual increase amount, and is not to exceed \$0.20 per month per year of service. The legislature reserves the right to amend or repeal this section in the future and no member or beneficiary has the contractual right

to receive this adjustment to the annual increase amount not granted prior to that time.

(2) The adjustment to the annual increase amount as set forth in section 5, chapter 491, Laws of 2007 was intended by the legislature as a replacement benefit for gain-sharing. If the repeal of chapter 41.31 RCW is held to be invalid in a final determination of a court of law, and the court orders reinstatement of gain-sharing or other alternate benefits as a remedy, then this adjustment to the annual increase amount shall not be included in future annual increase amounts paid on or after the date of such reinstatement. [2007 c 491 § 5.]

***Reviser's note:** RCW 41.31.010 was repealed by 2007 c 491 § 13, effective January 2, 2008.

Severability—Conflict with federal requirements—2007 c 491: See notes following RCW 41.32.765.

41.32.489 Retirement allowance—Annual increases—Eligibility. (1) Beginning July 1, 1995, and annually thereafter, the retirement allowance of a person meeting the requirements of this section shall be increased by the annual increase amount.

(2) The following persons shall be eligible for the benefit provided in subsection (1) of this section:

(a) A beneficiary who has received a retirement allowance for at least one year by July 1st in the calendar year in which the annual increase is given and has attained at least age sixty-six by December 31st in the calendar year in which the annual increase is given; or

(b) A beneficiary whose retirement allowance is lower than the minimum benefit provided under RCW 41.32.4851.

(3) The following persons shall also be eligible for the benefit provided in subsection (1) of this section:

(a) A beneficiary receiving the minimum benefit on June 30, 1995, under RCW 41.32.485; or

(b) A recipient of a survivor benefit on June 30, 1995, which has been increased by *RCW 41.32.575.

(4) If otherwise eligible, those receiving an annual adjustment under RCW 41.32.530(1)(d) shall be eligible for the annual increase adjustment in addition to the benefit that would have been received absent this section.

(5) Those receiving a temporary disability benefit under RCW 41.32.540 shall not be eligible for the benefit provided by this section.

(6) The legislature reserves the right to amend or repeal this section in the future and no member or beneficiary has a contractual right to receive this postretirement adjustment not granted prior to that time. [2007 c 89 § 2; 1995 c 345 § 2.]

***Reviser's note:** RCW 41.32.575 was repealed by 1995 c 345 § 11.

Effective date—2007 c 89: See note following RCW 41.40.197.

Intent—1995 c 345: "The intent of this act is to:

(1) Simplify the calculation of postretirement adjustments so that they can be more easily communicated to plan 1 active and retired members;

(2) Provide postretirement adjustments based on years of service rather than size of benefit;

(3) Provide postretirement adjustments at an earlier age;

(4) Provide postretirement adjustments to a larger segment of plan 1 retirees; and

(5) Simplify administration by reducing the number of plan 1 postretirement adjustments to one." [1995 c 345 § 1.]

Effective date—1995 c 345: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and shall take effect immediately [May 12, 1995]." [1995 c 345 § 14.]

41.32.570 Postretirement employment—Reduction or suspension of pension payments. (1)(a) If a retiree enters employment with an employer sooner than one calendar month after his or her accrual date, the retiree's monthly retirement allowance will be reduced by five and one-half percent for every seven hours worked during that month. This reduction will be applied each month until the retiree remains absent from employment with an employer for one full calendar month.

(b) The benefit reduction provided in (a) of this subsection will accrue for a maximum of one hundred forty hours per month. Any monthly benefit reduction over one hundred percent will be applied to the benefit the retiree is eligible to receive in subsequent months.

(2) Except under subsection (3) of this section, any retired teacher or retired administrator who enters service in any public educational institution in Washington state at least one calendar month after his or her accrual date shall cease to receive pension payments while engaged in such service, after the retiree has rendered service for more than eight hundred sixty-seven hours in a school year.

(3) Any retired teacher or retired administrator who enters service in any public educational institution in Washington state one and one-half calendar months or more after his or her accrual date and:

(a) Is hired pursuant to a written policy into a position for which the school board has documented a justifiable need to hire a retiree into the position;

(b) Is hired through the established process for the position with the approval of the school board or other highest decision-making authority of the prospective employer;

(c) Whose employer retains records of the procedures followed and the decisions made in hiring the retired teacher or retired administrator and provides those records in the event of an audit; and

(d) The employee has not already rendered a cumulative total of more than one thousand nine hundred hours of service while in receipt of pension payments beyond an annual threshold of eight hundred sixty-seven hours;

shall cease to receive pension payments while engaged in that service after the retiree has rendered service for more than one thousand five hundred hours in a school year. The one thousand nine hundred hour cumulative total limitation under this section applies prospectively after July 22, 2007.

(4) When a retired teacher or administrator renders service beyond eight hundred sixty-seven hours, the department shall collect from the employer the applicable employer retirement contributions for the entire duration of the member's employment during that fiscal year.

(5) The department shall collect and provide the state actuary with information relevant to the use of this section for the select committee on pension policy.

(6) The legislature reserves the right to amend or repeal this section in the future and no member or beneficiary has a contractual right to be employed for more than five hundred twenty-five hours per year without a reduction of his or her pension. [2007 c 50 § 3; 2003 c 295 § 6. Prior: 2001 2nd sp.s. c 10 § 3; (2001 c 317 § 1 repealed by 2003 c 412 § 3); 1999 c 387 § 1; 1997 c 254 § 5; 1995 c 264 § 1; 1994 c 69 § 2; 1989 c 273 § 29; 1986 c 237 § 1; 1967 c 151 § 5; 1959 c 37

§ 3; 1955 c 274 § 30; 1947 c 80 § 57; Rem. Supp. 1947 § 4995-76.]

Effective dates—2001 2nd sp.s. c 10: See note following RCW 41.40.037.

Intent—Construction—Application—1997 c 254: See notes following RCW 41.26.490.

Effective date—1995 c 264: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and shall take effect immediately [May 5, 1995]." [1995 c 264 § 2.]

Findings—1994 c 69: "The legislature finds that there is a shortage of certificated substitute teachers in many regions of the state, and that this shortage will likely increase in the coming years. The legislature further finds that one method of reducing this shortage of substitute teachers is to encourage retired teachers to serve as substitutes by increasing the number of days they can work without affecting their retirement payments." [1994 c 69 § 1.]

Severability—1989 c 273: See RCW 41.45.900.

Effective date—Severability—1967 c 151: See notes following RCW 41.32.480.

Contract rights of retirees hired for postretirement employment: RCW 28A.405.900.

41.32.584 Additional benefit for justices or judges—One-time irrevocable election. (1) Between January 1, 2007, and December 31, 2007, a member of plan 1 employed as a supreme court justice, court of appeals judge, or superior court judge may make a one-time irrevocable election, filed in writing with the member's employer, the department, and the administrative office of the courts, to accrue an additional benefit equal to one and one-half percent of average final compensation for each year of future service credit from the date of the election.

(2)(a) A member who chooses to make the election under subsection (1) of this section may apply to the department to increase the member's benefit multiplier by one and one-half percent per year of service for the period in which the member served as a justice or judge prior to the election. The member may purchase, beginning with the most recent judicial service, the higher benefit multiplier for up to seventy percent of that portion of the member's prior judicial service that would ensure that the member has no more than a seventy-five percent of average final compensation benefit accrued by age sixty-four. The member shall pay five percent of the salary earned for each month of service for which the higher benefit multiplier is being purchased, plus interest as determined by the director. The purchase price shall not exceed the actuarially equivalent value of the increase in the member's benefit resulting from the increase in the benefit multiplier. This payment must be made prior to retirement and prior to December 31, 2007. After December 31, 2007, a member may purchase the higher benefit multiplier for any of the member's prior judicial service at the actuarially equivalent value of the increase in the member's benefit resulting from the increase in the benefit multiplier, as determined by the director.

(b) Subject to rules adopted by the department, a member applying to increase the member's benefit multiplier under this section may pay all or part of the cost with a lump sum payment, eligible rollover, direct rollover, or trustee-to-trustee transfer from an eligible retirement plan. The department shall adopt rules to ensure that all lump sum payments, rollovers, and transfers comply with the requirements of the

internal revenue code and regulations adopted by the internal revenue service. The rules adopted by the department may condition the acceptance of a rollover or transfer from another plan on the receipt of information necessary to enable the department to determine the eligibility of any transferred funds for tax-free rollover treatment or other treatment under federal income tax law. [2007 c 123 § 5; 2006 c 189 § 7.]

Effective date—2006 c 189: See note following RCW 2.14.115.

41.32.765 Retirement for service. (1) **NORMAL RETIREMENT.** Any member with at least five service credit years of service who has attained at least age sixty-five shall be eligible to retire and to receive a retirement allowance computed according to the provisions of RCW 41.32.760.

(2) **EARLY RETIREMENT.** Any member who has completed at least twenty service credit years of service who has attained at least age fifty-five shall be eligible to retire and to receive a retirement allowance computed according to the provisions of RCW 41.32.760, except that a member retiring pursuant to this subsection shall have the retirement allowance actuarially reduced to reflect the difference in the number of years between age at retirement and the attainment of age sixty-five.

(3) **ALTERNATE EARLY RETIREMENT.**

(a) Any member who has completed at least thirty service credit years and has attained age fifty-five shall be eligible to retire and to receive a retirement allowance computed according to the provisions of RCW 41.32.760, except that a member retiring pursuant to this subsection shall have the retirement allowance reduced by three percent per year to reflect the difference in the number of years between age at retirement and the attainment of age sixty-five.

(b) On or after September 1, 2008, any member who has completed at least thirty service credit years and has attained age fifty-five shall be eligible to retire and to receive a retirement allowance computed according to the provisions of RCW 41.32.760, except that a member retiring pursuant to this subsection shall have the retirement allowance reduced as follows:

Retirement Age	Percent Reduction
55	20%
56	17%
57	14%
58	11%
59	8%
60	5%
61	2%
62	0%
63	0%
64	0%

Any member who retires under the provisions of this subsection is ineligible for the postretirement employment provisions of RCW 41.32.802(2) until the retired member has reached sixty-five years of age. For purposes of this subsection, employment with an employer also includes any per-

sonal service contract, service by an employer as a temporary or project employee, or any other similar compensated relationship with any employer included under the provisions of RCW 41.32.800(1).

The subsidized reductions for alternate early retirement in this subsection as set forth in section 2, chapter 491, Laws of 2007 were intended by the legislature as replacement benefits for gain-sharing. Until there is legal certainty with respect to the repeal of chapter 41.31A RCW, the right to retire under this subsection is noncontractual, and the legislature reserves the right to amend or repeal this subsection. Legal certainty includes, but is not limited to, the expiration of any: Applicable limitations on actions; and periods of time for seeking appellate review, up to and including reconsideration by the Washington supreme court and the supreme court of the United States. Until that time, eligible members may still retire under this subsection, and upon receipt of the first installment of a retirement allowance computed under this subsection, the resulting benefit becomes contractual for the recipient. If the repeal of chapter 41.31A RCW is held to be invalid in a final determination of a court of law, and the court orders reinstatement of gain-sharing or other alternate benefits as a remedy, then retirement benefits for any member who has completed at least thirty service credit years and has attained age fifty-five but has not yet received the first installment of a retirement allowance under this subsection shall be computed using the reductions in (a) of this subsection. [2007 c 491 § 2; 2000 c 247 § 902; 1991 c 343 § 5; 1977 ex.s. c 293 § 4.]

Benefits not contractual right until September 1, 2008—2007 c 491: "The new benefits provided pursuant to sections 2(3)(b), 4(3)(b), 6(3)(b), and 8(3)(b), chapter 491, Laws of 2007 are not provided to employees as a matter of contractual right prior to September 1, 2008, and will not become a contractual right thereafter if the repeal of chapter 41.31A RCW is held to be invalid in a final determination of a court of law. The legislature retains the right to alter or abolish these benefits at any time prior to September 1, 2008." [2007 c 491 § 15.]

Severability—2007 c 491: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [2007 c 491 § 18.]

Conflict with federal requirements—2007 c 491: "If any part of this act is found to be in conflict with a final determination by the federal internal revenue service that is a prescribed condition to favorable tax treatment of one or more of the retirement plans, the conflicting part of this act is inoperative solely to the extent of the conflict and with respect to the individual members directly affected. This finding does not affect the operation of the remainder of this act in its application to the members concerned. The legislature reserves the right to amend or repeal this act in the future as may be required to comply with a final federal determination that amendment or repeal is necessary to maintain the favorable tax treatment of a plan." [2007 c 491 § 14.]

Effective dates—Subchapter headings not law—2000 c 247: See RCW 41.40.931 and 41.40.932.

Findings—Effective dates—1991 c 343: See notes following RCW 41.50.005.

Effective date—Severability—Legislative direction and placement—Section headings—1977 ex.s. c 293: See notes following RCW 41.32.755.

41.32.835 Choice of membership in plan 2 or plan 3.

(1) All teachers who first become employed by an employer in an eligible position on or after July 1, 2007, shall have a period of ninety days to make an irrevocable choice to become a member of plan 2 or plan 3. At the end of ninety

days, if the member has not made a choice to become a member of plan 2, he or she becomes a member of plan 3.

(2) For administrative efficiency, until a member elects to become a member of plan 3, or becomes a member of plan 3 by default under subsection (1) of this section, the member shall be reported to the department in plan 2, with member and employer contributions. Upon becoming a member of plan 3 by election or by default, all service credit shall be transferred to the member's plan 3 defined benefit, and all employee accumulated contributions shall be transferred to the member's plan 3 defined contribution account.

(3) The plan choice provision as set forth in section 3, chapter 491, Laws of 2007 was intended by the legislature as a replacement benefit for gain-sharing. Until there is legal certainty with respect to the repeal of chapter 41.31A RCW, the right to plan choice under this section is noncontractual, and the legislature reserves the right to amend or repeal this section. Legal certainty includes, but is not limited to, the expiration of any: Applicable limitations on actions; and periods of time for seeking appellate review, up to and including reconsideration by the Washington supreme court and the supreme court of the United States. Until that time, all teachers who first become employed by an employer in an eligible position on or after July 1, 2007, may choose either plan 2 or plan 3 under this section. If the repeal of chapter 41.31A RCW is held to be invalid in a final determination of a court of law, and the court orders reinstatement of gain-sharing or other alternate benefits as a remedy, then all teachers who first become employed by an employer in an eligible position on or after the date of such reinstatement shall be members of plan 3. [2007 c 491 § 3; 1995 c 239 § 105.]

Effective date—2007 c 491 §§ 1, 3, and 7: "Sections 1, 3, and 7 of this act are necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and take effect July 1, 2007." [2007 c 491 § 19.]

Severability—Conflict with federal requirements—2007 c 491: See notes following RCW 41.32.765.

Intent—Purpose—1995 c 239: See note following RCW 41.32.831.

Effective date—Part and subchapter headings not law—1995 c 239: See notes following RCW 41.32.005.

Benefits not contractual right until date specified: RCW 41.34.100.

41.32.875 Retirement eligibility. (1) **NORMAL RETIREMENT.** Any member who is at least age sixty-five and who has:

(a) Completed ten service credit years; or
 (b) Completed five service credit years, including twelve service credit months after attaining age forty-four; or
 (c) Completed five service credit years by July 1, 1996, under plan 2 and who transferred to plan 3 under RCW 41.32.817;
 shall be eligible to retire and to receive a retirement allowance computed according to the provisions of RCW 41.32.840.

(2) **EARLY RETIREMENT.** Any member who has attained at least age fifty-five and has completed at least ten years of service shall be eligible to retire and to receive a retirement allowance computed according to the provisions of RCW 41.32.840, except that a member retiring pursuant to this subsection shall have the retirement allowance actuarially reduced to reflect the difference in the number of years

between age at retirement and the attainment of age sixty-five.

(3) **ALTERNATE EARLY RETIREMENT.**

(a) Any member who has completed at least thirty service credit years and has attained age fifty-five shall be eligible to retire and to receive a retirement allowance computed according to the provisions of RCW 41.32.840, except that a member retiring pursuant to this subsection shall have the retirement allowance reduced by three percent per year to reflect the difference in the number of years between age at retirement and the attainment of age sixty-five.

(b) On or after September 1, 2008, any member who has completed at least thirty service credit years and has attained age fifty-five shall be eligible to retire and to receive a retirement allowance computed according to the provisions of RCW 41.32.840, except that a member retiring pursuant to this subsection shall have the retirement allowance reduced as follows:

Retirement Age	Percent Reduction
55	20%
56	17%
57	14%
58	11%
59	8%
60	5%
61	2%
62	0%
63	0%
64	0%

Any member who retires under the provisions of this subsection is ineligible for the postretirement employment provisions of RCW 41.32.862(2) until the retired member has reached sixty-five years of age. For purposes of this subsection, employment with an employer also includes any personal service contract, service by an employer as a temporary or project employee, or any other similar compensated relationship with any employer included under the provisions of RCW 41.32.860(1).

The subsidized reductions for alternate early retirement in this subsection as set forth in section 4, chapter 491, Laws of 2007 were intended by the legislature as replacement benefits for gain-sharing. Until there is legal certainty with respect to the repeal of chapter 41.31A RCW, the right to retire under this subsection is noncontractual, and the legislature reserves the right to amend or repeal this subsection. Legal certainty includes, but is not limited to, the expiration of any: Applicable limitations on actions; and periods of time for seeking appellate review, up to and including reconsideration by the Washington supreme court and the supreme court of the United States. Until that time, eligible members may still retire under this subsection, and upon receipt of the first installment of a retirement allowance computed under this subsection, the resulting benefit becomes contractual for the recipient. If the repeal of chapter 41.31A RCW is held to be invalid in a final determination of a court of law, and the court orders reinstatement of gain-sharing or other alternate

benefits as a remedy, then retirement benefits for any member who has completed at least thirty service credit years and has attained age fifty-five but has not yet received the first installment of a retirement allowance under this subsection shall be computed using the reductions in (a) of this subsection. [2007 c 491 § 4; 2006 c 33 § 1; 2000 c 247 § 903; 1996 c 39 § 6; 1995 c 239 § 113.]

Benefits not contractual right until September 1, 2008—2007 c 491: See note following RCW 41.32.765.

Severability—Conflict with federal requirements—2007 c 491: See notes following RCW 41.32.765.

Effective dates—Subchapter headings not law—2000 c 247: See RCW 41.40.931 and 41.40.932.

Effective dates—1996 c 39: See note following RCW 41.32.010.

Intent—Purpose—1995 c 239: See note following RCW 41.32.831.

Effective date—Part and subchapter headings not law—1995 c 239: See notes following RCW 41.32.005.

Benefits not contractual right until date specified: RCW 41.34.100.

Chapter 41.35 RCW

WASHINGTON SCHOOL EMPLOYEES' RETIREMENT SYSTEM

Sections

41.35.070	Duty disability retirement recipients—Continued service credit.
41.35.115	Death benefit—Course of employment—Occupational disease or infection.
41.35.420	Retirement eligibility.
41.35.610	Choice of membership in plan 2 or plan 3.
41.35.680	Retirement eligibility.

41.35.070 Duty disability retirement recipients—Continued service credit. Those members subject to this chapter who became disabled in the line of duty and who received or are receiving benefits under Title 51 RCW or a similar federal workers' compensation program shall receive or continue to receive service credit subject to the following:

(1) No member may receive more than one month's service credit in a calendar month.

(2) No service credit under this section may be allowed after a member separates or is separated without leave of absence.

(3) Employer contributions shall be paid by the employer at the rate in effect for the period of the service credited.

(4) Employee contributions shall be collected by the employer and paid to the department at the rate in effect for the period of service credited.

(5) Contributions shall be based on the regular compensation which the member would have received had the disability not occurred. If contribution payments are made retroactively, interest shall be charged at the rate set by the director on both employee and employer contributions. No service credit shall be granted until the employee contribution has been paid.

(6) The service and compensation credit shall not be granted for a period to exceed twenty-four consecutive months.

(7) Should the legislature revoke the service credit authorized under this section or repeal this section, no affected employee is entitled to receive the credit as a matter of contractual right. [2007 c 49 § 3; 1998 c 341 § 8.]

41.35.115 Death benefit—Course of employment—Occupational disease or infection. (1) A one hundred fifty thousand dollar death benefit shall be paid to the member's estate, or such person or persons, trust or organization as the member has nominated by written designation duly executed and filed with the department. If no such designated person or persons are still living at the time of the member's death, the member's death benefit shall be paid to the member's surviving spouse as if in fact the spouse had been nominated by written designation, or if there is no surviving spouse, then to the member's legal representatives.

(2) The benefit under this section shall be paid only where death occurs as a result of (a) injuries sustained in the course of employment; or (b) an occupational disease or infection that arises naturally and proximately out of employment covered under this chapter. The determination of eligibility for the benefit shall be made consistent with Title 51 RCW by the department of labor and industries. The department of labor and industries shall notify the department of retirement systems by order under RCW 51.52.050. [2007 c 487 § 4; 2003 c 402 § 3.]

41.35.420 Retirement eligibility. (1) NORMAL RETIREMENT. Any member with at least five service credit years who has attained at least age sixty-five shall be eligible to retire and to receive a retirement allowance computed according to the provisions of RCW 41.35.400.

(2) EARLY RETIREMENT. Any member who has completed at least twenty service credit years and has attained age fifty-five shall be eligible to retire and to receive a retirement allowance computed according to the provisions of RCW 41.35.400, except that a member retiring pursuant to this subsection shall have the retirement allowance actuarially reduced to reflect the difference in the number of years between age at retirement and the attainment of age sixty-five.

(3) ALTERNATE EARLY RETIREMENT.

(a) Any member who has completed at least thirty service credit years and has attained age fifty-five shall be eligible to retire and to receive a retirement allowance computed according to the provisions of RCW 41.35.400, except that a member retiring pursuant to this subsection shall have the retirement allowance reduced by three percent per year to reflect the difference in the number of years between age at retirement and the attainment of age sixty-five.

(b) On or after September 1, 2008, any member who has completed at least thirty service credit years and has attained age fifty-five shall be eligible to retire and to receive a retirement allowance computed according to the provisions of RCW 41.35.400, except that a member retiring pursuant to this subsection shall have the retirement allowance reduced as follows:

Retirement Age	Percent Reduction
55	20%
56	17%
57	14%
58	11%
59	8%
60	5%
61	2%
62	0%
63	0%
64	0%

Any member who retires under the provisions of this subsection is ineligible for the postretirement employment provisions of RCW 41.35.060(2) until the retired member has reached sixty-five years of age. For purposes of this subsection, employment with an employer also includes any personal service contract, service by an employer as a temporary or project employee, or any other similar compensated relationship with any employer included under the provisions of RCW 41.35.230(1).

The subsidized reductions for alternate early retirement in this subsection as set forth in section 6, chapter 491, Laws of 2007 were intended by the legislature as replacement benefits for gain-sharing. Until there is legal certainty with respect to the repeal of chapter 41.31A RCW, the right to retire under this subsection is noncontractual, and the legislature reserves the right to amend or repeal this subsection. Legal certainty includes, but is not limited to, the expiration of any: Applicable limitations on actions; and periods of time for seeking appellate review, up to and including reconsideration by the Washington supreme court and the supreme court of the United States. Until that time, eligible members may still retire under this subsection, and upon receipt of the first installment of a retirement allowance computed under this subsection, the resulting benefit becomes contractual for the recipient. If the repeal of chapter 41.31A RCW is held to be invalid in a final determination of a court of law, and the court orders reinstatement of gain-sharing or other alternate benefits as a remedy, then retirement benefits for any member who has completed at least thirty service credit years and has attained age fifty-five but has not yet received the first installment of a retirement allowance under this subsection shall be computed using the reductions in (a) of this subsection. [2007 c 491 § 6; 2000 c 247 § 905; 1998 c 341 § 103.]

Benefits not contractual right until September 1, 2008—2007 c 491: See note following RCW 41.32.765.

Severability—Conflict with federal requirements—2007 c 491: See notes following RCW 41.32.765.

Effective dates—Subchapter headings not law—2000 c 247: See RCW 41.40.931 and 41.40.932.

41.35.610 Choice of membership in plan 2 or plan 3.

(1) All classified employees who first become employed by an employer in an eligible position on or after July 1, 2007, shall have a period of ninety days to make an irrevocable choice to become a member of plan 2 or plan 3. At the end of

ninety days, if the member has not made a choice to become a member of plan 2, he or she becomes a member of plan 3.

(2) For administrative efficiency, until a member elects to become a member of plan 3, or becomes a member of plan 3 by default under subsection (1) of this section, the member shall be reported to the department in plan 2, with member and employer contributions. Upon becoming a member of plan 3 by election or by default, all service credit shall be transferred to the member's plan 3 defined benefit, and all employee accumulated contributions shall be transferred to the member's plan 3 defined contribution account.

(3) The plan choice provision as set forth in section 7, chapter 491, Laws of 2007 was intended by the legislature as a replacement benefit for gain-sharing. Until there is legal certainty with respect to the repeal of chapter 41.31A RCW, the right to plan choice under this section is noncontractual, and the legislature reserves the right to amend or repeal this section. Legal certainty includes, but is not limited to, the expiration of any: Applicable limitations on actions; and periods of time for seeking appellate review, up to and including reconsideration by the Washington supreme court and the supreme court of the United States. Until that time, all classified employees who first become employed by an employer in an eligible position on or after July 1, 2007, may choose either plan 2 or plan 3 under this section. If the repeal of chapter 41.31A RCW is held to be invalid in a final determination of a court of law, and the court orders reinstatement of gain-sharing or other alternate benefits as a remedy, then all classified employees who first become employed by an employer in an eligible position on or after the date of such reinstatement shall be members of plan 3. [2007 c 491 § 7; 1998 c 341 § 202.]

Effective date—2007 c 491 §§ 1, 3, and 7: See note following RCW 41.32.835.

Severability—Conflict with federal requirements—2007 c 491: See notes following RCW 41.32.765.

41.35.680 Retirement eligibility. (1) NORMAL RETIREMENT. Any member who is at least age sixty-five and who has:

- (a) Completed ten service credit years; or
- (b) Completed five service credit years, including twelve service credit months after attaining age forty-four; or
- (c) Completed five service credit years by September 1, 2000, under the public employees' retirement system plan 2 and who transferred to plan 3 under RCW 41.35.510; shall be eligible to retire and to receive a retirement allowance computed according to the provisions of RCW 41.35.620.

(2) EARLY RETIREMENT. Any member who has attained at least age fifty-five and has completed at least ten years of service shall be eligible to retire and to receive a retirement allowance computed according to the provisions of RCW 41.35.620, except that a member retiring pursuant to this subsection shall have the retirement allowance actuarially reduced to reflect the difference in the number of years between age at retirement and the attainment of age sixty-five.

(3) ALTERNATE EARLY RETIREMENT.

(a) Any member who has completed at least thirty service credit years and has attained age fifty-five shall be eligi-

ble to retire and to receive a retirement allowance computed according to the provisions of RCW 41.35.620, except that a member retiring pursuant to this subsection shall have the retirement allowance reduced by three percent per year to reflect the difference in the number of years between age at retirement and the attainment of age sixty-five.

(b) On or after September 1, 2008, any member who has completed at least thirty service credit years and has attained age fifty-five shall be eligible to retire and to receive a retirement allowance computed according to the provisions of RCW 41.35.620, except that a member retiring pursuant to this subsection shall have the retirement allowance reduced as follows:

Retirement Age	Percent Reduction
55	20%
56	17%
57	14%
58	11%
59	8%
60	5%
61	2%
62	0%
63	0%
64	0%

Any member who retires under the provisions of this subsection is ineligible for the postretirement employment provisions of RCW 41.35.060(2) until the retired member has reached sixty-five years of age. For purposes of this subsection, employment with an employer also includes any personal service contract, service by an employer as a temporary or project employee, or any other similar compensated relationship with any employer included under the provisions of RCW 41.35.230(1).

The subsidized reductions for alternate early retirement in this subsection as set forth in section 8, chapter 491, Laws of 2007 were intended by the legislature as replacement benefits for gain-sharing. Until there is legal certainty with respect to the repeal of chapter 41.31A RCW, the right to retire under this subsection is noncontractual, and the legislature reserves the right to amend or repeal this subsection. Legal certainty includes, but is not limited to, the expiration of any: Applicable limitations on actions; and periods of time for seeking appellate review, up to and including reconsideration by the Washington supreme court and the supreme court of the United States. Until that time, eligible members may still retire under this subsection, and upon receipt of the first installment of a retirement allowance computed under this subsection, the resulting benefit becomes contractual for the recipient. If the repeal of chapter 41.31A RCW is held to be invalid in a final determination of a court of law, and the court orders reinstatement of gain-sharing or other alternate benefits as a remedy, then retirement benefits for any member who has completed at least thirty service credit years and has attained age fifty-five but has not yet received the first installment of a retirement allowance under this subsection shall be computed using the reductions in (a) of this subsection.

tion. [2007 c 491 § 8; 2006 c 33 § 2; 2000 c 247 § 906; 1998 c 341 § 209.]

Benefits not contractual right until September 1, 2008—2007 c 491: See note following RCW 41.32.765.

Severability—Conflict with federal requirements—2007 c 491: See notes following RCW 41.32.765.

Effective dates—Subchapter headings not law—2000 c 247: See RCW 41.40.931 and 41.40.932.

**Chapter 41.37 RCW
WASHINGTON PUBLIC SAFETY EMPLOYEES'
RETIREMENT SYSTEM**

Sections

41.37.010	Definitions.
41.37.060	Duty disability retirement recipients—Continued service credit.
41.37.110	Death benefit—Course of employment—Occupational disease or infection.

41.37.010 Definitions. The definitions in this section apply throughout this chapter, unless the context clearly requires otherwise.

(1) "Retirement system" means the Washington public safety employees' retirement system provided for in this chapter.

(2) "Department" means the department of retirement systems created in chapter 41.50 RCW.

(3) "State treasurer" means the treasurer of the state of Washington.

(4) "Employer" means the Washington state department of corrections, the Washington state parks and recreation commission, the Washington state gambling commission, the Washington state patrol, the Washington state department of natural resources, and the Washington state liquor control board; any county corrections department; or any city corrections department not covered under chapter 41.28 RCW.

(5) "Member" means any employee employed by an employer on a full-time basis:

(a) Who is in a position that requires completion of a certified criminal justice training course and is authorized by their employer to arrest, conduct criminal investigations, enforce the criminal laws of the state of Washington, and carry a firearm as part of the job;

(b) Whose primary responsibility is to ensure the custody and security of incarcerated or probationary individuals as a corrections officer, probation officer, or jailer;

(c) Who is a limited authority Washington peace officer, as defined in RCW 10.93.020, for an employer; or

(d) Whose primary responsibility is to supervise members eligible under this subsection.

(6)(a) "Compensation earnable" for members, means salaries or wages earned by a member during a payroll period for personal services, including overtime payments, and shall include wages and salaries deferred under provisions established pursuant to sections 403(b), 414(h), and 457 of the United States internal revenue code, but shall exclude non-money maintenance compensation and lump sum or other payments for deferred annual sick leave, unused accumulated vacation, unused accumulated annual leave, or any form of severance pay.

(b) "Compensation earnable" for members also includes the following actual or imputed payments, which are not paid for personal services:

(i) Retroactive payments to an individual by an employer on reinstatement of the employee in a position, or payments by an employer to an individual in lieu of reinstatement, which are awarded or granted as the equivalent of the salary or wage which the individual would have earned during a payroll period shall be considered compensation earnable to the extent provided in this subsection, and the individual shall receive the equivalent service credit;

(ii) In any year in which a member serves in the legislature, the member shall have the option of having such member's compensation earnable be the greater of:

(A) The compensation earnable the member would have received had such member not served in the legislature; or

(B) Such member's actual compensation earnable received for nonlegislative public employment and legislative service combined. Any additional contributions to the retirement system required because compensation earnable under (b)(ii)(A) of this subsection is greater than compensation earnable under (b)(ii)(B) of this subsection shall be paid by the member for both member and employer contributions;

(iii) Assault pay only as authorized by RCW 27.04.100, 72.01.045, and 72.09.240;

(iv) Compensation that a member would have received but for a disability occurring in the line of duty only as authorized by RCW 41.37.060;

(v) Compensation that a member receives due to participation in the leave sharing program only as authorized by RCW 41.04.650 through 41.04.670; and

(vi) Compensation that a member receives for being in standby status. For the purposes of this section, a member is in standby status when not being paid for time actually worked and the employer requires the member to be prepared to report immediately for work, if the need arises, although the need may not arise.

(7) "Service" means periods of employment by a member on or after July 1, 2006, for one or more employers for which compensation earnable is paid. Compensation earnable earned for ninety or more hours in any calendar month shall constitute one service credit month. Compensation earnable earned for at least seventy hours but less than ninety hours in any calendar month shall constitute one-half service credit month of service. Compensation earnable earned for less than seventy hours in any calendar month shall constitute one-quarter service credit month of service. Time spent in standby status, whether compensated or not, is not service.

Any fraction of a year of service shall be taken into account in the computation of such retirement allowance or benefits.

(a) Service in any state elective position shall be deemed to be full-time service.

(b) A member shall receive a total of not more than twelve service credit months of service for such calendar year. If an individual is employed in an eligible position by one or more employers the individual shall receive no more than one service credit month during any calendar month in which multiple service for ninety or more hours is rendered.

(8) "Service credit year" means an accumulation of months of service credit which is equal to one when divided by twelve.

(9) "Service credit month" means a month or an accumulation of months of service credit which is equal to one.

(10) "Membership service" means all service rendered as a member.

(11) "Beneficiary" means any person in receipt of a retirement allowance or other benefit provided by this chapter resulting from service rendered to an employer by another person.

(12) "Regular interest" means such rate as the director may determine.

(13) "Accumulated contributions" means the sum of all contributions standing to the credit of a member in the member's individual account, including any amount paid under RCW 41.50.165(2), together with the regular interest thereon.

(14) "Average final compensation" means the member's average compensation earnable of the highest consecutive sixty months of service credit months prior to such member's retirement, termination, or death. Periods constituting authorized leaves of absence may not be used in the calculation of average final compensation except under RCW 41.37.290.

(15) "Final compensation" means the annual rate of compensation earnable by a member at the time of termination of employment.

(16) "Annuity" means payments for life derived from accumulated contributions of a member. All annuities shall be paid in monthly installments.

(17) "Pension" means payments for life derived from contributions made by the employer. All pensions shall be paid in monthly installments.

(18) "Retirement allowance" means monthly payments to a retiree or beneficiary as provided in this chapter.

(19) "Employee" or "employed" means a person who is providing services for compensation to an employer, unless the person is free from the employer's direction and control over the performance of work. The department shall adopt rules and interpret this subsection consistent with common law.

(20) "Actuarial equivalent" means a benefit of equal value when computed upon the basis of such mortality and other tables as may be adopted by the director.

(21) "Retirement" means withdrawal from active service with a retirement allowance as provided by this chapter.

(22) "Eligible position" means any permanent, full-time position included in subsection (5) of this section.

(23) "Ineligible position" means any position which does not conform with the requirements set forth in subsection (22) of this section.

(24) "Leave of absence" means the period of time a member is authorized by the employer to be absent from service without being separated from membership.

(25) "Retiree" means any person who has begun accruing a retirement allowance or other benefit provided by this chapter resulting from service rendered to an employer while a member.

(26) "Director" means the director of the department.

(27) "State elective position" means any position held by any person elected or appointed to statewide office or elected or appointed as a member of the legislature.

(28) "State actuary" or "actuary" means the person appointed pursuant to RCW 44.44.010(2).

(29) "Plan" means the Washington public safety employees' retirement system plan 2.

(30) "Index" means, for any calendar year, that year's annual average consumer price index, Seattle, Washington area, for urban wage earners and clerical workers, all items, compiled by the bureau of labor statistics, United States department of labor.

(31) "Index A" means the index for the year prior to the determination of a postretirement adjustment.

(32) "Index B" means the index for the year prior to index A.

(33) "Adjustment ratio" means the value of index A divided by index B.

(34) "Separation from service" occurs when a person has terminated all employment with an employer. [2007 c 492 § 11; 2007 c 294 § 1; 2006 c 309 § 2; 2005 c 327 § 4; 2004 c 242 § 2.]

Reviser's note: This section was amended by 2007 c 294 § 1 and by 2007 c 492 § 11, each without reference to the other. Both amendments are incorporated in the publication of this section under RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

Effective date—2006 c 309: See note following RCW 41.37.005.

Effective date—2005 c 327 §§ 4-7: "Sections 4 through 7 of this act take effect July 1, 2006." [2005 c 327 § 12.]

41.37.060 Duty disability retirement recipients—Continued service credit. Those members subject to this chapter who became disabled in the line of duty and who received or are receiving benefits under Title 51 RCW or a similar federal workers' compensation program shall receive or continue to receive service credit subject to the following:

(1) No member may receive more than one month's service credit in a calendar month.

(2) No service credit under this section may be allowed after a member separates or is separated without leave of absence.

(3) Employer contributions shall be paid by the employer at the rate in effect for the period of the service credited.

(4) Employee contributions shall be collected by the employer and paid to the department at the rate in effect for the period of service credited.

(5) Contributions shall be based on the regular compensation which the member would have received had the disability not occurred. If contribution payments are made retroactively, interest shall be charged at the rate set by the director on both employee and employer contributions. Service credit shall not be granted until the employee contribution has been paid.

(6) The service and compensation credit shall not be granted for a period to exceed twenty-four consecutive months.

(7) Should the legislature revoke the service credit authorized under this section or repeal this section, no affected employee is entitled to receive the credit as a matter of contractual right. [2007 c 49 § 4; 2004 c 242 § 9.]

41.37.110 Death benefit—Course of employment—Occupational disease or infection. (1) A one hundred fifty thousand dollar death benefit shall be paid to the member's estate, or the person or persons, trust, or organization the member has nominated by written designation duly executed and filed with the department. If the designated person or persons are not still living at the time of the member's death, the member's death benefit shall be paid to the member's surviving spouse as if in fact the spouse had been nominated by written designation, or if there is no surviving spouse, then to the member's legal representatives.

(2) The benefit under this section shall be paid only where death occurs as a result of (a) injuries sustained in the course of employment; or (b) an occupational disease or infection that arises naturally and proximately out of employment covered under this chapter. The determination of eligibility for the benefit shall be made consistent with Title 51 RCW by the department of labor and industries. The department of labor and industries shall notify the department of retirement systems by order under RCW 51.52.050. [2007 c 487 § 5; 2004 c 242 § 14.]

Chapter 41.40 RCW

WASHINGTON PUBLIC EMPLOYEES' RETIREMENT SYSTEM

Sections

41.40.010	Definitions.
41.40.037	Service by retirees—Reduction of retirement allowance upon reemployment—Reestablishment of membership.
41.40.0931	Death benefit—Course of employment as a police officer—Occupational disease or infection.
41.40.0932	Death benefit—Course of employment—Occupational disease or infection.
41.40.113	Public safety employees' retirement system—Election—Membership.
41.40.124	Discontinuing judicial retirement account plan contributions—Additional benefit—One-time irrevocable election—Justices and judges.
41.40.127	Additional benefit for district or municipal court judges—One-time irrevocable election.
41.40.183	Annual increase amount—Legislature's rights reserved.
41.40.197	Retirement allowance—Annual increases—Eligibility.
41.40.630	Retirement for service.
41.40.700	Death benefits.
41.40.820	Retirement eligibility.
41.40.870	Discontinuing judicial retirement account plan contributions—Additional benefit—One-time irrevocable election—Justices and judges.
41.40.873	Additional benefit for district or municipal court judges—One-time irrevocable election.

41.40.010 Definitions. As used in this chapter, unless a different meaning is plainly required by the context:

(1) "Retirement system" means the public employees' retirement system provided for in this chapter.

(2) "Department" means the department of retirement systems created in chapter 41.50 RCW.

(3) "State treasurer" means the treasurer of the state of Washington.

(4)(a) "Employer" for plan 1 members, means every branch, department, agency, commission, board, and office of the state, any political subdivision or association of political subdivisions of the state admitted into the retirement system, and legal entities authorized by RCW 35.63.070 and 36.70.060 or chapter 39.34 RCW; and the term shall also include any labor guild, association, or organization the

membership of a local lodge or division of which is comprised of at least forty percent employees of an employer (other than such labor guild, association, or organization) within this chapter. The term may also include any city of the first class that has its own retirement system.

(b) "Employer" for plan 2 and plan 3 members, means every branch, department, agency, commission, board, and office of the state, and any political subdivision and municipal corporation of the state admitted into the retirement system, including public agencies created pursuant to RCW 35.63.070, 36.70.060, and 39.34.030; except that after August 31, 2000, school districts and educational service districts will no longer be employers for the public employees' retirement system plan 2.

(5) "Member" means any employee included in the membership of the retirement system, as provided for in RCW 41.40.023. RCW 41.26.045 does not prohibit a person otherwise eligible for membership in the retirement system from establishing such membership effective when he or she first entered an eligible position.

(6) "Original member" of this retirement system means:

(a) Any person who became a member of the system prior to April 1, 1949;

(b) Any person who becomes a member through the admission of an employer into the retirement system on and after April 1, 1949, and prior to April 1, 1951;

(c) Any person who first becomes a member by securing employment with an employer prior to April 1, 1951, provided the member has rendered at least one or more years of service to any employer prior to October 1, 1947;

(d) Any person who first becomes a member through the admission of an employer into the retirement system on or after April 1, 1951, provided, such person has been in the regular employ of the employer for at least six months of the twelve-month period preceding the said admission date;

(e) Any member who has restored all contributions that may have been withdrawn as provided by RCW 41.40.150 and who on the effective date of the individual's retirement becomes entitled to be credited with ten years or more of membership service except that the provisions relating to the minimum amount of retirement allowance for the member upon retirement at age seventy as found in RCW 41.40.190(4) shall not apply to the member;

(f) Any member who has been a contributor under the system for two or more years and who has restored all contributions that may have been withdrawn as provided by RCW 41.40.150 and who on the effective date of the individual's retirement has rendered five or more years of service for the state or any political subdivision prior to the time of the admission of the employer into the system; except that the provisions relating to the minimum amount of retirement allowance for the member upon retirement at age seventy as found in RCW 41.40.190(4) shall not apply to the member.

(7) "New member" means a person who becomes a member on or after April 1, 1949, except as otherwise provided in this section.

(8)(a) "Compensation earnable" for plan 1 members, means salaries or wages earned during a payroll period for personal services and where the compensation is not all paid in money, maintenance compensation shall be included upon

the basis of the schedules established by the member's employer.

(i) "Compensation earnable" for plan 1 members also includes the following actual or imputed payments, which are not paid for personal services:

(A) Retroactive payments to an individual by an employer on reinstatement of the employee in a position, or payments by an employer to an individual in lieu of reinstatement in a position which are awarded or granted as the equivalent of the salary or wage which the individual would have earned during a payroll period shall be considered compensation earnable and the individual shall receive the equivalent service credit;

(B) If a leave of absence is taken by an individual for the purpose of serving in the state legislature, the salary which would have been received for the position from which the leave of absence was taken, shall be considered as compensation earnable if the employee's contribution is paid by the employee and the employer's contribution is paid by the employer or employee;

(C) Assault pay only as authorized by RCW 27.04.100, 72.01.045, and 72.09.240;

(D) Compensation that a member would have received but for a disability occurring in the line of duty only as authorized by RCW 41.40.038;

(E) Compensation that a member receives due to participation in the leave sharing program only as authorized by RCW 41.04.650 through 41.04.670; and

(F) Compensation that a member receives for being in standby status. For the purposes of this section, a member is in standby status when not being paid for time actually worked and the employer requires the member to be prepared to report immediately for work, if the need arises, although the need may not arise.

(ii) "Compensation earnable" does not include:

(A) Remuneration for unused sick leave authorized under RCW 41.04.340, 28A.400.210, or 28A.310.490;

(B) Remuneration for unused annual leave in excess of thirty days as authorized by RCW 43.01.044 and 43.01.041.

(b) "Compensation earnable" for plan 2 and plan 3 members, means salaries or wages earned by a member during a payroll period for personal services, including overtime payments, and shall include wages and salaries deferred under provisions established pursuant to sections 403(b), 414(h), and 457 of the United States Internal Revenue Code, but shall exclude nonmoney maintenance compensation and lump sum or other payments for deferred annual sick leave, unused accumulated vacation, unused accumulated annual leave, or any form of severance pay.

"Compensation earnable" for plan 2 and plan 3 members also includes the following actual or imputed payments, which are not paid for personal services:

(i) Retroactive payments to an individual by an employer on reinstatement of the employee in a position, or payments by an employer to an individual in lieu of reinstatement in a position which are awarded or granted as the equivalent of the salary or wage which the individual would have earned during a payroll period shall be considered compensation earnable to the extent provided above, and the individual shall receive the equivalent service credit;

(ii) In any year in which a member serves in the legislature, the member shall have the option of having such member's compensation earnable be the greater of:

(A) The compensation earnable the member would have received had such member not served in the legislature; or

(B) Such member's actual compensation earnable received for nonlegislative public employment and legislative service combined. Any additional contributions to the retirement system required because compensation earnable under (b)(ii)(A) of this subsection is greater than compensation earnable under (b)(ii)(B) of this subsection shall be paid by the member for both member and employer contributions;

(iii) Assault pay only as authorized by RCW 27.04.100, 72.01.045, and 72.09.240;

(iv) Compensation that a member would have received but for a disability occurring in the line of duty only as authorized by RCW 41.40.038;

(v) Compensation that a member receives due to participation in the leave sharing program only as authorized by RCW 41.04.650 through 41.04.670; and

(vi) Compensation that a member receives for being in standby status. For the purposes of this section, a member is in standby status when not being paid for time actually worked and the employer requires the member to be prepared to report immediately for work, if the need arises, although the need may not arise.

(9)(a) "Service" for plan 1 members, except as provided in RCW 41.40.088, means periods of employment in an eligible position or positions for one or more employers rendered to any employer for which compensation is paid, and includes time spent in office as an elected or appointed official of an employer. Compensation earnable earned in full time work for seventy hours or more in any given calendar month shall constitute one service credit month except as provided in RCW 41.40.088. Compensation earnable earned for less than seventy hours in any calendar month shall constitute one-quarter service credit month of service except as provided in RCW 41.40.088. Only service credit months and one-quarter service credit months shall be counted in the computation of any retirement allowance or other benefit provided for in this chapter. Any fraction of a year of service shall be taken into account in the computation of such retirement allowance or benefits. Time spent in standby status, whether compensated or not, is not service.

(i) Service by a state employee officially assigned by the state on a temporary basis to assist another public agency, shall be considered as service as a state employee: PROVIDED, That service to any other public agency shall not be considered service as a state employee if such service has been used to establish benefits in any other public retirement system.

(ii) An individual shall receive no more than a total of twelve service credit months of service during any calendar year. If an individual is employed in an eligible position by one or more employers the individual shall receive no more than one service credit month during any calendar month in which multiple service for seventy or more hours is rendered.

(iii) A school district employee may count up to forty-five days of sick leave as creditable service solely for the purpose of determining eligibility to retire under RCW 41.40.180 as authorized by RCW 28A.400.300. For purposes

of plan 1 "forty-five days" as used in RCW 28A.400.300 is equal to two service credit months. Use of less than forty-five days of sick leave is creditable as allowed under this subsection as follows:

(A) Less than twenty-two days equals one-quarter service credit month;

(B) Twenty-two days equals one service credit month;

(C) More than twenty-two days but less than forty-five days equals one and one-quarter service credit month.

(b) "Service" for plan 2 and plan 3 members, means periods of employment by a member in an eligible position or positions for one or more employers for which compensation earnable is paid. Compensation earnable earned for ninety or more hours in any calendar month shall constitute one service credit month except as provided in RCW 41.40.088. Compensation earnable earned for at least seventy hours but less than ninety hours in any calendar month shall constitute one-half service credit month of service. Compensation earnable earned for less than seventy hours in any calendar month shall constitute one-quarter service credit month of service. Time spent in standby status, whether compensated or not, is not service.

Any fraction of a year of service shall be taken into account in the computation of such retirement allowance or benefits.

(i) Service in any state elective position shall be deemed to be full time service, except that persons serving in state elective positions who are members of the Washington school employees' retirement system, teachers' retirement system, public safety employees' retirement system, or law enforcement officers' and fire fighters' retirement system at the time of election or appointment to such position may elect to continue membership in the Washington school employees' retirement system, teachers' retirement system, public safety employees' retirement system, or law enforcement officers' and fire fighters' retirement system.

(ii) A member shall receive a total of not more than twelve service credit months of service for such calendar year. If an individual is employed in an eligible position by one or more employers the individual shall receive no more than one service credit month during any calendar month in which multiple service for ninety or more hours is rendered.

(iii) Up to forty-five days of sick leave may be creditable as service solely for the purpose of determining eligibility to retire under RCW 41.40.180 as authorized by RCW 28A.400.300. For purposes of plan 2 and plan 3 "forty-five days" as used in RCW 28A.400.300 is equal to two service credit months. Use of less than forty-five days of sick leave is creditable as allowed under this subsection as follows:

(A) Less than eleven days equals one-quarter service credit month;

(B) Eleven or more days but less than twenty-two days equals one-half service credit month;

(C) Twenty-two days equals one service credit month;

(D) More than twenty-two days but less than thirty-three days equals one and one-quarter service credit month;

(E) Thirty-three or more days but less than forty-five days equals one and one-half service credit month.

(10) "Service credit year" means an accumulation of months of service credit which is equal to one when divided by twelve.

(11) "Service credit month" means a month or an accumulation of months of service credit which is equal to one.

(12) "Prior service" means all service of an original member rendered to any employer prior to October 1, 1947.

(13) "Membership service" means:

(a) All service rendered, as a member, after October 1, 1947;

(b) All service after October 1, 1947, to any employer prior to the time of its admission into the retirement system for which member and employer contributions, plus interest as required by RCW 41.50.125, have been paid under RCW 41.40.056 or 41.40.057;

(c) Service not to exceed six consecutive months of probationary service rendered after April 1, 1949, and prior to becoming a member, in the case of any member, upon payment in full by such member of the total amount of the employer's contribution to the retirement fund which would have been required under the law in effect when such probationary service was rendered if the member had been a member during such period, except that the amount of the employer's contribution shall be calculated by the director based on the first month's compensation earnable as a member;

(d) Service not to exceed six consecutive months of probationary service, rendered after October 1, 1947, and before April 1, 1949, and prior to becoming a member, in the case of any member, upon payment in full by such member of five percent of such member's salary during said period of probationary service, except that the amount of the employer's contribution shall be calculated by the director based on the first month's compensation earnable as a member.

(14)(a) "Beneficiary" for plan 1 members, means any person in receipt of a retirement allowance, pension or other benefit provided by this chapter.

(b) "Beneficiary" for plan 2 and plan 3 members, means any person in receipt of a retirement allowance or other benefit provided by this chapter resulting from service rendered to an employer by another person.

(15) "Regular interest" means such rate as the director may determine.

(16) "Accumulated contributions" means the sum of all contributions standing to the credit of a member in the member's individual account, including any amount paid under RCW 41.50.165(2), together with the regular interest thereon.

(17)(a) "Average final compensation" for plan 1 members, means the annual average of the greatest compensation earnable by a member during any consecutive two year period of service credit months for which service credit is allowed; or if the member has less than two years of service credit months then the annual average compensation earnable during the total years of service for which service credit is allowed.

(b) "Average final compensation" for plan 2 and plan 3 members, means the member's average compensation earnable of the highest consecutive sixty months of service credit months prior to such member's retirement, termination, or death. Periods constituting authorized leaves of absence may not be used in the calculation of average final compensation except under RCW 41.40.710(2).

(18) "Final compensation" means the annual rate of compensation earnable by a member at the time of termination of employment.

(19) "Annuity" means payments for life derived from accumulated contributions of a member. All annuities shall be paid in monthly installments.

(20) "Pension" means payments for life derived from contributions made by the employer. All pensions shall be paid in monthly installments.

(21) "Retirement allowance" means the sum of the annuity and the pension.

(22) "Employee" or "employed" means a person who is providing services for compensation to an employer, unless the person is free from the employer's direction and control over the performance of work. The department shall adopt rules and interpret this subsection consistent with common law.

(23) "Actuarial equivalent" means a benefit of equal value when computed upon the basis of such mortality and other tables as may be adopted by the director.

(24) "Retirement" means withdrawal from active service with a retirement allowance as provided by this chapter.

(25) "Eligible position" means:

(a) Any position that, as defined by the employer, normally requires five or more months of service a year for which regular compensation for at least seventy hours is earned by the occupant thereof. For purposes of this chapter an employer shall not define "position" in such a manner that an employee's monthly work for that employer is divided into more than one position;

(b) Any position occupied by an elected official or person appointed directly by the governor, or appointed by the chief justice of the supreme court under RCW 2.04.240(2) or 2.06.150(2), for which compensation is paid.

(26) "Ineligible position" means any position which does not conform with the requirements set forth in subsection (25) of this section.

(27) "Leave of absence" means the period of time a member is authorized by the employer to be absent from service without being separated from membership.

(28) "Totally incapacitated for duty" means total inability to perform the duties of a member's employment or office or any other work for which the member is qualified by training or experience.

(29) "Retiree" means any person who has begun accruing a retirement allowance or other benefit provided by this chapter resulting from service rendered to an employer while a member.

(30) "Director" means the director of the department.

(31) "State elective position" means any position held by any person elected or appointed to statewide office or elected or appointed as a member of the legislature.

(32) "State actuary" or "actuary" means the person appointed pursuant to RCW 44.44.010(2).

(33) "Plan 1" means the public employees' retirement system, plan 1 providing the benefits and funding provisions covering persons who first became members of the system prior to October 1, 1977.

(34) "Plan 2" means the public employees' retirement system, plan 2 providing the benefits and funding provisions

covering persons who first became members of the system on and after October 1, 1977, and are not included in plan 3.

(35) "Plan 3" means the public employees' retirement system, plan 3 providing the benefits and funding provisions covering persons who:

(a) First become a member on or after:

(i) March 1, 2002, and are employed by a state agency or institute of higher education and who did not choose to enter plan 2; or

(ii) September 1, 2002, and are employed by other than a state agency or institute of higher education and who did not choose to enter plan 2; or

(b) Transferred to plan 3 under RCW 41.40.795.

(36) "Index" means, for any calendar year, that year's annual average consumer price index, Seattle, Washington area, for urban wage earners and clerical workers, all items, compiled by the bureau of labor statistics, United States department of labor.

(37) "Index A" means the index for the year prior to the determination of a postretirement adjustment.

(38) "Index B" means the index for the year prior to index A.

(39) "Index year" means the earliest calendar year in which the index is more than sixty percent of index A.

(40) "Adjustment ratio" means the value of index A divided by index B.

(41) "Annual increase" means, initially, fifty-nine cents per month per year of service which amount shall be increased each July 1st by three percent, rounded to the nearest cent.

(42) "Separation from service" occurs when a person has terminated all employment with an employer. Separation from service or employment does not occur, and if claimed by an employer or employee may be a violation of RCW 41.40.055, when an employee and employer have a written or oral agreement to resume employment with the same employer following termination. Mere expressions or inquiries about postretirement employment by an employer or employee that do not constitute a commitment to reemploy the employee after retirement are not an agreement under this subsection.

(43) "Member account" or "member's account" for purposes of plan 3 means the sum of the contributions and earnings on behalf of the member in the defined contribution portion of plan 3. [2007 c 50 § 4; 2004 c 242 § 53; 2003 c 412 § 4; 2000 c 247 § 102; 1998 c 341 § 601. Prior: 1997 c 254 § 10; 1997 c 88 § 6; prior: 1995 c 345 § 10; 1995 c 286 § 1; 1995 c 244 § 3; prior: 1994 c 298 § 2; 1994 c 247 § 5; 1994 c 197 § 23; 1994 c 177 § 8; 1993 c 95 § 8; prior: 1991 c 343 § 6; 1991 c 35 § 70; 1990 c 274 § 3; prior: 1989 c 309 § 1; 1989 c 289 § 1; 1985 c 13 § 7; 1983 c 69 § 1; 1981 c 256 § 6; 1979 ex.s. c 249 § 7; 1977 ex.s. c 295 § 16; 1973 1st ex.s. c 190 § 2; 1972 ex.s. c 151 § 1; 1971 ex.s. c 271 § 2; 1969 c 128 § 1; 1965 c 155 § 1; 1963 c 225 § 1; 1963 c 174 § 1; 1961 c 291 § 1; 1957 c 231 § 1; 1955 c 277 § 1; 1953 c 200 § 1; 1951 c 50 § 1; 1949 c 240 § 1; 1947 c 274 § 1; Rem. Supp. 1949 § 11072-1.]

Effective date—2004 c 242: See RCW 41.37.901.

Effective date—1998 c 341: See RCW 41.35.901.

Intent—Construction—Application—1997 c 254: See notes following RCW 41.26.490.

Intent—Effective date—1995 c 345: See notes following RCW 41.32.489.

Intent—1994 c 298: "(1) This act provides cross-references to existing statutes that affect calculation of pensions under the retirement systems authorized by chapters 41.40 and 41.32 RCW to the relevant definition sections of those chapters. Except as provided in subsection (2) of this section, this act is technical in nature and neither enhances nor diminishes existing pension rights. Except for the amendment to RCW 41.40.010(5), it is not the intent of the legislature to change the substance or effect of any statute previously enacted. Rather, this act provides cross-references to applicable statutes in order to aid with the administration of benefits authorized in chapters 41.40 and 41.32 RCW.

(2) The amendments to RCW 41.40.010 (5) and (29) contained in section 2, chapter 298, Laws of 1994, and to RCW 41.32.010(31) contained in section 3, chapter 298, Laws of 1994, clarify the status of certain persons as either members or retirees. RCW 41.04.275 and section 7, chapter 298, Laws of 1994, create the pension funding account in the state treasury and direct the transfer of moneys deposited in the budget stabilization account by the 1993-95 operating appropriations act, section 919, chapter 24, Laws of 1993 sp. sess., for the continuing costs of state retirement system benefits in effect on July 1, 1993, consistent with section 919, chapter 24, Laws of 1993 sp. sess. to the pension funding account." [1994 c 298 § 1.]

Effective date—1994 c 247: See note following RCW 41.32.4991.

Intent—Severability—Effective date—1994 c 197: See notes following RCW 41.50.165.

Findings—1994 c 177: See note following RCW 41.50.125.

Retroactive application—Effective date—1993 c 95: See notes following RCW 41.40.175.

Findings—Effective dates—1991 c 343: See notes following RCW 41.50.005.

Intent—1991 c 35: See note following RCW 41.26.005.

Findings—Effective date—Construction—1990 c 274: See notes following RCW 41.32.010.

Purpose—Application—Retrospective application—1985 c 13: See notes following RCW 41.04.445.

Applicability—1983 c 69 § 1: "Section 1 of this 1983 act applies only to service credit accruing after July 24, 1983." [1983 c 69 § 3.]

Purpose—Severability—1981 c 256: See notes following RCW 41.26.030.

Severability—1973 1st ex.s. c 190: "If any provision of this 1973 act, or its application to any person or circumstance is held invalid, the remainder of the act, or the application of the provision to other persons or circumstances is not affected." [1973 1st ex.s. c 190 § 16.]

Severability—1971 ex.s. c 271: See note following RCW 41.32.260.

Severability—1969 c 128: "If any provision of this act, or its application to any person or circumstance is held invalid, the remainder of the act, or the application of the provision to other persons or circumstances is not affected." [1969 c 128 § 19.]

Severability—1965 c 155: "If any provision of this act, or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1965 c 155 § 10.]

Severability—1963 c 174: "If any provision of this act, or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1963 c 174 § 19.]

Severability—1961 c 291: "If any provision of this act, or its application to any person or circumstance is held invalid, the remainder of the act, or the application of the provision to other persons or circumstances is not affected." [1961 c 291 § 18.]

41.40.037 Service by retirees—Reduction of retirement allowance upon reemployment—Reestablishment of membership. (1)(a) If a retiree enters employment with an employer sooner than one calendar month after his or her accrual date, the retiree's monthly retirement allowance will be reduced by five and one-half percent for every eight hours worked during that month. This reduction will be applied

each month until the retiree remains absent from employment with an employer for one full calendar month.

(b) The benefit reduction provided in (a) of this subsection will accrue for a maximum of one hundred sixty hours per month. Any benefit reduction over one hundred percent will be applied to the benefit the retiree is eligible to receive in subsequent months.

(2)(a) Except as provided in (b) of this subsection, a retiree from plan 1 who enters employment with an employer at least one calendar month after his or her accrual date may continue to receive pension payments while engaged in such service for up to eight hundred sixty-seven hours of service in a calendar year without a reduction of pension.

(b) A retiree from plan 1 who enters employment with an employer at least three calendar months after his or her accrual date and:

(i) Is hired pursuant to a written policy into a position for which the employer has documented a justifiable need to hire a retiree into the position;

(ii) Is hired through the established process for the position with the approval of: A school board for a school district; the chief executive officer of a state agency employer; the secretary of the senate for the senate; the chief clerk of the house of representatives for the house of representatives; the secretary of the senate and the chief clerk of the house of representatives jointly for the joint legislative audit and review committee, the select committee on pension policy, the legislative evaluation and accountability program, the legislative systems committee, and the statute law committee; or according to rules adopted for the rehiring of retired plan 1 members for a local government employer;

(iii) The employer retains records of the procedures followed and decisions made in hiring the retiree, and provides those records in the event of an audit; and

(iv) The employee has not already rendered a cumulative total of more than one thousand nine hundred hours of service while in receipt of pension payments beyond an annual threshold of eight hundred sixty-seven hours; shall cease to receive pension payments while engaged in that service after the retiree has rendered service for more than one thousand five hundred hours in a calendar year. The one thousand nine hundred hour cumulative total under this subsection applies prospectively to those retiring after July 27, 2003, and retroactively to those who retired prior to July 27, 2003, and shall be calculated from the date of retirement.

(c) When a plan 1 member renders service beyond eight hundred sixty-seven hours, the department shall collect from the employer the applicable employer retirement contributions for the entire duration of the member's employment during that calendar year.

(d) A retiree from plan 2 or plan 3 who has satisfied the break in employment requirement of subsection (1) of this section may work up to eight hundred sixty-seven hours in a calendar year in an eligible position, as defined in RCW 41.32.010, 41.35.010, 41.37.010, or 41.40.010, or as a fire fighter or law enforcement officer, as defined in RCW 41.26.030, without suspension of his or her benefit.

(3) If the retiree opts to reestablish membership under RCW 41.40.023(12), he or she terminates his or her retirement status and becomes a member. Retirement benefits shall not accrue during the period of membership and the

individual shall make contributions and receive membership credit. Such a member shall have the right to again retire if eligible in accordance with RCW 41.40.180. However, if the right to retire is exercised to become effective before the member has rendered two uninterrupted years of service, the retirement formula and survivor options the member had at the time of the member's previous retirement shall be reinstated.

(4) The department shall collect and provide the state actuary with information relevant to the use of this section for the select committee on pension policy.

(5) The legislature reserves the right to amend or repeal this section in the future and no member or beneficiary has a contractual right to be employed for more than five months in a calendar year without a reduction of his or her pension. [2007 c 50 § 5; 2005 c 319 § 103; 2004 c 242 § 63. Prior: 2003 c 412 § 5; 2003 c 295 § 7; 2001 2nd sp.s. c 10 § 4; (2001 2nd sp.s. c 10 § 12 repealed by 2002 c 26 § 9); 1997 c 254 § 14.]

Findings—Intent—Part headings—Effective dates—2005 c 319: See notes following RCW 43.17.020.

Effective date—2004 c 242: See RCW 41.37.901.

Effective dates—2001 2nd sp.s. c 10: "Except for section 12 of this act which takes effect December 31, 2004, this act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect July 1, 2001." [2001 2nd sp.s. c 10 § 14.]

Intent—Construction—Application—1997 c 254: See notes following RCW 41.26.490.

41.40.0931 Death benefit—Course of employment as a police officer—Occupational disease or infection. (1) A one hundred fifty thousand dollar death benefit for members who had the opportunity to transfer to the law enforcement officers' and firefighters' retirement system pursuant to chapter 502, Laws of 1993, but elected to remain in the public employees' retirement system, shall be paid to the member's estate, or such person or persons, trust, or organization as the member has nominated by written designation duly executed and filed with the department. If there is no designated person or persons still living at the time of the member's death, the member's death benefit shall be paid to the member's surviving spouse as if in fact the spouse had been nominated by written designation, or if there is no surviving spouse, then to the member's legal representatives.

(2) Subject to subsection (3) of this section, the benefit under this section shall be paid only where death occurs as a result of (a) injuries sustained in the course of employment as a general authority police officer; or (b) an occupational disease or infection that arises naturally and proximately out of employment covered under this chapter. The determination of eligibility for the benefit shall be made consistent with Title 51 RCW by the department of labor and industries. The department of labor and industries shall notify the department of retirement systems by order under RCW 51.52.050.

(3) The benefit under this section shall not be paid in the event the member was in the act of committing a felony when the fatal injuries were suffered. [2007 c 487 § 6; 1998 c 157 § 1.]

Effective date—1998 c 157: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state gov-

ernment and its existing public institutions, and takes effect immediately [March 25, 1998]." [1998 c 157 § 6.]

41.40.0932 Death benefit—Course of employment—Occupational disease or infection. (1) A one hundred fifty thousand dollar death benefit shall be paid to the member's estate, or such person or persons, trust or organization as the member has nominated by written designation duly executed and filed with the department. If no such designated person or persons are still living at the time of the member's death, the member's death benefit shall be paid to the member's surviving spouse as if in fact the spouse had been nominated by written designation, or if there is no surviving spouse, then to the member's legal representatives.

(2) The benefit under this section shall be paid only where death occurs as a result of (a) injuries sustained in the course of employment; or (b) an occupational disease or infection that arises naturally and proximately out of employment covered under this chapter. The determination of eligibility for the benefit shall be made consistent with Title 51 RCW by the department of labor and industries. The department of labor and industries shall notify the department of retirement systems by order under RCW 51.52.050. [2007 c 487 § 7; 2003 c 402 § 1.]

41.40.113 Public safety employees' retirement system—Election—Membership. (1) An employee who was a member of the public employees' retirement system plan 2 or plan 3 before July 1, 2006, and on July 1, 2006, is employed by an employer as defined in RCW 41.37.010(4) and is an employee in a job class included in RCW 41.37.010(5), has the following options during the election period:

(a) Remain a member of the public employees' retirement system; or

(b) Become a member of the public safety employees' retirement system plan 2. All members will be dual members as provided in chapter 41.54 RCW, and public employees' retirement system service credit may not be transferred to the public safety employees' retirement system plan 2.

(2) The "election period" is the period between July 1, 2006, and September 30, 2006.

(3) During the election period, employees remain members of the public employees' retirement system plan 2 or plan 3 until they elect to join the public safety employees' retirement system. Members who elect to join the public safety employees' retirement system as described in subsection (1) of this section will have their membership begin prospectively from the date of their election.

(4) If after September 30, 2006, the member has not made an election to join the public safety employees' retirement system he or she will remain in the public employees' retirement system plan 2 or plan 3.

(5) An employee who was a member of the public employees' retirement system plan 1 on or before July 1, 2006, and on or after July 1, 2006, is employed by an employer as defined in RCW 41.37.010(4) as an employee in a job class included in RCW 41.37.010(5), shall remain a member of the public employees' retirement system plan 1.

(6) All new employees hired on or after July 1, 2006, who become employed by an employer as defined in RCW 41.37.010(4) as an employee in a job class included in RCW

41.37.010(5) will become members of the public safety employees' retirement system.

(7) An employee of the department of natural resources who was a member of the public employees' retirement system plan 2 or plan 3 before July 1, 2007, and on July 1, 2007, is performing the duties as defined in RCW 41.37.010(5), has the following options during the election period defined in subsection (8) of this section:

(a) Remain in the public employees' retirement system; or

(b) Become a member of the public safety employees' retirement system plan 2 and be a dual member as provided in chapter 41.54 RCW, and public employees' retirement system service credit may not be transferred to the public safety employees' retirement system.

(8) The "election period" is the period between July 1, 2007, and September 30, 2007.

(9) During the election period, department of natural resources employees remain members of the public employees' retirement system plan 2 or plan 3 until they elect to join the public safety employees' retirement system. Members who elect to join the public safety employees' retirement system as described in subsection (7) of this section will have their membership begin prospectively from the date of their election.

(10) If after September 30, 2007, an employee has not made an election to join the public safety employees' retirement system, he or she will remain in the public employees' retirement system plan 2 or plan 3. [2007 c 294 § 2; 2004 c 242 § 5.]

Effective date—2004 c 242: See RCW 41.37.901.

41.40.124 Discontinuing judicial retirement account plan contributions—Additional benefit—One-time irrevocable election—Justices and judges. (1) Between January 1, 2007, and December 31, 2007, a member of plan 1 or plan 2 employed as a supreme court justice, court of appeals judge, or superior court judge may make a one-time irrevocable election, filed in writing with the member's employer, the department, and the administrative office of the courts, to accrue an additional benefit equal to one and one-half percent of average final compensation for each year of future service credit from the date of the election in lieu of future employee and employer contributions to the judicial retirement account plan under chapter 2.14 RCW.

(2)(a) A member who chooses to make the election under subsection (1) of this section may apply to the department to increase the member's benefit multiplier by an additional one and one-half percent per year of service for the period in which the member served as a justice or judge prior to the election. The member may purchase, beginning with the most recent judicial service, the higher benefit multiplier for up to seventy percent of that portion of the member's prior judicial service that would ensure that the member has no more than a seventy-five percent of average final compensation benefit accrued by age sixty-four for members of plan 1, and age sixty-six for members of plan 2. The member shall pay five percent of the salary earned for each month of service for which the higher benefit multiplier is being purchased, plus interest as determined by the director. The pur-

chase price shall not exceed the actuarially equivalent value of the increase in the member's benefit resulting from the increase in the benefit multiplier. This payment must be made prior to retirement and prior to December 31, 2007. After December 31, 2007, a member may purchase the higher benefit multiplier for any of the member's prior judicial service at the actuarially equivalent value of the increase in the member's benefit resulting from the increase in the benefit multiplier, as determined by the director.

(b) Subject to rules adopted by the department, a member applying to increase the member's benefit multiplier under this section may pay all or part of the cost with a lump sum payment, eligible rollover, direct rollover, or trustee-to-trustee transfer from an eligible retirement plan. The department shall adopt rules to ensure that all lump sum payments, rollovers, and transfers comply with the requirements of the internal revenue code and regulations adopted by the internal revenue service. The rules adopted by the department may condition the acceptance of a rollover or transfer from another plan on the receipt of information necessary to enable the department to determine the eligibility of any transferred funds for tax-free rollover treatment or other treatment under federal income tax law. [2007 c 123 § 1; 2006 c 189 § 5.]

Effective date—2006 c 189: See note following RCW 2.14.115.

41.40.127 Additional benefit for district or municipal court judges—One-time irrevocable election. (1) Between January 1, 2007, and December 31, 2007, a member of plan 1 or plan 2 employed as a district court judge or municipal court judge may make a one-time irrevocable election, filed in writing with the member's employer and the department, to accrue an additional benefit equal to one and one-half percent of average final compensation for each year of future service credit from the date of the election.

(2)(a) A member who chooses to make the election under subsection (1) of this section may apply to the department to increase the member's benefit multiplier by one and one-half percent per year of service for the period in which the member served as a judge prior to the election. The member may purchase, beginning with the most recent judicial service, the higher benefit multiplier for up to seventy percent of that portion of the member's prior judicial service that would ensure that the member has no more than a seventy-five percent of average final compensation benefit accrued by age sixty-four for members of plan 1, and age sixty-six for members of plan 2. The member shall pay five percent of the salary earned for each month of service for which the higher benefit multiplier is being purchased, plus interest as determined by the director. The purchase price shall not exceed the actuarially equivalent value of the increase in the member's benefit resulting from the increase in the benefit multiplier. This payment must be made prior to retirement and prior to December 31, 2007. After December 31, 2007, a member may purchase the higher benefit multiplier for any of the member's prior judicial service at the actuarially equivalent value of the increase in the member's benefit resulting from the increase in the benefit multiplier, as determined by the director.

(b) Subject to rules adopted by the department, a member applying to increase the member's benefit multiplier under

this section may pay all or part of the cost with a lump sum payment, eligible rollover, direct rollover, or trustee-to-trustee transfer from an eligible retirement plan. The department shall adopt rules to ensure that all lump sum payments, rollovers, and transfers comply with the requirements of the internal revenue code and regulations adopted by the internal revenue service. The rules adopted by the department may condition the acceptance of a rollover or transfer from another plan on the receipt of information necessary to enable the department to determine the eligibility of any transferred funds for tax-free rollover treatment or other treatment under federal income tax law. [2007 c 123 § 2; 2006 c 189 § 6.]

Effective date—2006 c 189: See note following RCW 2.14.115.

41.40.183 Annual increase amount—Legislature's rights reserved. (1) Beginning July 1, 2009, the annual increase amount as defined in RCW 41.40.010(41) shall be increased by an amount equal to \$0.40 per month per year of service minus the 2008 gain-sharing increase amount under *RCW 41.31.010 as it exists on July 22, 2007. This adjustment shall not decrease the annual increase amount, and is not to exceed \$0.20 per month per year of service. The legislature reserves the right to amend or repeal this section in the future and no member or beneficiary has the contractual right to receive this adjustment to the annual increase amount not granted prior to that time.

(2) The adjustment to the annual increase amount as set forth in section 11, chapter 491, Laws of 2007 was intended by the legislature as a replacement benefit for gain-sharing. If the repeal of chapter 41.31 RCW is held to be invalid in a final determination of a court of law, and the court orders reinstatement of gain-sharing or other alternate benefits as a remedy, then this adjustment to the annual increase amount shall not be included in future annual increase amounts paid on or after the date of such reinstatement. [2007 c 491 § 11.]

***Reviser's note:** RCW 41.31.010 was repealed by 2007 c 491 § 13, effective January 2, 2008.

Severability—Conflict with federal requirements—2007 c 491: See notes following RCW 41.32.765.

41.40.197 Retirement allowance—Annual increases—Eligibility. (1) Beginning July 1, 1995, and annually thereafter, the retirement allowance of a person meeting the requirements of this section shall be increased by the annual increase amount.

(2) The following persons shall be eligible for the benefit provided in subsection (1) of this section:

(a) A beneficiary who has received a retirement allowance for at least one year by July 1st in the calendar year in which the annual increase is given and has attained at least age sixty-six by December 31st in the calendar year in which the annual increase is given; or

(b) A beneficiary whose retirement allowance is lower than the minimum benefit provided under RCW 41.40.1984.

(3) If otherwise eligible, those receiving an annual adjustment under RCW 41.40.188(1)(c) shall be eligible for the annual increase adjustment in addition to the benefit that would have been received absent this section.

(4) Those receiving a benefit under RCW 41.40.220(1), or a survivor of a disabled member under RCW 41.44.170(5) shall be eligible for the benefit provided by this section.

(5) The legislature reserves the right to amend or repeal this section in the future and no member or beneficiary has a contractual right to receive this postretirement adjustment not granted prior to that time. [2007 c 89 § 1; 2005 c 327 § 8; 1995 c 345 § 5.]

Effective date—2007 c 89: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect July 1, 2007." [2007 c 89 § 3.]

Intent—Effective date—1995 c 345: See notes following RCW 41.32.489.

41.40.630 Retirement for service. (1) **NORMAL RETIREMENT.** Any member with at least five service credit years who has attained at least age sixty-five shall be eligible to retire and to receive a retirement allowance computed according to the provisions of RCW 41.40.620.

(2) **EARLY RETIREMENT.** Any member who has completed at least twenty service credit years and has attained age fifty-five shall be eligible to retire and to receive a retirement allowance computed according to the provisions of RCW 41.40.620, except that a member retiring pursuant to this subsection shall have the retirement allowance actuarially reduced to reflect the difference in the number of years between age at retirement and the attainment of age sixty-five.

(3) **ALTERNATE EARLY RETIREMENT.**

(a) Any member who has completed at least thirty service credit years and has attained age fifty-five shall be eligible to retire and to receive a retirement allowance computed according to the provisions of RCW 41.40.620, except that a member retiring pursuant to this subsection shall have the retirement allowance reduced by three percent per year to reflect the difference in the number of years between age at retirement and the attainment of age sixty-five.

(b) On or after July 1, 2008, any member who has completed at least thirty service credit years and has attained age fifty-five shall be eligible to retire and to receive a retirement allowance computed according to the provisions of RCW 41.40.620, except that a member retiring pursuant to this subsection shall have the retirement allowance reduced as follows:

Retirement Age	Percent Reduction
55	20%
56	17%
57	14%
58	11%
59	8%
60	5%
61	2%
62	0%
63	0%
64	0%

Any member who retires under the provisions of this subsection is ineligible for the postretirement employment provisions of RCW 41.40.037(2)(d) until the retired member

has reached sixty-five years of age. For purposes of this subsection, employment with an employer also includes any personal service contract, service by an employer as a temporary or project employee, or any other similar compensated relationship with any employer included under the provisions of RCW 41.40.690(1).

The subsidized reductions for alternate early retirement in this subsection as set forth in section 9, chapter 491, Laws of 2007 were intended by the legislature as replacement benefits for gain-sharing. Until there is legal certainty with respect to the repeal of chapter 41.31A RCW, the right to retire under this subsection is noncontractual, and the legislature reserves the right to amend or repeal this subsection. Legal certainty includes, but is not limited to, the expiration of any: Applicable limitations on actions; and periods of time for seeking appellate review, up to and including reconsideration by the Washington supreme court and the supreme court of the United States. Until that time, eligible members may still retire under this subsection, and upon receipt of the first installment of a retirement allowance computed under this subsection, the resulting benefit becomes contractual for the recipient. If the repeal of chapter 41.31A RCW is held to be invalid in a final determination of a court of law, and the court orders reinstatement of gain-sharing or other alternate benefits as a remedy, then retirement benefits for any member who has completed at least thirty service credit years and has attained age fifty-five but has not yet received the first installment of a retirement allowance under this subsection shall be computed using the reductions in (a) of this subsection. [2007 c 491 § 9; 2000 c 247 § 901; 1991 c 343 § 11; 1977 ex.s. c 295 § 4.]

Benefits not contractual right until July 1, 2008—2007 c 491: "The new benefits provided pursuant to sections 9(3)(b) and 10(3)(b), chapter 491, Laws of 2007 are not provided to employees as a matter of contractual right prior to July 1, 2008, and will not become a contractual right thereafter if the repeal of chapter 41.31A RCW is held to be invalid in a final determination of a court of law. The legislature retains the right to alter or abolish these benefits at any time prior to July 1, 2008." [2007 c 491 § 16.]

Severability—Conflict with federal requirements—2007 c 491: See notes following RCW 41.32.765.

Findings—Effective dates—1991 c 343: See notes following RCW 41.50.005.

Legislative direction and placement—Section headings—1977 ex.s. c 295: See notes following RCW 41.40.600.

41.40.700 Death benefits. (1) Except as provided in RCW 11.07.010, if a member or a vested member who has not completed at least ten years of service dies, the amount of the accumulated contributions standing to such member's credit in the retirement system at the time of such member's death, less any amount identified as owing to an obligee upon withdrawal of accumulated contributions pursuant to a court order filed under RCW 41.50.670, shall be paid to the member's estate, or such person or persons, trust, or organization as the member shall have nominated by written designation duly executed and filed with the department. If there be no such designated person or persons still living at the time of the member's death, such member's accumulated contributions standing to such member's credit in the retirement system, less any amount identified as owing to an obligee upon withdrawal of accumulated contributions pursuant to a court order filed under RCW 41.50.670, shall be paid to the mem-

ber's surviving spouse as if in fact such spouse had been nominated by written designation, or if there be no such surviving spouse, then to such member's legal representatives.

(2) If a member who is eligible for retirement or a member who has completed at least ten years of service dies, the surviving spouse or eligible child or children shall elect to receive one of the following:

(a) A retirement allowance computed as provided for in RCW 41.40.630, actuarially reduced by the amount of any lump sum benefit identified as owing to an obligee upon withdrawal of accumulated contributions pursuant to a court order filed under RCW 41.50.670 and actuarially adjusted to reflect a joint and one hundred percent survivor option under RCW 41.40.660 and, except under subsection (4) of this section, if the member was not eligible for normal retirement at the date of death a further reduction as described in RCW 41.40.630; if a surviving spouse who is receiving a retirement allowance dies leaving a child or children of the member under the age of majority, then such child or children shall continue to receive an allowance in an amount equal to that which was being received by the surviving spouse, share and share alike, until such child or children reach the age of majority; if there is no surviving spouse eligible to receive an allowance at the time of the member's death, such member's child or children under the age of majority shall receive an allowance share and share alike calculated as herein provided making the assumption that the ages of the spouse and member were equal at the time of the member's death;

(b) The member's accumulated contributions, less any amount identified as owing to an obligee upon withdrawal of accumulated contributions pursuant to a court order filed under RCW 41.50.670; or

(c) For a member who leaves the employ of an employer to enter the uniformed services of the United States and who dies after January 1, 2007, while honorably serving in the uniformed services of the United States in Operation Enduring Freedom or Persian Gulf, Operation Iraqi Freedom, an amount equal to two hundred percent of the member's accumulated contributions, less any amount identified as owing to an obligee upon withdrawal of accumulated contributions pursuant to a court order filed under RCW 41.50.670.

(3) If a member who is eligible for retirement or a member who has completed at least ten years of service dies after October 1, 1977, and is not survived by a spouse or an eligible child, then the accumulated contributions standing to the member's credit, less any amount identified as owing to an obligee upon withdrawal of accumulated contributions pursuant to a court order filed under RCW 41.50.670, shall be paid:

(a) To a person or persons, estate, trust, or organization as the member shall have nominated by written designation duly executed and filed with the department; or

(b) If there is no such designated person or persons still living at the time of the member's death, then to the member's legal representatives.

(4) A member who is killed in the course of employment, as determined by the director of the department of labor and industries, is not subject to an actuarial reduction under RCW 41.40.630. The member's retirement allowance is computed under RCW 41.40.620. [2007 c 487 § 8; 2003 c 155 § 7;

2000 c 247 § 1004; 1995 c 144 § 8; 1993 c 236 § 5; 1991 c 365 § 28; 1990 c 249 § 18; 1977 ex.s. c 295 § 11.]

Applicability—2003 c 155: See note following RCW 41.32.520.

Severability—1991 c 365: See note following RCW 41.50.500.

Findings—1990 c 249: See note following RCW 2.10.146.

Legislative direction and placement—Section headings—1977 ex.s. c 295: See notes following RCW 41.40.610.

41.40.820 Retirement eligibility. (1) NORMAL RETIREMENT. Any member who is at least age sixty-five and who has:

(a) Completed ten service credit years; or

(b) Completed five service credit years, including twelve service credit months after attaining age forty-four; or

(c) Completed five service credit years by the transfer payment date specified in RCW 41.40.795, under the public employees' retirement system plan 2 and who transferred to plan 3 under RCW 41.40.795;

shall be eligible to retire and to receive a retirement allowance computed according to the provisions of RCW 41.40.790.

(2) EARLY RETIREMENT. Any member who has attained at least age fifty-five and has completed at least ten years of service shall be eligible to retire and to receive a retirement allowance computed according to the provisions of RCW 41.40.790, except that a member retiring pursuant to this subsection shall have the retirement allowance actuarially reduced to reflect the difference in the number of years between age at retirement and the attainment of age sixty-five.

(3) ALTERNATE EARLY RETIREMENT.

(a) Any member who has completed at least thirty service credit years and has attained age fifty-five shall be eligible to retire and to receive a retirement allowance computed according to the provisions of RCW 41.40.790, except that a member retiring pursuant to this subsection shall have the retirement allowance reduced by three percent per year to reflect the difference in the number of years between age at retirement and the attainment of age sixty-five.

(b) On or after July 1, 2008, any member who has completed at least thirty service credit years and has attained age fifty-five shall be eligible to retire and to receive a retirement allowance computed according to the provisions of RCW 41.40.790, except that a member retiring pursuant to this subsection shall have the retirement allowance reduced as follows:

Retirement Age	Percent Reduction
55	20%
56	17%
57	14%
58	11%
59	8%
60	5%
61	2%
62	0%
63	0%
64	0%

Any member who retires under the provisions of this subsection is ineligible for the postretirement employment provisions of RCW 41.40.037(2)(d) until the retired member has reached sixty-five years of age. For purposes of this subsection, employment with an employer also includes any personal service contract, service by an employer as a temporary or project employee, or any other similar compensated relationship with any employer included under the provisions of RCW 41.40.850(1).

The subsidized reductions for alternate early retirement in this subsection as set forth in section 10, chapter 491, Laws of 2007 were intended by the legislature as replacement benefits for gain-sharing. Until there is legal certainty with respect to the repeal of chapter 41.31A RCW, the right to retire under this subsection is noncontractual, and the legislature reserves the right to amend or repeal this subsection. Legal certainty includes, but is not limited to, the expiration of any: Applicable limitations on actions; and periods of time for seeking appellate review, up to and including reconsideration by the Washington supreme court and the supreme court of the United States. Until that time, eligible members may still retire under this subsection, and upon receipt of the first installment of a retirement allowance computed under this subsection, the resulting benefit becomes contractual for the recipient. If the repeal of chapter 41.31A RCW is held to be invalid in a final determination of a court of law, and the court orders reinstatement of gain-sharing or other alternate benefits as a remedy, then retirement benefits for any member who has completed at least thirty service credit years and has attained age fifty-five but has not yet received the first installment of a retirement allowance under this subsection shall be computed using the reductions in (a) of this subsection. [2007 c 491 § 10; 2006 c 33 § 3; 2000 c 247 § 309.]

Benefits not contractual right until July 1, 2008—2007 c 491: See note following RCW 41.40.630.

Severability—Conflict with federal requirements—2007 c 491: See notes following RCW 41.32.765.

41.40.870 Discontinuing judicial retirement account plan contributions—Additional benefit—One-time irrevocable election—Justices and judges. (1) Between January 1, 2007, and December 31, 2007, a member of plan 3 employed as a supreme court justice, court of appeals judge, or superior court judge may make a one-time irrevocable election, filed in writing with the member's employer, the department, and the administrative office of the courts, to accrue an additional plan 3 defined benefit equal to six-tenths percent of average final compensation for each year of future service credit from the date of the election in lieu of future employer contributions to the judicial retirement account plan under chapter 2.14 RCW.

(2)(a) A member who chooses to make the election under subsection (1) of this section may apply to the department to increase the member's benefit multiplier by six-tenths percent per year of service for the period in which the member served as a justice or judge prior to the election. The member may purchase, beginning with the most recent judicial service, the higher benefit multiplier for up to seventy percent of that portion of the member's prior judicial service that would ensure that the member has no more than a thirty-seven and one-half percent of average final compensation

benefit accrued by age sixty-six. The member shall pay two and one-half percent of the salary earned for each month of service for which the higher benefit multiplier is being purchased, plus interest as determined by the director. The purchase price shall not exceed the actuarially equivalent value of the increase in the member's benefit resulting from the increase in the benefit multiplier. This payment must be made prior to retirement and prior to December 31, 2007. After December 31, 2007, a member may purchase the higher benefit multiplier for any of the member's prior judicial service at the actuarially equivalent value of the increase in the member's benefit resulting from the increase in the benefit multiplier, as determined by the director.

(b) Subject to rules adopted by the department, a member applying to increase the member's benefit multiplier under this section may pay all or part of the cost with a lump sum payment, eligible rollover, direct rollover, or trustee-to-trustee transfer from an eligible retirement plan. The department shall adopt rules to ensure that all lump sum payments, rollovers, and transfers comply with the requirements of the internal revenue code and regulations adopted by the internal revenue service. The rules adopted by the department may condition the acceptance of a rollover or transfer from another plan on the receipt of information necessary to enable the department to determine the eligibility of any transferred funds for tax-free rollover treatment or other treatment under federal income tax law.

(3) A member who chooses to make the election under subsection (1) of this section shall contribute a minimum of seven and one-half percent of pay to the member's defined contribution account. [2007 c 123 § 3; 2006 c 189 § 8.]

Effective date—2006 c 189: See note following RCW 2.14.115.

41.40.873 Additional benefit for district or municipal court judges—One-time irrevocable election. (1) Between January 1, 2007, and December 31, 2007, a member of plan 3 employed as a district court judge or municipal court judge may make a one-time irrevocable election, filed in writing with the member's employer and the department, to accrue an additional plan 3 defined benefit equal to six-tenths percent of average final compensation for each year of future service credit from the date of the election.

(2)(a) A member who chooses to make the election under subsection (1) of this section may apply to the department to increase the member's benefit multiplier by six-tenths percent per year of service for the period in which the member served as a judge prior to the election. The member may purchase, beginning with the most recent judicial service, the higher benefit multiplier for up to seventy percent of that portion of the member's prior judicial service that would ensure that the member has no more than a thirty-seven and one-half percent of average final compensation benefit accrued by age sixty-six. The member shall pay two and one-half percent of the salary earned for each month of service for which the higher benefit multiplier is being purchased, plus interest as determined by the director. The purchase price shall not exceed the actuarially equivalent value of the increase in the member's benefit resulting from the increase in the benefit multiplier. This payment must be made prior to retirement and prior to December 31, 2007. After December

31, 2007, a member may purchase the higher benefit multiplier for any of the member's prior judicial service at the actuarially equivalent value of the increase in the member's benefit resulting from the increase in the benefit multiplier, as determined by the director.

(b) Subject to rules adopted by the department, a member applying to increase the member's benefit multiplier under this section may pay all or part of the cost with a lump sum payment, eligible rollover, direct rollover, or trustee-to-trustee transfer from an eligible retirement plan. The department shall adopt rules to ensure that all lump sum payments, rollovers, and transfers comply with the requirements of the internal revenue code and regulations adopted by the internal revenue service. The rules adopted by the department may condition the acceptance of a rollover or transfer from another plan on the receipt of information necessary to enable the department to determine the eligibility of any transferred funds for tax-free rollover treatment or other treatment under federal income tax law.

(3) A member who chooses to make the election under subsection (1) of this section shall contribute a minimum of seven and one-half percent of pay to the member's defined contribution account. [2007 c 123 § 4; 2006 c 189 § 9.]

Effective date—2006 c 189: See note following RCW 2.14.115.

Chapter 41.44 RCW

STATEWIDE CITY EMPLOYEES' RETIREMENT

Sections

41.44.060 Persons excluded.

41.44.060 Persons excluded. Police officers in first class cities and all city firefighters shall be excluded from the provisions of this chapter, except those employees of the fire department who are not eligible to the benefits of any firefighters' pension system established by or pursuant to state law, and who shall be included in the miscellaneous personnel. [2007 c 218 § 71; 1951 c 275 § 3; 1947 c 71 § 6; Rem. Supp. 1947 § 9592-135.]

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

Firefighters' relief and pensions: Chapters 41.16, 41.18 RCW.

Police relief and pensions in first-class cities: Chapter 41.20 RCW.

Volunteer firefighters' relief and pensions: Chapter 41.24 RCW.

Chapter 41.45 RCW

ACTUARIAL FUNDING OF STATE RETIREMENT SYSTEMS

Sections

41.45.030 State actuary to submit information on the experience and financial condition of each retirement system—Adoption of long-term economic assumptions.

41.45.060 Basic state and employer contribution rates—Role of council—Role of state actuary.

41.45.0604 Contribution rates—Law enforcement officers' and firefighters' retirement system plan 2.

41.45.061 Required contribution rates for plan 2 members.

41.45.0631 Contribution rate (*as amended by 2007 c 280*).

41.45.0631 Contribution rate—Allocation of costs (*as amended by 2007 c 300*).

41.45.070 Supplemental rate.

[2007 RCW Supp—page 432]

41.45.110 Pension funding council—Audits required—Select committee on pension policy.

41.45.203 Contribution rates for certain justices and judges—Teachers' retirement system.

41.45.030 State actuary to submit information on the experience and financial condition of each retirement system—Adoption of long-term economic assumptions. (1) Beginning September 1, 2007, and every two years thereafter, the state actuary shall submit to the council information regarding the experience and financial condition of each state retirement system, and make recommendations regarding the long-term economic assumptions set forth in RCW 41.45.035. The council shall review this and such other information as it may require.

(2) By October 31, 2007, and every two years thereafter, the council, by affirmative vote of four councilmembers, may adopt changes to the long-term economic assumptions established in RCW 41.45.035. Any changes adopted by the council shall be subject to revision by the legislature.

The council shall consult with the economic and revenue forecast supervisor and the executive director of the state investment board, and shall consider long-term historical averages, in reviewing possible changes to the economic assumptions.

(3) The assumptions and the asset value smoothing technique established in RCW 41.45.035, as modified in the future by the council or legislature, shall be used by the state actuary in conducting all actuarial studies of the state retirement systems, including actuarial fiscal notes under RCW 44.44.040. The assumptions shall also be used for the administration of benefits under the retirement plans listed in RCW 41.45.020, pursuant to timelines and conditions established by department rules. [2007 c 280 § 1; 2001 2nd sp.s. c 11 § 5; 1995 c 233 § 1; 1993 c 519 § 17; 1989 c 273 § 3.]

Effective date—2001 2nd sp.s. c 11: "Except under section 21 of this act, this act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect July 1, 2001." [2001 2nd sp.s. c 11 § 22.]

Effective date—1995 c 233: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and shall take effect immediately [May 5, 1995]." [1995 c 233 § 4.]

Part headings not law—Effective date—1993 c 519: See notes following RCW 28A.400.212.

41.45.060 Basic state and employer contribution rates—Role of council—Role of state actuary. (1) The state actuary shall provide preliminary actuarial valuation results based on the economic assumptions and asset value smoothing technique included in RCW 41.45.035 or adopted under RCW 41.45.030 or 41.45.035.

(2) Not later than July 31, 2008, and every two years thereafter, consistent with the economic assumptions and asset value smoothing technique included in RCW 41.45.035 or adopted under RCW 41.45.030 or 41.45.035, the council shall adopt and may make changes to:

(a) A basic state contribution rate for the law enforcement officers' and firefighters' retirement system plan 1;

(b) Basic employer contribution rates for the public employees' retirement system, the teachers' retirement system, and the Washington state patrol retirement system; and

(c) Basic employer contribution rates for the school employees' retirement system and the public safety employees' retirement system for funding both those systems and the public employees' retirement system plan 1.

The council may adopt annual rate changes for any plan for any rate-setting period. The contribution rates adopted by the council shall be subject to revision by the legislature.

(3) The employer and state contribution rates adopted by the council shall be the level percentages of pay that are needed:

(a) To fully amortize the total costs of the public employees' retirement system plan 1, the teachers' retirement system plan 1, and the law enforcement officers' and firefighters' retirement system plan 1 not later than June 30, 2024; and

(b) To fully fund the public employees' retirement system plans 2 and 3, the teachers' retirement system plans 2 and 3, the public safety employees' retirement system plan 2, and the school employees' retirement system plans 2 and 3 in accordance with RCW 41.45.061, 41.45.067, and this section.

(4) The aggregate actuarial cost method shall be used to calculate a combined plan 2 and 3 employer contribution rate and a Washington state patrol retirement system contribution rate.

(5) The council shall immediately notify the directors of the office of financial management and department of retirement systems of the state and employer contribution rates adopted. The rates shall be effective for the ensuing biennial period, subject to any legislative modifications.

(6) The director shall collect those rates adopted by the council. The rates established in RCW 41.45.062, or by the council, shall be subject to revision by the legislature.

(7) The state actuary shall prepare final actuarial valuation results based on the economic assumptions, asset value smoothing technique, and contribution rates included in or adopted under RCW 41.45.030, 41.45.035, and this section. [2007 c 280 § 2; 2005 c 370 § 2; (2005 c 370 § 1 expired July 1, 2006); 2004 c 242 § 39. Prior: 2003 c 294 § 10; 2003 c 92 § 3; 2002 c 26 § 2; prior: 2001 2nd sp.s. c 11 § 10; 2001 c 329 § 10; 2000 2nd sp.s. c 1 § 905; 2000 c 247 § 504; prior: 1998 c 341 § 404; 1998 c 340 § 11; 1998 c 283 § 6; 1995 c 239 § 309; 1993 c 519 § 19; 1992 c 239 § 2; 1990 c 18 § 1; 1989 c 273 § 6.]

Effective date—2005 c 370 §§ 2 and 4: "Sections 2 and 4 of this act take effect July 1, 2006." [2005 c 370 § 8.]

Effective date—2005 c 370 §§ 1, 3, and 6: "Sections 1, 3, and 6 of this act are necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and take effect July 1, 2005." [2005 c 370 § 7.]

Expiration date—2005 c 370 §§ 1 and 3: "Sections 1 and 3 of this act expire July 1, 2006." [2005 c 370 § 9.]

Effective date—2004 c 242: See RCW 41.37.901.

Severability—Effective date—2003 c 92: See RCW 41.26.905 and 41.26.906.

Effective date—2001 2nd sp.s. c 11: See note following RCW 41.45.030.

Effective date—2001 c 329: See note following RCW 43.43.120.

Severability—Effective date—2000 2nd sp.s. c 1: See notes following RCW 41.05.143.

Effective dates—Subchapter headings not law—2000 c 247: See RCW 41.40.931 and 41.40.932.

Effective date—1998 c 341: See note following RCW 41.34.060.

Effective date—1998 c 340: See note following RCW 41.31.010.

Intent—Purpose—1995 c 239: See note following RCW 41.32.831.

Effective date—Part and subchapter headings not law—1995 c 239: See notes following RCW 41.32.005.

Part headings not law—Effective date—1993 c 519: See notes following RCW 28A.400.212.

Effective date—1992 c 239: "This act shall take effect September 1, 1992." [1992 c 239 § 6.]

Effective date—1990 c 18: "This act shall take effect September 1, 1991." [1990 c 18 § 3.]

Benefits not contractual right until date specified: RCW 41.34.100.

41.45.0604 Contribution rates—Law enforcement officers' and firefighters' retirement system plan 2. (1) Not later than July 31, 2008, and every even-numbered year thereafter, the law enforcement officers' and firefighters' plan 2 retirement board shall adopt contribution rates for the law enforcement officers' and firefighters' retirement system plan 2 as provided in RCW 41.26.720(1)(a).

(2) The law enforcement officers' and firefighters' plan 2 retirement board shall immediately notify the directors of the office of financial management and department of retirement systems of the state, employer, and employee rates adopted. Thereafter, the director shall collect those rates adopted by the board. The rates shall be effective for the ensuing biennial period, subject to any legislative modifications. [2007 c 280 § 3; 2003 c 92 § 4.]

Severability—Effective date—2003 c 92: See RCW 41.26.905 and 41.26.906.

41.45.061 Required contribution rates for plan 2 members. (1) The required contribution rate for members of the plan 2 teachers' retirement system shall be fixed at the rates in effect on July 1, 1996, subject to the following:

(a) Beginning September 1, 1997, except as provided in (b) of this subsection, the employee contribution rate shall not exceed the employer plan 2 and 3 rates adopted under RCW 41.45.060, *41.45.054, and 41.45.070 for the teachers' retirement system;

(b) In addition, the employee contribution rate for plan 2 shall be increased by fifty percent of the contribution rate increase caused by any plan 2 benefit increase passed after July 1, 1996;

(c) In addition, the employee contribution rate for plan 2 shall not be increased as a result of any distributions pursuant to section 309, chapter 341, Laws of 1998 and **RCW 41.31A.020.

(2) The required contribution rate for members of the school employees' retirement system plan 2 shall equal the school employees' retirement system employer plan 2 and 3 contribution rate adopted under RCW 41.45.060, *41.45.054, and 41.45.070, except as provided in subsection (3) of this section.

(3) The member contribution rate for the school employees' retirement system plan 2 shall be increased by fifty percent of the contribution rate increase caused by any plan 2 benefit increase passed after September 1, 2000.

(4) The required contribution rate for members of the public employees' retirement system plan 2 shall be set at the same rate as the employer combined plan 2 and plan 3 rate.

(5) The required contribution rate for members of the law enforcement officers' and firefighters' retirement system plan 2 shall be set at fifty percent of the cost of the retirement system.

(6) The employee contribution rates for plan 2 under subsections (3) and (4) of this section shall not include any increase as a result of any distributions pursuant to RCW **41.31A.020 and ***41.31A.030.

(7) The required plan 2 and 3 contribution rates for employers shall be adopted in the manner described in RCW 41.45.060, *41.45.054, and 41.45.070.

(8) The required contribution rate for members of the public safety employees' retirement system plan 2 shall be set at fifty percent of the cost of the retirement system.

(9) Concurrently with the adoption of employer contribution rates, the state actuary shall calculate the required contribution rates for plan 2 members, which are fixed in accordance with this section. Upon adoption of employer contribution rates, the state actuary shall immediately notify the directors of the office of financial management and department of retirement systems of the required contribution rates for members, which shall be effective for the ensuing rate-setting period. [2007 c 280 § 4; 2004 c 242 § 40. Prior: 2001 2nd sp.s. c 11 § 13; 2001 2nd sp.s. c 11 § 12; 2001 c 180 § 1; prior: 2000 c 247 § 506; 2000 c 230 § 2; 1998 c 341 § 405; 1997 c 10 § 2; 1995 c 239 § 311.]

Reviser's note: *(1) RCW 41.45.054 was decodified pursuant to 2005 c 370 § 5, effective September 1, 2005.

***(2) RCW 41.31A.020 was repealed by 2007 c 491 § 13 without cognizance of its amendment by 2007 c 491 § 1. For rule of construction concerning sections amended and repealed in the same legislative session, see RCW 1.12.025.

****(3) RCW 41.31A.030 was repealed by 2007 c 491 § 13, effective January 2, 2008.

Effective date—2004 c 242: See RCW 41.37.901.

Effective date—2001 2nd sp.s. c 11: See note following RCW 41.45.030.

Effective date—2001 2nd sp.s. c 11: See note following RCW 41.45.010.

Effective date—2001 c 180 §§ 1 and 2: "Sections 1 and 2 of this act take effect March 1, 2002." [2001 c 180 § 6.]

Effective dates—Subchapter headings not law—2000 c 247: See RCW 41.40.931 and 41.40.932.

Effective date—2000 c 230: See note following RCW 41.35.630.

Effective date—1998 c 341: See RCW 41.35.901.

Intent—Purpose—1995 c 239: See note following RCW 41.32.831.

Effective date—Part and subchapter headings not law—1995 c 239: See notes following RCW 41.32.005.

41.45.0631 Contribution rate (as amended by 2007 c 280). Beginning July 1, 2001, the required contribution rate for members of the Washington state patrol retirement system shall be two percent or equal to the employer rate adopted under RCW 41.45.060 and 41.45.070 for the Washington state patrol retirement system, whichever is greater. The employee contribution rate shall not, however, include any increase as a result of distributions under RCW 43.43.270(2) for survivors of members who became disabled under RCW 43.43.040(2) prior to July 1, 2006. Concurrently with the adoption of the employer contribution rate for the Washington state patrol retirement system, the state actuary shall calculate the required contribution rate for members, which is fixed in accordance with this section. The state actuary shall immediately notify the directors of the office of financial management and department of retirement systems of the required contribution rate for members, which shall be effective for the ensuing rate-setting period. [2007 c 280 § 5; 2006 c 94 § 2; 2001 c 329 § 11.]

[2007 RCW Supp—page 434]

41.45.0631 Contribution rate—Allocation of costs (as amended by 2007 c 300). (1) The allocation of costs between the employer and members of the Washington state patrol retirement system shall be made only after the application of any minimum total contribution rate that may be in effect for the system under subsection (4) of this section. For benefit improvements effective on or after July 1, 2007, costs shall be shared equally by members and the employer, and any cap on member contributions shall be adjusted accordingly. The member contribution rate shall be based on the adjusted total contribution rate described in subsection (2) of this section. Beginning July 1, ((2001)) 2007, the required member contribution rate for members of the Washington state patrol retirement system shall be ((two percent or equal to the employer rate adopted under RCW 41.45.060 and 41.45.070 for the Washington state patrol retirement system, whichever is greater. The employee contribution rate shall not, however, include any increase as a result of)) the lesser of the following: (a) One-half of the adjusted total contribution rate for the system; or (b) seven percent, plus fifty percent of the contribution rate increase caused by any benefit improvements effective on or after July 1, 2007.

(2) The employer shall continue to pay for all costs attributable to distributions under RCW 43.43.270(2) for survivors of members who became disabled under RCW 43.43.040(2) prior to July 1, 2006, until such costs are fully paid. In order to avoid charging members for these costs, the total required contribution rate shall be adjusted to exclude these costs. The result of the adjustment shall be the adjusted total contribution rate that is to be used to calculate the required member contribution rate.

(3) The employer rate shall be the contribution rate required to cover all total system costs that are not covered by the member contribution rate.

(4) Beginning July 1, 2009, a minimum total contribution rate is established for the Washington state patrol retirement system. The total Washington state patrol retirement system contribution rate as adopted by the pension funding council and subject to revision by the legislature may exceed, but may not drop below, the established minimum total contribution rate. The minimum total contribution rate shall equal the total contribution rate required to fund seventy percent of the Washington state patrol retirement system's normal cost as calculated under the entry age normal cost method. Upon completion of each biennial actuarial valuation, the state actuary shall review the appropriateness of this minimum total contribution rate and recommend to the legislature any adjustments as may be needed. [2007 c 300 § 1; 2006 c 94 § 2; 2001 c 329 § 11.]

Reviser's note: RCW 41.45.0631 was amended twice during the 2007 legislative session, each without reference to the other. For rule of construction concerning sections amended more than once during the same legislative session, see RCW 1.12.025.

Effective date—2007 c 300: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect July 1, 2007." [2007 c 300 § 3.]

Effective date—2001 c 329: See note following RCW 43.43.120.

41.45.070 Supplemental rate. (1) In addition to the basic employer contribution rate established in RCW 41.45.060 or *41.45.054, the department shall also charge employers of public employees' retirement system, teachers' retirement system, school employees' retirement system, public safety employees' retirement system, or Washington state patrol retirement system members an additional supplemental rate to pay for the cost of additional benefits, if any, granted to members of those systems. Except as provided in subsections (6), (7), and (9) of this section, the supplemental contribution rates required by this section shall be calculated by the state actuary and shall be charged regardless of language to the contrary contained in the statute which authorizes additional benefits.

(2) In addition to the basic member, employer, and state contribution rate established in RCW 41.45.0604 for the law enforcement officers' and firefighters' retirement system plan 2, the department shall also establish supplemental rates to pay for the cost of additional benefits, if any, granted to members of the law enforcement officers' and firefighters'

retirement system plan 2. Except as provided in subsection (6) of this section, these supplemental rates shall be calculated by the actuary retained by the law enforcement officers' and firefighters' board and the state actuary through the process provided in RCW 41.26.720(1)(a) and the state treasurer shall transfer the additional required contributions regardless of language to the contrary contained in the statute which authorizes the additional benefits.

(3) The supplemental rate charged under this section to fund benefit increases provided to active members of the public employees' retirement system plan 1, the teachers' retirement system plan 1, and Washington state patrol retirement system, shall be calculated as the level percentage of all members' pay needed to fund the cost of the benefit not later than June 30, 2024.

(4) The supplemental rate charged under this section to fund benefit increases provided to active and retired members of the public employees' retirement system plan 2 and plan 3, the teachers' retirement system plan 2 and plan 3, the public safety employees' retirement system plan 2, or the school employees' retirement system plan 2 and plan 3 shall be calculated as the level percentage of all members' pay needed to fund the cost of the benefit, as calculated under RCW 41.45.060, 41.45.061, or 41.45.067.

(5) The supplemental rate charged under this section to fund postretirement adjustments which are provided on a nonautomatic basis to current retirees shall be calculated as the percentage of pay needed to fund the adjustments as they are paid to the retirees. The supplemental rate charged under this section to fund automatic postretirement adjustments for active or retired members of the public employees' retirement system plan 1 and the teachers' retirement system plan 1 shall be calculated as the level percentage of pay needed to fund the cost of the automatic adjustments not later than June 30, 2024.

(6) A supplemental rate shall not be charged to pay for the cost of additional benefits granted to members pursuant to chapter 340, Laws of 1998.

(7) A supplemental rate shall not be charged to pay for the cost of additional benefits granted to members pursuant to **chapter 41.31A RCW; section 309, chapter 341, Laws of 1998; or section 701, chapter 341, Laws of 1998.

(8) A supplemental rate shall not be charged to pay for the cost of additional benefits granted to members and survivors pursuant to chapter 94, Laws of 2006.

(9) A supplemental rate shall not be charged to pay for the cost of the additional benefits granted to members of the teachers' retirement system and the school employees' retirement system plans 2 and 3 in sections 2, 4, 6, and 8, chapter 491, Laws of 2007 until September 1, 2008. A supplemental rate shall not be charged to pay for the cost of the additional benefits granted to members of the public employees' retirement system plans 2 and 3 under sections 9 and 10, chapter 491, Laws of 2007 until July 1, 2008. [2007 c 491 § 12; 2006 c 94 § 3; (2005 c 327 § 10 expired July 1, 2006); 2004 c 242 § 41. Prior: (2003 1st sp.s. c 11 § 3 repealed by 2005 c 327 § 11); 2003 c 92 § 5; prior: 2001 2nd sp.s. c 11 § 16; 2001 2nd sp.s. c 11 § 15; 2000 c 247 § 505; 1998 c 340 § 10; 1995 c 239 § 310; 1990 c 18 § 2; 1989 1st ex.s. c 1 § 1; 1989 c 273 § 7.]

Reviser's note: *(1) RCW 41.45.054 was decodified by 2005 c 370 § 5, effective September 1, 2005.

***(2) Chapter 41.31A RCW was repealed by 2007 c 491 § 13, effective January 2, 2008, however, RCW 41.31A.020 was also amended by 2007 c 491 § 1 and 2007 c 492 § 10. For rule of construction, see RCW 1.12.025(1).

Severability—Conflict with federal requirements—2007 c 491: See notes following RCW 41.32.765.

Effective date—2006 c 94 § 3: "Section 3 of this act takes effect July 1, 2006." [2006 c 94 § 4.]

Expiration date—2005 c 327 § 10: "Section 10 of this act expires July 1, 2006." [2005 c 327 § 13.]

Effective date—2004 c 242: See RCW 41.37.901.

Effective date—2003 1st sp.s. c 11: See note following RCW 41.45.035.

Severability—Effective date—2003 c 92: See RCW 41.26.905 and 41.26.906.

Effective date—2001 2nd sp.s. c 11: See note following RCW 41.45.010.

Effective date—2001 2nd sp.s. c 11: See note following RCW 41.45.030.

Effective dates—Subchapter headings not law—2000 c 247: See RCW 41.40.931 and 41.40.932.

Effective date—1998 c 341: See RCW 41.35.901.

Effective date—1998 c 340: See note following RCW 41.31.010.

Intent—Purpose—1995 c 239: See note following RCW 41.32.831.

Effective date—Part and subchapter headings not law—1995 c 239: See notes following RCW 41.32.005.

Effective date—1990 c 18: See note following RCW 41.45.060.

Benefits not contractual right until date specified: RCW 41.34.100.

41.45.110 Pension funding council—Audits required—Select committee on pension policy. The pension funding council shall solicit and administer a biennial actuarial audit of the preliminary and final actuarial valuations used for employer and member rate-setting purposes. This audit will be conducted concurrent with the actuarial valuation performed by the state actuary. At least once in each six-year period, the pension funding council shall solicit and administer an actuarial audit of the results of the experience study required in RCW 41.45.090. Upon receipt of the results of the preliminary actuarial audits required by this section, and at least thirty days prior to adopting contribution rates, the pension funding council shall submit the results to the select committee on pension policy. [2007 c 280 § 6; 2003 c 295 § 10; 1998 c 283 § 3.]

41.45.203 Contribution rates for certain justices and judges—Teachers' retirement system. (1) The required employer contribution rate in support of teachers' retirement system members employed as supreme court justices, court of appeals judges, and superior court judges who elect to participate under RCW 41.32.584(1), or who are newly elected or appointed after January 1, 2007, shall equal the teachers' retirement system employer contribution rate established under this chapter.

(2) The required contribution rate for members of the teachers' retirement system plan 1 employed as supreme court justices, court of appeals judges, and superior court judges who elect to participate under RCW 41.32.584(1), or who are newly elected or appointed after January 1, 2007, shall be the deductions established under RCW 41.50.235

plus three and seventy-six one-hundredths percent of pay. [2007 c 492 § 12; 2006 c 189 § 18.]

Effective date—2006 c 189: See note following RCW 2.14.115.

Chapter 41.48 RCW

FEDERAL SOCIAL SECURITY FOR PUBLIC EMPLOYEES

Sections

41.48.030 Agreement with secretary of health, education, and welfare.

41.48.030 Agreement with secretary of health, education, and welfare. (1) The governor is hereby authorized to enter on behalf of the state into an agreement with the secretary of health, education, and welfare consistent with the terms and provisions of this chapter, for the purpose of extending the benefits of the federal old-age and survivors insurance system to employees of the state or any political subdivision not members of an existing retirement system, or to members of a retirement system established by the state or by a political subdivision thereof or by an institution of higher learning with respect to services specified in such agreement which constitute "employment" as defined in RCW 41.48.020. Such agreement may contain such provisions relating to coverage, benefits, contributions, effective date, modification and termination of the agreement, administration, and other appropriate provisions as the governor and secretary of health, education, and welfare shall agree upon, but, except as may be otherwise required by or under the social security act as to the services to be covered, such agreement shall provide in effect that—

(a) Benefits will be provided for employees whose services are covered by the agreement (and their dependents and survivors) on the same basis as though such services constituted employment within the meaning of Title II of the social security act;

(b) The state will pay to the secretary of the treasury, at such time or times as may be prescribed under the social security act, contributions with respect to wages (as defined in RCW 41.48.020), equal to the sum of the taxes which would be imposed by the federal insurance contributions act if the services covered by the agreement constituted employment within the meaning of that act;

(c) Such agreement shall be effective with respect to services in employment covered by the agreement or modification thereof performed after a date specified therein but in no event may it be effective with respect to any such services performed prior to the first day of the calendar year immediately preceding the calendar year in which such agreement or modification of the agreement is accepted by the secretary of health, education and welfare;

(d) All services which constitute employment as defined in RCW 41.48.020 and are performed in the employ of the state by employees of the state, shall be covered by the agreement;

(e) All services which (i) constitute employment as defined in RCW 41.48.020, (ii) are performed in the employ of a political subdivision of the state, and (iii) are covered by a plan which is in conformity with the terms of the agreement

and has been approved by the governor under RCW 41.48.050, shall be covered by the agreement; and

(f) As modified, the agreement shall include all services described in either paragraph (d) or paragraph (e) of this subsection and performed by individuals to whom section 218(c)(3)(C) of the social security act is applicable, and shall provide that the service of any such individual shall continue to be covered by the agreement in case he thereafter becomes eligible to be a member of a retirement system; and

(g) As modified, the agreement shall include all services described in either paragraph (d) or paragraph (e) of this subsection and performed by individuals in positions covered by a retirement system with respect to which the governor has issued a certificate to the secretary of health, education, and welfare pursuant to subsection (5) of this section;

(h) Law enforcement officers and firefighters of each political subdivision of this state who are covered by the Washington Law Enforcement Officers' and Fire Fighters' Retirement System Act (chapter 209, Laws of 1969 ex. sess.) as now in existence or hereafter amended shall constitute a separate "coverage group" for purposes of the agreement entered into under this section and for purposes of section 218 of the social security act. To the extent that the agreement between this state and the federal secretary of health, education, and welfare in existence on the date of adoption of this subsection is inconsistent with this subsection, the governor shall seek to modify the inconsistency.

(2) Any instrumentality jointly created by this state and any other state or states is hereby authorized, upon the granting of like authority by such other state or states, (a) to enter into an agreement with the secretary of health, education, and welfare whereby the benefits of the federal old-age and survivors insurance system shall be extended to employees of such instrumentality, (b) to require its employees to pay (and for that purpose to deduct from their wages) contributions equal to the amounts which they would be required to pay under RCW 41.48.040(1) if they were covered by an agreement made pursuant to subsection (1) of this section, and (c) to make payments to the secretary of the treasury in accordance with such agreement, including payments from its own funds, and otherwise to comply with such agreements. Such agreement shall, to the extent practicable, be consistent with the terms and provisions of subsection (1) and other provisions of this chapter.

(3) The governor is empowered to authorize a referendum, and to designate an agency or individual to supervise its conduct, in accordance with the requirements of section 218(d)(3) of the social security act, and subsection (4) of this section on the question of whether service in all positions covered by a retirement system established by the state or by a political subdivision thereof should be excluded from or included under an agreement under this chapter. If a retirement system covers positions of employees of the state of Washington, of the institutions of higher learning, and positions of employees of one or more of the political subdivisions of the state, then for the purpose of the referendum as provided herein, there may be deemed to be a separate retirement system with respect to employees of the state, or any one or more of the political subdivisions, or institutions of higher learning and the governor shall authorize a referendum upon request of the subdivisions' or institutions' of

higher learning governing body: PROVIDED HOWEVER, That if a referendum of state employees generally fails to produce a favorable majority vote then the governor may authorize a referendum covering positions of employees in any state department who are compensated in whole or in part from grants made to this state under Title III of the federal social security act: PROVIDED, That any city or town affiliated with the statewide city employees retirement system organized under chapter 41.44 RCW may at its option agree to a plan submitted by the board of trustees of said statewide city employees retirement system for inclusion under an agreement under this chapter if the referendum to be held as provided herein indicates a favorable result: PROVIDED FURTHER, That the teachers' retirement system be considered one system for the purpose of the referendum except as applied to the several *colleges of education. The notice of referendum required by section 218(d)(3)(C) of the social security act to be given to employees shall contain or shall be accompanied by a statement, in such form and such detail as the agency or individual designated to supervise the referendum shall deem necessary and sufficient, to inform the employees of the rights which will accrue to them and their dependents and survivors, and the liabilities to which they will be subject, if their services are included under an agreement under this chapter.

(4) The governor, before authorizing a referendum, shall require the following conditions to be met:

(a) The referendum shall be by secret written ballot on the question of whether service in positions covered by such retirement system shall be excluded from or included under the agreement between the governor and the secretary of health, education, and welfare provided for in RCW 41.48.030(1);

(b) An opportunity to vote in such referendum shall be given and shall be limited to eligible employees;

(c) Not less than ninety days' notice of such referendum shall be given to all such employees;

(d) Such referendum shall be conducted under the supervision (of the governor or) of an agency or individual designated by the governor;

(e) The proposal for coverage shall be approved only if a majority of the eligible employees vote in favor of including services in such positions under the agreement;

(f) The state legislature, in the case of a referendum affecting the rights and liabilities of state employees covered under the state employees' retirement system and employees under the teachers' retirement system, and in all other cases the local legislative authority or governing body, shall have specifically approved the proposed plan and approved any necessary structural adjustment to the existing system to conform with the proposed plan.

(5) Upon receiving satisfactory evidence that with respect to any such referendum the conditions specified in subsection (4) of this section and section 218(d)(3) of the social security act have been met, the governor shall so certify to the secretary of health, education, and welfare.

(6) If the legislative body of any political subdivision of this state certifies to the governor that a referendum has been held under the terms of RCW 41.48.050(1)(i) and gives notice to the governor of termination of social security for any coverage group of the political subdivision, the governor

shall give two years advance notice in writing to the federal department of health, education, and welfare of such termination of the agreement entered into under this section with respect to said coverage group. [2007 c 218 § 72; 1971 ex.s. c 257 § 19; 1967 c 5 § 1; 1957 c 170 § 1; 1955 ex.s. c 4 § 3; 1951 c 184 § 3.]

***Reviser's note:** The "colleges of education" were redesignated state colleges by 1961 c 62 § 1, formerly RCW 28.81.005, decodified in the 1969 education code. See also RCW 28B.10.016.

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

Purpose—Severability—1971 ex.s. c 257: See notes following RCW 41.26.030.

Chapter 41.50 RCW

DEPARTMENT OF RETIREMENT SYSTEMS

Sections

41.50.033 Crediting interest to retirement system accounts.

41.50.033 Crediting interest to retirement system accounts. (1) The director shall determine when interest, if provided by a plan, shall be credited to accounts in the public employees' retirement system, the teachers' retirement system, the school employees' retirement system, the public safety employees' retirement system, the law enforcement officers' and firefighters' retirement system, or the Washington state patrol retirement system. The amounts to be credited and the methods of doing so shall be at the director's discretion, except that if interest is credited, it shall be done at least quarterly.

(2) Interest as determined by the director under this section is "regular interest" as defined in RCW 41.40.010(15), 41.32.010(23), 41.35.010(12), 41.37.010(12), 41.26.030(23), and 43.43.120(8).

(3) The legislature affirms that the authority of the director under RCW 41.40.020 and 41.50.030 includes the authority and responsibility to establish the amount and all conditions for regular interest, if any. The legislature intends chapter 493, Laws of 2007 to be curative, remedial, and retrospectively applicable. [2007 c 493 § 1.]

Chapter 41.54 RCW

PORTABILITY OF PUBLIC RETIREMENT BENEFITS

Sections

41.54.010 Definitions.
41.54.030 Calculation of service retirement allowance.
41.54.070 Benefits under chapter—Minimum and maximum.

41.54.010 Definitions. The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

(1) "Base salary" means salaries or wages earned by a member of a system during a payroll period for personal services and includes wages and salaries deferred under provisions of the United States internal revenue code, but shall exclude overtime payments, nonmoney maintenance compensation, and lump sum payments for deferred annual sick leave, unused accumulated vacation, unused accumulated annual leave, any form of severance pay, any bonus for vol-

untary retirement, any other form of leave, or any similar lump sum payment; except that forms of payment which are excluded under this subsection shall be included in base salary when reportable to the department in all of a dual member's retirement systems, and when none of the dual member's retirement systems are the Washington state patrol retirement system.

(2) "Department" means the department of retirement systems.

(3) "Director" means the director of the department of retirement systems.

(4) "Dual member" means a person who (a) is or becomes a member of a system on or after July 1, 1988, (b) has been a member of one or more other systems, and (c) has never been retired for service from a retirement system and is not receiving a disability retirement or disability leave benefit from any retirement system listed in RCW 41.50.030 or subsection (6) of this section.

(5) "Service" means the same as it may be defined in each respective system. For the purposes of RCW 41.54.030, military service granted under RCW 41.40.170(3) or 43.43.260 may only be based on service accrued under chapter 41.40 or 43.43 RCW, respectively.

(6) "System" means the retirement systems established under chapters 41.32, 41.40, 41.44, 41.35, 41.37, and 43.43 RCW; plan 2 of the system established under chapter 41.26 RCW; and the city employee retirement systems for Seattle, Tacoma, and Spokane. [2007 c 207 § 1; 2004 c 242 § 58; 1998 c 341 § 702; 1993 c 517 § 8; 1990 c 192 § 1; 1988 c 195 § 1; 1987 c 192 § 1.]

Effective date—2004 c 242: See RCW 41.37.901.

Effective date—1998 c 341: See RCW 41.35.901.

Purpose—1993 c 517: See note following RCW 41.26.420.

41.54.030 Calculation of service retirement allowance. (1) A dual member may combine service in all systems for the purpose of:

(a) Determining the member's eligibility to receive a service retirement allowance; and

(b) Qualifying for a benefit under RCW 41.26.530(2), 41.32.840(2), 41.35.620, or 41.40.790.

(2) A dual member who is eligible to retire under any system may elect to retire from all the member's systems and to receive service retirement allowances calculated as provided in this section. Each system shall calculate the allowance using its own criteria except that the member shall be allowed to substitute the member's base salary from any system as the compensation used in calculating the allowance.

(3) The service retirement allowances from a system which, but for this section, would not be allowed to be paid at this date based on the dual member's age may be received immediately or deferred to a later date. The allowances shall be actuarially adjusted from the earliest age upon which the combined service would have made such dual member eligible in that system.

(4) The service retirement eligibility requirements of RCW 41.40.180 shall apply to any dual member whose prior system is plan 1 of the public employees' retirement system established under chapter 41.40 RCW. [2007 c 207 § 2; 2003 c 294 § 13; 1998 c 341 § 703. Prior: 1996 c 55 § 4; 1996 c

55 § 3; 1996 c 39 § 19; 1995 c 239 § 319; 1990 c 192 § 2; 1988 c 195 § 2; 1987 c 192 § 3.]

Effective date—1998 c 341: See RCW 41.35.901.

Effective dates—1996 c 39: See note following RCW 41.32.010.

Intent—Purpose—1995 c 239: See note following RCW 41.32.831.

Effective date—Part and subchapter headings not law—1995 c 239: See notes following RCW 41.32.005.

Benefits not contractual right until date specified: RCW 41.34.100.

41.54.070 Benefits under chapter—Minimum and maximum. (1) The benefit granted by this chapter shall not result in a total benefit less than would have been received absent such benefit.

(2) The total sum of the retirement allowances received under this chapter shall not exceed the largest amount the dual member would receive if all the service had been rendered in any one system. When calculating the maximum benefit a dual member would receive: (a) Military service granted under RCW 41.40.170(3) or 43.43.260 shall be based only on service accrued under chapter 41.40 or 43.43 RCW, respectively; and (b) the calculation shall be made assuming that the dual member did not defer any allowances pursuant to RCW 41.54.030(3). When a dual member's combined retirement allowances would exceed the limitation imposed by this subsection, the allowances shall be reduced by the systems on a proportional basis, according to service. The limitation imposed by this subsection shall not apply to a dual member with:

(i) Less than fifteen years of service credit in a plan with a retirement benefit cap as defined by the department; and

(ii) Service credit in a plan with no retirement benefit cap. [2007 c 207 § 3; 1996 c 55 § 6; 1988 c 195 § 4; 1987 c 192 § 7.]

Chapter 41.56 RCW

PUBLIC EMPLOYEES' COLLECTIVE BARGAINING

Sections

41.56.021	Application of chapter to employees of institutions of higher education—Exceptions—Limitations on bargaining.
41.56.028	Application of chapter to family child care providers—Governor as public employer—Procedure—Intent.
41.56.029	Application of chapter to adult family home providers—Governor as public employer—Procedure—Intent.
41.56.030	Definitions.
41.56.070	Election to ascertain bargaining representative.
41.56.113	Individual providers—Family child care providers—Adult family home providers—Deductions from payments for dues—State is payor, not employer.
41.56.465	Uniformed personnel—Interest arbitration panel—Determinations—Factors to be considered.

41.56.021 Application of chapter to employees of institutions of higher education—Exceptions—Limitations on bargaining. (1) In addition to the entities listed in RCW 41.56.020, this chapter applies to employees of institutions of higher education who are exempted from civil service pursuant to RCW 41.06.070(2), with the following exceptions:

(a) Executive employees, including all members of the governing board of each institution of higher education and related boards; all presidents and vice presidents; deans,

directors, and chairs; and executive heads of major administrative or academic divisions;

(b) Managers who perform any of the following functions:

(i) Formulate, develop, or establish institutional policy, or direct the work of an administrative unit;

(ii) Manage, administer, and control a program, including its physical, financial, or personnel resources;

(iii) Have substantial responsibility for human resources administration, legislative relations, public information, internal audits and investigations, or the preparation and administration of budgets;

(iv) Functionally is above the first level of supervision and exercises authority that is not merely routine or clerical in nature and requires the consistent use of independent judgment;

(c) Employees who, in the regular course of their duties, act as a principal assistant, administrative assistant, or personal assistant to employees as defined by (a) of this subsection;

(d) Confidential employees;

(e) Employees who assist assistant attorneys general who advise and represent managers or confidential employees in personnel or labor relations matters, or who advise or represent the state in tort actions.

(2) Employees subject to this section shall not be included in any unit of employees certified under RCW 41.56.022, 41.56.024, or 41.56.203, chapter 41.76 RCW, or chapter 41.80 RCW. Employees whose eligibility for collective bargaining is covered by chapter 28B.52, 41.76, or 41.80 RCW are exempt from the provisions of this chapter.

(3) Institutions of higher education and the exclusive bargaining representatives shall not agree to any proposal that would prevent the implementation of approved affirmative action plans or that would be inconsistent with the comparable worth agreement that provided the basis for the salary changes implemented beginning with the 1983-1985 biennium to achieve comparable worth.

(4) Institutions of higher education and the exclusive bargaining representative shall not bargain over rights of management that, in addition to all powers, duties, and rights established by constitutional provision or statute, shall include but not be limited to the following:

(a) The functions and programs of the institution, the use of technology, and the structure of the organization;

(b) The institution's budget and the size of its workforce, including determining the financial basis for layoffs;

(c) The right to direct and supervise employees;

(d) The right to take whatever actions are deemed necessary to carry out the mission of the state and the institutions of higher education during emergencies;

(e) Retirement plans and retirement benefits; or

(f) Health care benefits or other employee insurance benefits, except as provided in RCW 41.80.020. [2007 c 136 § 1.]

41.56.028 Application of chapter to family child care providers—Governor as public employer—Procedure—Intent. (1) In addition to the entities listed in RCW 41.56.020, this chapter applies to the governor with respect to family child care providers. Solely for the purposes of col-

lective bargaining and as expressly limited under subsections (2) and (3) of this section, the governor is the public employer of family child care providers who, solely for the purposes of collective bargaining, are public employees. The public employer shall be represented for bargaining purposes by the governor or the governor's designee appointed under chapter 41.80 RCW.

(2) This chapter governs the collective bargaining relationship between the governor and family child care providers, except as follows:

(a) A statewide unit of all family child care providers is the only unit appropriate for purposes of collective bargaining under RCW 41.56.060.

(b) The exclusive bargaining representative of family child care providers in the unit specified in (a) of this subsection shall be the representative chosen in an election conducted pursuant to RCW 41.56.070, except that in the initial election conducted under chapter 54, Laws of 2006, if more than one labor organization is on the ballot and none of the choices receives a majority of the votes cast, a run-off election shall be held.

(c) Notwithstanding the definition of "collective bargaining" in RCW 41.56.030(4), the scope of collective bargaining for child care providers under this section shall be limited solely to: (i) Economic compensation, such as manner and rate of subsidy and reimbursement, including tiered reimbursements; (ii) health and welfare benefits; (iii) professional development and training; (iv) labor-management committees; (v) grievance procedures; and (vi) other economic matters. Retirement benefits shall not be subject to collective bargaining. By such obligation neither party shall be compelled to agree to a proposal or be required to make a concession unless otherwise provided in this chapter.

(d) The mediation and interest arbitration provisions of RCW 41.56.430 through 41.56.470 and 41.56.480 apply, except that:

(i) With respect to commencement of negotiations between the governor and the exclusive bargaining representative of family child care providers, negotiations shall be commenced initially upon certification of an exclusive bargaining representative under (a) of this subsection and, thereafter, by February 1st of any even-numbered year; and

(ii) The decision of the arbitration panel is not binding on the legislature and, if the legislature does not approve the request for funds necessary to implement the compensation and benefit provisions of the arbitrated collective bargaining agreement, is not binding on the state.

(e) Family child care providers do not have the right to strike.

(3) Family child care providers who are public employees solely for the purposes of collective bargaining under subsection (1) of this section are not, for that reason, employees of the state for any purpose. This section applies only to the governance of the collective bargaining relationship between the employer and family child care providers as provided in subsections (1) and (2) of this section.

(4) This section does not create or modify:

(a) The parents' or legal guardians' right to choose and terminate the services of any family child care provider that provides care for their child or children;

(b) The secretary of the department of social and health services' right to adopt requirements under RCW 74.15.030, except for requirements related to grievance procedures and collective negotiations on personnel matters as specified in subsection (2)(c) of this section;

(c) Chapter 26.44 RCW, RCW 43.43.832, 43.20A.205, and 74.15.130; and

(d) The legislature's right to make programmatic modifications to the delivery of state services through child care subsidy programs, including standards of eligibility of parents, legal guardians, and family child care providers participating in child care subsidy programs, and the nature of services provided. The governor shall not enter into, extend, or renew any agreement under this section that does not expressly reserve the legislative rights described in this subsection (4)(d).

(5) Upon meeting the requirements of subsection (6) of this section, the governor must submit, as a part of the proposed biennial or supplemental operating budget submitted to the legislature under RCW 43.88.030, a request for funds necessary to implement the compensation and benefit provisions of a collective bargaining agreement entered into under this section or for legislation necessary to implement such agreement.

(6) A request for funds necessary to implement the compensation and benefit provisions of a collective bargaining agreement entered into under this section shall not be submitted by the governor to the legislature unless such request has been:

(a) Submitted to the director of financial management by October 1st before the legislative session at which the request is to be considered, except that, for initial negotiations under this section, the request must be submitted by November 15, 2006; and

(b) Certified by the director of financial management as being feasible financially for the state or reflects the binding decision of an arbitration panel reached under this section.

(7) The legislature must approve or reject the submission of the request for funds as a whole. If the legislature rejects or fails to act on the submission, any such agreement will be reopened solely for the purpose of renegotiating the funds necessary to implement the agreement.

(8) The governor shall periodically consult with the joint committee on employment relations established by RCW 41.80.010 regarding appropriations necessary to implement the compensation and benefit provisions of any collective bargaining agreement and, upon completion of negotiations, advise the committee on the elements of the agreement and on any legislation necessary to implement such agreement.

(9) After the expiration date of any collective bargaining agreement entered into under this section, all of the terms and conditions specified in any such agreement remain in effect until the effective date of a subsequent agreement, not to exceed one year from the expiration date stated in the agreement, except as provided in subsection (4)(d) of this section.

(10) If, after the compensation and benefit provisions of an agreement are approved by the legislature, a significant revenue shortfall occurs resulting in reduced appropriations, as declared by proclamation of the governor or by resolution of the legislature, both parties shall immediately enter into

collective bargaining for a mutually agreed upon modification of the agreement.

(11) In enacting this section, the legislature intends to provide state action immunity under federal and state anti-trust laws for the joint activities of family child care providers and their exclusive bargaining representative to the extent such activities are authorized by this chapter. [2007 c 278 § 2; 2006 c 54 § 1.]

41.56.029 Application of chapter to adult family home providers—Governor as public employer—Procedure—Intent.

(1) In addition to the entities listed in RCW 41.56.020, this chapter applies to the governor with respect to adult family home providers. Solely for the purposes of collective bargaining and as expressly limited under subsections (2) and (3) of this section, the governor is the public employer of adult family home providers who, solely for the purposes of collective bargaining, are public employees. The public employer shall be represented for bargaining purposes by the governor or the governor's designee.

(2) There shall be collective bargaining, as defined in RCW 41.56.030, between the governor and adult family home providers, except as follows:

(a) A statewide unit of all adult family home providers is the only unit appropriate for purposes of collective bargaining under RCW 41.56.060.

(b) The exclusive bargaining representative of adult family home providers in the unit specified in (a) of this subsection shall be the representative chosen in an election conducted pursuant to RCW 41.56.070.

Bargaining authorization cards furnished as the showing of interest in support of any representation petition or motion for intervention filed under this section shall be exempt from disclosure under chapter 42.56 RCW.

(c) Notwithstanding the definition of "collective bargaining" in RCW 41.56.030(4), the scope of collective bargaining for adult family home providers under this section shall be limited solely to: (i) Economic compensation, such as manner and rate of subsidy and reimbursement, including tiered reimbursements; (ii) health and welfare benefits; (iii) professional development and training; (iv) labor-management committees; (v) grievance procedures; and (vi) other economic matters. Retirement benefits shall not be subject to collective bargaining. By such obligation neither party shall be compelled to agree to a proposal or be required to make a concession unless otherwise provided in this chapter.

(d) In addition to the entities listed in the mediation and interest arbitration provisions of RCW 41.56.430 through 41.56.470 and 41.56.480, the provisions apply to the governor or the governor's designee and the exclusive bargaining representative of adult family home providers, except that:

(i) In addition to the factors to be taken into consideration by an interest arbitration panel under RCW 41.56.465, the panel shall consider the financial ability of the state to pay for the compensation and benefit provisions of a collective bargaining agreement.

(ii) The decision of the arbitration panel is not binding on the legislature and, if the legislature does not approve the request for funds necessary to implement the compensation and benefit provisions of the arbitrated collective bargaining agreement, the decision is not binding on the state.

(e) Adult family home providers do not have the right to strike.

(3) Adult family home providers who are public employees solely for the purposes of collective bargaining under subsection (1) of this section are not, for that reason, employees of the state for any other purpose. This section applies only to the governance of the collective bargaining relationship between the employer and adult family home providers as provided in subsections (1) and (2) of this section.

(4) This section does not create or modify:

(a) The department's authority to establish a plan of care for each consumer or its core responsibility to manage long-term care services under chapter 70.128 RCW, including determination of the level of care that each consumer is eligible to receive. However, at the request of the exclusive bargaining representative, the governor or the governor's designee appointed under chapter 41.80 RCW shall engage in collective bargaining, as defined in RCW 41.56.030(4), with the exclusive bargaining representative over how the department's core responsibility affects hours of work for adult family home providers. This subsection shall not be interpreted to require collective bargaining over an individual consumer's plan of care;

(b) The department's obligation to comply with the federal medicaid statute and regulations and the terms of any community-based waiver granted by the federal department of health and human services and to ensure federal financial participation in the provision of the services;

(c) The legislature's right to make programmatic modifications to the delivery of state services under chapter 70.128 RCW, including standards of eligibility of consumers and adult family home providers participating in the programs under chapter 70.128 RCW, and the nature of services provided. The governor shall not enter into, extend, or renew any agreement under this chapter that does not expressly reserve the legislative rights described in this subsection (4)(c);

(d) The residents', parents', or legal guardians' right to choose and terminate the services of any licensed adult family home provider; and

(e) RCW 43.43.832, 43.20A.205, or 74.15.130.

(5) Upon meeting the requirements of subsection (6) of this section, the governor must submit, as a part of the proposed biennial or supplemental operating budget submitted to the legislature under RCW 43.88.030, a request for funds necessary to implement the compensation and benefit provisions of a collective bargaining agreement entered into under this section or for legislation necessary to implement the agreement.

(6) A request for funds necessary to implement the compensation and benefit provisions of a collective bargaining agreement entered into under this section shall not be submitted by the governor to the legislature unless the request has been:

(a) Submitted to the director of financial management by October 1st prior to the legislative session at which the requests are to be considered; and

(b) Certified by the director of financial management as financially feasible for the state or reflective of a binding decision of an arbitration panel reached under subsection (2)(d) of this section.

(7) The legislature must approve or reject the submission of the request for funds as a whole. If the legislature rejects or fails to act on the submission, any collective bargaining agreement must be reopened for the sole purpose of renegotiating the funds necessary to implement the agreement.

(8) If, after the compensation and benefit provisions of an agreement are approved by the legislature, a significant revenue shortfall occurs resulting in reduced appropriations, as declared by proclamation of the governor or by resolution of the legislature, both parties shall immediately enter into collective bargaining for a mutually agreed upon modification of the agreement.

(9) After the expiration date of any collective bargaining agreement entered into under this section, all of the terms and conditions specified in the agreement remain in effect until the effective date of a subsequent agreement, not to exceed one year from the expiration date stated in the agreement.

(10) In enacting this section, the legislature intends to provide state action immunity under federal and state anti-trust laws for the joint activities of adult family home providers and their exclusive bargaining representative to the extent the activities are authorized by this chapter. [2007 c 184 § 1.]

Part headings not law—2007 c 184: "Part headings used in this act are not any part of the law." [2007 c 184 § 9.]

Severability—2007 c 184: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [2007 c 184 § 10.]

Conflict with federal requirements—2007 c 184: "If any part of this act is found to be in conflict with federal requirements that are a prescribed condition to the allocation of federal funds to the state, the conflicting part of this act is inoperative solely to the extent of the conflict and with respect to the agencies directly affected, and this finding does not affect the operation of the remainder of this act in its application to the agencies concerned. Rules adopted under this act must meet federal requirements that are a necessary condition to the receipt of federal funds by the state." [2007 c 184 § 11.]

41.56.030 Definitions. As used in this chapter:

(1) "Public employer" means any officer, board, commission, council, or other person or body acting on behalf of any public body governed by this chapter, or any subdivision of such public body. For the purposes of this section, the public employer of district court or superior court employees for wage-related matters is the respective county legislative authority, or person or body acting on behalf of the legislative authority, and the public employer for nonwage-related matters is the judge or judge's designee of the respective district court or superior court.

(2) "Public employee" means any employee of a public employer except any person (a) elected by popular vote, or (b) appointed to office pursuant to statute, ordinance or resolution for a specified term of office as a member of a multi-member board, commission, or committee, whether appointed by the executive head or body of the public employer, or (c) whose duties as deputy, administrative assistant or secretary necessarily imply a confidential relationship to (i) the executive head or body of the applicable bargaining unit, or (ii) any person elected by popular vote, or (iii) any person appointed to office pursuant to statute, ordinance or resolution for a specified term of office as a member of a multi-member board, commission, or committee, whether appointed by the executive head or body of the public

employer, or (d) who is a court commissioner or a court magistrate of superior court, district court, or a department of a district court organized under chapter 3.46 RCW, or (e) who is a personal assistant to a district court judge, superior court judge, or court commissioner. For the purpose of (e) of this subsection, no more than one assistant for each judge or commissioner may be excluded from a bargaining unit.

(3) "Bargaining representative" means any lawful organization which has as one of its primary purposes the representation of employees in their employment relations with employers.

(4) "Collective bargaining" means the performance of the mutual obligations of the public employer and the exclusive bargaining representative to meet at reasonable times, to confer and negotiate in good faith, and to execute a written agreement with respect to grievance procedures and collective negotiations on personnel matters, including wages, hours and working conditions, which may be peculiar to an appropriate bargaining unit of such public employer, except that by such obligation neither party shall be compelled to agree to a proposal or be required to make a concession unless otherwise provided in this chapter.

(5) "Commission" means the public employment relations commission.

(6) "Executive director" means the executive director of the commission.

(7) "Uniformed personnel" means: (a) Law enforcement officers as defined in RCW 41.26.030 employed by the governing body of any city or town with a population of two thousand five hundred or more and law enforcement officers employed by the governing body of any county with a population of ten thousand or more; (b) correctional employees who are uniformed and nonuniformed, commissioned and noncommissioned security personnel employed in a jail as defined in RCW 70.48.020(5), by a county with a population of seventy thousand or more, and who are trained for and charged with the responsibility of controlling and maintaining custody of inmates in the jail and safeguarding inmates from other inmates; (c) general authority Washington peace officers as defined in RCW 10.93.020 employed by a port district in a county with a population of one million or more; (d) security forces established under RCW 43.52.520; (e) firefighters as that term is defined in RCW 41.26.030; (f) employees of a port district in a county with a population of one million or more whose duties include crash fire rescue or other fire fighting duties; (g) employees of fire departments of public employers who dispatch exclusively either fire or emergency medical services, or both; or (h) employees in the several classes of advanced life support technicians, as defined in RCW 18.71.200, who are employed by a public employer.

(8) "Institution of higher education" means the University of Washington, Washington State University, Central Washington University, Eastern Washington University, Western Washington University, The Evergreen State College, and the various state community colleges.

(9) "Home care quality authority" means the authority under chapter 74.39A RCW.

(10) "Individual provider" means an individual provider as defined in RCW 74.39A.240(4) who, solely for the pur-

poses of collective bargaining, is a public employee as provided in RCW 74.39A.270.

(11) "Child care subsidy" means a payment from the state through a child care subsidy program established pursuant to RCW 74.12.340 or 74.08A.340, 45 C.F.R. Sec. 98.1 through 98.17, or any successor program.

(12) "Family child care provider" means a person who: (a) Provides regularly scheduled care for a child or children in the home of the provider or in the home of the child or children for periods of less than twenty-four hours or, if necessary due to the nature of the parent's work, for periods equal to or greater than twenty-four hours; (b) receives child care subsidies; and (c) is either licensed by the state under RCW 74.15.030 or is exempt from licensing under chapter 74.15 RCW.

(13) "Adult family home provider" means a provider as defined in RCW 70.128.010 who receives payments from the medicaid and state-funded long-term care programs. [2007 c 184 § 2; 2006 c 54 § 2; 2004 c 3 § 6; 2002 c 99 § 2. Prior: 2000 c 23 § 1; 2000 c 19 § 1; 1999 c 217 § 2; 1995 c 273 § 1; prior: 1993 c 398 § 1; 1993 c 397 § 1; 1993 c 379 § 302; 1992 c 36 § 2; 1991 c 363 § 119; 1989 c 275 § 2; 1987 c 135 § 2; 1984 c 150 § 1; 1975 1st ex.s. c 296 § 15; 1973 c 131 § 2; 1967 ex.s. c 108 § 3.]

Part headings not law—Severability—Conflict with federal requirements—2007 c 184: See notes following RCW 41.56.029.

Severability—Effective date—2004 c 3: See notes following RCW 74.39A.270.

Effective date—1995 c 273: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and shall take effect July 1, 1995." [1995 c 273 § 5.]

Effective dates—1993 c 398: "(1) Sections 3 and 5 of this act shall take effect July 1, 1995.

(2) Sections 1, 2, 4, and 6 of this act are necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and shall take effect immediately [May 15, 1993]." [1993 c 398 § 7.]

Intent—Severability—Effective date—1993 c 379: See notes following RCW 28B.10.029.

Purpose—Captions not law—1991 c 363: See notes following RCW 2.32.180.

Severability—1987 c 135: See note following RCW 41.56.020.

Effective date—1984 c 150: "This act shall take effect on July 1, 1985." [1984 c 150 § 2.]

Effective date—1975 1st ex.s. c 296: See RCW 41.58.901.

Construction—Severability—1973 c 131: See RCW 41.56.905, 41.56.910.

Public employment relations commission: Chapter 41.58 RCW.

41.56.070 Election to ascertain bargaining representative. In the event the commission elects to conduct an election to ascertain the exclusive bargaining representative, and upon the request of a prospective bargaining representative showing written proof of at least thirty percent representation of the public employees within the unit, the commission shall hold an election by secret ballot to determine the issue. The ballot shall contain the name of such bargaining representative and of any other bargaining representative showing written proof of at least ten percent representation of the public employees within the unit, together with a choice for any public employee to designate that he does not desire to be represented by any bargaining agent. Where more than one

organization is on the ballot and neither of the three or more choices receives a majority vote of the public employees within the bargaining unit, a run-off election shall be held. The run-off ballot shall contain the two choices which received the largest and second-largest number of votes. No question concerning representation may be raised within one year of a certification or attempted certification. Where there is a valid collective bargaining agreement in effect, no question of representation may be raised except during the period not more than ninety nor less than sixty days prior to the expiration date of the agreement. Any agreement which contains a provision for automatic renewal or extension of the agreement shall not be a valid agreement; nor shall any agreement be valid if it provides for a term of existence for more than three years, except that any agreement entered into between school districts, cities, counties, or municipal corporations, and their respective employees, may provide for a term of existence of up to six years. [2007 c 75 § 2; 2007 c 75 § 1; 1975 1st ex.s. c 296 § 18; 1967 ex.s. c 108 § 7.]

Reviser's note: This section was amended by 2007 c 75 § 1 and by 2007 c 75 § 2, each without reference to the other. Both amendments are incorporated in the publication of this section under RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

Effective date—1975 1st ex.s. c 296: See RCW 41.58.901.

41.56.113 Individual providers—Family child care providers—Adult family home providers—Deductions from payments for dues—State is payor, not employer.

(1) Upon the written authorization of an individual provider, a family child care provider, or an adult family home provider within the bargaining unit and after the certification or recognition of the bargaining unit's exclusive bargaining representative, the state as payor, but not as the employer, shall, subject to subsection (3) of this section, deduct from the payments to an individual provider, a family child care provider, or an adult family home provider the monthly amount of dues as certified by the secretary of the exclusive bargaining representative and shall transmit the same to the treasurer of the exclusive bargaining representative.

(2) If the governor and the exclusive bargaining representative of a bargaining unit of individual providers, family child care providers, or adult family home providers enter into a collective bargaining agreement that:

(a) Includes a union security provision authorized in RCW 41.56.122, the state as payor, but not as the employer, shall, subject to subsection (3) of this section, enforce the agreement by deducting from the payments to bargaining unit members the dues required for membership in the exclusive bargaining representative, or, for nonmembers thereof, a fee equivalent to the dues; or

(b) Includes requirements for deductions of payments other than the deduction under (a) of this subsection, the state, as payor, but not as the employer, shall, subject to subsection (3) of this section, make such deductions upon written authorization of the individual provider, family child care provider, or adult family home provider.

(3)(a) The initial additional costs to the state in making deductions from the payments to individual providers, family child care providers, and adult family home providers under this section shall be negotiated, agreed upon in advance, and

reimbursed to the state by the exclusive bargaining representative.

(b) The allocation of ongoing additional costs to the state in making deductions from the payments to individual providers, family child care providers, or adult family home providers under this section shall be an appropriate subject of collective bargaining between the exclusive bargaining representative and the governor unless prohibited by another statute. If no collective bargaining agreement containing a provision allocating the ongoing additional cost is entered into between the exclusive bargaining representative and the governor, or if the legislature does not approve funding for the collective bargaining agreement as provided in RCW 74.39A.300, 41.56.028, or 41.56.029, as applicable, the ongoing additional costs to the state in making deductions from the payments to individual providers, family child care providers, or adult family home providers under this section shall be negotiated, agreed upon in advance, and reimbursed to the state by the exclusive bargaining representative.

(4) The governor and the exclusive bargaining representative of a bargaining unit of family child care providers may not enter into a collective bargaining agreement that contains a union security provision unless the agreement contains a process, to be administered by the exclusive bargaining representative of a bargaining unit of family child care providers, for hardship dispensation for license-exempt family child care providers who are also temporary assistance for needy families recipients or WorkFirst participants. [2007 c 184 § 3; 2006 c 54 § 3; 2004 c 3 § 7; 2002 c 99 § 1.]

Part headings not law—Severability—Conflict with federal requirements—2007 c 184: See notes following RCW 41.56.029.

Severability—Effective date—2004 c 3: See notes following RCW 74.39A.270.

41.56.465 Uniformed personnel—Interest arbitration panel—Determinations—Factors to be considered.

(1) In making its determination, the panel shall be mindful of the legislative purpose enumerated in RCW 41.56.430 and, as additional standards or guidelines to aid it in reaching a decision, the panel shall consider:

(a) The constitutional and statutory authority of the employer;

(b) Stipulations of the parties;

(c) The average consumer prices for goods and services, commonly known as the cost of living;

(d) Changes in any of the circumstances under (a) through (c) of this subsection during the pendency of the proceedings; and

(e) Such other factors, not confined to the factors under (a) through (d) of this subsection, that are normally or traditionally taken into consideration in the determination of wages, hours, and conditions of employment. For those employees listed in RCW 41.56.030(7)(a) who are employed by the governing body of a city or town with a population of less than fifteen thousand, or a county with a population of less than seventy thousand, consideration must also be given to regional differences in the cost of living.

(2) For employees listed in RCW 41.56.030(7) (a) through (d), the panel shall also consider a comparison of the wages, hours, and conditions of employment of personnel involved in the proceedings with the wages, hours, and con-

ditions of employment of like personnel of like employers of similar size on the west coast of the United States.

(3) For employees listed in RCW 41.56.030(7) (e) through (h), the panel shall also consider a comparison of the wages, hours, and conditions of employment of personnel involved in the proceedings with the wages, hours, and conditions of employment of like personnel of public fire departments of similar size on the west coast of the United States. However, when an adequate number of comparable employers exists within the state of Washington, other west coast employers may not be considered.

(4) For employees listed in RCW 41.56.028:

(a) The panel shall also consider:

(i) A comparison of child care provider subsidy rates and reimbursement programs by public entities, including counties and municipalities, along the west coast of the United States; and

(ii) The financial ability of the state to pay for the compensation and benefit provisions of a collective bargaining agreement; and

(b) The panel may consider:

(i) The public's interest in reducing turnover and increasing retention of child care providers;

(ii) The state's interest in promoting, through education and training, a stable child care workforce to provide quality and reliable child care from all providers throughout the state; and

(iii) In addition, for employees exempt from licensing under chapter 74.15 RCW, the state's fiscal interest in reducing reliance upon public benefit programs including but not limited to medical coupons, food stamps, subsidized housing, and emergency medical services.

(5) For employees listed in RCW 74.39A.270:

(a) The panel shall consider:

(i) A comparison of wages, hours, and conditions of employment of publicly reimbursed personnel providing similar services to similar clients, including clients who are elderly, frail, or have developmental disabilities, both in the state and across the United States; and

(ii) The financial ability of the state to pay for the compensation and fringe benefit provisions of a collective bargaining agreement; and

(b) The panel may consider:

(i) A comparison of wages, hours, and conditions of employment of publicly employed personnel providing similar services to similar clients, including clients who are elderly, frail, or have developmental disabilities, both in the state and across the United States;

(ii) The state's interest in promoting a stable long-term care workforce to provide quality and reliable care to vulnerable elderly and disabled recipients;

(iii) The state's interest in ensuring access to affordable, quality health care for all state citizens; and

(iv) The state's fiscal interest in reducing reliance upon public benefit programs including but not limited to medical coupons, food stamps, subsidized housing, and emergency medical services.

(6) Subsections (2) and (3) of this section may not be construed to authorize the panel to require the employer to pay, directly or indirectly, the increased employee contributions resulting from chapter 502, Laws of 1993 or chapter

517, Laws of 1993 as required under chapter 41.26 RCW. [2007 c 278 § 1; 1995 c 273 § 2; 1993 c 398 § 3.]

Effective date—1995 c 273: See note following RCW 41.56.030.

Effective dates—1993 c 398: See note following RCW 41.56.030.

Title 42

PUBLIC OFFICERS AND AGENCIES

Chapters

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Chapter 42.17 RCW

DISCLOSURE—CAMPAIGN FINANCES—LOBBYING

Sections

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42.17.020 Definitions. (*Effective January 1, 2008.*)

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42.17.760 Agency shop fees as contributions.

42.17.020 Definitions. (*Effective until January 1, 2008.*) The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

(1) "Actual malice" means to act with knowledge of falsity or with reckless disregard as to truth or falsity.

(2) "Agency" includes all state agencies and all local agencies. "State agency" includes every state office, department, division, bureau, board, commission, or other state agency. "Local agency" includes every county, city, town, municipal corporation, quasi-municipal corporation, or special purpose district, or any office, department, division, bureau, board, commission, or agency thereof, or other local public agency.

(3) "Authorized committee" means the political committee authorized by a candidate, or by the public official against whom recall charges have been filed, to accept contributions or make expenditures on behalf of the candidate or public official.

(4) "Ballot proposition" means any "measure" as defined by RCW 29A.04.091, or any initiative, recall, or referendum proposition proposed to be submitted to the voters of the state or any municipal corporation, political subdivision, or other voting constituency from and after the time when the proposition has been initially filed with the appropriate election officer of that constituency prior to its circulation for signatures.

(5) "Benefit" means a commercial, proprietary, financial, economic, or monetary advantage, or the avoidance of a commercial, proprietary, financial, economic, or monetary disadvantage.

(6) "Bona fide political party" means:

(a) An organization that has filed a valid certificate of nomination with the secretary of state under chapter 29A.20 RCW;

(b) The governing body of the state organization of a major political party, as defined in RCW 29A.04.086, that is the body authorized by the charter or bylaws of the party to exercise authority on behalf of the state party; or

(c) The county central committee or legislative district committee of a major political party. There may be only one legislative district committee for each party in each legislative district.

(7) "Depository" means a bank designated by a candidate or political committee pursuant to RCW 42.17.050.

(8) "Treasurer" and "deputy treasurer" mean the individuals appointed by a candidate or political committee, pursuant to RCW 42.17.050, to perform the duties specified in that section.

(9) "Candidate" means any individual who seeks nomination for election or election to public office. An individual seeks nomination or election when he or she first:

(a) Receives contributions or makes expenditures or reserves space or facilities with intent to promote his or her candidacy for office;

(b) Announces publicly or files for office;

(c) Purchases commercial advertising space or broadcast time to promote his or her candidacy; or

(d) Gives his or her consent to another person to take on behalf of the individual any of the actions in (a) or (c) of this subsection.

(10) "Caucus political committee" means a political committee organized and maintained by the members of a major political party in the state senate or state house of representatives.

(11) "Commercial advertiser" means any person who sells the service of communicating messages or producing printed material for broadcast or distribution to the general public or segments of the general public whether through the use of newspapers, magazines, television and radio stations, billboard companies, direct mail advertising companies, printing companies, or otherwise.

(12) "Commission" means the agency established under RCW 42.17.350.

(13) "Compensation" unless the context requires a narrower meaning, includes payment in any form for real or personal property or services of any kind: PROVIDED, That for the purpose of compliance with RCW 42.17.241, the term "compensation" shall not include per diem allowances or other payments made by a governmental entity to reimburse a public official for expenses incurred while the official is engaged in the official business of the governmental entity.

(14) "Continuing political committee" means a political committee that is an organization of continuing existence not established in anticipation of any particular election campaign.

(15)(a) "Contribution" includes:

(i) A loan, gift, deposit, subscription, forgiveness of indebtedness, donation, advance, pledge, payment, transfer of funds between political committees, or anything of value, including personal and professional services for less than full consideration;

(ii) An expenditure made by a person in cooperation, consultation, or concert with, or at the request or suggestion of, a candidate, a political committee, or their agents;

(iii) The financing by a person of the dissemination, distribution, or republication, in whole or in part, of broadcast, written, graphic, or other form of political advertising or electioneering communication prepared by a candidate, a political committee, or its authorized agent;

(iv) Sums paid for tickets to fund-raising events such as dinners and parties, except for the actual cost of the consumables furnished at the event.

(b) "Contribution" does not include:

(i) Standard interest on money deposited in a political committee's account;

(ii) Ordinary home hospitality;

(iii) A contribution received by a candidate or political committee that is returned to the contributor within five business days of the date on which it is received by the candidate or political committee;

(iv) A news item, feature, commentary, or editorial in a regularly scheduled news medium that is of primary interest to the general public, that is in a news medium controlled by a person whose business is that news medium, and that is not controlled by a candidate or a political committee;

(v) An internal political communication primarily limited to the members of or contributors to a political party organization or political committee, or to the officers, management staff, or stockholders of a corporation or similar enterprise, or to the members of a labor organization or other membership organization;

(vi) The rendering of personal services of the sort commonly performed by volunteer campaign workers, or incidental expenses personally incurred by volunteer campaign workers not in excess of fifty dollars personally paid for by the worker. "Volunteer services," for the purposes of this section, means services or labor for which the individual is not compensated by any person;

(vii) Messages in the form of reader boards, banners, or yard or window signs displayed on a person's own property or property occupied by a person. However, a facility used for such political advertising for which a rental charge is normally made must be reported as an in-kind contribution and counts towards any applicable contribution limit of the person providing the facility;

(viii) Legal or accounting services rendered to or on behalf of:

(A) A political party or caucus political committee if the person paying for the services is the regular employer of the person rendering such services; or

(B) A candidate or an authorized committee if the person paying for the services is the regular employer of the individual rendering the services and if the services are solely for the purpose of ensuring compliance with state election or public disclosure laws.

(c) Contributions other than money or its equivalent are deemed to have a monetary value equivalent to the fair market value of the contribution. Services or property or rights furnished at less than their fair market value for the purpose of assisting any candidate or political committee are deemed a contribution. Such a contribution must be reported as an in-

kind contribution at its fair market value and counts towards any applicable contribution limit of the provider.

(16) "Elected official" means any person elected at a general or special election to any public office, and any person appointed to fill a vacancy in any such office.

(17) "Election" includes any primary, general, or special election for public office and any election in which a ballot proposition is submitted to the voters: PROVIDED, That an election in which the qualifications for voting include other than those requirements set forth in Article VI, section 1 (Amendment 63) of the Constitution of the state of Washington shall not be considered an election for purposes of this chapter.

(18) "Election campaign" means any campaign in support of or in opposition to a candidate for election to public office and any campaign in support of, or in opposition to, a ballot proposition.

(19) "Election cycle" means the period beginning on the first day of January after the date of the last previous general election for the office that the candidate seeks and ending on December 31st after the next election for the office. In the case of a special election to fill a vacancy in an office, "election cycle" means the period beginning on the day the vacancy occurs and ending on December 31st after the special election.

(20) "Electioneering communication" means any broadcast, cable, or satellite television or radio transmission, United States postal service mailing, billboard, newspaper, or periodical that:

(a) Clearly identifies a candidate for a state, local, or judicial office either by specifically naming the candidate, or identifying the candidate without using the candidate's name;

(b) Is broadcast, transmitted, mailed, erected, distributed, or otherwise published within sixty days before any election for that office in the jurisdiction in which the candidate is seeking election; and

(c) Either alone, or in combination with one or more communications identifying the candidate by the same sponsor during the sixty days before an election, has a fair market value of five thousand dollars or more.

(21) "Electioneering communication" does not include:

(a) Usual and customary advertising of a business owned by a candidate, even if the candidate is mentioned in the advertising when the candidate has been regularly mentioned in that advertising appearing at least twelve months preceding his or her becoming a candidate;

(b) Advertising for candidate debates or forums when the advertising is paid for by or on behalf of the debate or forum sponsor, so long as two or more candidates for the same position have been invited to participate in the debate or forum;

(c) A news item, feature, commentary, or editorial in a regularly scheduled news medium that is:

(i) Of primary interest to the general public;

(ii) In a news medium controlled by a person whose business is that news medium; and

(iii) Not a medium controlled by a candidate or a political committee;

(d) Slate cards and sample ballots;

(e) Advertising for books, films, dissertations, or similar works (i) written by a candidate when the candidate entered into a contract for such publications or media at least twelve

months before becoming a candidate, or (ii) written about a candidate;

(f) Public service announcements;

(g) A mailed internal political communication primarily limited to the members of or contributors to a political party organization or political committee, or to the officers, management staff, or stockholders of a corporation or similar enterprise, or to the members of a labor organization or other membership organization;

(h) An expenditure by or contribution to the authorized committee of a candidate for state, local, or judicial office; or

(i) Any other communication exempted by the commission through rule consistent with the intent of this chapter.

(22) "Expenditure" includes a payment, contribution, subscription, distribution, loan, advance, deposit, or gift of money or anything of value, and includes a contract, promise, or agreement, whether or not legally enforceable, to make an expenditure. The term "expenditure" also includes a promise to pay, a payment, or a transfer of anything of value in exchange for goods, services, property, facilities, or anything of value for the purpose of assisting, benefiting, or honoring any public official or candidate, or assisting in furthering or opposing any election campaign. For the purposes of this chapter, agreements to make expenditures, contracts, and promises to pay may be reported as estimated obligations until actual payment is made. The term "expenditure" shall not include the partial or complete repayment by a candidate or political committee of the principal of a loan, the receipt of which loan has been properly reported.

(23) "Final report" means the report described as a final report in RCW 42.17.080(2).

(24) "General election" for the purposes of RCW 42.17.640 means the election that results in the election of a person to a state office. It does not include a primary.

(25) "Gift," is as defined in RCW 42.52.010.

(26) "Immediate family" includes the spouse, dependent children, and other dependent relatives, if living in the household. For the purposes of RCW 42.17.640 through 42.17.790, "immediate family" means an individual's spouse, and child, stepchild, grandchild, parent, stepparent, grandparent, brother, half brother, sister, or half sister of the individual and the spouse of any such person and a child, stepchild, grandchild, parent, stepparent, grandparent, brother, half brother, sister, or half sister of the individual's spouse and the spouse of any such person.

(27) "Incumbent" means a person who is in present possession of an elected office.

(28) "Independent expenditure" means an expenditure that has each of the following elements:

(a) It is made in support of or in opposition to a candidate for office by a person who is not (i) a candidate for that office, (ii) an authorized committee of that candidate for that office, (iii) a person who has received the candidate's encouragement or approval to make the expenditure, if the expenditure pays in whole or in part for political advertising supporting that candidate or promoting the defeat of any other candidate or candidates for that office, or (iv) a person with whom the candidate has collaborated for the purpose of making the expenditure, if the expenditure pays in whole or in part for political advertising supporting that candidate or promoting the defeat of any other candidate or candidates for that office;

(b) The expenditure pays in whole or in part for political advertising that either specifically names the candidate supported or opposed, or clearly and beyond any doubt identifies the candidate without using the candidate's name; and

(c) The expenditure, alone or in conjunction with another expenditure or other expenditures of the same person in support of or opposition to that candidate, has a value of *five hundred dollars or more. A series of expenditures, each of which is under five hundred dollars, constitutes one independent expenditure if their cumulative value is five hundred dollars or more.

(29)(a) "Intermediary" means an individual who transmits a contribution to a candidate or committee from another person unless the contribution is from the individual's employer, immediate family as defined for purposes of RCW 42.17.640 through 42.17.790, or an association to which the individual belongs.

(b) A treasurer or a candidate is not an intermediary for purposes of the committee that the treasurer or candidate serves.

(c) A professional fund-raiser is not an intermediary if the fund-raiser is compensated for fund-raising services at the usual and customary rate.

(d) A volunteer hosting a fund-raising event at the individual's home is not an intermediary for purposes of that event.

(30) "Legislation" means bills, resolutions, motions, amendments, nominations, and other matters pending or proposed in either house of the state legislature, and includes any other matter that may be the subject of action by either house or any committee of the legislature and all bills and resolutions that, having passed both houses, are pending approval by the governor.

(31) "Lobby" and "lobbying" each mean attempting to influence the passage or defeat of any legislation by the legislature of the state of Washington, or the adoption or rejection of any rule, standard, rate, or other legislative enactment of any state agency under the state Administrative Procedure Act, chapter 34.05 RCW. Neither "lobby" nor "lobbying" includes an association's or other organization's act of communicating with the members of that association or organization.

(32) "Lobbyist" includes any person who lobbies either in his or her own or another's behalf.

(33) "Lobbyist's employer" means the person or persons by whom a lobbyist is employed and all persons by whom he or she is compensated for acting as a lobbyist.

(34) "Participate" means that, with respect to a particular election, an entity:

(a) Makes either a monetary or in-kind contribution to a candidate;

(b) Makes an independent expenditure or electioneering communication in support of or opposition to a candidate;

(c) Endorses a candidate prior to contributions being made by a subsidiary corporation or local unit with respect to that candidate or that candidate's opponent;

(d) Makes a recommendation regarding whether a candidate should be supported or opposed prior to a contribution being made by a subsidiary corporation or local unit with respect to that candidate or that candidate's opponent; or

(e) Directly or indirectly collaborates or consults with a subsidiary corporation or local unit on matters relating to the support of or opposition to a candidate, including, but not limited to, the amount of a contribution, when a contribution should be given, and what assistance, services or independent expenditures, or electioneering communications, if any, will be made or should be made in support of or opposition to a candidate.

(35) "Person" includes an individual, partnership, joint venture, public or private corporation, association, federal, state, or local governmental entity or agency however constituted, candidate, committee, political committee, political party, executive committee thereof, or any other organization or group of persons, however organized.

(36) "Person in interest" means the person who is the subject of a record or any representative designated by that person, except that if that person is under a legal disability, the term "person in interest" means and includes the parent or duly appointed legal representative.

(37) "Political advertising" includes any advertising displays, newspaper ads, billboards, signs, brochures, articles, tabloids, flyers, letters, radio or television presentations, or other means of mass communication, used for the purpose of appealing, directly or indirectly, for votes or for financial or other support or opposition in any election campaign.

(38) "Political committee" means any person (except a candidate or an individual dealing with his or her own funds or property) having the expectation of receiving contributions or making expenditures in support of, or opposition to, any candidate or any ballot proposition.

(39) "Primary" for the purposes of RCW 42.17.640 means the procedure for nominating a candidate to state office under chapter 29A.52 RCW or any other primary for an election that uses, in large measure, the procedures established in chapter 29A.52 RCW.

(40) "Public office" means any federal, state, judicial, county, city, town, school district, port district, special district, or other state political subdivision elective office.

(41) "Public record" includes any writing containing information relating to the conduct of government or the performance of any governmental or proprietary function prepared, owned, used, or retained by any state or local agency regardless of physical form or characteristics. For the office of the secretary of the senate and the office of the chief clerk of the house of representatives, public records means legislative records as defined in RCW 40.14.100 and also means the following: All budget and financial records; personnel leave, travel, and payroll records; records of legislative sessions; reports submitted to the legislature; and any other record designated a public record by any official action of the senate or the house of representatives.

(42) "Recall campaign" means the period of time beginning on the date of the filing of recall charges under RCW 29A.56.120 and ending thirty days after the recall election.

(43) "Sponsor of an electioneering communications, independent expenditures, or political advertising" means the person paying for the electioneering communication, independent expenditure, or political advertising. If a person acts as an agent for another or is reimbursed by another for the payment, the original source of the payment is the sponsor.

(44) "State legislative office" means the office of a member of the state house of representatives or the office of a member of the state senate.

(45) "State office" means state legislative office or the office of governor, lieutenant governor, secretary of state, attorney general, commissioner of public lands, insurance commissioner, superintendent of public instruction, state auditor, or state treasurer.

(46) "State official" means a person who holds a state office.

(47) "Surplus funds" mean, in the case of a political committee or candidate, the balance of contributions that remain in the possession or control of that committee or candidate subsequent to the election for which the contributions were received, and that are in excess of the amount necessary to pay remaining debts incurred by the committee or candidate prior to that election. In the case of a continuing political committee, "surplus funds" mean those contributions remaining in the possession or control of the committee that are in excess of the amount necessary to pay all remaining debts when it makes its final report under RCW 42.17.065.

(48) "Writing" means handwriting, typewriting, printing, photostating, photographing, and every other means of recording any form of communication or representation, including, but not limited to, letters, words, pictures, sounds, or symbols, or combination thereof, and all papers, maps, magnetic or paper tapes, photographic films and prints, motion picture, film and video recordings, magnetic or punched cards, discs, drums, diskettes, sound recordings, and other documents including existing data compilations from which information may be obtained or translated.

As used in this chapter, the singular shall take the plural and any gender, the other, as the context requires. [2007 c 180 § 1; 2005 c 445 § 6; 2002 c 75 § 1; 1995 c 397 § 1; 1992 c 139 § 1; 1991 sp.s. c 18 § 1; 1990 c 139 § 2. Prior: 1989 c 280 § 1; 1989 c 175 § 89; 1984 c 34 § 5; 1979 ex.s. c 50 § 1; 1977 ex.s. c 313 § 1; 1975 1st ex.s. c 294 § 2; 1973 c 1 § 2 (Initiative Measure No. 276, approved November 7, 1972).]

***Reviser's note:** The dollar amounts in this section have been adjusted for inflation by rule of the commission adopted under the authority of RCW 42.17.690. For current dollar amounts, see chapter 390-05 of the Washington Administrative Code (WAC).

Legislative intent—1990 c 139: "The provisions of this act which repeal the reporting requirements established by chapter 423, Laws of 1987 for registered lobbyists and employers of lobbyists are not intended to alter, expand, or restrict whatsoever the definition of "lobby" or "lobbying" contained in RCW 42.17.020 as it existed prior to the enactment of chapter 423, Laws of 1987." [1990 c 139 § 1.]

Effective date—1989 c 280: "This act shall take effect January 1, 1990." [1989 c 280 § 14.]

Effective date—1989 c 175: See note following RCW 34.05.010.

Effective date—1977 ex.s. c 313: "This 1977 amendatory act shall take effect on January 1, 1978." [1977 ex.s. c 313 § 9.]

Severability—1977 ex.s. c 313: "If any provision of this 1977 amendatory act, or its application to any person or circumstance is held invalid, the remainder of the act, or the application of the provision to other persons or circumstances is not affected." [1977 ex.s. c 313 § 8.]

42.17.020 Definitions. (Effective January 1, 2008.)

The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

(1) "Actual malice" means to act with knowledge of falsity or with reckless disregard as to truth or falsity.

(2) "Agency" includes all state agencies and all local agencies. "State agency" includes every state office, department, division, bureau, board, commission, or other state agency. "Local agency" includes every county, city, town, municipal corporation, quasi-municipal corporation, or special purpose district, or any office, department, division, bureau, board, commission, or agency thereof, or other local public agency.

(3) "Authorized committee" means the political committee authorized by a candidate, or by the public official against whom recall charges have been filed, to accept contributions or make expenditures on behalf of the candidate or public official.

(4) "Ballot proposition" means any "measure" as defined by RCW 29A.04.091, or any initiative, recall, or referendum proposition proposed to be submitted to the voters of the state or any municipal corporation, political subdivision, or other voting constituency from and after the time when the proposition has been initially filed with the appropriate election officer of that constituency prior to its circulation for signatures.

(5) "Benefit" means a commercial, proprietary, financial, economic, or monetary advantage, or the avoidance of a commercial, proprietary, financial, economic, or monetary disadvantage.

(6) "Bona fide political party" means:

(a) An organization that has filed a valid certificate of nomination with the secretary of state under chapter 29A.20 RCW;

(b) The governing body of the state organization of a major political party, as defined in RCW 29A.04.086, that is the body authorized by the charter or bylaws of the party to exercise authority on behalf of the state party; or

(c) The county central committee or legislative district committee of a major political party. There may be only one legislative district committee for each party in each legislative district.

(7) "Depository" means a bank designated by a candidate or political committee pursuant to RCW 42.17.050.

(8) "Treasurer" and "deputy treasurer" mean the individuals appointed by a candidate or political committee, pursuant to RCW 42.17.050, to perform the duties specified in that section.

(9) "Candidate" means any individual who seeks nomination for election or election to public office. An individual seeks nomination or election when he or she first:

(a) Receives contributions or makes expenditures or reserves space or facilities with intent to promote his or her candidacy for office;

(b) Announces publicly or files for office;

(c) Purchases commercial advertising space or broadcast time to promote his or her candidacy; or

(d) Gives his or her consent to another person to take on behalf of the individual any of the actions in (a) or (c) of this subsection.

(10) "Caucus political committee" means a political committee organized and maintained by the members of a major political party in the state senate or state house of representatives.

(11) "Commercial advertiser" means any person who sells the service of communicating messages or producing

printed material for broadcast or distribution to the general public or segments of the general public whether through the use of newspapers, magazines, television and radio stations, billboard companies, direct mail advertising companies, printing companies, or otherwise.

(12) "Commission" means the agency established under RCW 42.17.350.

(13) "Compensation" unless the context requires a narrower meaning, includes payment in any form for real or personal property or services of any kind: PROVIDED, That for the purpose of compliance with RCW 42.17.241, the term "compensation" shall not include per diem allowances or other payments made by a governmental entity to reimburse a public official for expenses incurred while the official is engaged in the official business of the governmental entity.

(14) "Continuing political committee" means a political committee that is an organization of continuing existence not established in anticipation of any particular election campaign.

(15)(a) "Contribution" includes:

(i) A loan, gift, deposit, subscription, forgiveness of indebtedness, donation, advance, pledge, payment, transfer of funds between political committees, or anything of value, including personal and professional services for less than full consideration;

(ii) An expenditure made by a person in cooperation, consultation, or concert with, or at the request or suggestion of, a candidate, a political committee, the person or persons named on the candidate's or committee's registration form who direct expenditures on behalf of the candidate or committee, or their agents;

(iii) The financing by a person of the dissemination, distribution, or republication, in whole or in part, of broadcast, written, graphic, or other form of political advertising or electioneering communication prepared by a candidate, a political committee, or its authorized agent;

(iv) Sums paid for tickets to fund-raising events such as dinners and parties, except for the actual cost of the consumables furnished at the event.

(b) "Contribution" does not include:

(i) Standard interest on money deposited in a political committee's account;

(ii) Ordinary home hospitality;

(iii) A contribution received by a candidate or political committee that is returned to the contributor within five business days of the date on which it is received by the candidate or political committee;

(iv) A news item, feature, commentary, or editorial in a regularly scheduled news medium that is of primary interest to the general public, that is in a news medium controlled by a person whose business is that news medium, and that is not controlled by a candidate or a political committee;

(v) An internal political communication primarily limited to the members of or contributors to a political party organization or political committee, or to the officers, management staff, or stockholders of a corporation or similar enterprise, or to the members of a labor organization or other membership organization;

(vi) The rendering of personal services of the sort commonly performed by volunteer campaign workers, or incidental expenses personally incurred by volunteer campaign

workers not in excess of fifty dollars personally paid for by the worker. "Volunteer services," for the purposes of this section, means services or labor for which the individual is not compensated by any person;

(vii) Messages in the form of reader boards, banners, or yard or window signs displayed on a person's own property or property occupied by a person. However, a facility used for such political advertising for which a rental charge is normally made must be reported as an in-kind contribution and counts towards any applicable contribution limit of the person providing the facility;

(viii) Legal or accounting services rendered to or on behalf of:

(A) A political party or caucus political committee if the person paying for the services is the regular employer of the person rendering such services; or

(B) A candidate or an authorized committee if the person paying for the services is the regular employer of the individual rendering the services and if the services are solely for the purpose of ensuring compliance with state election or public disclosure laws; or

(ix) The performance of ministerial functions by a person on behalf of two or more candidates or political committees either as volunteer services defined in (b)(vi) of this subsection or for payment by the candidate or political committee for whom the services are performed as long as:

(A) The person performs solely ministerial functions;

(B) A person who is paid by two or more candidates or political committees is identified by the candidates and political committees on whose behalf services are performed as part of their respective statements of organization under RCW 42.17.040; and

(C) The person does not disclose, except as required by law, any information regarding a candidate's or committee's plans, projects, activities, or needs, or regarding a candidate's or committee's contributions or expenditures that is not already publicly available from campaign reports filed with the commission, or otherwise engage in activity that constitutes a contribution under (a)(ii) of this subsection.

A person who performs ministerial functions under this subsection (15)(b)(ix) is not considered an agent of the candidate or committee as long as he or she has no authority to authorize expenditures or make decisions on behalf of the candidate or committee.

(c) Contributions other than money or its equivalent are deemed to have a monetary value equivalent to the fair market value of the contribution. Services or property or rights furnished at less than their fair market value for the purpose of assisting any candidate or political committee are deemed a contribution. Such a contribution must be reported as an in-kind contribution at its fair market value and counts towards any applicable contribution limit of the provider.

(16) "Elected official" means any person elected at a general or special election to any public office, and any person appointed to fill a vacancy in any such office.

(17) "Election" includes any primary, general, or special election for public office and any election in which a ballot proposition is submitted to the voters: PROVIDED, That an election in which the qualifications for voting include other than those requirements set forth in Article VI, section 1 (Amendment 63) of the Constitution of the state of Washing-

ton shall not be considered an election for purposes of this chapter.

(18) "Election campaign" means any campaign in support of or in opposition to a candidate for election to public office and any campaign in support of, or in opposition to, a ballot proposition.

(19) "Election cycle" means the period beginning on the first day of January after the date of the last previous general election for the office that the candidate seeks and ending on December 31st after the next election for the office. In the case of a special election to fill a vacancy in an office, "election cycle" means the period beginning on the day the vacancy occurs and ending on December 31st after the special election.

(20) "Electioneering communication" means any broadcast, cable, or satellite television or radio transmission, United States postal service mailing, billboard, newspaper, or periodical that:

(a) Clearly identifies a candidate for a state, local, or judicial office either by specifically naming the candidate, or identifying the candidate without using the candidate's name;

(b) Is broadcast, transmitted, mailed, erected, distributed, or otherwise published within sixty days before any election for that office in the jurisdiction in which the candidate is seeking election; and

(c) Either alone, or in combination with one or more communications identifying the candidate by the same sponsor during the sixty days before an election, has a fair market value of five thousand dollars or more.

(21) "Electioneering communication" does not include:

(a) Usual and customary advertising of a business owned by a candidate, even if the candidate is mentioned in the advertising when the candidate has been regularly mentioned in that advertising appearing at least twelve months preceding his or her becoming a candidate;

(b) Advertising for candidate debates or forums when the advertising is paid for by or on behalf of the debate or forum sponsor, so long as two or more candidates for the same position have been invited to participate in the debate or forum;

(c) A news item, feature, commentary, or editorial in a regularly scheduled news medium that is:

(i) Of primary interest to the general public;

(ii) In a news medium controlled by a person whose business is that news medium; and

(iii) Not a medium controlled by a candidate or a political committee;

(d) Slate cards and sample ballots;

(e) Advertising for books, films, dissertations, or similar works (i) written by a candidate when the candidate entered into a contract for such publications or media at least twelve months before becoming a candidate, or (ii) written about a candidate;

(f) Public service announcements;

(g) A mailed internal political communication primarily limited to the members of or contributors to a political party organization or political committee, or to the officers, management staff, or stockholders of a corporation or similar enterprise, or to the members of a labor organization or other membership organization;

(h) An expenditure by or contribution to the authorized committee of a candidate for state, local, or judicial office; or

(i) Any other communication exempted by the commission through rule consistent with the intent of this chapter.

(22) "Expenditure" includes a payment, contribution, subscription, distribution, loan, advance, deposit, or gift of money or anything of value, and includes a contract, promise, or agreement, whether or not legally enforceable, to make an expenditure. The term "expenditure" also includes a promise to pay, a payment, or a transfer of anything of value in exchange for goods, services, property, facilities, or anything of value for the purpose of assisting, benefiting, or honoring any public official or candidate, or assisting in furthering or opposing any election campaign. For the purposes of this chapter, agreements to make expenditures, contracts, and promises to pay may be reported as estimated obligations until actual payment is made. The term "expenditure" shall not include the partial or complete repayment by a candidate or political committee of the principal of a loan, the receipt of which loan has been properly reported.

(23) "Final report" means the report described as a final report in RCW 42.17.080(2).

(24) "General election" for the purposes of RCW 42.17.640 means the election that results in the election of a person to a state office. It does not include a primary.

(25) "Gift," is as defined in RCW 42.52.010.

(26) "Immediate family" includes the spouse, dependent children, and other dependent relatives, if living in the household. For the purposes of RCW 42.17.640 through 42.17.790, "immediate family" means an individual's spouse, and child, stepchild, grandchild, parent, stepparent, grandparent, brother, half brother, sister, or half sister of the individual and the spouse of any such person and a child, stepchild, grandchild, parent, stepparent, grandparent, brother, half brother, sister, or half sister of the individual's spouse and the spouse of any such person.

(27) "Incumbent" means a person who is in present possession of an elected office.

(28) "Independent expenditure" means an expenditure that has each of the following elements:

(a) It is made in support of or in opposition to a candidate for office by a person who is not (i) a candidate for that office, (ii) an authorized committee of that candidate for that office, (iii) a person who has received the candidate's encouragement or approval to make the expenditure, if the expenditure pays in whole or in part for political advertising supporting that candidate or promoting the defeat of any other candidate or candidates for that office, or (iv) a person with whom the candidate has collaborated for the purpose of making the expenditure, if the expenditure pays in whole or in part for political advertising supporting that candidate or promoting the defeat of any other candidate or candidates for that office;

(b) The expenditure pays in whole or in part for political advertising that either specifically names the candidate supported or opposed, or clearly and beyond any doubt identifies the candidate without using the candidate's name; and

(c) The expenditure, alone or in conjunction with another expenditure or other expenditures of the same person in support of or opposition to that candidate, has a value of *five hundred dollars or more. A series of expenditures, each of which is under five hundred dollars, constitutes one independent expenditure if their cumulative value is five hundred dollars or more.

(29)(a) "Intermediary" means an individual who transmits a contribution to a candidate or committee from another person unless the contribution is from the individual's employer, immediate family as defined for purposes of RCW 42.17.640 through 42.17.790, or an association to which the individual belongs.

(b) A treasurer or a candidate is not an intermediary for purposes of the committee that the treasurer or candidate serves.

(c) A professional fund-raiser is not an intermediary if the fund-raiser is compensated for fund-raising services at the usual and customary rate.

(d) A volunteer hosting a fund-raising event at the individual's home is not an intermediary for purposes of that event.

(30) "Legislation" means bills, resolutions, motions, amendments, nominations, and other matters pending or proposed in either house of the state legislature, and includes any other matter that may be the subject of action by either house or any committee of the legislature and all bills and resolutions that, having passed both houses, are pending approval by the governor.

(31) "Lobby" and "lobbying" each mean attempting to influence the passage or defeat of any legislation by the legislature of the state of Washington, or the adoption or rejection of any rule, standard, rate, or other legislative enactment of any state agency under the state Administrative Procedure Act, chapter 34.05 RCW. Neither "lobby" nor "lobbying" includes an association's or other organization's act of communicating with the members of that association or organization.

(32) "Lobbyist" includes any person who lobbies either in his or her own or another's behalf.

(33) "Lobbyist's employer" means the person or persons by whom a lobbyist is employed and all persons by whom he or she is compensated for acting as a lobbyist.

(34) "Ministerial functions" means an act or duty carried out as part of the duties of an administrative office without exercise of personal judgment or discretion.

(35) "Participate" means that, with respect to a particular election, an entity:

(a) Makes either a monetary or in-kind contribution to a candidate;

(b) Makes an independent expenditure or electioneering communication in support of or opposition to a candidate;

(c) Endorses a candidate prior to contributions being made by a subsidiary corporation or local unit with respect to that candidate or that candidate's opponent;

(d) Makes a recommendation regarding whether a candidate should be supported or opposed prior to a contribution being made by a subsidiary corporation or local unit with respect to that candidate or that candidate's opponent; or

(e) Directly or indirectly collaborates or consults with a subsidiary corporation or local unit on matters relating to the support of or opposition to a candidate, including, but not limited to, the amount of a contribution, when a contribution should be given, and what assistance, services or independent expenditures, or electioneering communications, if any, will be made or should be made in support of or opposition to a candidate.

(36) "Person" includes an individual, partnership, joint venture, public or private corporation, association, federal, state, or local governmental entity or agency however constituted, candidate, committee, political committee, political party, executive committee thereof, or any other organization or group of persons, however organized.

(37) "Person in interest" means the person who is the subject of a record or any representative designated by that person, except that if that person is under a legal disability, the term "person in interest" means and includes the parent or duly appointed legal representative.

(38) "Political advertising" includes any advertising displays, newspaper ads, billboards, signs, brochures, articles, tabloids, flyers, letters, radio or television presentations, or other means of mass communication, used for the purpose of appealing, directly or indirectly, for votes or for financial or other support or opposition in any election campaign.

(39) "Political committee" means any person (except a candidate or an individual dealing with his or her own funds or property) having the expectation of receiving contributions or making expenditures in support of, or opposition to, any candidate or any ballot proposition.

(40) "Primary" for the purposes of RCW 42.17.640 means the procedure for nominating a candidate to state office under chapter 29A.52 RCW or any other primary for an election that uses, in large measure, the procedures established in chapter 29A.52 RCW.

(41) "Public office" means any federal, state, judicial, county, city, town, school district, port district, special district, or other state political subdivision elective office.

(42) "Public record" includes any writing containing information relating to the conduct of government or the performance of any governmental or proprietary function prepared, owned, used, or retained by any state or local agency regardless of physical form or characteristics. For the office of the secretary of the senate and the office of the chief clerk of the house of representatives, public records means legislative records as defined in RCW 40.14.100 and also means the following: All budget and financial records; personnel leave, travel, and payroll records; records of legislative sessions; reports submitted to the legislature; and any other record designated a public record by any official action of the senate or the house of representatives.

(43) "Recall campaign" means the period of time beginning on the date of the filing of recall charges under RCW 29A.56.120 and ending thirty days after the recall election.

(44) "Sponsor of an electioneering communications, independent expenditures, or political advertising" means the person paying for the electioneering communication, independent expenditure, or political advertising. If a person acts as an agent for another or is reimbursed by another for the payment, the original source of the payment is the sponsor.

(45) "State legislative office" means the office of a member of the state house of representatives or the office of a member of the state senate.

(46) "State office" means state legislative office or the office of governor, lieutenant governor, secretary of state, attorney general, commissioner of public lands, insurance commissioner, superintendent of public instruction, state auditor, or state treasurer.

(47) "State official" means a person who holds a state office.

(48) "Surplus funds" mean, in the case of a political committee or candidate, the balance of contributions that remain in the possession or control of that committee or candidate subsequent to the election for which the contributions were received, and that are in excess of the amount necessary to pay remaining debts incurred by the committee or candidate prior to that election. In the case of a continuing political committee, "surplus funds" mean those contributions remaining in the possession or control of the committee that are in excess of the amount necessary to pay all remaining debts when it makes its final report under RCW 42.17.065.

(49) "Writing" means handwriting, typewriting, printing, photostating, photographing, and every other means of recording any form of communication or representation, including, but not limited to, letters, words, pictures, sounds, or symbols, or combination thereof, and all papers, maps, magnetic or paper tapes, photographic films and prints, motion picture, film and video recordings, magnetic or punched cards, discs, drums, diskettes, sound recordings, and other documents including existing data compilations from which information may be obtained or translated.

As used in this chapter, the singular shall take the plural and any gender, the other, as the context requires. [2007 c 358 § 1; 2007 c 180 § 1; 2005 c 445 § 6; 2002 c 75 § 1; 1995 c 397 § 1; 1992 c 139 § 1; 1991 sp.s. c 18 § 1; 1990 c 139 § 2. Prior: 1989 c 280 § 1; 1989 c 175 § 89; 1984 c 34 § 5; 1979 ex.s. c 50 § 1; 1977 ex.s. c 313 § 1; 1975 1st ex.s. c 294 § 2; 1973 c 1 § 2 (Initiative Measure No. 276, approved November 7, 1972).]

Reviser's note: *(1) The dollar amounts in this section have been adjusted for inflation by rule of the commission adopted under the authority of RCW 42.17.690. For current dollar amounts, see chapter 390-05 of the Washington Administrative Code (WAC).

(2) This section was amended by 2007 c 180 § 1 and by 2007 c 358 § 1, each without reference to the other. Both amendments are incorporated in the publication of this section under RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

Effective date—2007 c 358: "This act takes effect January 1, 2008." [2007 c 358 § 4.]

Legislative intent—1990 c 139: "The provisions of this act which repeal the reporting requirements established by chapter 423, Laws of 1987 for registered lobbyists and employers of lobbyists are not intended to alter, expand, or restrict whatsoever the definition of "lobby" or "lobbying" contained in RCW 42.17.020 as it existed prior to the enactment of chapter 423, Laws of 1987." [1990 c 139 § 1.]

Effective date—1989 c 280: "This act shall take effect January 1, 1990." [1989 c 280 § 14.]

Effective date—1989 c 175: See note following RCW 34.05.010.

Effective date—1977 ex.s. c 313: "This 1977 amendatory act shall take effect on January 1, 1978." [1977 ex.s. c 313 § 9.]

Severability—1977 ex.s. c 313: "If any provision of this 1977 amendatory act, or its application to any person or circumstance is held invalid, the remainder of the act, or the application of the provision to other persons or circumstances is not affected." [1977 ex.s. c 313 § 8.]

42.17.040 Statement of organization by political committees. (Effective January 1, 2008.) (1) Every political committee, within two weeks after its organization or, within two weeks after the date when it first has the expectation of receiving contributions or making expenditures in any election campaign, whichever is earlier, shall file a statement of organization with the commission and with the county

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auditor or elections officer of the county in which the candidate resides, or in the case of any other political committee, the county in which the treasurer resides. A political committee organized within the last three weeks before an election and having the expectation of receiving contributions or making expenditures during and for that election campaign shall file a statement of organization within three business days after its organization or when it first has the expectation of receiving contributions or making expenditures in the election campaign.

(2) The statement of organization shall include but not be limited to:

(a) The name and address of the committee;

(b) The names and addresses of all related or affiliated committees or other persons, and the nature of the relationship or affiliation;

(c) The names, addresses, and titles of its officers; or if it has no officers, the names, addresses, and titles of its responsible leaders;

(d) The name and address of its treasurer and depository;

(e) A statement whether the committee is a continuing one;

(f) The name, office sought, and party affiliation of each candidate whom the committee is supporting or opposing, and, if the committee is supporting the entire ticket of any party, the name of the party;

(g) The ballot proposition concerned, if any, and whether the committee is in favor of or opposed to such proposition;

(h) What distribution of surplus funds will be made, in accordance with RCW 42.17.095, in the event of dissolution;

(i) The street address of the place and the hours during which the committee will make available for public inspection its books of account and all reports filed in accordance with RCW 42.17.080;

(j) Such other information as the commission may by regulation prescribe, in keeping with the policies and purposes of this chapter;

(k) The name, address, and title of any person who authorizes expenditures or makes decisions on behalf of the candidate or committee; and

(l) The name, address, and title of any person who is paid by or is a volunteer for a candidate or political committee to perform ministerial functions and who performs ministerial functions on behalf of two or more candidates or committees.

(3) Any material change in information previously submitted in a statement of organization shall be reported to the commission and to the appropriate county elections officer within the ten days following the change. [2007 c 358 § 2; 1989 c 280 § 2; 1982 c 147 § 1; 1977 ex.s. c 336 § 1; 1975 1st ex.s. c 294 § 3; 1973 c 1 § 4 (Initiative Measure No. 276, approved November 7, 1972).]

Effective date—2007 c 358: See note following RCW 42.17.020.

Effective date—1989 c 280: See note following RCW 42.17.020.

Severability—1977 ex.s. c 336: "If any provision of this 1977 amendatory act, or its application to any person or circumstance is held invalid, the remainder of the act, or the application of the provision to other persons or circumstances is not affected." [1977 ex.s. c 336 § 8.]

Effective date—1973 c 1: See RCW 42.17.900.

42.17.070 Expenditures—Authorization of and restrictions on. (Effective January 1, 2008.) No expendi-

tures may be made or incurred by any candidate or political committee except on the authority of the candidate or the person or persons named on the candidate's or committee's registration form, and a record of all such expenditures shall be maintained by the treasurer.

No expenditure of more than fifty dollars may be made in currency unless a receipt, signed by the recipient and by the candidate or treasurer, is prepared and made a part of the campaign's or political committee's financial records. [2007 c 358 § 3; 1989 c 280 § 7; 1985 c 367 § 5; 1973 c 1 § 7 (Initiative Measure No. 276, approved November 7, 1972).]

Effective date—2007 c 358: See note following RCW 42.17.020.

Effective date—1989 c 280: See note following RCW 42.17.020.

42.17.2401 "Executive state officer" defined. For the purposes of RCW 42.17.240, the term "executive state officer" includes:

(1) The chief administrative law judge, the director of agriculture, the administrator of the Washington basic health plan, the director of the department of services for the blind, the director of the state system of community and technical colleges, the director of community, trade, and economic development, the secretary of corrections, the director of early learning, the director of ecology, the commissioner of employment security, the chair of the energy facility site evaluation council, the secretary of the state finance committee, the director of financial management, the director of fish and wildlife, the executive secretary of the forest practices appeals board, the director of the gambling commission, the director of general administration, the secretary of health, the administrator of the Washington state health care authority, the executive secretary of the health care facilities authority, the executive secretary of the higher education facilities authority, the executive secretary of the horse racing commission, the executive secretary of the human rights commission, the executive secretary of the indeterminate sentence review board, the director of the department of information services, the executive director of the state investment board, the director of labor and industries, the director of licensing, the director of the lottery commission, the director of the office of minority and women's business enterprises, the director of parks and recreation, the director of personnel, the executive director of the public disclosure commission, the executive director of the Puget Sound partnership, the director of the recreation and conservation office, the director of retirement systems, the director of revenue, the secretary of social and health services, the chief of the Washington state patrol, the executive secretary of the board of tax appeals, the secretary of transportation, the secretary of the utilities and transportation commission, the director of veterans affairs, the president of each of the regional and state universities and the president of The Evergreen State College, and each district and each campus president of each state community college;

(2) Each professional staff member of the office of the governor;

(3) Each professional staff member of the legislature; and

(4) Central Washington University board of trustees, the boards of trustees of each community college and each technical college, each member of the state board for community

and technical colleges, state convention and trade center board of directors, committee for deferred compensation, Eastern Washington University board of trustees, Washington economic development finance authority, The Evergreen State College board of trustees, executive ethics board, forest practices appeals board, forest practices board, gambling commission, life sciences discovery fund authority board of trustees, Washington health care facilities authority, each member of the Washington health services commission, higher education coordinating board, higher education facilities authority, horse racing commission, state housing finance commission, human rights commission, indeterminate sentence review board, board of industrial insurance appeals, information services board, recreation and conservation funding board, state investment board, commission on judicial conduct, legislative ethics board, liquor control board, lottery commission, marine oversight board, Pacific Northwest electric power and conservation planning council, parks and recreation commission, board of pilotage commissioners, pollution control hearings board, public disclosure commission, public pension commission, shorelines hearing board, public employees' benefits board, salmon recovery funding board, board of tax appeals, transportation commission, University of Washington board of regents, utilities and transportation commission, Washington state maritime commission, Washington personnel resources board, Washington public power supply system executive board, Washington State University board of regents, Western Washington University board of trustees, and fish and wildlife commission. [2007 c 341 § 48; 2007 c 241 § 2; 2007 c 15 § 1; 2006 c 265 § 113; 2005 c 424 § 17. Prior: 2001 c 36 § 1; 2001 c 9 § 1; 1996 c 186 § 504; prior: 1995 c 399 § 60; 1995 c 397 § 10; prior: 1993 sp.s. c 2 § 18; 1993 c 492 § 488; 1993 c 281 § 43; 1991 c 200 § 404; 1991 c 3 § 293; prior: 1989 1st ex.s. c 9 § 812; 1989 c 279 § 22; 1989 c 158 § 2; 1988 c 36 § 13; 1987 c 504 § 14; 1985 c 6 § 8; 1984 c 34 § 2.]

Reviser's note: This section was amended by 2007 c 15 § 1, 2007 c 241 § 2, and by 2007 c 341 § 48, each without reference to the other. All amendments are incorporated in the publication of this section under RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

Severability—Effective date—2007 c 341: See RCW 90.71.906 and 90.71.907.

Intent—Effective date—2007 c 241: See notes following RCW 79A.25.005.

Part headings not law—Effective date—Severability—2006 c 265: See RCW 43.215.904 through 43.215.906.

Captions not law—Liberal construction—Severability—Effective dates—2005 c 424: See RCW 43.350.900 through 43.350.903.

Findings—Intent—Part headings not law—Effective date—1996 c 186: See notes following RCW 43.330.904.

Effective date—1993 sp.s. c 2 §§ 1-6, 8-59, and 61-79: See RCW 43.300.900.

Severability—1993 sp.s. c 2: See RCW 43.300.901.

Findings—Intent—1993 c 492: See notes following RCW 43.20.050.

Short title—Severability—Savings—Captions not law—Reservation of legislative power—Effective dates—1993 c 492: See RCW 43.72.910 through 43.72.915.

Effective date—1993 c 281: See note following RCW 41.06.022.

Effective dates—Severability—1991 c 200: See RCW 90.56.901 and 90.56.904.

Effective date—Severability—1989 1st ex.s. c 9: See RCW 43.70.910 and 43.70.920.

Severability—1989 c 279: See RCW 43.163.901.

Alphabetization—1989 c 158 § 2: "When section 2 of this act is codified, the code reviser shall arrange the names of the agencies in each subsection in alphabetical order." [1989 c 158 § 3.] The names of the agencies in the above section have been arranged according to the first distinctive word of each agency's name.

Severability—Effective date—1987 c 504: See RCW 43.105.901 and 43.105.902.

42.17.400 Enforcement. (1) The attorney general and the prosecuting authorities of political subdivisions of this state may bring civil actions in the name of the state for any appropriate civil remedy, including but not limited to the special remedies provided in RCW 42.17.390.

(2) The attorney general and the prosecuting authorities of political subdivisions of this state may investigate or cause to be investigated the activities of any person who there is reason to believe is or has been acting in violation of this chapter, and may require any such person or any other person reasonably believed to have information concerning the activities of such person to appear at a time and place designated in the county in which such person resides or is found, to give such information under oath and to produce all accounts, bills, receipts, books, paper and documents which may be relevant or material to any investigation authorized under this chapter.

(3) When the attorney general or the prosecuting authority of any political subdivision of this state requires the attendance of any person to obtain such information or the production of the accounts, bills, receipts, books, papers, and documents which may be relevant or material to any investigation authorized under this chapter, he shall issue an order setting forth the time when and the place where attendance is required and shall cause the same to be delivered to or sent by registered mail to the person at least fourteen days before the date fixed for attendance. Such order shall have the same force and effect as a subpoena, shall be effective statewide, and, upon application of the attorney general or said prosecuting authority, obedience to the order may be enforced by any superior court judge in the county where the person receiving it resides or is found, in the same manner as though the order were a subpoena. The court, after hearing, for good cause, and upon application of any person aggrieved by the order, shall have the right to alter, amend, revise, suspend, or postpone all or any part of its provisions. In any case where the order is not enforced by the court according to its terms, the reasons for the court's actions shall be clearly stated in writing, and such action shall be subject to review by the appellate courts by certiorari or other appropriate proceeding.

(4) Any person who has notified the attorney general and the prosecuting attorney in the county in which the violation occurred in writing that there is reason to believe that some provision of this chapter is being or has been violated may himself bring in the name of the state any of the actions (hereinafter referred to as a citizen's action) authorized under this chapter.

(a) This citizen action may be brought only if:

(i) The attorney general and the prosecuting attorney have failed to commence an action hereunder within forty-five days after such notice;

(ii) Such person has thereafter further notified the attorney general and prosecuting attorney that said person will

commence a citizen's action within ten days upon their failure so to do;

(iii) The attorney general and the prosecuting attorney have in fact failed to bring such action within ten days of receipt of said second notice; and

(iv) The citizen's action is filed within two years after the date when the alleged violation occurred.

(b) If the person who brings the citizen's action prevails, the judgment awarded shall escheat to the state, but he shall be entitled to be reimbursed by the state of Washington for costs and attorney's fees he has incurred: PROVIDED, That in the case of a citizen's action which is dismissed and which the court also finds was brought without reasonable cause, the court may order the person commencing the action to pay all costs of trial and reasonable attorney's fees incurred by the defendant.

(5) In any action brought under this section, the court may award to the state all costs of investigation and trial, including a reasonable attorney's fee to be fixed by the court. If the violation is found to have been intentional, the amount of the judgment, which shall for this purpose include the costs, may be trebled as punitive damages. If damages or trebled damages are awarded in such an action brought against a lobbyist, the judgment may be awarded against the lobbyist, and the lobbyist's employer or employers joined as defendants, jointly, severally, or both. If the defendant prevails, he shall be awarded all costs of trial, and may be awarded a reasonable attorney's fee to be fixed by the court to be paid by the state of Washington. [2007 c 455 § 1; 1975 1st ex.s. c 294 § 27; 1973 c 1 § 40 (Initiative Measure No. 276, approved November 7, 1972).]

42.17.410 Limitation on actions. Except as provided in RCW 42.17.400(4)(a)(iv), any action brought under the provisions of this chapter must be commenced within five years after the date when the violation occurred. [2007 c 455 § 2; 1982 c 147 § 18; 1973 c 1 § 41 (Initiative Measure No. 276, approved November 7, 1972).]

42.17.760 Agency shop fees as contributions. (1) A labor organization may not use agency shop fees paid by an individual who is not a member of the organization to make contributions or expenditures to influence an election or to operate a political committee, unless affirmatively authorized by the individual.

(2) A labor organization does not use agency shop fees when it uses its general treasury funds to make such contributions or expenditures if it has sufficient revenues from sources other than agency shop fees in its general treasury to fund such contributions or expenditures. [2007 c 438 § 1; 1993 c 2 § 16 (Initiative Measure No. 134, approved November 3, 1992).]

Effective date—2007 c 438: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately [May 11, 2007]." [2007 c 438 § 2.]

Chapter 42.23 RCW

CODE OF ETHICS FOR MUNICIPAL OFFICERS—
CONTRACT INTERESTS

Sections

42.23.030 Interest in contracts prohibited—Exceptions.

42.23.030 Interest in contracts prohibited—Exceptions. No municipal officer shall be beneficially interested, directly or indirectly, in any contract which may be made by, through or under the supervision of such officer, in whole or in part, or which may be made for the benefit of his or her office, or accept, directly or indirectly, any compensation, gratuity or reward in connection with such contract from any other person beneficially interested therein. This section shall not apply in the following cases:

(1) The furnishing of electrical, water or other utility services by a municipality engaged in the business of furnishing such services, at the same rates and on the same terms as are available to the public generally;

(2) The designation of public depositaries for municipal funds;

(3) The publication of legal notices required by law to be published by any municipality, upon competitive bidding or at rates not higher than prescribed by law for members of the general public;

(4) The designation of a school director as clerk or as both clerk and purchasing agent of a school district;

(5) The employment of any person by a municipality for unskilled day labor at wages not exceeding two hundred dollars in any calendar month. The exception provided in this subsection does not apply to a county with a population of one hundred twenty-five thousand or more, a city with a population of more than one thousand five hundred, an irrigation district encompassing more than fifty thousand acres, or a first class school district;

(6)(a) The letting of any other contract in which the total amount received under the contract or contracts by the municipal officer or the municipal officer's business does not exceed one thousand five hundred dollars in any calendar month.

(b) However, in the case of a particular officer of a second class city or town, or a noncharter optional code city, or a member of any county fair board in a county which has not established a county purchasing department pursuant to RCW 36.32.240, the total amount of such contract or contracts authorized in this subsection (6) may exceed one thousand five hundred dollars in any calendar month but shall not exceed eighteen thousand dollars in any calendar year.

(c)(i) In the case of a particular officer of a rural public hospital district, as defined in RCW 70.44.460, the total amount of such contract or contracts authorized in this subsection (6) may exceed one thousand five hundred dollars in any calendar month, but shall not exceed twenty-four thousand dollars in any calendar year.

(ii) At the beginning of each calendar year, beginning with the 2006 calendar year, the legislative authority of the rural public hospital district shall increase the calendar year limitation described in this subsection (6)(c) by an amount equal to the dollar amount for the previous calendar year multiplied by the change in the consumer price index as of the

close of the twelve-month period ending December 31st of that previous calendar year. If the new dollar amount established under this subsection is not a multiple of ten dollars, the increase shall be rounded to the next lowest multiple of ten dollars. As used in this subsection, "consumer price index" means the consumer price index compiled by the bureau of labor statistics, United States department of labor for the state of Washington. If the bureau of labor statistics develops more than one consumer price index for areas within the state, the index covering the greatest number of people, covering areas exclusively within the boundaries of the state, and including all items shall be used.

(d) The exceptions provided in this subsection (6) do not apply to:

(i) A sale or lease by the municipality as the seller or lessor;

(ii) The letting of any contract by a county with a population of one hundred twenty-five thousand or more, a city with a population of ten thousand or more, or an irrigation district encompassing more than fifty thousand acres; or

(iii) Contracts for legal services, except for reimbursement of expenditures.

(e) The municipality shall maintain a list of all contracts that are awarded under this subsection (6). The list must be made available for public inspection and copying;

(7) The leasing by a port district as lessor of port district property to a municipal officer or to a contracting party in which a municipal officer may be beneficially interested, if in addition to all other legal requirements, a board of three disinterested appraisers and the superior court in the county where the property is situated finds that all terms and conditions of such lease are fair to the port district and are in the public interest. The appraisers must be appointed from members of the American Institute of Real Estate Appraisers by the presiding judge of the superior court;

(8) The letting of any employment contract for the driving of a school bus in a second class school district if the terms of such contract are commensurate with the pay plan or collective bargaining agreement operating in the district;

(9) The letting of an employment contract as a substitute teacher or substitute educational aide to an officer of a second class school district that has two hundred or fewer full-time equivalent students, if the terms of the contract are commensurate with the pay plan or collective bargaining agreement operating in the district and the board of directors has found, consistent with the written policy under RCW 28A.330.240, that there is a shortage of substitute teachers in the school district;

(10) The letting of any employment contract to the spouse of an officer of a school district, when such contract is solely for employment as a substitute teacher for the school district. This exception applies only if the terms of the contract are commensurate with the pay plan or collective bargaining agreement applicable to all district employees and the board of directors has found, consistent with the written policy under RCW 28A.330.240, that there is a shortage of substitute teachers in the school district;

(11) The letting of any employment contract to the spouse of an officer of a school district if the spouse was under contract as a certificated or classified employee with the school district before the date in which the officer

assumes office and the terms of the contract are commensurate with the pay plan or collective bargaining agreement operating in the district. However, in a second class school district that has less than two hundred full-time equivalent students enrolled at the start of the school year as defined in RCW 28A.150.040, the spouse is not required to be under contract as a certificated or classified employee before the date on which the officer assumes office;

(12) The authorization, approval, or ratification of any employment contract with the spouse of a public hospital district commissioner if: (a) The spouse was employed by the public hospital district before the date the commissioner was initially elected; (b) the terms of the contract are commensurate with the pay plan or collective bargaining agreement operating in the district for similar employees; (c) the interest of the commissioner is disclosed to the board of commissioners and noted in the official minutes or similar records of the public hospital district prior to the letting or continuation of the contract; and (d) and the commissioner does not vote on the authorization, approval, or ratification of the contract or any conditions in the contract.

A municipal officer may not vote in the authorization, approval, or ratification of a contract in which he or she is beneficially interested even though one of the exemptions allowing the awarding of such a contract applies. The interest of the municipal officer must be disclosed to the governing body of the municipality and noted in the official minutes or similar records of the municipality before the formation of the contract. [2007 c 298 § 1; 2006 c 121 § 1; 2005 c 114 § 1; 1999 c 261 § 2; 1997 c 98 § 1; 1996 c 246 § 1. Prior: 1994 c 81 § 77; 1994 c 20 § 1; 1993 c 308 § 1; 1991 c 363 § 120; 1990 c 33 § 573; 1989 c 263 § 1; 1983 1st ex.s. c 44 § 1; prior: 1980 c 39 § 1; 1979 ex.s. c 4 § 1; 1971 ex.s. c 242 § 1; 1961 c 268 § 4.]

Findings—Intent—1999 c 261: "The legislature finds that:

(1) The current statutes pertaining to municipal officers' beneficial interest in contracts are quite confusing and have resulted in some inadvertent violations of the law.

(2) The dollar thresholds for many of the exemptions have not been changed in over thirty-five years, and the restrictions apply to the total amount of the contract instead of the portion of the contract that pertains to the business operated by the municipal officer.

(3) The confusion existing over these current statutes discourages some municipalities from accessing some efficiencies available to them.

Therefore, it is the intent of the legislature to clarify the statutes pertaining to municipal officers and contracts and to enact reasonable protections against inappropriate conflicts of interest." [1999 c 261 § 1.]

Purpose—Captions not law—1991 c 363: See notes following RCW 2.32.180.

Purpose—Statutory references—Severability—1990 c 33: See RCW 28A.900.100 through 28A.900.102.

Severability—1989 c 263: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1989 c 263 § 3.]

Severability—1980 c 39: "If any provision of this amendatory act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1980 c 39 § 3.]

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Chapter 42.48 RCW

RELEASE OF RECORDS FOR RESEARCH

Sections

42.48.010 Definitions.

42.48.010 Definitions. For the purposes of this chapter, the following definitions apply:

(1) "Individually identifiable" means that a record contains information which reveals or can likely be associated with the identity of the person or persons to whom the record pertains.

(2) "Legally authorized representative" means a person legally authorized to give consent for the disclosure of personal records on behalf of a minor or a legally incompetent adult.

(3) "Personal record" means any information obtained or maintained by a state agency which refers to a person and which is declared exempt from public disclosure, confidential, or privileged under state or federal law.

(4) "Research" means a planned and systematic sociological, psychological, epidemiological, biomedical, or other scientific investigation carried out by a state agency, by a scientific research professional associated with a bona fide scientific research organization, or by a graduate student currently enrolled in an advanced academic degree curriculum, with an objective to contribute to scientific knowledge, the solution of social and health problems, or the evaluation of public benefit and service programs. This definition excludes methods of record analysis and data collection that are subjective, do not permit replication, and are not designed to yield reliable and valid results.

(5) "Research record" means an item or grouping of information obtained for the purpose of research from or about a person or extracted for the purpose of research from a personal record.

(6) "State agency" means: (a) The department of social and health services; (b) the department of corrections; (c) an institution of higher education as defined in RCW 28B.10.016; (d) the department of health; or (e) the department of early learning. [2007 c 17 § 6; 1989 1st ex.s. c 9 § 207; 1985 c 334 § 1.]

Effective date—Severability—1989 1st ex.s. c 9: See RCW 43.70.910 and 43.70.920.

Chapter 42.52 RCW

ETHICS IN PUBLIC SERVICE

Sections

42.52.805 Solicitation for charitable activities of executive branch state employees—Limitations—Definitions.

42.52.805 Solicitation for charitable activities of executive branch state employees—Limitations—Definitions. (1) When soliciting gifts, grants, or donations solely to support the charitable activities of executive branch state employees conducted pursuant to RCW 9.46.0209, the executive branch state officers and executive branch state employees are presumed not to be in violation of the solicitation and receipt of gift provisions in RCW 42.52.140. However, the gifts, grants, or donations must only be solicited

from state employees or businesses and organizations that have no business dealings with the soliciting employee's agency. For the purposes of this subsection, "business dealings" includes being subject to regulation by the agency, having a contractual relationship with the agency, and purchasing goods or services from the agency.

(2) For purposes of this section, activities are deemed to be charitable if the activities are devoted to the purposes authorized under RCW 9.46.0209 for charitable and nonprofit organizations listed in that section, or are in support of the activities of those charitable or nonprofit organizations. [2007 c 452 § 2.]

Chapter 42.56 RCW PUBLIC RECORDS ACT

Sections

42.56.010	Definitions.
42.56.030	Construction.
42.56.140	Public records exemptions accountability committee.
42.56.270	Financial, commercial, and proprietary information. (<i>Expires June 30, 2008.</i>)
42.56.270	Financial, commercial, and proprietary information. (<i>Effective June 30, 2008.</i>)
42.56.330	Public utilities and transportation.
42.56.335	Public utility districts and municipally owned electrical utilities—Restrictions on access by law enforcement authorities.
42.56.360	Health care. (<i>Effective until July 1, 2009.</i>)
42.56.360	Health care. (<i>Effective July 1, 2009.</i>)
42.56.380	Agriculture and livestock.
42.56.400	Insurance and financial institutions. (<i>Effective until July 1, 2009.</i>)
42.56.400	Insurance and financial institutions. (<i>Effective July 1, 2009.</i>)
42.56.430	Fish and wildlife.
42.56.570	Explanatory pamphlet.
42.56.580	Public records officers.
42.56.590	Personal information—Notice of security breaches.
42.56.904	Intent—2007 c 391.

42.56.010 Definitions. The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

(1) "Agency" includes all state agencies and all local agencies. "State agency" includes every state office, department, division, bureau, board, commission, or other state agency. "Local agency" includes every county, city, town, municipal corporation, quasi-municipal corporation, or special purpose district, or any office, department, division, bureau, board, commission, or agency thereof, or other local public agency.

(2) "Public record" includes any writing containing information relating to the conduct of government or the performance of any governmental or proprietary function prepared, owned, used, or retained by any state or local agency regardless of physical form or characteristics. For the office of the secretary of the senate and the office of the chief clerk of the house of representatives, public records means legislative records as defined in RCW 40.14.100 and also means the following: All budget and financial records; personnel leave, travel, and payroll records; records of legislative sessions; reports submitted to the legislature; and any other record designated a public record by any official action of the senate or the house of representatives.

(3) "Writing" means handwriting, typewriting, printing, photostating, photographing, and every other means of recording any form of communication or representation

including, but not limited to, letters, words, pictures, sounds, or symbols, or combination thereof, and all papers, maps, magnetic or paper tapes, photographic films and prints, motion picture, film and video recordings, magnetic or punched cards, discs, drums, diskettes, sound recordings, and other documents including existing data compilations from which information may be obtained or translated. [2007 c 197 § 1; 2005 c 274 § 101.]

42.56.030 Construction. The people of this state do not yield their sovereignty to the agencies that serve them. The people, in delegating authority, do not give their public servants the right to decide what is good for the people to know and what is not good for them to know. The people insist on remaining informed so that they may maintain control over the instruments that they have created. This chapter shall be liberally construed and its exemptions narrowly construed to promote this public policy and to assure that the public interest will be fully protected. In the event of conflict between the provisions of this chapter and any other act, the provisions of this chapter shall govern. [2007 c 197 § 2; 2005 c 274 § 283; 1992 c 139 § 2. Formerly RCW 42.17.251.]

42.56.140 Public records exemptions accountability committee. (1)(a) The public records exemptions accountability committee is created to review exemptions from public disclosure, with thirteen members as provided in this subsection.

(i) The governor shall appoint two members, one of whom represents the governor and one of whom represents local government.

(ii) The attorney general shall appoint two members, one of whom represents the attorney general and one of whom represents a statewide media association.

(iii) The state auditor shall appoint one member.

(iv) The president of the senate shall appoint one member from each of the two largest caucuses of the senate.

(v) The speaker of the house of representatives shall appoint one member from each of the two largest caucuses of the house of representatives.

(vi) The governor shall appoint four members of the public, with consideration given to diversity of viewpoint and geography.

(b) The governor shall select the chair of the committee from among its membership.

(c) Terms of the members shall be four years and shall be staggered, beginning August 1, 2007.

(2) The purpose of the public records exemptions accountability committee is to review public disclosure exemptions and provide recommendations pursuant to subsection (7)(d) of this section. The committee shall develop and publish criteria for review of public exemptions.

(3) All meetings of the committee shall be open to the public.

(4) The committee must consider input from interested parties.

(5) The office of the attorney general and the office of financial management shall provide staff support to the committee.

(6) Legislative members of the committee shall be reimbursed for travel expenses in accordance with RCW 44.04.120. Nonlegislative members, except those representing an employer or organization, are entitled to be reimbursed for travel expenses in accordance with RCW 43.03.050 and 43.03.060.

(7)(a) Beginning August 1, 2007, the code reviser shall provide the committee by August 1st of each year with a list of all public disclosure exemptions in the Revised Code of Washington.

(b) The committee shall develop a schedule to accomplish a review of each public disclosure exemption. The committee shall publish the schedule and publish any revisions made to the schedule.

(c) The chair shall convene an initial meeting of the committee by September 1, 2007. The committee shall meet at least once a quarter and may hold additional meetings at the call of the chair or by a majority vote of the members of the committee.

(d) For each public disclosure exemption, the committee shall provide a recommendation as to whether the exemption should be continued without modification, modified, scheduled for sunset review at a future date, or terminated. By November 15th of each year, the committee shall transmit its recommendations to the governor, the attorney general, and the appropriate committees of the house of representatives and the senate. [2007 c 198 § 2.]

Finding—2007 c 198: "The legislature recognizes that public disclosure exemptions are enacted to meet objectives that are determined to be in the public interest. Given the changing nature of information technology and management, recordkeeping, and the increasing number of public disclosure exemptions, the legislature finds that periodic reviews of public disclosure exemptions are needed to determine if each exemption serves the public interest." [2007 c 198 § 1.]

42.56.270 Financial, commercial, and proprietary information. (Expires June 30, 2008.) The following financial, commercial, and proprietary information is exempt from disclosure under this chapter:

(1) Valuable formulae, designs, drawings, computer source code or object code, and research data obtained by any agency within five years of the request for disclosure when disclosure would produce private gain and public loss;

(2) Financial information supplied by or on behalf of a person, firm, or corporation for the purpose of qualifying to submit a bid or proposal for (a) a ferry system construction or repair contract as required by RCW 47.60.680 through 47.60.750 or (b) highway construction or improvement as required by RCW 47.28.070;

(3) Financial and commercial information and records supplied by private persons pertaining to export services provided under chapters 43.163 and 53.31 RCW, and by persons pertaining to export projects under RCW 43.23.035;

(4) Financial and commercial information and records supplied by businesses or individuals during application for loans or program services provided by chapters *15.110, 43.163, 43.160, 43.330, and 43.168 RCW, or during application for economic development loans or program services provided by any local agency;

(5) Financial information, business plans, examination reports, and any information produced or obtained in evaluating or examining a business and industrial development cor-

poration organized or seeking certification under chapter 31.24 RCW;

(6) Financial and commercial information supplied to the state investment board by any person when the information relates to the investment of public trust or retirement funds and when disclosure would result in loss to such funds or in private loss to the providers of this information;

(7) Financial and valuable trade information under RCW 51.36.120;

(8) Financial, commercial, operations, and technical and research information and data submitted to or obtained by the clean Washington center in applications for, or delivery of, program services under chapter 70.95H RCW;

(9) Financial and commercial information requested by the public stadium authority from any person or organization that leases or uses the stadium and exhibition center as defined in RCW 36.102.010;

(10)(a) Financial information, including but not limited to account numbers and values, and other identification numbers supplied by or on behalf of a person, firm, corporation, limited liability company, partnership, or other entity related to an application for a horse racing license submitted pursuant to RCW 67.16.260(1)(b), liquor license, gambling license, or lottery retail license;

(b) Independent auditors' reports and financial statements of house-banked social card game licensees required by the gambling commission pursuant to rules adopted under chapter 9.46 RCW;

(c) Financial or proprietary information supplied to the liquor control board including the amount of beer or wine sold by a domestic winery, brewery, microbrewery, or certificate of approval holder under RCW 66.24.206(1) or 66.24.270(2)(a) and including the amount of beer or wine purchased by a retail licensee in connection with a retail licensee's obligation under RCW 66.24.210 or 66.24.290, for receipt of shipments of beer or wine;

(11) Proprietary data, trade secrets, or other information that relates to: (a) A vendor's unique methods of conducting business; (b) data unique to the product or services of the vendor; or (c) determining prices or rates to be charged for services, submitted by any vendor to the department of social and health services for purposes of the development, acquisition, or implementation of state purchased health care as defined in RCW 41.05.011;

(12)(a) When supplied to and in the records of the department of community, trade, and economic development:

(i) Financial and proprietary information collected from any person and provided to the department of community, trade, and economic development pursuant to RCW 43.330.050(8) and **43.330.080(4); and

(ii) Financial or proprietary information collected from any person and provided to the department of community, trade, and economic development or the office of the governor in connection with the siting, recruitment, expansion, retention, or relocation of that person's business and until a siting decision is made, identifying information of any person supplying information under this subsection and the locations being considered for siting, relocation, or expansion of a business;

(b) When developed by the department of community, trade, and economic development based on information as described in (a)(i) of this subsection, any work product is not exempt from disclosure;

(c) For the purposes of this subsection, "siting decision" means the decision to acquire or not to acquire a site;

(d) If there is no written contact for a period of sixty days to the department of community, trade, and economic development from a person connected with siting, recruitment, expansion, retention, or relocation of that person's business, information described in (a)(ii) of this subsection will be available to the public under this chapter;

(13) Financial and proprietary information submitted to or obtained by the department of ecology or the authority created under chapter 70.95N RCW to implement chapter 70.95N RCW;

(14) Financial, commercial, operations, and technical and research information and data submitted to or obtained by the life sciences discovery fund authority in applications for, or delivery of, grants under chapter 43.350 RCW, to the extent that such information, if revealed, would reasonably be expected to result in private loss to the providers of this information;

(15) Financial and commercial information provided as evidence to the department of licensing as required by RCW 19.112.110 or 19.112.120, except information disclosed in aggregate form that does not permit the identification of information related to individual fuel licensees;

(16) Any production records, mineral assessments, and trade secrets submitted by a permit holder, mine operator, or landowner to the department of natural resources under RCW 78.44.085;

(17)(a) Farm plans developed by conservation districts, unless permission to release the farm plan is granted by the landowner or operator who requested the plan, or the farm plan is used for the application or issuance of a permit;

(b) Farm plans developed under chapter 90.48 RCW and not under the federal clean water act, 33 U.S.C. Sec. 1251 are subject to RCW 42.56.610 and 90.64.190;

(18) Financial, commercial, operations, and technical and research information and data submitted to or obtained by a health sciences and services authority in applications for, or delivery of, grants under RCW 35.104.010 through 35.104.060, to the extent that such information, if revealed, would reasonably be expected to result in private loss to providers of this information; and

(19) Information gathered under chapter 19.85 RCW or RCW 34.05.328 that can be identified to a particular business. [2007 c 470 § 1; 2007 c 251 § 12; 2007 c 197 § 3. Prior: 2006 c 369 § 2; 2006 c 341 § 6; 2006 c 338 § 5; 2006 c 302 § 12; 2006 c 209 § 7; 2006 c 183 § 37; 2006 c 171 § 8; 2005 c 274 § 407.]

Reviser's note: *(1) Chapter 15.110 RCW was recodified as chapter 43.325 RCW pursuant to 2007 c 348 § 502.

** (2) RCW 43.330.080 was amended by 2007 c 249 § 2, deleting subsection (4).

(3) This section was amended by 2007 c 197 § 3, 2007 c 251 § 12, and by 2007 c 470 § 1, each without reference to the other. All amendments are incorporated in the publication of this section under RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

Expiration date—2007 c 470 § 1: "Section 1 of this act expires June 30, 2008." [2007 c 470 § 3.]

Expiration date—2007 c 251 § 12: "Section 12 of this act expires June 30, 2008." [2007 c 251 § 17.]

Captions not law—Severability—2007 c 251: See notes following RCW 35.104.010.

Expiration date—2007 c 197 § 3: "Section 3 of this act expires June 30, 2008." [2007 c 197 § 10.]

Effective date—2006 c 369 § 2: "Section 2 of this act takes effect July 1, 2006." [2006 c 369 § 3.]

Effective date—2006 c 341 § 6: "Section 6 of this act takes effect July 1, 2006." [2006 c 341 § 7.]

Findings—Intent—2006 c 338: See note following RCW 19.112.110.

Effective date—Severability—2006 c 338: See RCW 19.112.903 and 19.112.904.

Effective date—2006 c 302 §§ 10 and 12: See note following RCW 66.28.180.

Construction—Severability—Effective date—2006 c 183: See RCW 70.95N.900 through 70.95N.902.

Effective date—2006 c 171 §§ 8 and 10: "Sections 8 and 10 of this act take effect July 1, 2006." [2006 c 171 § 13.]

Findings—Severability—2006 c 171: See RCW 15.110.005 and 15.110.901.

42.56.270 Financial, commercial, and proprietary information. (*Effective June 30, 2008.*) The following financial, commercial, and proprietary information is exempt from disclosure under this chapter:

(1) Valuable formulae, designs, drawings, computer source code or object code, and research data obtained by any agency within five years of the request for disclosure when disclosure would produce private gain and public loss;

(2) Financial information supplied by or on behalf of a person, firm, or corporation for the purpose of qualifying to submit a bid or proposal for (a) a ferry system construction or repair contract as required by RCW 47.60.680 through 47.60.750 or (b) highway construction or improvement as required by RCW 47.28.070;

(3) Financial and commercial information and records supplied by private persons pertaining to export services provided under chapters 43.163 and 53.31 RCW, and by persons pertaining to export projects under RCW 43.23.035;

(4) Financial and commercial information and records supplied by businesses or individuals during application for loans or program services provided by chapters *15.110, 43.163, 43.160, 43.330, and 43.168 RCW, or during application for economic development loans or program services provided by any local agency;

(5) Financial information, business plans, examination reports, and any information produced or obtained in evaluating or examining a business and industrial development corporation organized or seeking certification under chapter 31.24 RCW;

(6) Financial and commercial information supplied to the state investment board by any person when the information relates to the investment of public trust or retirement funds and when disclosure would result in loss to such funds or in private loss to the providers of this information;

(7) Financial and valuable trade information under RCW 51.36.120;

(8) Financial, commercial, operations, and technical and research information and data submitted to or obtained by the clean Washington center in applications for, or delivery of, program services under chapter 70.95H RCW;

(9) Financial and commercial information requested by the public stadium authority from any person or organization that leases or uses the stadium and exhibition center as defined in RCW 36.102.010;

(10)(a) Financial information, including but not limited to account numbers and values, and other identification numbers supplied by or on behalf of a person, firm, corporation, limited liability company, partnership, or other entity related to an application for a horse racing license submitted pursuant to RCW 67.16.260(1)(b), liquor license, gambling license, or lottery retail license;

(b) Independent auditors' reports and financial statements of house-banked social card game licensees required by the gambling commission pursuant to rules adopted under chapter 9.46 RCW;

(11) Proprietary data, trade secrets, or other information that relates to: (a) A vendor's unique methods of conducting business; (b) data unique to the product or services of the vendor; or (c) determining prices or rates to be charged for services, submitted by any vendor to the department of social and health services for purposes of the development, acquisition, or implementation of state purchased health care as defined in RCW 41.05.011;

(12)(a) When supplied to and in the records of the department of community, trade, and economic development:

(i) Financial and proprietary information collected from any person and provided to the department of community, trade, and economic development pursuant to RCW 43.330.050(8) and **43.330.080(4); and

(ii) Financial or proprietary information collected from any person and provided to the department of community, trade, and economic development or the office of the governor in connection with the siting, recruitment, expansion, retention, or relocation of that person's business and until a siting decision is made, identifying information of any person supplying information under this subsection and the locations being considered for siting, relocation, or expansion of a business;

(b) When developed by the department of community, trade, and economic development based on information as described in (a)(i) of this subsection, any work product is not exempt from disclosure;

(c) For the purposes of this subsection, "siting decision" means the decision to acquire or not to acquire a site;

(d) If there is no written contact for a period of sixty days to the department of community, trade, and economic development from a person connected with siting, recruitment, expansion, retention, or relocation of that person's business, information described in (a)(ii) of this subsection will be available to the public under this chapter;

(13) Financial and proprietary information submitted to or obtained by the department of ecology or the authority created under chapter 70.95N RCW to implement chapter 70.95N RCW;

(14) Financial, commercial, operations, and technical and research information and data submitted to or obtained by the life sciences discovery fund authority in applications for, or delivery of, grants under chapter 43.350 RCW, to the extent that such information, if revealed, would reasonably

be expected to result in private loss to the providers of this information;

(15) Financial and commercial information provided as evidence to the department of licensing as required by RCW 19.112.110 or 19.112.120, except information disclosed in aggregate form that does not permit the identification of information related to individual fuel licensees;

(16) Any production records, mineral assessments, and trade secrets submitted by a permit holder, mine operator, or landowner to the department of natural resources under RCW 78.44.085;

(17)(a) Farm plans developed by conservation districts, unless permission to release the farm plan is granted by the landowner or operator who requested the plan, or the farm plan is used for the application or issuance of a permit;

(b) Farm plans developed under chapter 90.48 RCW and not under the federal clean water act, 33 U.S.C. Sec. 1251 et seq., are subject to RCW 42.56.610 and 90.64.190;

(18) Financial, commercial, operations, and technical and research information and data submitted to or obtained by a health sciences and services authority in applications for, or delivery of, grants under RCW 35.104.010 through 35.104.060, to the extent that such information, if revealed, would reasonably be expected to result in private loss to providers of this information; and

(19) Information gathered under chapter 19.85 RCW or RCW 34.05.328 that can be identified to a particular business. [2007 c 470 § 2; 2007 c 251 § 13; 2007 c 197 § 4. Prior: 2006 c 369 § 2; 2006 c 341 § 6; 2006 c 338 § 5; 2006 c 209 § 7; 2006 c 183 § 37; 2006 c 171 § 8; 2005 c 274 § 407.]

Reviser's note: *(1) Chapter 15.110 RCW was recodified as chapter 43.325 RCW pursuant to 2007 c 348 § 502.

***(2) RCW 43.330.080 was amended by 2007 c 249 § 2, deleting subsection (4).

(3) This section was amended by 2007 c 197 § 4, 2007 c 251 § 13, and by 2007 c 470 § 2, each without reference to the other. All amendments are incorporated in the publication of this section under RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

Effective date—2007 c 470 § 2: "Section 2 of this act takes effect June 30, 2008." [2007 c 470 § 4.]

Effective date—2007 c 251 § 13: "Section 13 of this act takes effect June 30, 2008." [2007 c 251 § 18.]

Captions not law—Severability—2007 c 251: See notes following RCW 35.104.010.

Effective date—2007 c 197 § 4: "Section 4 of this act takes effect June 30, 2008." [2007 c 197 § 11.]

Effective date—2006 c 369 § 2: "Section 2 of this act takes effect July 1, 2006." [2006 c 369 § 3.]

Effective date—2006 c 341 § 6: "Section 6 of this act takes effect July 1, 2006." [2006 c 341 § 7.]

Findings—Intent—2006 c 338: See note following RCW 19.112.110.

Effective date—Severability—2006 c 338: See RCW 19.112.903 and 19.112.904.

Construction—Severability—Effective date—2006 c 183: See RCW 70.95N.900 through 70.95N.902.

Effective date—2006 c 171 §§ 8 and 10: "Sections 8 and 10 of this act take effect July 1, 2006." [2006 c 171 § 13.]

Findings—Severability—2006 c 171: See RCW 15.110.005 and 15.110.901.

42.56.330 Public utilities and transportation. The following information relating to public utilities and transportation is exempt from disclosure under this chapter:

(1) Records filed with the utilities and transportation commission or attorney general under RCW 80.04.095 that a court has determined are confidential under RCW 80.04.095;

(2) The residential addresses and residential telephone numbers of the customers of a public utility contained in the records or lists held by the public utility of which they are customers, except that this information may be released to the division of child support or the agency or firm providing child support enforcement for another state under Title IV-D of the federal social security act, for the establishment, enforcement, or modification of a support order;

(3) The names, residential addresses, residential telephone numbers, and other individually identifiable records held by an agency in relation to a vanpool, carpool, or other ride-sharing program or service; however, these records may be disclosed to other persons who apply for ride-matching services and who need that information in order to identify potential riders or drivers with whom to share rides;

(4) The personally identifying information of current or former participants or applicants in a paratransit or other transit service operated for the benefit of persons with disabilities or elderly persons;

(5) The personally identifying information of persons who acquire and use transit passes and other fare payment media including, but not limited to, stored value smart cards and magnetic strip cards, except that an agency may disclose this information to a person, employer, educational institution, or other entity that is responsible, in whole or in part, for payment of the cost of acquiring or using a transit pass or other fare payment media, or to the news media when reporting on public transportation or public safety. This information may also be disclosed at the agency's discretion to governmental agencies or groups concerned with public transportation or public safety;

(6) Any information obtained by governmental agencies that is collected by the use of a motor carrier intelligent transportation system or any comparable information equipment attached to a truck, tractor, or trailer; however, the information may be given to other governmental agencies or the owners of the truck, tractor, or trailer from which the information is obtained. As used in this subsection, "motor carrier" has the same definition as provided in RCW 81.80.010; and

(7) The personally identifying information of persons who acquire and use transponders or other technology to facilitate payment of tolls. This information may be disclosed in aggregate form as long as the data does not contain any personally identifying information. For these purposes aggregate data may include the census tract of the account holder as long as any individual personally identifying information is not released. Personally identifying information may be released to law enforcement agencies only for toll enforcement purposes. Personally identifying information may be released to law enforcement agencies for other purposes only if the request is accompanied by a court order. [2007 c 197 § 5; 2006 c 209 § 8; 2005 c 274 § 413.]

42.56.335 Public utility districts and municipally owned electrical utilities—Restrictions on access by law enforcement authorities. A law enforcement authority may not request inspection or copying of records of any person who belongs to a public utility district or a municipally

owned electrical utility unless the authority provides the public utility district or municipally owned electrical utility with a written statement in which the authority states that it suspects that the particular person to whom the records pertain has committed a crime and the authority has a reasonable belief that the records could determine or help determine whether the suspicion might be true. Information obtained in violation of this section is inadmissible in any criminal proceeding. [2007 c 197 § 6.]

42.56.360 Health care. (Effective until July 1, 2009.)

(1) The following health care information is exempt from disclosure under this chapter:

(a) Information obtained by the board of pharmacy as provided in RCW 69.45.090;

(b) Information obtained by the board of pharmacy or the department of health and its representatives as provided in RCW 69.41.044, 69.41.280, and 18.64.420;

(c) Information and documents created specifically for, and collected and maintained by a quality improvement committee under RCW 43.70.510 or 70.41.200, or by a peer review committee under RCW 4.24.250, or by a quality assurance committee pursuant to RCW 74.42.640 or 18.20.390, or by a hospital, as defined in RCW 43.70.056, for reporting of health care-associated infections under RCW 43.70.056, and notifications or reports of adverse events or incidents made under RCW 70.56.020 or 70.56.040, regardless of which agency is in possession of the information and documents;

(d)(i) Proprietary financial and commercial information that the submitting entity, with review by the department of health, specifically identifies at the time it is submitted and that is provided to or obtained by the department of health in connection with an application for, or the supervision of, an antitrust exemption sought by the submitting entity under RCW 43.72.310;

(ii) If a request for such information is received, the submitting entity must be notified of the request. Within ten business days of receipt of the notice, the submitting entity shall provide a written statement of the continuing need for confidentiality, which shall be provided to the requester. Upon receipt of such notice, the department of health shall continue to treat information designated under this subsection (1)(d) as exempt from disclosure;

(iii) If the requester initiates an action to compel disclosure under this chapter, the submitting entity must be joined as a party to demonstrate the continuing need for confidentiality;

(e) Records of the entity obtained in an action under RCW 18.71.300 through 18.71.340;

(f) Except for published statistical compilations and reports relating to the infant mortality review studies that do not identify individual cases and sources of information, any records or documents obtained, prepared, or maintained by the local health department for the purposes of an infant mortality review conducted by the department of health under RCW 70.05.170;

(g) Complaints filed under chapter 18.130 RCW after July 27, 1997, to the extent provided in RCW 18.130.095(1); and

(h) Information obtained by the department of health under chapter 70.225 RCW.

(2) Chapter 70.02 RCW applies to public inspection and copying of health care information of patients. [2007 c 261 § 4; 2007 c 259 § 49. Prior: 2006 c 209 § 9; 2006 c 8 § 112; 2005 c 274 § 416.]

Reviser's note: This section was amended by 2007 c 259 § 49 and by 2007 c 261 § 4, each without reference to the other. Both amendments are incorporated in the publication of this section under RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

Findings—2007 c 261: See note following RCW 43.70.056.

Severability—Subheadings not law—2007 c 259: See notes following RCW 41.05.033.

Effective date—2006 c 8 §§ 112 and 210: "Sections 112 and 210 of this act take effect July 1, 2006." [2006 c 8 § 405.]

Findings—Intent—Part headings and subheadings not law—Severability—2006 c 8: See notes following RCW 5.64.010.

Basic health plan—Confidentiality: RCW 70.47.150.

42.56.360 Health care. (Effective July 1, 2009.) (1) The following health care information is exempt from disclosure under this chapter:

(a) Information obtained by the board of pharmacy as provided in RCW 69.45.090;

(b) Information obtained by the board of pharmacy or the department of health and its representatives as provided in RCW 69.41.044, 69.41.280, and 18.64.420;

(c) Information and documents created specifically for, and collected and maintained by a quality improvement committee under RCW 43.70.510, 70.230.080, or 70.41.200, or by a peer review committee under RCW 4.24.250, or by a quality assurance committee pursuant to RCW 74.42.640 or 18.20.390, or by a hospital, as defined in RCW 43.70.056, for reporting of health care-associated infections under RCW 43.70.056, and notifications or reports of adverse events or incidents made under RCW 70.56.020 or 70.56.040, regardless of which agency is in possession of the information and documents;

(d)(i) Proprietary financial and commercial information that the submitting entity, with review by the department of health, specifically identifies at the time it is submitted and that is provided to or obtained by the department of health in connection with an application for, or the supervision of, an antitrust exemption sought by the submitting entity under RCW 43.72.310;

(ii) If a request for such information is received, the submitting entity must be notified of the request. Within ten business days of receipt of the notice, the submitting entity shall provide a written statement of the continuing need for confidentiality, which shall be provided to the requester. Upon receipt of such notice, the department of health shall continue to treat information designated under this subsection (1)(d) as exempt from disclosure;

(iii) If the requester initiates an action to compel disclosure under this chapter, the submitting entity must be joined as a party to demonstrate the continuing need for confidentiality;

(e) Records of the entity obtained in an action under RCW 18.71.300 through 18.71.340;

(f) Except for published statistical compilations and reports relating to the infant mortality review studies that do

not identify individual cases and sources of information, any records or documents obtained, prepared, or maintained by the local health department for the purposes of an infant mortality review conducted by the department of health under RCW 70.05.170;

(g) Complaints filed under chapter 18.130 RCW after July 27, 1997, to the extent provided in RCW 18.130.095(1); and

(h) Information obtained by the department of health under chapter 70.225 RCW.

(2) Chapter 70.02 RCW applies to public inspection and copying of health care information of patients. [2007 c 273 § 25; 2007 c 261 § 4; 2007 c 259 § 49. Prior: 2006 c 209 § 9; 2006 c 8 § 112; 2005 c 274 § 416.]

Reviser's note: This section was amended by 2007 c 259 § 49, 2007 c 261 § 4, and by 2007 c 273 § 25, each without reference to the other. All amendments are incorporated in the publication of this section under RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

Effective date—Implementation—2007 c 273: See RCW 70.230.900 and 70.230.901.

Findings—2007 c 261: See note following RCW 43.70.056.

Severability—Subheadings not law—2007 c 259: See notes following RCW 41.05.033.

Effective date—2006 c 8 §§ 112 and 210: "Sections 112 and 210 of this act take effect July 1, 2006." [2006 c 8 § 405.]

Findings—Intent—Part headings and subheadings not law—Severability—2006 c 8: See notes following RCW 5.64.010.

Basic health plan—Confidentiality: RCW 70.47.150.

42.56.380 Agriculture and livestock. The following information relating to agriculture and livestock is exempt from disclosure under this chapter:

(1) Business-related information under RCW 15.86.110;

(2) Information provided under RCW 15.54.362;

(3) Production or sales records required to determine assessment levels and actual assessment payments to commodity boards and commissions formed under chapters 15.24, 15.26, 15.28, 15.44, 15.65, 15.66, 15.74, 15.88, 15.100, 15.89, and 16.67 RCW or required by the department of agriculture to administer these chapters or the department's programs;

(4) Consignment information contained on phytosanitary certificates issued by the department of agriculture under chapters 15.13, 15.49, and 15.17 RCW or federal phytosanitary certificates issued under 7 C.F.R. 353 through cooperative agreements with the animal and plant health inspection service, United States department of agriculture, or on applications for phytosanitary certification required by the department of agriculture;

(5) Financial and commercial information and records supplied by persons (a) to the department of agriculture for the purpose of conducting a referendum for the potential establishment of a commodity board or commission; or (b) to the department of agriculture or commodity boards or commissions formed under chapter 15.24, 15.28, 15.44, 15.65, 15.66, 15.74, 15.88, 15.100, 15.89, or 16.67 RCW with respect to domestic or export marketing activities or individual producer's production information;

(6) Except under RCW 15.19.080, information obtained regarding the purchases, sales, or production of an individual American ginseng grower or dealer;

(7) Information that can be identified to a particular business and that is collected under RCW 15.17.140(2) and 15.17.143 for certificates of compliance;

(8) Financial statements provided under RCW 16.65.030(1)(d);

(9) Information submitted by an individual or business for the purpose of participating in a state or national animal identification system. Disclosure to local, state, and federal officials is not public disclosure. This exemption does not affect the disclosure of information used in reportable animal health investigations under chapter 16.36 RCW once they are complete; and

(10) Results of testing for animal diseases not required to be reported under chapter 16.36 RCW that is done at the request of the animal owner or his or her designee that can be identified to a particular business or individual. [2007 c 177 § 1. Prior: 2006 c 330 § 26; 2006 c 75 § 3; 2005 c 274 § 418.]

Effective date—2006 c 330 § 26: "Section 26 of this act takes effect July 1, 2006." [2006 c 330 § 32.]

Construction—Severability—2006 c 330: See RCW 15.89.900 and 15.89.901.

Effective date—2006 c 75 § 3: "Section 3 of this act takes effect July 1, 2006." [2006 c 75 § 5.]

Findings—2006 c 75: "The legislature finds that livestock identification numbers, premise information, and animal movement data are proprietary information that all have a role in defining a livestock producer's position within the marketplace, including his or her competitive advantage over other producers. The legislature therefore finds that exempting certain voluntary livestock identification, premise, and movement information from state public disclosure requirements will foster an environment that is more conducive to voluntary participation, and lead to a more effective livestock identification system." [2006 c 75 § 1.]

42.56.400 Insurance and financial institutions. *(Effective until July 1, 2009.)* The following information relating to insurance and financial institutions is exempt from disclosure under this chapter:

(1) Records maintained by the board of industrial insurance appeals that are related to appeals of crime victims' compensation claims filed with the board under RCW 7.68.110;

(2) Information obtained and exempted or withheld from public inspection by the health care authority under RCW 41.05.026, whether retained by the authority, transferred to another state purchased health care program by the authority, or transferred by the authority to a technical review committee created to facilitate the development, acquisition, or implementation of state purchased health care under chapter 41.05 RCW;

(3) The names and individual identification data of all viators regulated by the insurance commissioner under chapter 48.102 RCW;

(4) Information provided under RCW 48.30A.045 through 48.30A.060;

(5) Information provided under RCW 48.05.510 through 48.05.535, 48.43.200 through 48.43.225, 48.44.530 through 48.44.555, and 48.46.600 through 48.46.625;

(6) Examination reports and information obtained by the department of financial institutions from banks under RCW 30.04.075, from savings banks under RCW 32.04.220, from savings and loan associations under RCW 33.04.110, from credit unions under RCW 31.12.565, from check cashers and

sellers under RCW 31.45.030(3), and from securities brokers and investment advisers under RCW 21.20.100, all of which is confidential and privileged information;

(7) Information provided to the insurance commissioner under RCW 48.110.040(3);

(8) Documents, materials, or information obtained by the insurance commissioner under RCW 48.02.065, all of which are confidential and privileged;

(9) Confidential proprietary and trade secret information provided to the commissioner under RCW 48.31C.020 through 48.31C.050 and 48.31C.070;

(10) Data filed under RCW 48.140.020, 48.140.030, 48.140.050, and 7.70.140 that, alone or in combination with any other data, may reveal the identity of a claimant, health care provider, health care facility, insuring entity, or self-insurer involved in a particular claim or a collection of claims. For the purposes of this subsection:

(a) "Claimant" has the same meaning as in RCW 48.140.010(2).

(b) "Health care facility" has the same meaning as in RCW 48.140.010(6).

(c) "Health care provider" has the same meaning as in RCW 48.140.010(7).

(d) "Insuring entity" has the same meaning as in RCW 48.140.010(8).

(e) "Self-insurer" has the same meaning as in RCW 48.140.010(11); and

(11) Documents, materials, or information obtained by the insurance commissioner under RCW 48.135.060;

(12) Documents, materials, or information obtained by the insurance commissioner under RCW 48.37.060;

(13) Confidential and privileged documents obtained or produced by the insurance commissioner and identified in RCW 48.37.080; and

(14) Documents, materials, or information obtained by the insurance commissioner under RCW 48.37.140. [2007 c 197 § 7; 2007 c 82 § 17. Prior: 2006 c 284 § 17; 2006 c 8 § 210; 2005 c 274 § 420.]

Reviser's note: This section was amended by 2007 c 82 § 17 and by 2007 c 197 § 7, each without reference to the other. Both amendments are incorporated in the publication of this section under RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

Severability—Effective date—2006 c 284: See RCW 48.135.900 and 48.135.901.

Effective date—2006 c 8 §§ 112 and 210: See note following RCW 42.56.360.

Findings—Intent—Part headings and subheadings not law—Severability—2006 c 8: See notes following RCW 5.64.010.

42.56.400 Insurance and financial institutions. *(Effective July 1, 2009.)* The following information relating to insurance and financial institutions is exempt from disclosure under this chapter:

(1) Records maintained by the board of industrial insurance appeals that are related to appeals of crime victims' compensation claims filed with the board under RCW 7.68.110;

(2) Information obtained and exempted or withheld from public inspection by the health care authority under RCW 41.05.026, whether retained by the authority, transferred to another state purchased health care program by the authority,

or transferred by the authority to a technical review committee created to facilitate the development, acquisition, or implementation of state purchased health care under chapter 41.05 RCW;

(3) The names and individual identification data of all viators regulated by the insurance commissioner under chapter 48.102 RCW;

(4) Information provided under RCW 48.30A.045 through 48.30A.060;

(5) Information provided under RCW 48.05.510 through 48.05.535, 48.43.200 through 48.43.225, 48.44.530 through 48.44.555, and 48.46.600 through 48.46.625;

(6) Examination reports and information obtained by the department of financial institutions from banks under RCW 30.04.075, from savings banks under RCW 32.04.220, from savings and loan associations under RCW 33.04.110, from credit unions under RCW 31.12.565, from check cashers and sellers under RCW 31.45.030(3), and from securities brokers and investment advisers under RCW 21.20.100, all of which is confidential and privileged information;

(7) Information provided to the insurance commissioner under RCW 48.110.040(3);

(8) Documents, materials, or information obtained by the insurance commissioner under RCW 48.02.065, all of which are confidential and privileged;

(9) Confidential proprietary and trade secret information provided to the commissioner under RCW 48.31C.020 through 48.31C.050 and 48.31C.070;

(10) Data filed under RCW 48.140.020, 48.140.030, 48.140.050, and 7.70.140 that, alone or in combination with any other data, may reveal the identity of a claimant, health care provider, health care facility, insuring entity, or self-insurer involved in a particular claim or a collection of claims. For the purposes of this subsection:

(a) "Claimant" has the same meaning as in RCW 48.140.010(2).

(b) "Health care facility" has the same meaning as in RCW 48.140.010(6).

(c) "Health care provider" has the same meaning as in RCW 48.140.010(7).

(d) "Insuring entity" has the same meaning as in RCW 48.140.010(8).

(e) "Self-insurer" has the same meaning as in RCW 48.140.010(11);

(11) Documents, materials, or information obtained by the insurance commissioner under RCW 48.135.060;

(12) Documents, materials, or information obtained by the insurance commissioner under RCW 48.37.060;

(13) Confidential and privileged documents obtained or produced by the insurance commissioner and identified in RCW 48.37.080;

(14) Documents, materials, or information obtained by the insurance commissioner under RCW 48.37.140; and

(15) Documents, materials, or information obtained by the insurance commissioner under RCW 48.17.595. [2007 c 197 § 7; 2007 c 117 § 36; 2007 c 82 § 17. Prior: 2006 c 284 § 17; 2006 c 8 § 210; 2005 c 274 § 420.]

Reviser's note: This section was amended by 2007 c 82 § 17, 2007 c 117 § 36, and by 2007 c 197 § 7, each without reference to the other. All amendments are incorporated in the publication of this section under RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

Severability—Effective date—2007 c 117: See RCW 48.17.900 and 48.17.901.

Severability—Effective date—2006 c 284: See RCW 48.135.900 and 48.135.901.

Effective date—2006 c 8 §§ 112 and 210: See note following RCW 42.56.360.

Findings—Intent—Part headings and subheadings not law—Severability—2006 c 8: See notes following RCW 5.64.010.

42.56.430 Fish and wildlife. The following information relating to fish and wildlife is exempt from disclosure under this chapter:

(1) Commercial fishing catch data from logbooks required to be provided to the department of fish and wildlife under RCW 77.12.047, when the data identifies specific catch location, timing, or methodology and the release of which would result in unfair competitive disadvantage to the commercial fisher providing the catch data, however, this information may be released to government agencies concerned with the management of fish and wildlife resources;

(2) Sensitive fish and wildlife data. Sensitive fish and wildlife data may be released to the following entities and their agents for fish, wildlife, land management purposes, or scientific research needs: Government agencies, public utilities, and accredited colleges and universities. Sensitive fish and wildlife data may be released to tribal governments. Sensitive fish and wildlife data may also be released to the owner, lessee, or right-of-way or easement holder of the private land to which the data pertains. The release of sensitive fish and wildlife data may be subject to a confidentiality agreement, except upon release of sensitive fish and wildlife data to the owner, lessee, or right-of-way or easement holder of private land who initially provided the data. Sensitive fish and wildlife data does not include data related to reports of predatory wildlife as specified in RCW 77.12.885. Sensitive fish and wildlife data must meet at least one of the following criteria of this subsection as applied by the department of fish and wildlife:

(a) The nesting sites or specific locations of endangered species designated under RCW 77.12.020, or threatened or sensitive species classified by rule of the department of fish and wildlife;

(b) Radio frequencies used in, or locational data generated by, telemetry studies; or

(c) Other location data that could compromise the viability of a specific fish or wildlife population, and where at least one of the following criteria are met:

(i) The species has a known commercial or black market value;

(ii) There is a history of malicious take of that species and the species behavior or ecology renders it especially vulnerable;

(iii) There is a known demand to visit, take, or disturb the species; or

(iv) The species has an extremely limited distribution and concentration; and

(3) The personally identifying information of persons who acquire recreational licenses under RCW 77.32.010 or commercial licenses under chapter 77.65 or 77.70 RCW, except name, address of contact used by the department, and type of license, endorsement, or tag; however, the department

of fish and wildlife may disclose personally identifying information to:

(a) Government agencies concerned with the management of fish and wildlife resources;

(b) The department of social and health services, child support division, and to the department of licensing in order to implement RCW 77.32.014 and 46.20.291; and

(c) Law enforcement agencies for the purpose of firearm possession enforcement under RCW 9.41.040. [2007 c 293 § 1; 2005 c 274 § 423.]

42.56.570 Explanatory pamphlet. (1) The attorney general's office shall publish, and update when appropriate, a pamphlet, written in plain language, explaining this chapter.

(2) The attorney general, by February 1, 2006, shall adopt by rule an advisory model rule for state and local agencies, as defined in RCW 42.56.010, addressing the following subjects:

- (a) Providing fullest assistance to requestors;
- (b) Fulfilling large requests in the most efficient manner;
- (c) Fulfilling requests for electronic records; and
- (d) Any other issues pertaining to public disclosure as determined by the attorney general.

(3) The attorney general, in his or her discretion, may from time to time revise the model rule. [2007 c 197 § 8. Prior: 2005 c 483 § 4; 2005 c 274 § 290; 1992 c 139 § 9. Formerly RCW 42.17.348.]

42.56.580 Public records officers. (1) Each state and local agency shall appoint and publicly identify a public records officer whose responsibility is to serve as a point of contact for members of the public in requesting disclosure of public records and to oversee the agency's compliance with the public records disclosure requirements of this chapter. A state or local agency's public records officer may appoint an employee or official of another agency as its public records officer.

(2) For state agencies, the name and contact information of the agency's public records officer to whom members of the public may direct requests for disclosure of public records and who will oversee the agency's compliance with the public records disclosure requirements of this chapter shall be published in the state register at the time of designation and maintained thereafter on the code reviser web site for the duration of the designation.

(3) For local agencies, the name and contact information of the agency's public records officer to whom members of the public may direct requests for disclosure of public records and who will oversee the agency's compliance within the public records disclosure requirements of this chapter shall be made in a way reasonably calculated to provide notice to the public, including posting at the local agency's place of business, posting on its internet site, or including in its publications. [2007 c 456 § 6; 2005 c 483 § 3. Formerly RCW 42.17.253.]

42.56.590 Personal information—Notice of security breaches. (1)(a) Any agency that owns or licenses computerized data that includes personal information shall disclose any breach of the security of the system following discovery

or notification of the breach in the security of the data to any resident of this state whose unencrypted personal information was, or is reasonably believed to have been, acquired by an unauthorized person. The disclosure shall be made in the most expedient time possible and without unreasonable delay, consistent with the legitimate needs of law enforcement, as provided in subsection (3) of this section, or any measures necessary to determine the scope of the breach and restore the reasonable integrity of the data system.

(b) For purposes of this section, "agency" means the same as in RCW 42.56.010.

(2) Any agency that maintains computerized data that includes personal information that the agency does not own shall notify the owner or licensee of the information of any breach of the security of the data immediately following discovery, if the personal information was, or is reasonably believed to have been, acquired by an unauthorized person.

(3) The notification required by this section may be delayed if a law enforcement agency determines that the notification will impede a criminal investigation. The notification required by this section shall be made after the law enforcement agency determines that it will not compromise the investigation.

(4) For purposes of this section, "breach of the security of the system" means unauthorized acquisition of computerized data that compromises the security, confidentiality, or integrity of personal information maintained by the agency. Good faith acquisition of personal information by an employee or agent of the agency for the purposes of the agency is not a breach of the security of the system when the personal information is not used or subject to further unauthorized disclosure.

(5) For purposes of this section, "personal information" means an individual's first name or first initial and last name in combination with any one or more of the following data elements, when either the name or the data elements are not encrypted:

- (a) Social security number;
- (b) Driver's license number or Washington identification card number; or
- (c) Account number or credit or debit card number, in combination with any required security code, access code, or password that would permit access to an individual's financial account.

(6) For purposes of this section, "personal information" does not include publicly available information that is lawfully made available to the general public from federal, state, or local government records.

(7) For purposes of this section and except under subsection (8) of this section, notice may be provided by one of the following methods:

- (a) Written notice;
- (b) Electronic notice, if the notice provided is consistent with the provisions regarding electronic records and signatures set forth in 15 U.S.C. Sec. 7001; or

(c) Substitute notice, if the agency demonstrates that the cost of providing notice would exceed two hundred fifty thousand dollars, or that the affected class of subject persons to be notified exceeds five hundred thousand, or the agency does not have sufficient contact information. Substitute notice shall consist of all of the following:

(i) E-mail notice when the agency has an e-mail address for the subject persons;

(ii) Conspicuous posting of the notice on the agency's web site page, if the agency maintains one; and

(iii) Notification to major statewide media.

(8) An agency that maintains its own notification procedures as part of an information security policy for the treatment of personal information and is otherwise consistent with the timing requirements of this section is in compliance with the notification requirements of this section if it notifies subject persons in accordance with its policies in the event of a breach of security of the system.

(9) Any waiver of the provisions of this section is contrary to public policy, and is void and unenforceable.

(10)(a) Any customer injured by a violation of this section may institute a civil action to recover damages.

(b) Any business that violates, proposes to violate, or has violated this section may be enjoined.

(c) The rights and remedies available under this section are cumulative to each other and to any other rights and remedies available under law.

(d) An agency shall not be required to disclose a technical breach of the security system that does not seem reasonably likely to subject customers to a risk of criminal activity. [2007 c 197 § 9; 2005 c 368 § 1. Formerly RCW 42.17.31922.]

Similar provision: RCW 19.255.010.

42.56.904 Intent—2007 c 391. It is the intent of the legislature to clarify that no reasonable construction of chapter 42.56 RCW has ever allowed attorney invoices to be withheld in their entirety by any public entity in a request for documents under that chapter. It is further the intent of the legislature that specific descriptions of work performed be redacted only if they would reveal an attorney's mental impressions, actual legal advice, theories, or opinions, or are otherwise exempt under chapter 391, Laws of 2007 or other laws, with the burden upon the public entity to justify each redaction and narrowly construe any exception to full disclosure. The legislature intends to clarify that the public's interest in open, accountable government includes an accounting of any expenditure of public resources, including through liability insurance, upon private legal counsel or private consultants. [2007 c 391 § 1.]

Title 43

STATE GOVERNMENT—EXECUTIVE

Chapters

- 43.01 State officers—General provisions.
- 43.03 Salaries and expenses.
- 43.04 Use of state seal.
- 43.06 Governor.
- 43.07 Secretary of state.
- 43.08 State treasurer.
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- 43.10 Attorney general.
- 43.17 Administrative departments and agencies—General provisions.
- 43.19 Department of general administration.

- 43.20 State board of health.
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- 43.325 Energy freedom program.
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Chapter 43.01 RCW

STATE OFFICERS—GENERAL PROVISIONS

Sections

- 43.01.047 Vacations—Provisions not applicable to individual providers, family child care providers, or adult family home providers.
- 43.01.135 Sexual harassment in the workplace.
- 43.01.250 Electric vehicles—State purchase of power at state office locations—Report.

43.01.047 Vacations—Provisions not applicable to individual providers, family child care providers, or adult family home providers. RCW 43.01.040 through 43.01.044 do not apply to individual providers under RCW 74.39A.220 through 74.39A.300, family child care providers under RCW 41.56.028, or adult family home providers under RCW 41.56.029. [2007 c 184 § 5; 2006 c 54 § 5; 2004 c 3 § 4.]

Part headings not law—Severability—Conflict with federal requirements—2007 c 184: See notes following RCW 41.56.029.

Part headings not law—Severability—Conflict with federal requirements—Short title—Effective date—2006 c 54: See RCW 41.56.911 through 41.56.915.

Severability—Effective date—2004 c 3: See notes following RCW 74.39A.270.

43.01.135 Sexual harassment in the workplace. Agencies as defined in RCW 41.06.020 shall:

(1) Update or develop and disseminate among all agency employees and contractors a policy that:

(a) Defines and prohibits sexual harassment in the workplace;

(b) Includes procedures that describe how the agency will address concerns of employees who are affected by sexual harassment in the workplace;

(c) Identifies appropriate sanctions and disciplinary actions; and

(d) Complies with guidelines adopted by the director of personnel under RCW 41.06.395;

(2) Respond promptly and effectively to sexual harassment concerns;

(3) Conduct training and education for all employees in order to prevent and eliminate sexual harassment in the organization;

(4) Inform employees of their right to file a complaint with the Washington state human rights commission under chapter 49.60 RCW, or with the federal equal employment opportunity commission under Title VII of the civil rights act of 1964; and

(5) Report to the department of personnel on compliance with this section.

The cost of the training programs shall be borne by state agencies within existing resources. [2007 c 76 § 2.]

43.01.250 Electric vehicles—State purchase of power at state office locations—Report. (1) It is in the state’s interest and to the benefit of the people of the state to encourage the use of electrical vehicles in order to reduce emissions and provide the public with cleaner air. This section expressly authorizes the purchase of power at state expense to recharge privately and publicly owned plug-in electrical vehicles at state office locations where the vehicles are used for state business, are commute vehicles, or where the vehi-

cles are at the state location for the purpose of conducting business with the state.

(2) The director of the department of general administration may report to the governor and the appropriate committees of the legislature, as deemed necessary by the director, on the estimated amount of state-purchased electricity consumed by plug-in electrical vehicles if the director of general administration determines that the use has a significant cost to the state, and on the number of plug-in electric vehicles using state office locations. The report may be combined with the report under section 401, chapter 348, Laws of 2007. [2007 c 348 § 206.]

Findings—Part headings not law—2007 c 348: See RCW 43.325.005 and 43.325.903.

Chapter 43.03 RCW

SALARIES AND EXPENSES

Sections

- 43.03.011 Salaries of state elected officials of the executive branch.
- 43.03.012 Salaries of judges.
- 43.03.013 Salaries of members of the legislature.
- 43.03.028 State committee on agency officials’ salaries—Members—Duties—Reports.

43.03.011 Salaries of state elected officials of the executive branch. Pursuant to Article XXVIII, section 1 of the state Constitution and RCW 43.03.010 and 43.03.310, the annual salaries of the state elected officials of the executive branch shall be as follows:

(1) Effective September 1, 2006:

- (a) Governor \$ 150,995
- (b) Lieutenant governor \$ 78,930
- (c) Secretary of state \$ 105,811
- (d) Treasurer \$ 105,811
- (e) Auditor. \$ 105,811
- (f) Attorney general. \$ 137,268
- (g) Superintendent of public instruction \$ 107,978
- (h) Commissioner of public lands. \$ 107,978
- (i) Insurance commissioner. \$ 105,811

(2) Effective September 1, 2007:

- (a) Governor \$ 163,618
- (b) Lieutenant governor \$ 92,106
- (c) Secretary of state \$ 114,657
- (d) Treasurer \$ 114,657
- (e) Auditor. \$ 114,657
- (f) Attorney general. \$ 148,744
- (g) Superintendent of public instruction \$ 119,234
- (h) Commissioner of public lands. \$ 119,234
- (i) Insurance commissioner. \$ 114,657

(3) Effective September 1, 2008:

- (a) Governor \$ 166,891
- (b) Lieutenant governor \$ 93,948
- (c) Secretary of state \$ 116,950
- (d) Treasurer \$ 116,950
- (e) Auditor. \$ 116,950
- (f) Attorney general. \$ 151,718
- (g) Superintendent of public instruction \$ 121,618
- (h) Commissioner of public lands. \$ 121,618
- (i) Insurance commissioner. \$ 116,950

(4) The lieutenant governor shall receive the fixed amount of his salary plus 1/260th of the difference between his salary and that of the governor for each day that the lieutenant governor is called upon to perform the duties of the governor by reason of the absence from the state, removal, resignation, death, or disability of the governor. [2007 c 524 § 1; 2005 c 519 § 1; 2003 1st sp.s. c 1 § 1; 2001 1st sp.s. c 3 § 1; 1999 sp.s. c 3 § 1; 1997 c 458 § 1; 1995 2nd sp.s. c 1 § 1; 1993 sp.s. c 26 § 1; 1991 sp.s. c 1 § 1; 1989 2nd ex.s. c 4 § 1; 1987 1st ex.s. c 1 § 1, part.]

43.03.012 Salaries of judges. Pursuant to Article XXVIII, section 1 of the state Constitution and RCW 2.04.092, 2.06.062, 2.08.092, 3.58.010, and 43.03.310, the annual salaries of the judges of the state shall be as follows:

- (1) Effective September 1, 2006:
 - (a) Justices of the supreme court. \$ 145,636
 - (b) Judges of the court of appeals. \$ 138,636
 - (c) Judges of the superior court. \$ 131,988
 - (d) Full-time judges of the district court. \$ 125,672
- (2) Effective September 1, 2007:
 - (a) Justices of the supreme court. \$ 155,557
 - (b) Judges of the court of appeals. \$ 148,080
 - (c) Judges of the superior court. \$ 140,979
 - (d) Full-time judges of the district court. \$ 134,233
- (3) Effective September 1, 2008:
 - (a) Justices of the supreme court. \$ 164,221
 - (b) Judges of the court of appeals. \$ 156,328
 - (c) Judges of the superior court. \$ 148,832
 - (d) Full-time judges of the district court. \$ 141,710

(4) The salary for a part-time district court judge shall be the proportion of full-time work for which the position is authorized, multiplied by the salary for a full-time district court judge. [2007 c 524 § 2; 2005 c 519 § 2; 2003 1st sp.s. c 1 § 2; 2001 1st sp.s. c 3 § 2; 1999 sp.s. c 3 § 2; 1997 c 458 § 2; 1995 2nd sp.s. c 1 § 2; 1993 sp.s. c 26 § 2; 1991 sp.s. c 1 § 2; 1989 2nd ex.s. c 4 § 2; 1987 1st ex.s. c 1 § 1, part.]

43.03.013 Salaries of members of the legislature. Pursuant to Article XXVIII, section 1 of the state Constitution and RCW 43.03.010 and 43.03.310, the annual salary of members of the legislature shall be:

- (1) Effective September 1, 2006:
 - (a) Legislators \$ 36,311
 - (b) Speaker of the house \$ 44,311
 - (c) Senate majority leader. \$ 44,311
 - (d) House minority leader. \$ 40,311
 - (e) Senate minority leader. \$ 40,311
- (2) Effective September 1, 2007:
 - (a) Legislators \$ 41,280
 - (b) Speaker of the house \$ 49,280
 - (c) Senate majority leader. \$ 49,280
 - (d) House minority leader. \$ 45,280
 - (e) Senate minority leader. \$ 45,280
- (3) Effective September 1, 2008:
 - (a) Legislators \$ 42,106
 - (b) Speaker of the house \$ 50,106
 - (c) Senate majority leader. \$ 50,106
 - (d) House minority leader. \$ 46,106
 - (e) Senate minority leader. \$ 46,106

[2007 c 524 § 3; 2005 c 519 § 3; 2003 1st sp.s. c 1 § 3; 2001 1st sp.s. c 3 § 3; 1999 sp.s. c 3 § 3; 1997 c 458 § 3; 1995 2nd sp.s. c 1 § 3; 1993 sp.s. c 26 § 3; 1991 sp.s. c 1 § 3; 1989 2nd ex.s. c 4 § 3; 1987 1st ex.s. c 1 § 1, part.]

43.03.028 State committee on agency officials' salaries—Members—Duties—Reports.

(1) There is hereby created a state committee on agency officials' salaries to consist of seven members, or their designees, as follows: The president of the University of Puget Sound; the chairperson of the council of presidents of the state's four-year institutions of higher education; the chairperson of the Washington personnel resources board; the president of the Association of Washington Business; the president of the Pacific Northwest Personnel Managers' Association; the president of the Washington State Bar Association; and the president of the Washington State Labor Council. If any of the titles or positions mentioned in this subsection are changed or abolished, any person occupying an equivalent or like position shall be qualified for appointment by the governor to membership upon the committee.

(2) The committee shall study the duties and salaries of the directors of the several departments and the members of the several boards and commissions of state government, who are subject to appointment by the governor or whose salaries are fixed by the governor, and of the chief executive officers of the following agencies of state government:

The arts commission; the human rights commission; the board of accountancy; the board of pharmacy; the eastern Washington historical society; the Washington state historical society; the recreation and conservation office; the criminal justice training commission; the department of personnel; the state library; the traffic safety commission; the horse racing commission; the advisory council on vocational education; the public disclosure commission; the state conservation commission; the commission on Hispanic affairs; the commission on Asian Pacific American affairs; the state board for volunteer fire fighters and reserve officers; the transportation improvement board; the public employment relations commission; the forest practices appeals board; and the energy facilities site evaluation council.

The committee shall report to the governor or the chairperson of the appropriate salary fixing authority at least once in each fiscal biennium on such date as the governor may designate, but not later than seventy-five days prior to the convening of each regular session of the legislature during an odd-numbered year, its recommendations for the salaries to be fixed for each position.

(3) Committee members shall be reimbursed by the department of personnel for travel expenses under RCW 43.03.050 and 43.03.060. [2007 c 241 § 3; 2001 c 302 § 2; 1995 c 67 § 1. Prior: 1993 c 281 § 45; 1993 c 101 § 14; 1991 c 3 § 294; 1988 c 167 § 9; prior: 1987 c 504 § 15; 1987 c 249 § 7; 1986 c 155 § 9; 1982 c 163 § 21; 1980 c 87 § 20; prior: 1977 ex.s. c 127 § 1; 1977 c 75 § 36; 1970 ex.s. c 43 § 2; 1967 c 19 § 1; 1965 c 8 § 43.03.028; prior: 1961 c 307 § 1; 1955 c 340 § 1.]

Intent—Effective date—2007 c 241: See notes following RCW 79A.25.005.

Effective date—1993 c 281: See note following RCW 41.06.022.

Findings—1993 c 101: See note following RCW 27.34.010.

Severability—Effective date—1993 c 101: See RCW 27.34.915 and 27.34.916.

Savings—Severability—1988 c 167: See notes following RCW 47.26.121.

Severability—Effective date—1987 c 504: See RCW 43.105.901 and 43.105.902.

Contingent effective date—Severability—1986 c 155: See notes following RCW 43.03.300.

Severability—Effective date—1982 c 163: See notes following RCW 2.10.052.

Severability—1970 ex.s. c 43: See note following RCW 43.03.027.

Chapter 43.04 RCW USE OF STATE SEAL

Sections

43.04.100 Deposit of fees, penalties, and damages—Use.

43.04.100 Deposit of fees, penalties, and damages—

Use. All fees, penalties, and damages received under this chapter shall be paid to the secretary of state and with the exception of the filing fee authorized in RCW 43.04.040(2) shall be deposited by the secretary into the capitol furnishings preservation committee account created in RCW 27.48.040. [2007 c 453 § 4; 1988 c 120 § 10.]

Findings—2007 c 453: See RCW 44.73.005.

Chapter 43.06 RCW GOVERNOR

Sections

43.06.460 Cigarette tax contracts—Eligible tribes—Tax rate.

43.06.475 Timber harvest excise tax agreements.

43.06.480 Timber harvest excise tax agreements—Quinalt Nation.

43.06.460 Cigarette tax contracts—Eligible tribes—

Tax rate. (1) The governor is authorized to enter into cigarette tax contracts with the Squaxin Island Tribe, the Nisqually Tribe, Tulalip Tribes, the Muckleshoot Indian Tribe, the Quinalt Nation, the Jamestown S'Klallam Indian Tribe, the Port Gamble S'Klallam Tribe, the Stillaguamish Tribe, the Sauk-Suiattle Tribe, the Skokomish Indian Tribe, the Yakama Nation, the Suquamish Tribe, the Nooksack Indian Tribe, the Lummi Nation, the Chehalis Confederated Tribes, the Upper Skagit Tribe, the Snoqualmie Tribe, the Swinomish Tribe, the Samish Indian Nation, the Quileute Tribe, the Kalispel Tribe, the Confederated Tribes of the Colville Reservation, the Cowlitz Indian Tribe, the Lower Elwha Klallam Tribe, the Makah Tribe, the Hoh Tribe, and the Spokane Tribe. Each contract adopted under this section shall provide that the tribal cigarette tax rate be one hundred percent of the state cigarette and state and local sales and use taxes within three years of enacting the tribal tax and shall be set no lower than eighty percent of the state cigarette and state and local sales and use taxes during the three-year phase-in period. The three-year phase-in period shall be shortened by three months each quarter the number of cartons of nontribal manufactured cigarettes is at least ten percent or more than the quarterly average number of cartons of nontribal manufactured cigarettes from the six-month period preceding the imposition of the tribal tax under the contract.

Sales at a retailer operation not in existence as of the date a tribal tax under this section is imposed are subject to the full rate of the tribal tax under the contract. The tribal cigarette tax is in lieu of the state cigarette and state and local sales and use taxes, as provided in RCW 43.06.455(3).

(2) A cigarette tax contract under this section is subject to RCW 43.06.455. [2007 c 320 § 1; 2005 c 208 § 1; 2003 c 236 § 1; 2002 c 87 § 1; 2001 2nd sp.s. c 21 § 1; 2001 c 235 § 3.]

Effective date—2007 c 320: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect July 1, 2007." [2007 c 320 § 2.]

43.06.475 Timber harvest excise tax agreements. (1)

The governor may enter into timber harvest excise tax agreements concerning the harvest of timber. All timber harvest excise tax agreements must meet the requirements for timber harvest excise tax agreements under this section. The terms of a timber harvest excise tax agreement are not effective unless the agreement is authorized in RCW 43.06.480.

(2) Timber harvest excise tax agreements shall be in regard to timber harvests on fee land within the exterior boundaries of the reservation of the Indian tribe and are not in regard to timber harvests on trust land or land owned by the tribe within the exterior boundaries of the reservation.

(3) The agreement must provide that the tribal tax shall be credited against the state and county taxes imposed under RCW 84.33.041 and 84.33.051.

(4) Tribal ordinances for timber harvest excise taxation, or other authorizing tribal laws, which implement the timber harvest excise tax agreement with the state, must incorporate or contain provisions identical to chapter 84.33 RCW that relate to the tax rates and measures, such as stumpage values.

(5) Timber harvest excise tax agreements must be for renewable periods of no more than eight years.

(6) Timber harvest excise tax agreements must include provisions for compliance, such as inspection procedures, recordkeeping, and audit requirements.

(7) Tax revenue retained by the tribe must be used for essential government services. Use of tax revenue for subsidization of timber harvesters is prohibited.

(8) The timber harvest excise tax agreement may include provisions to resolve disputes using a nonjudicial process, such as mediation.

(9) The governor may delegate the power to negotiate the timber harvest excise tax agreements to the department of revenue.

(10) Information received by the state or open to state review under the terms of a timber harvest excise tax agreement is subject to the provisions of RCW 82.32.330. The department of revenue may enter into an information sharing agreement with the tribe to facilitate sharing information to improve tax collection.

(11) The timber harvest excise tax agreement must include dispute resolution procedures, contract termination procedures, and provisions delineating the respective roles and responsibilities of the tribe and the department of revenue.

(12) The timber harvest excise tax agreement must include provisions to require taxpayers to submit information that may be required by the department of revenue or tribe.

(13) For the purposes of this section:

(a) "Essential government services" means services such as forest land management; protection, enhancement, regulation, and stewardship of forested land; land consolidation; tribal administration; public facilities; fire; police; public health; education; job services; sewer; water; environmental and land use; transportation; utility services; and public facilities serving economic development purposes as those terms are defined in RCW 82.14.370(3)(c);

(b) "Forest land" has the same meaning as in RCW 84.33.035;

(c) "Harvester" has the same meaning as in RCW 84.33.035;

(d) "Indian tribe" or "tribe" means a federally recognized Indian tribe located within the geographical boundaries of the state of Washington; and

(e) "Timber" has the same meaning as in RCW 84.33.035. [2007 c 69 § 2.]

Findings—Intent—2007 c 69: "The legislature finds that in certain areas of taxation, where both a tribe and the state have jurisdiction and where there are challenges to administering a tax, tax agreements between the state and a tribe are a sound approach to resolving issues and simplifying processes. The legislature specifically recognizes that in the area of the timber excise tax, within the boundaries of the Quinault Reservation, the state faces challenges due to access to land and access to taxpayers. The activity being taxed takes place entirely within the reservation and is regulated by the tribe and by the state. The legislature therefore finds that shifting from a state administered tax, to a tribal tax credited against the state tax, will bring benefits such as consistent taxation, improved forest practices and water quality, improved fisheries, and sustainability. The legislature intends to further the government-to-government relationship between the state of Washington and the Quinault Nation by authorizing the governor to enter into an agreement related to timber harvest excise taxes." [2007 c 69 § 1.]

43.06.480 Timber harvest excise tax agreements—Quinault Nation. (1) The governor is authorized to enter into a timber harvest excise tax agreement with the Quinault Nation. Agreements adopted under this section must provide that the tribal timber harvest excise tax rate be one hundred percent of the state timber harvest excise tax.

(2) A timber harvest excise tax agreement under this section is subject to RCW 43.06.475. [2007 c 69 § 3.]

Findings—Intent—2007 c 69: See note following RCW 43.06.475.

Chapter 43.07 RCW SECRETARY OF STATE

Sections

43.07.128	Fees—Washington state heritage center. (<i>Effective January 1, 2009.</i>)
43.07.129	Washington state heritage center account.
43.07.370	Oral history, state library, archives programs, and Washington state heritage center—Gifts, grants, conveyances—Rules.
43.07.400	Domestic partnership registry—Forms—Rules.

43.07.128 Fees—Washington state heritage center. (*Effective January 1, 2009.*) (1) In addition to other required filing fees, the secretary of state shall collect a fee of five dollars at the time of filing for:

(a) Articles of incorporation for domestic corporations or applications for certificates of authority for foreign corporations under Title 23B RCW;

(b) Certificates of formation for domestic limited liability companies or registrations of foreign limited liability companies under chapter 25.15 RCW;

(c) Registrations of foreign and domestic partnerships and limited liability partnerships under chapter 25.05 RCW;

(d) Certificates of limited partnership[s] and registration[s] of foreign limited partnerships under chapter 25.10 RCW; and

(e) Registrations of trademarks under chapter 19.77 RCW.

(2) Moneys received under subsection (1) of this section must be deposited into the Washington state heritage center account. [2007 c 523 § 1.]

Effective date—2007 c 523 § 1: "Section 1 of this act takes effect January 1, 2009." [2007 c 523 § 7.]

Contingency—2007 c 523: "If specific funding for the purposes of this act, referencing this act by bill or chapter number, is not provided by June 30, 2007, in the omnibus appropriations act, this act is null and void." [2007 c 523 § 6.] Funding was provided in 2007 c 520 § 6013(9) (capital budget).

43.07.129 Washington state heritage center account.

The Washington state heritage center account is created in the custody of the state treasurer. All moneys received under RCW 36.18.010(11) and 43.07.128 must be deposited in the account. Expenditures from the account may be made only for the following purposes:

(1) Payment of the certificate of participation issued for the Washington state heritage center;

(2) Capital maintenance of the Washington state heritage center; and

(3) Program operations that serve the public, relate to the collections and exhibits housed in the Washington state heritage center, or fulfill the missions of the state archives, state library, and capital museum.

Only the secretary of state or the secretary of state's designee may authorize expenditures from the account. An appropriation is not required for expenditures, but the account is subject to allotment procedures under chapter 43.88 RCW. [2007 c 523 § 4.]

Contingency—2007 c 523: See note following RCW 43.07.128.

43.07.370 Oral history, state library, archives programs, and Washington state heritage center—Gifts, grants, conveyances—Rules.

(1) The secretary of state may solicit and accept gifts, grants, conveyances, bequests, and devises of real or personal property, or both, in trust or otherwise, and sell, lease, exchange, invest, or expend these donations or the proceeds, rents, profits, and income from the donations except as limited by the donor's terms.

(2) Moneys received under this section may be used only for the following purposes:

(a) Conducting oral histories;

(b) Archival activities;

(c) Washington state library activities; and

(d) Development, construction, and operation of the Washington state heritage center.

(3)(a) Moneys received under subsection (2)(a) through (c) of this section must be deposited in the oral history, state library, and archives account established in RCW 43.07.380.

(b) Moneys received under subsection (2)(d) of this section must be deposited in the Washington state heritage center account created in RCW 43.07.129.

(4) The secretary of state shall adopt rules to govern and protect the receipt and expenditure of the proceeds. [2007 c 523 § 3; 2003 c 164 § 1.]

Contingency—2007 c 523: See note following RCW 43.07.128.

43.07.400 Domestic partnership registry—Forms—Rules. (1) The state domestic partnership registry is created within the secretary of state's office.

(2)(a) The secretary shall prepare forms entitled "declaration of state registered domestic partnership" and "notice of termination of state registered domestic partnership" to meet the requirements of RCW 26.60.010, 26.60.020, 26.60.030, and 26.60.070.

(b) The "declaration of state registered domestic partnership" form must contain a statement that registration may affect property and inheritance rights, that registration is not a substitute for a will, deed, or partnership agreement, and that any rights conferred by registration may be completely superseded by a will, deed, or other instrument that may be executed by either party. The form must also contain instructions on how the partnership may be terminated.

(c) The "notice of termination of state registered domestic partnership" form must contain a statement that termination may affect property and inheritance rights, including beneficiary designations, and other agreements, such as the appointment of a state registered domestic partner as an attorney in fact under a power of attorney.

(3) The secretary shall distribute these forms to each county clerk. These forms shall be available to the public at the secretary of state's office, each county clerk, and on the internet.

(4) The secretary shall adopt rules necessary to implement the administration of the state domestic partnership registry. [2007 c 156 § 3.]

Chapter 43.08 RCW STATE TREASURER

Sections

43.08.250 Public safety and education account—Use.

43.08.250 Public safety and education account—Use.

(1) The money received by the state treasurer from fees, fines, forfeitures, penalties, reimbursements or assessments by any court organized under Title 3 or 35 RCW, or chapter 2.08 RCW, shall be deposited in the public safety and education account which is hereby created in the state treasury. The legislature shall appropriate the funds in the account to promote traffic safety education, highway safety, criminal justice training, crime victims' compensation, judicial education, the judicial information system, civil representation of indigent persons under RCW 2.53.030, winter recreation parking, drug court operations, and state game programs. Through the fiscal biennium ending June 30, 2009, the legis-

lature may appropriate moneys from the public safety and education account for purposes of appellate indigent defense and other operations of the office of public defense, the criminal litigation unit of the attorney general's office, the treatment alternatives to street crimes program, crime victims advocacy programs, justice information network telecommunication planning, treatment for supplemental security income clients, sexual assault treatment, operations of the administrative office of the courts, security in the common schools, alternative school start-up grants, programs for disruptive students, criminal justice data collection, Washington state patrol criminal justice activities, drug court operations, unified family courts, local court backlog assistance, financial assistance to local jurisdictions for extraordinary costs incurred in the adjudication of criminal cases, domestic violence treatment and related services, the department of corrections' costs in implementing chapter 196, Laws of 1999, reimbursement of local governments for costs associated with implementing criminal and civil justice legislation, the replacement of the department of corrections' offender-based tracking system, secure and semi-secure crisis residential centers, HOPE beds, the family policy council and community public health and safety networks, the street youth program, public notification about registered sex offenders, and narcotics or methamphetamine-related enforcement, education, training, and drug and alcohol treatment services.

(2)(a) The equal justice subaccount is created as a subaccount of the public safety and education account. The money received by the state treasurer from the increase in fees imposed by sections 9, 10, 12, 13, 14, 17, and 19, chapter 457, Laws of 2005 shall be deposited in the equal justice subaccount and shall be appropriated only for:

(i) Criminal indigent defense assistance and enhancement at the trial court level, including a criminal indigent defense pilot program;

(ii) Representation of parents in dependency and termination proceedings;

(iii) Civil legal representation of indigent persons; and

(iv) Contribution to district court judges' salaries and to eligible elected municipal court judges' salaries.

(b) For the 2005-07 fiscal biennium, an amount equal to twenty-five percent of revenues to the equal justice subaccount, less one million dollars, shall be appropriated from the equal justice subaccount to the administrator for the courts for purposes of (a)(iv) of this subsection. For the 2007-09 fiscal biennium and subsequent fiscal biennia, an amount equal to fifty percent of revenues to the equal justice subaccount shall be appropriated from the equal justice subaccount to the administrator for the courts for the purposes of (a)(iv) of this subsection. [2007 c 522 § 950. Prior: 2005 c 518 § 926; 2005 c 457 § 8; 2005 c 282 § 44; 2003 1st sp.s. c 25 § 918; prior: 2001 2nd sp.s. c 7 § 914; 2001 c 289 § 4; 2000 2nd sp.s. c 1 § 911; 1999 c 309 § 915; 1997 c 149 § 910; 1996 c 283 § 901; 1995 2nd sp.s. c 18 § 912; 1993 sp.s. c 24 § 917; 1992 c 54 § 3; prior: 1991 sp.s. c 16 § 919; 1991 sp.s. c 13 § 25; 1985 c 57 § 27; 1984 c 258 § 338.]

Severability—Effective date—2007 c 522: See notes following RCW 15.64.050.

Severability—Effective date—2005 c 518: See notes following RCW 28A.305.210.

Intent—2005 c 457: "The legislature recognizes the state's obligation to provide adequate representation to criminal indigent defendants and to parents in dependency and termination cases. The legislature also recognizes that trial courts are critical to maintaining the rule of law in a free society and that they are essential to the protection of the rights and enforcement of obligations for all. Therefore, the legislature intends to create a dedicated revenue source for the purposes of meeting the state's commitment to improving trial courts in the state, providing adequate representation to criminal indigent defendants, providing for civil legal services for indigent persons, and ensuring equal justice for all citizens of the state." [2005 c 457 § 1.]

Findings—Effective date—2005 c 105: See RCW 2.53.005 and 2.53.900.

Severability—Effective date—2003 1st sp.s. c 25: See notes following RCW 19.28.351.

Severability—Effective date—2001 2nd sp.s. c 7: See notes following RCW 43.320.110.

Severability—Effective date—2000 2nd sp.s. c 1: See notes following RCW 41.05.143.

Severability—Effective date—1999 c 309: See notes following RCW 41.06.152.

Severability—1997 c 149: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1997 c 149 § 917.]

Effective date—1997 c 149: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect July 1, 1997." [1997 c 149 § 918.]

Severability—1996 c 283: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1996 c 283 § 904.]

Effective date—1996 c 283: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and shall take effect immediately [March 30, 1996]." [1996 c 283 § 905.]

Severability—Effective date—1995 2nd sp.s. c 18: See notes following RCW 19.118.110.

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

Effective date—1992 c 54: See note following RCW 36.18.020.

Severability—Effective date—1991 sp.s. c 16: See notes following RCW 9.46.100.

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

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

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

Intent—1984 c 258: See note following RCW 3.46.120.

Public safety and education assessment: RCW 3.62.090.

Chapter 43.09 RCW STATE AUDITOR

Sections

43.09.186 Toll-free efficiency hotline—Duties—Annual overview and update.

43.09.186 Toll-free efficiency hotline—Duties—Annual overview and update. (1) Within existing funds, the state auditor must establish a toll-free telephone line that is available to public employees and members of the public to recommend measures to improve efficiency in state and local government and to report waste, inefficiency, or abuse, as well as examples of efficiency or outstanding achievement,

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by state and local agencies, public employees, or persons under contract with state and local agencies.

(2) The state auditor must prepare information that explains the purpose of the hotline, and the hotline telephone number must be prominently displayed in the information. Hotline information must be posted in all government offices in locations where it is most likely to be seen by the public. The state auditor must publicize the availability of the toll-free hotline through print and electronic media and other means of communication with the public.

(3) The state auditor must designate staff to be responsible for processing recommendations for improving efficiency and reports of waste, inefficiency, or abuse received through the hotline. The state auditor must conduct an initial review of each recommendation for efficiency and report of waste, inefficiency, or abuse made by public employees and members of the public. Following the initial review, the state auditor must determine which assertions require further examination or audit under the auditor's current authority and must assign qualified staff.

(4) The identity of a person making a report through the hotline, by e-mail through the state auditor's web site, or other means of communication is confidential at all times unless the person making a report consents to disclosure by written waiver, or until the investigation described in subsection (3) of this section is complete. All documents related to the report and subsequent investigation are also confidential until completion of the investigation or audit or when the documents are otherwise statutorily exempt from public disclosure.

(5) The state auditor must prepare a written determination of the results of the investigation performed, including any background information that the auditor deems necessary. The state auditor must report publicly the conclusions of each investigation and recommend ways to correct any deficiency and to improve efficiency. The reports must be distributed to the affected state agencies.

(6) The state auditor must provide an annual overview and update of hotline investigations, including the results and efficiencies achieved, to the legislature and to the appropriate legislative committees. [2007 c 41 § 1.]

Chapter 43.10 RCW ATTORNEY GENERAL

Sections

43.10.180 Legal services revolving fund—Allocation of costs to funds and agencies—Accounting—Billing.

43.10.180 Legal services revolving fund—Allocation of costs to funds and agencies—Accounting—Billing. (1) The attorney general shall keep such records as are necessary to facilitate proper allocation of costs to funds and agencies served and the director of financial management shall prescribe appropriate accounting procedures to accurately allocate costs to funds and agencies served. Billings shall be adjusted in line with actual costs incurred at intervals not to exceed six months.

(2) During the 2007-2009 fiscal biennium, all expenses for administration of the office of the attorney general shall

be allocated to and paid from the legal services revolving fund in accordance with accounting procedures prescribed by the director of financial management. [2007 c 522 § 951; 2005 c 518 § 927; 2003 1st sp.s. c 25 § 917; 1979 c 151 § 95; 1974 ex.s. c 146 § 3; 1971 ex.s. c 71 § 4.]

Severability—Effective date—2007 c 522: See notes following RCW 15.64.050.

Severability—Effective date—2005 c 518: See notes following RCW 28A.305.210.

Severability—Effective date—2003 1st sp.s. c 25: See notes following RCW 19.28.351.

Effective date—1974 ex.s. c 146: See note following RCW 43.10.150.

Chapter 43.17 RCW

ADMINISTRATIVE DEPARTMENTS AND AGENCIES—GENERAL PROVISIONS

Sections

43.17.010	Departments created.
43.17.020	Chief executive officers—Appointment.
43.17.400	Disposition of state-owned land—Definitions—Notice.

43.17.010 Departments created. There shall be departments of the state government which shall be known as (1) the department of social and health services, (2) the department of ecology, (3) the department of labor and industries, (4) the department of agriculture, (5) the department of fish and wildlife, (6) the department of transportation, (7) the department of licensing, (8) the department of general administration, (9) the department of community, trade, and economic development, (10) the department of veterans affairs, (11) the department of revenue, (12) the department of retirement systems, (13) the department of corrections, (14) the department of health, (15) the department of financial institutions, (16) the department of archaeology and historic preservation, (17) the department of early learning, and (18) the Puget Sound partnership, which shall be charged with the execution, enforcement, and administration of such laws, and invested with such powers and required to perform such duties, as the legislature may provide. [2007 c 341 § 46; 2006 c 265 § 111; 2005 c 333 § 10. Prior: 1993 sp.s. c 2 § 16; 1993 c 472 § 17; 1993 c 280 § 18; 1989 1st ex.s. c 9 § 810; 1987 c 506 § 2; 1985 c 466 § 47; 1984 c 125 § 12; 1981 c 136 § 61; 1979 c 10 § 1; prior: 1977 ex.s. c 334 § 5; 1977 ex.s. c 151 § 20; 1977 c 7 § 1; prior: 1975-'76 2nd ex.s. c 115 § 19; 1975-'76 2nd ex.s. c 105 § 24; 1971 c 11 § 1; prior: 1970 ex.s. c 62 § 28; 1970 ex.s. c 18 § 50; 1969 c 32 § 1; prior: 1967 ex.s. c 26 § 12; 1967 c 242 § 12; 1965 c 156 § 20; 1965 c 8 § 43.17.010; prior: 1957 c 215 § 19; 1955 c 285 § 2; 1953 c 174 § 1; prior: (i) 1937 c 111 § 1, part; RRS § 10760-2, part. (ii) 1935 c 176 § 1; 1933 c 3 § 1; 1929 c 115 § 1; 1921 c 7 § 2; RRS § 10760. (iii) 1945 c 267 § 1, part; Rem. Supp. 1945 § 10459-1, part. (iv) 1947 c 114 § 5; Rem. Supp. 1947 § 10786-10c.]

Severability—Effective date—2007 c 341: See RCW 90.71.906 and 90.71.907.

Part headings not law—Effective date—Severability—2006 c 265: See RCW 43.215.904 through 43.215.906.

Effective date—1993 sp.s. c 2 §§ 1-6, 8-59, and 61-79: See RCW 43.300.900.

Severability—1993 sp.s. c 2: See RCW 43.300.901.

Effective date—Implementation—1993 c 472: See RCW 43.320.900 and 43.320.901.

Effective date—Severability—1993 c 280: See RCW 43.330.902 and 43.330.903.

Effective date—Severability—1989 1st ex.s. c 9: See RCW 43.70.910 and 43.70.920.

Legislative findings and intent—1987 c 506: See note following RCW 77.04.020.

Effective date—Severability—1985 c 466: See notes following RCW 43.31.005.

Severability—Headings—Effective date—1984 c 125: See RCW 43.63A.901 through 43.63A.903.

Effective date—1981 c 136: See RCW 72.09.900.

Effective date—1977 ex.s. c 334: See note following RCW 46.01.011.

Federal requirements—Severability—1977 ex.s. c 151: See RCW 47.98.070 and 47.98.080.

Severability—1975-'76 2nd ex.s. c 105: See note following RCW 41.04.270.

Effective date—Severability—1970 ex.s. c 18: See notes following RCW 43.20A.010.

Department of

agriculture: Chapter 43.23 RCW.

community, trade, and economic development: Chapter 43.330 RCW.

corrections: Chapter 72.09 RCW.

ecology: Chapter 43.21A RCW.

employment security: Chapter 50.08 RCW.

financial institutions: Chapter 43.320 RCW.

fish and wildlife: Chapters 43.300 and 77.04 RCW.

general administration: Chapter 43.19 RCW.

health: Chapter 43.70 RCW.

information services: Chapter 43.105 RCW.

labor and industries: Chapter 43.22 RCW.

licensing: Chapters 43.24, 46.01 RCW.

natural resources: Chapter 43.30 RCW.

personnel: Chapter 41.06 RCW.

retirement systems: Chapter 41.50 RCW.

revenue: Chapter 82.01 RCW.

services for the blind: Chapter 74.18 RCW.

social and health services: Chapter 43.20A RCW.

transportation: Chapter 47.01 RCW.

veterans affairs: Chapter 43.60A RCW.

43.17.020 Chief executive officers—Appointment.

There shall be a chief executive officer of each department to be known as: (1) The secretary of social and health services, (2) the director of ecology, (3) the director of labor and industries, (4) the director of agriculture, (5) the director of fish and wildlife, (6) the secretary of transportation, (7) the director of licensing, (8) the director of general administration, (9) the director of community, trade, and economic development, (10) the director of veterans affairs, (11) the director of revenue, (12) the director of retirement systems, (13) the secretary of corrections, (14) the secretary of health, (15) the director of financial institutions, (16) the director of the department of archaeology and historic preservation, (17) the director of early learning, and (18) the executive director of the Puget Sound partnership.

Such officers, except the director of fish and wildlife, shall be appointed by the governor, with the consent of the senate, and hold office at the pleasure of the governor. The director of fish and wildlife shall be appointed by the fish and wildlife commission as prescribed by RCW 77.04.055. [2007 c 341 § 47; 2006 c 265 § 112. Prior: 2005 c 333 § 11; 2005 c 319 § 2; 1995 1st sp.s. c 2 § 2 (Referendum Bill No. 45, approved November 7, 1995); prior: 1993 sp.s. c 2 § 17; 1993 c 472 § 18; 1993 c 280 § 19; 1989 1st ex.s. c 9 § 811;

1987 c 506 § 3; 1985 c 466 § 48; 1984 c 125 § 13; 1981 c 136 § 62; 1979 c 10 § 2; prior: 1977 ex.s. c 334 § 6; 1977 ex.s. c 151 § 21; 1977 c 7 § 2; prior: 1975-'76 2nd ex.s. c 115 § 20; 1975-'76 2nd ex.s. c 105 § 25; 1971 c 11 § 2; prior: 1970 ex.s. c 62 § 29; 1970 ex.s. c 18 § 51; 1969 c 32 § 2; prior: 1967 ex.s. c 26 § 13; 1967 c 242 § 13; 1965 c 156 § 21; 1965 c 8 § 43.17.020; prior: 1957 c 215 § 20; 1955 c 285 § 3; 1953 c 174 § 2; prior: (i) 1935 c 176 § 2; 1933 c 3 § 2; 1929 c 115 § 2; 1921 c 7 § 3; RRS § 10761. (ii) 1937 c 111 § 1, part; RRS § 10760. (iii) 1945 c 267 § 1, part; Rem. Supp. 1945 § 10459-1, part.]

Severability—Effective date—2007 c 341: See RCW 90.71.906 and 90.71.907.

Part headings not law—Effective date—Severability—2006 c 265: See RCW 43.215.904 through 43.215.906.

Findings—Intent—2005 c 319: "The legislature finds that it is in the interest of the state to restructure the roles and responsibilities of the state's transportation agencies in order to improve efficiency and accountability. The legislature also finds that continued citizen oversight of the state's transportation system remains an important priority. To achieve these purposes, the legislature intends to provide direct accountability of the department of transportation to the governor, in his or her role as chief executive officer of state government, by making the secretary of transportation a cabinet-level official. Additionally, it is essential to clearly delineate between the separate and distinct roles and responsibilities of the executive and legislative branches of government. The role of executive is to oversee the implementation of transportation programs, while the legislature reserves to itself the role of policymaking. Finally, consolidating public outreach and auditing of the state's transportation agencies under a single citizen-governed entity, the transportation commission, will provide the public with information about the performance of the transportation system and an avenue for direct participation in its oversight." [2005 c 319 § 1.]

Part headings—2005 c 319: "Part headings used in this act are no part of the law." [2005 c 319 § 142.]

Effective dates—2005 c 319: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect July 1, 2005, except for section 103 of this act which takes effect July 1, 2006." [2005 c 319 § 145.]

Effective date—1995 1st sp.s. c 2: "Sections 2 through 43 of this act shall take effect July 1, 1996." [1995 1st sp.s. c 2 § 45.]

Referral to electorate—1995 1st sp.s. c 2: See note following RCW 77.04.013.

Effective date—1993 sp.s. c 2 §§ 1-6, 8-59, and 61-79: See RCW 43.300.900.

Severability—1993 sp.s. c 2: See RCW 43.300.901.

Effective date—Implementation—1993 c 472: See RCW 43.320.900 and 43.320.901.

Effective date—Severability—1993 c 280: See RCW 43.330.902 and 43.330.903.

Effective date—Severability—1989 1st ex.s. c 9: See RCW 43.70.910 and 43.70.920.

Legislative findings and intent—1987 c 506: See note following RCW 77.04.020.

Effective date—Severability—1985 c 466: See notes following RCW 43.31.125.

Severability—Headings—Effective date—1984 c 125: See RCW 43.63A.901 through 43.63A.903.

Effective date—1981 c 136: See RCW 72.09.900.

Effective date—1977 ex.s. c 334: See note following RCW 46.01.011.

Federal requirements—Severability—1977 ex.s. c 151: See RCW 47.98.070 and 47.98.080.

Severability—1975-'76 2nd ex.s. c 105: See note following RCW 41.04.270.

Effective date—Severability—1970 ex.s. c 18: See notes following RCW 43.20A.010.

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43.17.400 Disposition of state-owned land—Definitions—Notice. (1) The definitions in this subsection apply throughout this section unless the context clearly requires otherwise.

(a) "Disposition" means sales, exchanges, or other actions resulting in a transfer of land ownership.

(b) "State agencies" includes:

(i) The department of natural resources established in chapter 43.30 RCW;

(ii) The department of fish and wildlife established in chapter 43.300 RCW;

(iii) The department of transportation established in chapter 47.01 RCW;

(iv) The parks and recreation commission established in chapter 79A.05 RCW; and

(v) The department of general administration established in this chapter.

(2) State agencies proposing disposition of state-owned land must provide written notice of the proposed disposition to the legislative authorities of the counties, cities, and towns in which the land is located at least sixty days before entering into the disposition agreement.

(3) The requirements of this section are in addition and supplemental to other requirements of the laws of this state. [2007 c 62 § 2.]

Finding—Intent—2007 c 62: "The legislature recognizes that state agencies dispose of state-owned lands when these lands cannot be advantageously used by the agency or when dispositions are beneficial to the public's interest. The legislature also recognizes that dispositions of state-owned land can create opportunities for counties, cities, and towns wishing to purchase or otherwise acquire the lands, and citizens wishing to enjoy the lands for recreational or other purposes. However, the legislature finds that absent a specific requirement obligating state agencies to notify affected local governments of proposed land dispositions, occasions for governmental acquisition and public enjoyment of certain lands can be permanently lost.

Therefore, the legislature intends to enact an express and supplemental requirement obligating state agencies to notify local governments of proposed land dispositions." [2007 c 62 § 1.]

Severability—2007 c 62: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [2007 c 62 § 13.]

Chapter 43.19 RCW

DEPARTMENT OF GENERAL ADMINISTRATION

Sections

43.19.014	Notification requirements.
43.19.125	Powers and duties—Division of capitol buildings.
43.19.642	Biodiesel fuel blends—Use by agencies—Biannual report.
43.19.647	Purchase of biofuels and biofuel blends—Contracting authority.
43.19.648	Publicly owned vehicles, vessels, and construction equipment—Fuel usage—Tires.

43.19.014 Notification requirements. Actions under this chapter are subject to the notification requirements of RCW 43.17.400. [2007 c 62 § 12.]

Finding—Intent—Severability—2007 c 62: See notes following RCW 43.17.400.

43.19.125 Powers and duties—Division of capitol buildings. (1) The director of general administration, through the division of capitol buildings, shall have custody

and control of the capitol buildings and grounds, supervise and direct proper care, heating, lighting and repairing thereof, and designate rooms in the capitol buildings to be occupied by various state officials.

(2) During the 2007-2009 biennium, responsibility for development of the "Wheeler block" on the capitol campus as authorized in section 6013, chapter 520, Laws of 2007 shall be transferred from the department of general administration to the department of information services. The department of general administration and the department of information services shall develop a joint operating agreement for the new facilities on the "Wheeler block" and provide copies of that agreement to the appropriate committees of the legislature by December 30, 2008.

(3) During the 2007-2009 biennium, responsibility for development of the Pritchard building rehabilitation on the capitol campus as authorized in section 1090, chapter 520, Laws of 2007 shall be transferred from the department of general administration to the statute law committee. [2007 c 520 § 6014; 1965 c 8 § 43.19.125. Prior: 1959 c 301 § 2; 1955 c 285 § 9.]

Part headings not law—2007 c 520: "Part headings in this act are not any part of the law." [2007 c 520 § 6055.]

Severability—2007 c 520: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [2007 c 520 § 6056.]

Effective dates—2007 c 520: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately [May 15, 2007], except for section 6035 of this act which takes effect July 1, 2007, and section 6037 of this act which takes effect June 30, 2011." [2007 c 520 § 6057.]

Capitol campus design advisory committee: RCW 43.34.080.

East capitol site, acquisition and development: RCW 79.24.500 through 79.24.600.

Housing for state offices: Chapter 43.82 RCW.

Parking facilities and traffic on capitol grounds: RCW 79.24.300 through 79.24.320, 46.08.150.

Public buildings, earthquake standards for construction: Chapter 70.86 RCW.

43.19.642 Biodiesel fuel blends—Use by agencies—Biannual report. (1) Effective June 1, 2006, for agencies complying with the ultra-low sulfur diesel mandate of the United States environmental protection agency for on-highway diesel fuel, agencies shall use biodiesel as an additive to ultra-low sulfur diesel for lubricity, provided that the use of a lubricity additive is warranted and that the use of biodiesel is comparable in performance and cost with other available lubricity additives. The amount of biodiesel added to the ultra-low sulfur diesel fuel shall be not less than two percent.

(2) Effective June 1, 2009, state agencies are required to use a minimum of twenty percent biodiesel as compared to total volume of all diesel purchases made by the agencies for the operation of the agencies' diesel-powered vessels, vehicles, and construction equipment.

(3) All state agencies using biodiesel fuel shall, beginning on July 1, 2006, file biannual reports with the department of general administration documenting the use of the fuel and a description of how any problems encountered were resolved. [2007 c 348 § 201; 2006 c 338 § 10; 2003 c 17 § 2.]

Findings—Part headings not law—2007 c 348: See RCW 43.325.005 and 43.325.903.

Findings—Intent—2006 c 338: See note following RCW 19.112.110.

Effective date—Severability—2006 c 338: See RCW 19.112.903 and 19.112.904.

Findings—2003 c 17: "The legislature recognizes that:

- (1) Biodiesel is less polluting than petroleum diesel;
- (2) Using biodiesel in neat form or blended with petroleum diesel significantly reduces air toxics and cancer-causing compounds as well as the soot associated with petroleum diesel exhaust;
- (3) Biodiesel degrades much faster than petroleum diesel;
- (4) Biodiesel is less toxic than petroleum fuels;
- (5) The United States environmental protection agency's new emission standards for petroleum diesel that take effect June 1, 2006, will require the addition of a lubricant to ultra-low sulfur diesel to counteract premature wear of injection pumps;
- (6) Biodiesel provides the needed lubricity to ultra-low sulfur diesel;
- (7) Biodiesel use in state-owned diesel-powered vehicles provides a means for the state to comply with the alternative fuel vehicle purchase requirements of the energy policy act of 1992, P.L. 102-486; and
- (8) The state is in a position to set an example of large scale use of biodiesel in diesel-powered vehicles and equipment." [2003 c 17 § 1.]

43.19.647 Purchase of biofuels and biofuel blends—Contracting authority. (1) In order to allow the motor vehicle fuel needs of state and local government to be satisfied by Washington-produced biofuels as provided in this chapter, the department of general administration as well as local governments may contract in advance and execute contracts with public or private producers, suppliers, or other parties, for the purchase of appropriate biofuels, as that term is defined in RCW 43.325.010, and biofuel blends. Contract provisions may address items including, but not limited to, fuel standards, price, and delivery date.

(2) The department of general administration may combine the needs of local government agencies, including ports, special districts, school districts, and municipal corporations, for the purposes of executing contracts for biofuels and to secure a sufficient and stable supply of alternative fuels. [2007 c 348 § 203.]

Findings—Part headings not law—2007 c 348: See RCW 43.325.005 and 43.325.903.

43.19.648 Publicly owned vehicles, vessels, and construction equipment—Fuel usage—Tires. (1) Effective June 1, 2015, all state agencies and local government subdivisions of the state, to the extent determined practicable by the rules adopted by the department of community, trade, and economic development pursuant to RCW 43.325.080, are required to satisfy one hundred percent of their fuel usage for operating publicly owned vessels, vehicles, and construction equipment from electricity or biofuel.

(2) Except for cars owned or operated by the Washington state patrol, when tires on vehicles in the state's motor vehicle fleet are replaced, they must be replaced with tires that have the same or better rolling resistance as the original tires. [2007 c 348 § 202.]

Findings—Part headings not law—2007 c 348: See RCW 43.325.005 and 43.325.903.

Chapter 43.20 RCW
STATE BOARD OF HEALTH

Sections

43.20.050 Powers and duties of state board of health—State public health report—Delegation of authority—Enforcement of rules.

43.20.050 Powers and duties of state board of health—State public health report—Delegation of authority—Enforcement of rules. (1) The state board of health shall provide a forum for the development of public health policy in Washington state. It is authorized to recommend to the secretary means for obtaining appropriate citizen and professional involvement in all public health policy formulation and other matters related to the powers and duties of the department. It is further empowered to hold hearings and explore ways to improve the health status of the citizenry.

(a) At least every five years, the state board shall convene regional forums to gather citizen input on public health issues.

(b) Every two years, in coordination with the development of the state biennial budget, the state board shall prepare the state public health report that outlines the health priorities of the ensuing biennium. The report shall:

- (i) Consider the citizen input gathered at the forums;
- (ii) Be developed with the assistance of local health departments;
- (iii) Be based on the best available information collected and reviewed according to RCW 43.70.050 and recommendations from the *council;
- (iv) Be developed with the input of state health care agencies. At least the following directors of state agencies shall provide timely recommendations to the state board on suggested health priorities for the ensuing biennium: The secretary of social and health services, the health care authority administrator, the insurance commissioner, the superintendent of public instruction, the director of labor and industries, the director of ecology, and the director of agriculture;
- (v) Be used by state health care agency administrators in preparing proposed agency budgets and executive request legislation;

(vi) Be submitted by the state board to the governor by January 1st of each even-numbered year for adoption by the governor. The governor, no later than March 1st of that year, shall approve, modify, or disapprove the state public health report.

(c) In fulfilling its responsibilities under this subsection, the state board may create ad hoc committees or other such committees of limited duration as necessary.

(2) In order to protect public health, the state board of health shall:

(a) Adopt rules necessary to assure safe and reliable public drinking water and to protect the public health. Such rules shall establish requirements regarding:

- (i) The design and construction of public water system facilities, including proper sizing of pipes and storage for the number and type of customers;
- (ii) Drinking water quality standards, monitoring requirements, and laboratory certification requirements;
- (iii) Public water system management and reporting requirements;

(iv) Public water system planning and emergency response requirements;

(v) Public water system operation and maintenance requirements;

(vi) Water quality, reliability, and management of existing but inadequate public water systems; and

(vii) Quality standards for the source or supply, or both source and supply, of water for bottled water plants.

(b) Adopt rules and standards for prevention, control, and abatement of health hazards and nuisances related to the disposal of wastes, solid and liquid, including but not limited to sewage, garbage, refuse, and other environmental contaminants; adopt standards and procedures governing the design, construction, and operation of sewage, garbage, refuse and other solid waste collection, treatment, and disposal facilities;

(c) Adopt rules controlling public health related to environmental conditions including but not limited to heating, lighting, ventilation, sanitary facilities, cleanliness and space in all types of public facilities including but not limited to food service establishments, schools, institutions, recreational facilities and transient accommodations and in places of work;

(d) Adopt rules for the imposition and use of isolation and quarantine;

(e) Adopt rules for the prevention and control of infectious and noninfectious diseases, including food and vector borne illness, and rules governing the receipt and conveyance of remains of deceased persons, and such other sanitary matters as admit of and may best be controlled by universal rule; and

(f) Adopt rules for accessing existing databases for the purposes of performing health related research.

(3) The state board shall adopt rules for the design, construction, installation, operation, and maintenance of those on-site sewage systems with design flows of less than three thousand five hundred gallons per day.

(4) The state board may delegate any of its rule-adopting authority to the secretary and rescind such delegated authority.

(5) All local boards of health, health authorities and officials, officers of state institutions, police officers, sheriffs, constables, and all other officers and employees of the state, or any county, city, or township thereof, shall enforce all rules adopted by the state board of health. In the event of failure or refusal on the part of any member of such boards or any other official or person mentioned in this section to so act, he or she shall be subject to a fine of not less than fifty dollars, upon first conviction, and not less than one hundred dollars upon second conviction.

(6) The state board may advise the secretary on health policy issues pertaining to the department of health and the state. [2007 c 343 § 11; 1993 c 492 § 489; 1992 c 34 § 4. Prior: 1989 1st ex.s. c 9 § 210; 1989 c 207 § 1; 1985 c 213 § 1; 1979 c 141 § 49; 1967 ex.s. c 102 § 9; 1965 c 8 § 43.20.050; prior: (i) 1901 c 116 § 1; 1891 c 98 § 2; RRS § 6001. (ii) 1921 c 7 § 58; RRS § 10816.]

***Reviser's note:** RCW 70.170.030, which created the health care access and cost control council, was repealed by 1995 c 269 § 2204, effective July 1, 1995.

Captions and part headings not law—2007 c 343: See RCW 70.118B.900.

Findings—1993 c 492: "The legislature finds that our health and financial security are jeopardized by our ever increasing demand for health care and by current health insurance and health system practices. Current health system practices encourage public demand for unneeded, ineffective, and sometimes dangerous health treatments. These practices often result in unaffordable cost increases that far exceed ordinary inflation for essential care. Current total health care expenditure rates should be sufficient to provide access to essential health care interventions to all within a reformed, efficient system.

The legislature finds that too many of our state's residents are without health insurance, that each year many individuals and families are forced into poverty because of serious illness, and that many must leave gainful employment to be eligible for publicly funded medical services. Additionally, thousands of citizens are at risk of losing adequate health insurance, have had insurance canceled recently, or cannot afford to renew existing coverage.

The legislature finds that businesses find it difficult to pay for health insurance and remain competitive in a global economy, and that individuals, the poor, and small businesses bear an inequitable health insurance burden.

The legislature finds that persons of color have significantly higher rates of mortality and poor health outcomes, and substantially lower numbers and percentages of persons covered by health insurance than the general population. It is intended that chapter 492, Laws of 1993 make provisions to address the special health care needs of these racial and ethnic populations in order to improve their health status.

The legislature finds that uncontrolled demand and expenditures for health care are eroding the ability of families, businesses, communities, and governments to invest in other enterprises that promote health, maintain independence, and ensure continued economic welfare. Housing, nutrition, education, and the environment are all diminished as we invest ever increasing shares of wealth in health care treatments.

The legislature finds that while immediate steps must be taken, a long-term plan of reform is also needed." [1993 c 492 § 101.]

Intent—1993 c 492: "(1) The legislature intends that state government policy stabilize health services costs, assure access to essential services for all residents, actively address the health care needs of persons of color, improve the public's health, and reduce unwarranted health services costs to preserve the viability of nonhealth care businesses.

(2) The legislature intends that:

(a) Total health services costs be stabilized and kept within rates of increase similar to the rates of personal income growth within a publicly regulated, private marketplace that preserves personal choice;

(b) State residents be enrolled in the certified health plan of their choice that meets state standards regarding affordability, accessibility, cost-effectiveness, and clinical efficaciousness;

(c) State residents be able to choose health services from the full range of health care providers, as defined in RCW 43.72.010(12), in a manner consistent with good health services management, quality assurance, and cost effectiveness;

(d) Individuals and businesses have the option to purchase any health services they may choose in addition to those included in the uniform benefits package or supplemental benefits;

(e) All state residents, businesses, employees, and government participate in payment for health services, with total costs to individuals on a sliding scale based on income to encourage efficient and appropriate utilization of services;

(f) These goals be accomplished within a reformed system using private service providers and facilities in a way that allows consumers to choose among competing plans operating within budget limits and other regulations that promote the public good; and

(g) A policy of coordinating the delivery, purchase, and provision of health services among the federal, state, local, and tribal governments be encouraged and accomplished by chapter 492, Laws of 1993.

(3) Accordingly, the legislature intends that chapter 492, Laws of 1993 provide both early implementation measures and a process for overall reform of the health services system." [1993 c 492 § 102.]

Short title—Severability—Savings—Captions not law—Reservation of legislative power—Effective dates—1993 c 492: See RCW 43.72.910 through 43.72.915.

Severability—1992 c 34: See note following RCW 69.07.170.

Effective date—Severability—1989 1st ex.s. c 9: See RCW 43.70.910 and 43.70.920.

Savings—1985 c 213: "This act shall not be construed as affecting any existing right acquired or liability or obligation incurred under the sections

amended or repealed in this act or under any rule, regulation, or order adopted under those sections, nor as affecting any proceeding instituted under those sections." [1985 c 213 § 31.]

Effective date—1985 c 213: "This act is necessary for the immediate preservation of the public peace, health, and safety, the support of the state government and its existing public institutions, and shall take effect June 30, 1985." [1985 c 213 § 33.]

Severability—1967 ex.s. c 102: See note following RCW 43.70.130.

Rules and regulations—Visual and auditory screening of pupils: RCW 28A.210.020.

Chapter 43.20A RCW

DEPARTMENT OF SOCIAL AND HEALTH SERVICES

Sections

43.20A.560 Development of options to expand health care options—Consideration of federal waivers and state plan amendments required.

43.20A.560 Development of options to expand health care options—Consideration of federal waivers and state plan amendments required. (1) The department of social and health services shall develop a series of options that require federal waivers and state plan amendments to expand coverage and leverage federal and state resources for the state's basic health program, for the medical assistance program, as codified at Title XIX of the federal social security act, and the state's children's health insurance program, as codified at Title XXI of the federal social security act. The department shall propose options including but not limited to:

(a) Offering alternative benefit designs to promote high quality care, improve health outcomes, and encourage cost-effective treatment options and redirect savings to finance additional coverage;

(b) Creation of a health opportunity account demonstration program for individuals eligible for transitional medical benefits. When a participant in the health opportunity account demonstration program satisfies his or her deductible, the benefits provided shall be those included in the Medicaid benefit package in effect during the period of the demonstration program; and

(c) Promoting private health insurance plans and premium subsidies to purchase employer-sponsored insurance wherever possible, including federal approval to expand the department's employer-sponsored insurance premium assistance program to enrollees covered through the state's children's health insurance program.

(2) Prior to submitting requests for federal waivers or state plan amendments, the department shall consult with and seek input from stakeholders and other interested parties.

(3) The department of social and health services, in collaboration with the Washington state health care authority, shall ensure that enrollees are not simultaneously enrolled in the state's basic health program and the medical assistance program or the state's children's health insurance program to ensure coverage for the maximum number of people within available funds. [2007 c 259 § 23.]

Severability—Subheadings not law—2007 c 259: See notes following RCW 41.05.033.

Chapter 43.21A RCW

DEPARTMENT OF ECOLOGY

Sections

- 43.21A.681 Geoduck aquaculture operations—Guidelines—Rules.
 43.21A.690 Cost-reimbursement agreements.

43.21A.681 Geoduck aquaculture operations—Guidelines—Rules. (1) The department of ecology shall develop, by rule, guidelines for the appropriate siting and operation of geoduck aquaculture operations to be included in any master program under this section. The guidelines adopted under this section must be prepared with the advice of the shellfish aquaculture regulatory committee created in section 4, chapter 216, Laws of 2007, which shall serve as the advisory committee for the development of the guidelines.

(2) The guidelines required under this section must be filed for public review and comment no later than six months after the delivery of the final report by the shellfish aquaculture regulatory committee created in section 4, chapter 216, Laws of 2007.

(3) The department of ecology shall update the guidelines required under this section, as necessary, after the completion of the geoduck research by the sea grant program at the University of Washington required under RCW 28B.20.475. [2007 c 216 § 5.]

Shellfish aquaculture regulatory committee—2007 c 216: "(1) The shellfish aquaculture regulatory committee is established to, consistent with this section, serve as an advisory body to the department of ecology on regulatory processes and approvals for all current and new shellfish aquaculture activities, and the activities conducted pursuant to RCW 90.58.060, as the activities relate to shellfish. The shellfish aquaculture regulatory committee is advisory in nature, and no vote or action of the committee may overrule existing statutes, regulations, or local ordinances.

(2) The shellfish aquaculture regulatory committee shall develop recommendations as to:

(a) A regulatory system or permit process for all current and new shellfish aquaculture projects and activities that integrates all applicable existing local, state, and federal regulations and is efficient both for the regulators and the regulated; and

(b) Appropriate guidelines for geoduck aquaculture operations to be included in shoreline master programs under RCW 43.21A.681. When developing the recommendations for guidelines under this subsection, the committee must examine the following:

(i) Methods for quantifying and reducing marine litter; and

(ii) Possible landowner notification policies and requirements for establishing new geoduck aquaculture farms.

(3)(a) The members of the shellfish aquaculture regulatory committee shall be appointed by the director of the department of ecology as follows:

(i) Two representatives of county government, one from a county located on the Puget Sound, and one from a county located on the Pacific Ocean;

(ii) Two individuals who are professionally engaged in the commercial aquaculture of shellfish, one who owns or operates an aquatic farm in Puget Sound, and one who owns or operates an aquatic farm in state waters other than the Puget Sound;

(iii) Two representatives of organizations representing the environmental community;

(iv) Two individuals who own shoreline property, one of which [whom] does not have a commercial geoduck operation on his or her property and one of which who [whom] does have a commercial geoduck operation on his or her property; and

(v) One representative each from the following state agencies: The department of ecology, the department of fish and wildlife, the department of agriculture, and the department of natural resources.

(b) In addition to the other participants listed in this subsection, the governor shall invite the full participation of two tribal governments, at least one of which is located within the drainage of the Puget Sound.

(4) The department of ecology shall provide administrative and clerical assistance to the shellfish aquaculture regulatory committee and all agencies

listed in subsection (3) of this section shall provide technical assistance.

(5) Nonagency members of the shellfish aquaculture regulatory committee will not be compensated, but are entitled to be reimbursed for travel expenses in accordance with RCW 43.03.050 and 43.03.060.

(6) Any participation by a Native American tribe on the shellfish aquaculture regulatory committee shall not, under any circumstances, be viewed as an admission by the tribe that any of its activities, or those of its members, are subject to any of the statutes, regulations, ordinances, standards, or permit systems reviewed, considered, or proposed by the committee.

(7) The shellfish aquaculture regulatory committee is authorized to form technical advisory panels as needed and appoint to them members not on the shellfish aquaculture regulatory committee.

(8) The department of ecology shall report the recommendations and findings of the shellfish aquaculture regulatory committee to the appropriate committees of the legislature by December 1, 2007, with a further report, if necessary, by December 1, 2008." [2007 c 216 § 4.]

43.21A.690 Cost-reimbursement agreements. (1) The department may enter into a written cost-reimbursement agreement with a permit applicant or project proponent to recover from the applicant or proponent the reasonable costs incurred by the department in carrying out the requirements of this chapter, as well as the requirements of other relevant laws, as they relate to permit coordination, environmental review, application review, technical studies, and permit processing. The cost-reimbursement agreement shall identify the specific tasks, costs, and schedule for work to be conducted under the agreement.

(2) The written cost-reimbursement agreement shall be negotiated with the permit applicant or project proponent. Under the provisions of a cost-reimbursement agreement, funds from the applicant shall be used by the department to contract with an independent consultant to carry out the work covered by the cost-reimbursement agreement. The department may also use funds provided under a cost-reimbursement agreement to assign current staff to review the work of the consultant, to provide necessary technical assistance when an independent consultant with comparable technical skills is unavailable, and to recover reasonable and necessary direct and indirect costs that arise from processing the permit. The department shall, in developing the agreement, ensure that final decisions that involve policy matters are made by the agency and not by the consultant. The department shall make an estimate of the number of permanent staff hours to process the permits, and shall contract with consultants to replace the time and functions committed by these permanent staff to the project. The billing process shall provide for accurate time and cost accounting and may include a billing cycle that provides for progress payments. Use of cost-reimbursement agreements shall not reduce the current level of staff available to work on permits not covered by cost-reimbursement agreements. The department may not use any funds under a cost-reimbursement agreement to replace or supplant existing funding. The restrictions of chapter 42.52 RCW apply to any cost-reimbursement agreement, and to any person hired as a result of a cost-reimbursement agreement. [2007 c 94 § 10; 2003 c 70 § 1; 2000 c 251 § 2.]

Intent—2000 c 251: "It is the intent of the legislature to allow applicants for environmental permits for complex projects to compensate permitting agencies for providing environmental review through the voluntary negotiation of cost-reimbursement agreements with the permitting agency. It is the further intent of the legislature that cost-reimbursement agreements for complex projects free permitting agency resources to focus on the review of small projects permits." [2000 c 251 § 1.]

Captions not law—2000 c 251: "Captions used in this act are not any part of the law." [2000 c 251 § 8.]

Effective date—2000 c 251: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately [March 31, 2000]." [2000 c 251 § 9.]

Chapter 43.21B RCW

ENVIRONMENTAL HEARINGS OFFICE— POLLUTION CONTROL HEARINGS BOARD

Sections

43.21B.300 Penalty procedures.

43.21B.300 Penalty procedures. (1) Any civil penalty provided in RCW 18.104.155, 70.94.431, 70.105.080, 70.107.050, 88.46.090, 90.03.600, 90.48.144, 90.56.310, and 90.56.330 and chapter 90.76 RCW shall be imposed by a notice in writing, either by certified mail with return receipt requested or by personal service, to the person incurring the penalty from the department or the local air authority, describing the violation with reasonable particularity. Within thirty days after the notice is received, the person incurring the penalty may apply in writing to the department or the authority for the remission or mitigation of the penalty. Upon receipt of the application, the department or authority may remit or mitigate the penalty upon whatever terms the department or the authority in its discretion deems proper. The department or the authority may ascertain the facts regarding all such applications in such reasonable manner and under such rules as it may deem proper and shall remit or mitigate the penalty only upon a demonstration of extraordinary circumstances such as the presence of information or factors not considered in setting the original penalty.

(2) Any penalty imposed under this section may be appealed to the pollution control hearings board in accordance with this chapter if the appeal is filed with the hearings board and served on the department or authority thirty days after the date of receipt by the person penalized of the notice imposing the penalty or thirty days after the date of receipt of the notice of disposition of the application for relief from penalty.

(3) A penalty shall become due and payable on the later of:

(a) Thirty days after receipt of the notice imposing the penalty;

(b) Thirty days after receipt of the notice of disposition on application for relief from penalty, if such an application is made; or

(c) Thirty days after receipt of the notice of decision of the hearings board if the penalty is appealed.

(4) If the amount of any penalty is not paid to the department within thirty days after it becomes due and payable, the attorney general, upon request of the department, shall bring an action in the name of the state of Washington in the superior court of Thurston county, or of any county in which the violator does business, to recover the penalty. If the amount of the penalty is not paid to the authority within thirty days after it becomes due and payable, the authority may bring an action to recover the penalty in the superior court of the county of the authority's main office or of any county in

which the violator does business. In these actions, the procedures and rules of evidence shall be the same as in an ordinary civil action.

(5) All penalties recovered shall be paid into the state treasury and credited to the general fund except those penalties imposed pursuant to RCW 18.104.155, which shall be credited to the reclamation account as provided in RCW 18.104.155(7), RCW 70.94.431, the disposition of which shall be governed by that provision, RCW 70.105.080, which shall be credited to the hazardous waste control and elimination account created by RCW 70.105.180, RCW 90.56.330, which shall be credited to the coastal protection fund created by RCW 90.48.390, and RCW 90.76.080, which shall be credited to the underground storage tank account created by RCW 90.76.100. [2007 c 147 § 9; 2004 c 204 § 4; 2001 c 36 § 2; 1993 c 387 § 23; 1992 c 73 § 2; 1987 c 109 § 5.]

Effective date—1993 c 387: See RCW 18.104.930.

Effective dates—Severability—1992 c 73: See RCW 82.23B.902 and 90.56.905.

Purpose—Short title—Construction—Rules—Severability—Captions—1987 c 109: See notes following RCW 43.21B.001.

Chapter 43.21C RCW

STATE ENVIRONMENTAL POLICY

Sections

43.21C.232 Infrastructure improvements necessary to implement renewable fuel standards—Application and decision processing. (*Expires January 1, 2009.*)

43.21C.232 Infrastructure improvements necessary to implement renewable fuel standards—Application and decision processing. (*Expires January 1, 2009.*) (1) Lead agencies, and other agencies with jurisdiction, shall process all applications and decisions relating to infrastructure improvements or activities necessary to implement renewable fuel standards under chapter 19.112 RCW and RCW 43.19.642 in a defined and efficient manner according to specific timelines and practices designed to minimize processing and review times. Such applications and decisions may be processed prior to competing applications and decisions, to the extent appropriate under current law. Application and permit review requirements, turnaround times, and agency and applicant performance according to these standards shall be posted and made easily accessible to the public.

(2) Applications and decisions subject to the provisions of this section include, but are not limited to, any attendant and nonexempt state environmental policy act requirements under RCW 43.21C.030 and chapter 197-11 WAC, or other license, permit, or approval requirements relating to the:

(a) Installation of new storage tanks; pumps; any project to allow for increasing refining and blending capacity; any project to allow for efficiency improvements for refiners, blenders, or bulk plant operators; and any modification to off-loading or on-loading racks;

(b) Addition of heating or other equipment to biodiesel storage tanks or tanks that hold a blended product; and

(c) Replacement of underground fuel storage tanks, aboveground fuel storage tanks, pumps, and large bulk tanks.

(3) This section does not apply to biodiesel or ethanol production facilities.

(4) This section expires January 1, 2009. [2007 c 308 § 1.]

Chapter 43.21J RCW
ENVIRONMENTAL AND FOREST
RESTORATION PROJECTS

Sections

43.21J.030 Environmental enhancement and job creation task force.
43.21J.040 Environmental enhancement and restoration project proposals—Evaluation—Award of funds.

43.21J.030 Environmental enhancement and job creation task force. (1) There is created the environmental enhancement and job creation task force within the office of the governor. The purpose of the task force is to provide a coordinated and comprehensive approach to implementation of chapter 516, Laws of 1993. The task force shall consist of the commissioner of public lands, the director of the department of fish and wildlife, the director of the department of ecology, the director of the parks and recreation commission, the timber team coordinator, the executive director of the workforce training and education coordinating board, and the executive director of the Puget Sound partnership, or their designees. The task force may seek the advice of the following agencies and organizations: The department of community, trade, and economic development, the conservation commission, the employment security department, the recreation and conservation office, appropriate federal agencies, appropriate special districts, the Washington state association of counties, the association of Washington cities, labor organizations, business organizations, timber-dependent communities, environmental organizations, and Indian tribes. The governor shall appoint the task force chair. Members of the task force shall serve without additional pay. Participation in the work of the committee by agency members shall be considered in performance of their employment. The governor shall designate staff and administrative support to the task force and shall solicit the participation of agency personnel to assist the task force.

(2) The task force shall have the following responsibilities:

(a) Soliciting and evaluating, in accordance with the criteria set forth in RCW 43.21J.040, requests for funds from the *environmental and forest restoration account and making distributions from the account. The task force shall award funds for projects and training programs it approves and may allocate the funds to state agencies for disbursement and contract administration;

(b) Coordinating a process to assist state agencies and local governments to implement effective environmental and forest restoration projects funded under this chapter;

(c) Considering unemployment profile data provided by the employment security department.

(3) Beginning July 1, 1994, the task force shall have the following responsibilities:

(a) To solicit and evaluate proposals from state and local agencies, private nonprofit organizations, and tribes for environmental and forest restoration projects;

(b) To rank the proposals based on criteria developed by the task force in accordance with RCW 43.21J.040; and

(c) To determine funding allocations for projects to be funded from the account created in *RCW 43.21J.020 and for projects or programs as designated in the omnibus operating and capital appropriations acts. [2007 c 341 § 62; 2007 c 241 § 4; 1998 c 245 § 60; 1994 c 264 § 17; 1993 c 516 § 5.]

Reviser's note: *(1) The "environmental and forest restoration account" was created in RCW 43.21J.020 which was repealed by 2000 c 150 § 2, effective July 1, 2001.

(2) This section was amended by 2007 c 241 § 4 and by 2007 c 341 § 62, each without reference to the other. Both amendments are incorporated in the publication of this section under RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

Intent—Effective date—2007 c 241: See notes following RCW 79A.25.005.

43.21J.040 Environmental enhancement and restoration project proposals—Evaluation—Award of funds.

(1) Subject to the limitations of *RCW 43.21J.020, the task force shall award funds from the *environmental and forest restoration account on a competitive basis. The task force shall evaluate and rate environmental enhancement and restoration project proposals using the following criteria:

(a) The ability of the project to produce measurable improvements in water and habitat quality;

(b) The cost-effectiveness of the project based on: (i) Projected costs and benefits of the project; (ii) past costs and environmental benefits of similar projects; and (iii) the ability of the project to achieve cost efficiencies through its design to meet multiple policy objectives;

(c) The inclusion of the project as a high priority in a federal, state, tribal, or local government plan relating to environmental or forest restoration, including but not limited to a local watershed action plan, storm water management plan, capital facility plan, growth management plan, or a flood control plan; or the ranking of the project by conservation districts as a high priority for water quality and habitat improvements;

(d) The number of jobs to be created by the project for dislocated forest products workers, high-risk youth, and residents of impact areas;

(e) Participation in the project by environmental businesses to provide training, cosponsor projects, and employ or jointly employ project participants;

(f) The ease with which the project can be administered for the community the project serves;

(g) The extent to which the project will either augment existing efforts by organizations and governmental entities involved in environmental and forest restoration in the community or receive matching funds, resources, or in-kind contributions; and

(h) The capacity of the project to produce jobs and job-related training that will pay market rate wages and impart marketable skills to workers hired under this chapter.

(2) The following types of projects and programs shall be given top priority in the first fiscal year after July 1, 1993:

(a) Projects that are highly ranked in and implement adopted or approved watershed action plans, such as those developed pursuant to rules adopted by the agency then known as the **Puget Sound water quality authority for local planning and management of nonpoint source pollution;

(b) Conservation district projects that provide water quality and habitat improvements;

(c) Indian tribe projects that provide water quality and habitat improvements; or

(d) Projects that implement actions approved by a shellfish protection district under chapter 100, Laws of 1992.

(3) Funds shall not be awarded for the following activities:

(a) Administrative rule making;

(b) Planning; or

(c) Public education. [2007 c 341 § 63; 1993 c 516 § 4.]

Reviser's note: *(1) The "environmental and forest restoration account" was created in RCW 43.21J.020 which was repealed by 2000 c 150 § 2, effective July 1, 2001.

***(2) The Puget Sound water quality authority and its powers and duties, pursuant to the Sunset Act, chapter 43.131 RCW, were terminated June 30, 1995, and repealed June 30, 1996. See 1990 c 115 §§ 11 and 12. Powers, duties, and functions of the Puget Sound water quality authority pertaining to cleanup and protection of Puget Sound transferred to the Puget Sound action team by 1996 c 138 § 11. See RCW 90.71.903. For later enactment regarding the Puget Sound partnership, see chapter 90.71 RCW.

Severability—Effective date—2007 c 341: See RCW 90.71.906 and 90.71.907.

Chapter 43.22 RCW

DEPARTMENT OF LABOR AND INDUSTRIES

Sections

- 43.22.035 Printed materials—Department's duties.
- 43.22.431 Manufactured home safety and construction standards—Enforcement by director of labor and industries.
- 43.22.495 Manufactured housing—Duties.

43.22.035 Printed materials—Department's duties.

When an employer initially files a master application under chapter 19.02 RCW for the purpose, in whole or in part, of registering to pay industrial insurance taxes, the department shall send to the employer any printed material the department recommends or requires the employer to post. Any time the printed material has substantive changes in the information, the department shall send a copy to each employer. [2007 c 287 § 2.]

43.22.431 Manufactured home safety and construction standards—Enforcement by director of labor and industries. The director of the department of labor and industries may enforce manufactured home safety and construction standards adopted by the secretary of housing and urban development under the national manufactured home construction and safety standards act of 1974 (800 Stat. 700; 42 U.S.C. Secs. 5401-5426). Furthermore, the director may make agreements with the United States government and private inspection organizations to implement the development and enforcement of applicable provisions of this chapter and the national manufactured home construction and safety standards act of 1974 (800 Stat. 700; 42 U.S.C. Secs. 5401-5426). Any fees or contract moneys collected under these agreements shall be deposited into the manufactured home installation training account created in RCW 43.22A.100. [2007 c 432 § 6; 2001 c 335 § 3; 1977 ex.s. c 21 § 1.]

Application—2001 c 335: See note following RCW 43.22.335.

Construction—1977 ex.s. c 21: "This 1977 amendatory act is not intended to repeal, alter, or diminish existing state law respecting mobile

homes, commercial coaches, and recreational vehicles in those areas unregulated under federal law." [1977 ex.s. c 21 § 4.]

43.22.495 Manufactured housing—Duties. Beginning on July 1, 2007, the department of labor and industries shall perform all the consumer complaint and related functions of the state administrative agency that are required for purposes of complying with the regulations established by the federal department of housing and urban development for manufactured housing, including the preparation and submission of the state administrative plan.

The department of labor and industries may enter into state or local interagency agreements to coordinate site inspection activities with record monitoring and complaint handling. The interagency agreement may also provide for the reimbursement for cost of work that an agency performs. The department may include other related areas in any interagency agreements which are necessary for the efficient provision of services.

The directors of the department of community, trade, and economic development and the department of labor and industries shall immediately take such steps as are necessary to ensure that chapter 432, Laws of 2007 is implemented on July 1, 2007. [2007 c 432 § 7; 1995 c 399 § 69; 1990 c 176 § 1.]

Chapter 43.22A RCW

MOBILE AND MANUFACTURED HOME INSTALLATION

Sections

- 43.22A.005 Purpose.
- 43.22A.010 Definitions.
- 43.22A.020 Manufactured housing—Department duties.
- 43.22A.030 Manufactured housing—Federal standards—Enforcement. (*Contingent expiration date.*)
- 43.22A.040 Installer certification—Application—Training.
- 43.22A.050 Installer certification—Training course—Examination.
- 43.22A.060 Installer certification—Alternative to department training course—Rules.
- 43.22A.070 Installer certification—Issuance of certificate—Renewal—Suspension of license or certificate for noncompliance with support order.
- 43.22A.080 Installer certification—Revocation.
- 43.22A.090 Certification program fees.
- 43.22A.100 Manufactured home installation training account.
- 43.22A.110 Local government installation application and permit requirements.
- 43.22A.120 Certified installer required on-site—Infraction—Exceptions.
- 43.22A.130 Certified installer required on-site—Infraction—Notice.
- 43.22A.140 Violations—Investigations—Inspections.
- 43.22A.150 Violations—Separate infraction for each day, each worksite.
- 43.22A.160 Violation—Use of uncertified installer.
- 43.22A.170 Notice of infraction.
- 43.22A.180 Notice as determination.
- 43.22A.190 Penalty.
- 43.22A.200 Appeals.
- 43.22A.210 Manufactured homes—Warranty disputes.
- 43.22A.220 Rule adoption—Enforcement.
- 43.22A.900 Severability—1994 c 284.
- 43.22A.901 Effective date—1994 c 284.

43.22A.005 Purpose. The purpose of this chapter is to ensure that all mobile and manufactured homes are installed by a certified manufactured home installer in accordance with the state installation code, chapter 296-150B WAC, in order to provide greater protections to consumers and make the warranty requirement of *RCW 46.70.134 easier to achieve. [1994 c 284 § 14. Formerly RCW 43.63B.005.]

*Reviser's note: The reference in 1994 c 284 § 14 to "section 2 of this act" was erroneous. Section 10 of that act, codified as RCW 46.70.134, was apparently intended.

Dispute mediation: RCW 43.22A.210.

43.22A.010 Definitions. Unless the context clearly requires otherwise, the definitions in this section apply throughout this chapter.

(1) "Authorized representative" means an employee of a state agency, city, or county acting on behalf of the department.

(2) "Certified manufactured home installer" means a person who is in the business of installing mobile or manufactured homes and who has been issued a certificate by the department as provided in this chapter.

(3) "Department" means the department of labor and industries.

(4) "Director" means the director of labor and industries.

(5) "Manufactured home" means a single-family dwelling built in accordance with the department of housing and urban development manufactured home construction and safety standards act, which is a national, preemptive building code.

(6) "Mobile or manufactured home installation" means all on-site work necessary for the installation of a manufactured home, including:

- (a) Construction of the foundation system;
- (b) Installation of the support piers and earthquake resistant bracing system;
- (c) Required connection to foundation system and support piers;
- (d) Skirting;
- (e) Connections to the on-site water and sewer systems that are necessary for the normal operation of the home; and
- (f) Extension of the pressure relief valve for the water heater.

(7) "Manufactured home standards" means the manufactured home construction and safety standards as promulgated by the United States department of housing and urban development (HUD).

(8) "Mobile home" means a factory-built dwelling built prior to June 15, 1976, to standards other than the HUD code, and acceptable under applicable state codes in effect at the time of construction or introduction of the home into the state. Mobile homes have not been built since introduction of the HUD manufactured home construction and safety standards act.

(9) "Training course" means the education program administered by the department, or the education course administered by an approved educational provider, as a prerequisite to taking the examination for certification.

(10) "Approved educational provider" means an organization approved by the department to provide education and training of manufactured home installers and local inspectors. [2007 c 432 § 3; 1998 c 124 § 6; 1994 c 284 § 15. Formerly RCW 43.63B.010.]

43.22A.020 Manufactured housing—Department duties. Beginning on July 1, 2007, the department shall perform all the consumer complaint and related functions of the state administrative agency that are required for purposes of

complying with the regulations established by the federal department of housing and urban development for manufactured housing, including the preparation and submission of the state administrative plan.

The department may enter into state or local interagency agreements to coordinate site inspection activities with record monitoring and complaint handling. The interagency agreement may also provide for the reimbursement for cost of work that an agency performs. The department may include other related areas in any interagency agreements which are necessary for the efficient provision of services.

The department of community, trade, and economic development shall transfer all records, files, books, and documents necessary for the department to assume these new functions.

The directors of community, trade, and economic development and of labor and industries shall immediately take such steps as are necessary to ensure that chapter 432, Laws of 2007 is implemented on July 1, 2007. [2007 c 432 § 1; 1993 c 280 § 76; 1990 c 176 § 2. Formerly RCW 43.63A.460.]

Effective date—Severability—1993 c 280: See RCW 43.330.902 and 43.330.903.

43.22A.030 Manufactured housing—Federal standards—Enforcement. (Contingent expiration date.) The director shall enforce manufactured housing safety and construction standards adopted by the secretary of housing and urban development under the national manufactured housing construction and safety standards act of 1974 (800 Stat. 700; 42 U.S.C. Secs. 5401-5426). Furthermore, the director may make agreements with the United States government, state agencies, or private inspection organizations to implement the development and enforcement of applicable provisions of this chapter and the national manufactured housing construction and safety standards act of 1974 (800 Stat. 700; 42 U.S.C. Secs. 5401-5426) regarding the state administrative agency program. [2007 c 432 § 2; 1995 c 399 § 74; 1993 c 124 § 1. Formerly RCW 43.63A.465.]

Contingent expiration date—2007 c 432 § 2: "Section 2 of this act expires if the contingency in RCW 43.63A.490 occurs." [2007 c 432 § 15.]

Contingent expiration date—RCW 43.63A.465 through 43.63A.490: See RCW 43.63A.490.

43.22A.040 Installer certification—Application—Training. A person desiring to be issued a certificate of manufactured home installation as provided in this chapter shall make application to the department, in such a form as required by the department.

Upon receipt of the application and evidence required in this chapter, the director shall review the information and make a determination as to whether the applicant is eligible to take the training course and examination for the certificate of manufactured home installation. An applicant must furnish written evidence of six months of experience under the direct supervision of a certified manufactured home installer, or other equivalent experience, in order to be eligible to take the training course and examination. The director shall establish reasonable rules for the training course and examinations to be given to applicants for certificates of manufactured home installation. Upon determining that the applicant is eligible to

take the training course and examination, the director shall notify the applicant, indicating the time and place for taking the training course and examination.

The requirement that an applicant must be under the direct supervision of a certified manufactured home installer for six months only applies to applications made on or after July 1, 1996. For applications made before July 1, 1996, the department shall require evidence of experience to satisfy this requirement.

The director may allow other persons to take the training course and examination on manufactured home installation, without certification. [1994 c 284 § 17. Formerly RCW 43.63B.020.]

43.22A.050 Installer certification—Training course—Examination. The department shall prepare a written training course and examination to be administered to applicants for manufactured home installer certification. The examination shall be constructed to determine whether the applicant:

(1) Possesses general knowledge of the technical information and practical procedures that are necessary for manufactured home installation;

(2) Is familiar with the federal and state codes and administrative rules pertaining to manufactured homes; and

(3) Is familiar with the local government regulations as related to manufactured home installations.

The department shall certify the results of the examination and shall notify the applicant in writing whether the applicant has passed or failed the examination. An applicant who failed the examination may retake the training course and examination. The director may not limit the number of times that a person may take the training course and examination. [1994 c 284 § 18. Formerly RCW 43.63B.030.]

43.22A.060 Installer certification—Alternative to department training course—Rules. The department shall adopt rules to establish and administer a process of approving educational providers as an alternative to the department training course for installers and local inspectors. [1998 c 124 § 7. Formerly RCW 43.63B.035.]

43.22A.070 Installer certification—Issuance of certificate—Renewal—Suspension of license or certificate for noncompliance with support order. (1) The department shall issue a certificate of manufactured home installation to an applicant who has taken the training course, passed the examination, paid the fees, and in all other respects meets the qualifications. The certificate shall bear the date of issuance, a certification identification number, and is renewable every three years upon application and completion of a continuing education program as determined by the department. A renewal fee shall be assessed for each certificate. If a person fails to renew a certificate by the renewal date, the person must retake the examination and pay the examination fee.

(2) The certificate of manufactured home installation provided for in this chapter grants the holder the right to engage in manufactured home installation throughout the state, without any other installer certification.

(3) The department shall immediately suspend the license or certificate of a person who has been certified pursuant to RCW 74.20A.320 by the department of social and health services as a person who is not in compliance with a support order or a *residential or visitation order. If the person has continued to meet all other requirements for reinstatement during the suspension, reissuance of the license or certificate shall be automatic upon the department's receipt of a release issued by the department of social and health services stating that the licensee is in compliance with the order. [1997 c 58 § 874; 1994 c 284 § 19. Formerly RCW 43.63B.040.]

***Reviser's note:** 1997 c 58 § 887 requiring a court to order certification of noncompliance with residential provisions of a court-ordered parenting plan was vetoed. Provisions ordering the department of social and health services to certify a responsible parent based on a court order to certify for noncompliance with residential provisions of a parenting plan were vetoed. See RCW 74.20A.320.

Short title—Part headings, captions, table of contents not law—Exemptions and waivers from federal law—Conflict with federal requirements—Severability—1997 c 58: See RCW 74.08A.900 through 74.08A.904.

Effective dates—Intent—1997 c 58: See notes following RCW 74.20A.320.

43.22A.080 Installer certification—Revocation. (1) The department may revoke a certificate of manufactured home installation upon the following grounds:

(a) The certificate was obtained through error or fraud;

(b) The holder of the certificate is judged to be incompetent as a result of multiple infractions of the state installation code, WAC 296-150B-200 through 296-150B-255; or

(c) The holder has violated a provision of this chapter or a rule adopted to implement this chapter.

(2) Before a certificate of manufactured home installation is revoked, the holder must be given written notice of the department's intention to revoke the certificate, sent by registered mail, return receipt requested, to the holder's last known address. The notice shall enumerate the allegations against the holder, and shall give the holder the opportunity to request a hearing. At the hearing, the department and the holder may produce witnesses and give testimony. The hearing shall be conducted in accordance with the provisions of chapter 34.05 RCW. [1994 c 284 § 21. Formerly RCW 43.63B.050.]

43.22A.090 Certification program fees. (1) The department shall charge reasonable fees to cover the costs to administer the certification program which shall include but not be limited to the issuance, renewal, and reinstatement of all certificates, training courses, and examinations required under this chapter. All fees collected under this chapter shall be deposited in the manufactured home installation training account created in RCW 43.22A.100 and used only for the purposes specified in this chapter.

The fees shall be limited to covering the direct cost of issuing the certificates, administering the examinations, and administering and enforcing this chapter. The costs shall include only essential travel, per diem, and administrative support costs.

(2) For the purposes of implementing chapter 432, Laws of 2007, until July 1, 2008, the department may increase fees

for the certification program in excess of the fiscal growth factor under chapter 43.135 RCW. [2007 c 432 § 11; 1994 c 284 § 22. Formerly RCW 43.63B.070.]

43.22A.100 Manufactured home installation training account. The manufactured home installation training account is created in the state treasury. All receipts collected under this chapter and any legislative appropriations for manufactured home installation training shall be deposited into the account. Moneys in the account may only be spent after appropriation. Expenditures from the account may only be used for the purposes of this chapter. Unexpended and unencumbered moneys that remain in the account at the end of the fiscal year do not revert to the state general fund but remain in the account, separately accounted for, as a contingency reserve. [1994 c 284 § 23. Formerly RCW 43.63B.080.]

43.22A.110 Local government installation application and permit requirements. Any local government mobile or manufactured home installation application and permit shall state either the name and registration number of the contractor or licensed manufactured home dealer or the certification identification number of the certified manufactured home installer supervising such installation. A local government may not issue final approval for the installation of a manufactured home unless the certified installer or the installer's agent has posted at the set-up site the manufactured home installer's certification number and has identified the work being performed on the manufactured home installation on a form prescribed by the department. [1998 c 124 § 8; 1994 c 284 § 20. Formerly RCW 43.63B.060.]

43.22A.120 Certified installer required on-site—Infraction—Exceptions. After July 1, 1995, a mobile or manufactured home may not be installed without a certified manufactured home installer providing on-site supervision whenever installation work is being performed. The certified manufactured home installer is responsible for the reading, understanding, and following [of] the manufacturer's installation instructions and performance of noncertified workers engaged in the installation of the home. There shall be at least one certified manufactured home installer on the installation site whenever installation work is being performed.

A manufactured home installer certification shall not be required for:

- (1) Site preparation;
- (2) Sewer and water connections outside of the building site;
- (3) Specialty trades that are responsible for constructing accessory structures such as garages, carports, and decks;
- (4) Pouring concrete into forms;
- (5) Painting and dry wall finishing;
- (6) Carpet installation;
- (7) Specialty work performed within the scope of their license by licensed plumbers or electricians. This provision does not waive or lessen any state regulations related to licensing or permits required for electricians or plumbers;
- (8) A mobile or manufactured home owner performing installation work on their own home; and

(9) A manufacturer's mobile home installation crew installing a mobile or manufactured home sold by the manufacturer except for the on-site supervisor.

Violation of this section is an infraction. [1994 c 284 § 16. Formerly RCW 43.63B.090.]

43.22A.130 Certified installer required on-site—Infraction—Notice. An authorized representative of the department may issue a notice of infraction if the person supervising the manufactured home installation work fails to produce evidence of having a certificate issued by the department in accordance with this chapter. A notice of infraction issued under this chapter shall be personally served on or sent by certified mail to the person named in the notice by the authorized representative. [1994 c 284 § 25. Formerly RCW 43.63B.100.]

43.22A.140 Violations—Investigations—Inspections. An authorized representative may investigate alleged or apparent violations of this chapter. Upon presentation of credentials, an authorized representative, including a local government building official, may inspect sites at which manufactured home installation work is undertaken to determine whether such work is being done under the supervision of a certified manufactured home installer. Upon request of the authorized representative, a person performing manufactured home installation work shall identify the person holding the certificate issued by the department in accordance with this chapter. [1994 c 284 § 24. Formerly RCW 43.63B.110.]

43.22A.150 Violations—Separate infraction for each day, each worksite. Each day in which a person engages in the installation of manufactured homes in violation of this chapter is a separate infraction. Each worksite at which a person engages in the trade of manufactured home installation in violation of this chapter is a separate infraction. [1994 c 284 § 27. Formerly RCW 43.63B.120.]

43.22A.160 Violation—Use of uncertified installer. It is a violation of this chapter for any contractor, manufactured home dealer, manufacturer, or home dealer's or manufacturer's agent to engage any person to install a manufactured home who is not certified in accordance with this chapter. [1994 c 284 § 28. Formerly RCW 43.63B.130.]

43.22A.170 Notice of infraction. (1) The department shall prescribe the form of the notice of infraction issued under this chapter.

(2) The notice of infraction shall include the following:

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

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

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

(d) A statement of a monetary penalty that has been established for the infraction;

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

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

(g) A statement that failure to respond to a notice of infraction is a misdemeanor and may be punished by a fine or imprisonment in jail. [2006 c 270 § 11; 1994 c 284 § 26. Formerly RCW 43.63B.140.]

43.22A.180 Notice as determination. Unless contested in accordance with this chapter, the notice of infraction represents a determination that the person to whom the notice was issued committed the infraction. [1994 c 284 § 30. Formerly RCW 43.63B.160.]

43.22A.190 Penalty. (1) A person found to have committed an infraction under this chapter shall be assessed a monetary penalty of one thousand dollars.

(2) The administrative law judge may waive, reduce, or suspend the monetary penalty imposed for the infraction.

(3) Monetary penalties collected under this chapter shall be deposited into the manufactured home installation training account created in RCW 43.22A.100 for the purposes specified in this chapter. [2007 c 432 § 5; 1994 c 284 § 31. Formerly RCW 43.63B.170.]

43.22A.200 Appeals. If a party desires to contest a notice of infraction and civil penalty issued under this chapter, the party must file a notice of appeal with the department within twenty days of the department mailing the notice of civil penalty. An administrative law judge of the office of administrative hearings shall hear and determine the appeal. Appeal proceedings must be conducted under chapter 34.05 RCW. An appeal of the administrative law judge's determination or order must be to the superior court. The superior court's decision is subject only to discretionary review under the rules of appellate procedure. [2007 c 432 § 4; 1994 c 284 § 29. Formerly RCW 43.63B.150.]

43.22A.210 Manufactured homes—Warranty disputes. The department may mediate disputes that arise regarding any warranty required in chapter 46.70 RCW pertaining to the purchase or installation of a manufactured home. The department may charge reasonable fees for this service and shall deposit the moneys collected in accordance with RCW 43.22A.100. [2007 c 432 § 8; 1994 c 284 § 12. Formerly RCW 46.70.136.]

Severability—Effective date—1994 c 284: See RCW 43.63B.900 and 43.63B.901.

43.22A.220 Rule adoption—Enforcement. The director may adopt rules in accordance with chapter 34.05 RCW, make specific decisions, orders, and rulings, include demands and findings within the decisions, orders, and rulings, and take other necessary action for the implementation

and enforcement of duties under this chapter. [1994 c 284 § 32. Formerly RCW 43.63B.800.]

43.22A.900 Severability—1994 c 284. If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected. [1994 c 284 § 34. Formerly RCW 43.63B.900.]

43.22A.901 Effective date—1994 c 284. This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and shall take effect immediately [April 1, 1994]. [1994 c 284 § 35. Formerly RCW 43.63B.901.]

Chapter 43.30 RCW

DEPARTMENT OF NATURAL RESOURCES

Sections

43.30.490 Cost-reimbursement agreements.

43.30.490 Cost-reimbursement agreements. (1) The department may enter into a written cost-reimbursement agreement with a permit or lease applicant or project proponent to recover from the applicant or proponent the reasonable costs incurred by the department in carrying out the requirements of this chapter, as well as the requirements of other relevant laws, as they relate to permit coordination, environmental review, application review, technical studies, establishment of development units and approval or establishment of pooling agreements under chapter 78.52 RCW, including necessary technical studies, permit or lease processing, and monitoring for permit compliance. The cost-reimbursement agreement shall identify the specific tasks, costs, and schedule for work to be conducted under the agreement.

(2) The written cost-reimbursement agreement shall be negotiated with the permit or lease applicant or project proponent. Under the provisions of a cost-reimbursement agreement, funds from the applicant or proponent shall be used by the department to contract with an independent consultant to carry out the work covered by the cost-reimbursement agreement. The department may also use funds provided under a cost-reimbursement agreement to assign current staff to review the work of the consultant, to provide necessary technical assistance when an independent consultant with comparable technical skills is unavailable, and to recover reasonable and necessary direct and indirect costs that arise from processing the permit or lease. The department shall, in developing the agreement, ensure that final decisions that involve policy matters are made by the agency and not by the consultant. The department shall make an estimate of the number of permanent staff hours to process the permits or leases, and shall contract with consultants to replace the time and functions committed by these permanent staff to the project. The billing process shall provide for accurate time and cost accounting and may include a billing cycle that provides for progress payments. Use of cost-reimbursement agreements shall not reduce the current level of staff available to work on

permits or leases not covered by cost-reimbursement agreements. The department may not use any funds under a cost-reimbursement agreement to replace or supplant existing funding. The restrictions of chapter 42.52 RCW apply to any cost-reimbursement agreement, and to any person hired as a result of a cost-reimbursement agreement. [2007 c 188 § 1; 2007 c 94 § 11; 2003 c 70 § 2; 2000 c 251 § 3. Formerly RCW 43.30.420.]

Reviser's note: This section was amended by 2007 c 94 § 11 and by 2007 c 188 § 1, each without reference to the other. Both amendments are incorporated in the publication of this section under RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

Severability—Effective date—2007 c 341: See RCW 90.71.906 and 90.71.907.

Intent—Captions not law—Effective date—2000 c 251: See notes following RCW 43.21A.690.

Chapter 43.33A RCW STATE INVESTMENT BOARD

Sections

- 43.33A.150 Reports of investment activities. (*Effective if the proposed amendment to Article XVI of the state Constitution is approved at the November 2007 general election.*)
- 43.33A.220 Repealed. (*Effective July 1, 2008, if the proposed amendment to Article VII of the state Constitution is approved at the November 2007 general election.*)

43.33A.150 Reports of investment activities. (*Effective if the proposed amendment to Article XVI of the state Constitution is approved at the November 2007 general election.*) (1) The state investment board shall prepare written reports at least quarterly summarizing the investment activities of the state investment board, which reports shall be sent to the governor, the senate ways and means committee, the house appropriations committee, the department of retirement systems, and other agencies having a direct financial interest in the investment of funds by the board, and to other persons on written request. The state investment board shall provide information to the department of retirement systems necessary for the preparation of monthly reports.

(2) At least annually, the board shall report on the board's investment activities for the department of labor and industries' accident, medical aid, and reserve funds to the senate financial institutions and insurance committee, the senate economic development and labor committee, and the house commerce and labor committee, or appropriate successor committees.

(3) At least annually, the board shall report on the board's investment activities for the higher education permanent funds to the house capital budget committee and the senate ways and means committee. [2007 c 215 § 4; 1989 c 179 § 2; 1981 c 3 § 15.]

Finding—Intent—Contingent effective date—2007 c 215: See notes following RCW 39.42.070.

Effective dates—Severability—1981 c 3: See notes following RCW 43.33A.010.

43.33A.220 Repealed. (*Effective July 1, 2008, if the proposed amendment to Article VII of the state Constitution is approved at the November 2007 general election.*) See Supplementary Table of Disposition of Former RCW Sections, this volume.

Chapter 43.41 RCW

OFFICE OF FINANCIAL MANAGEMENT

Sections

- 43.41.270 Natural resource-related and environmentally based grant and loan programs—Administration and monitoring assistance.
- 43.41.390 Implementation of federal REAL ID Act of 2005.
- 43.41.400 Education data center.

43.41.270 Natural resource-related and environmentally based grant and loan programs—Administration and monitoring assistance. (1) The office of financial management shall assist natural resource-related agencies in developing outcome-focused performance measures for administering natural resource-related and environmentally based grant and loan programs. These performance measures are to be used in determining grant eligibility, for program management and performance assessment.

(2) The office of financial management and the governor's salmon recovery office, during the time it is constituted, shall assist natural resource-related agencies in developing recommendations for a monitoring program to measure outcome-focused performance measures required by this section. The recommendations must be consistent with the framework and coordinated monitoring strategy developed by the monitoring oversight committee established in *RCW 77.85.210.

(3) Natural resource agencies shall consult with grant or loan recipients including local governments, tribes, nongovernmental organizations, and other interested parties, and report to the office of financial management on the implementation of this section.

(4) For purposes of this section, "natural resource-related agencies" include the department of ecology, the department of natural resources, the department of fish and wildlife, the state conservation commission, the recreation and conservation funding board, the salmon recovery funding board, and the public works board within the department of community, trade, and economic development.

(5) For purposes of this section, "natural resource-related environmentally based grant and loan programs" includes the conservation reserve enhancement program; dairy nutrient management grants under chapter 90.64 RCW; state conservation commission water quality grants under chapter 89.08 RCW; coordinated prevention grants, public participation grants, and remedial action grants under RCW 70.105D.070; water pollution control facilities financing under chapter 70.146 RCW; aquatic lands enhancement grants under RCW 79.105.150; habitat grants under the Washington wildlife and recreation program under RCW 79A.15.040; salmon recovery grants under chapter 77.85 RCW; and the public works trust fund program under chapter 43.155 RCW. The term also includes programs administered by the department of fish and wildlife related to protection or recovery of fish stocks which are funded with moneys from the capital budget. [2007 c 444 § 7; 2007 c 241 § 5; 2001 c 227 § 2.]

Reviser's note: *(1) RCW 77.85.210 was repealed by 2005 c 309 § 10.

(2) This section was amended by 2007 c 241 § 5 and by 2007 c 444 § 7, each without reference to the other. Both amendments are incorporated in the publication of this section under RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

Intent—Effective date—2007 c 241: See notes following RCW 79A.25.005.

Findings—Intent—2001 c 227: "The legislature finds that the amount of overall requests for funding for natural resource-related programs in the capital budget has been steadily growing. The legislature also finds that there is an increasing interest by the public in examining the performance of the projects and programs to determine the return on their investments and that a coordinated and integrated response by state agencies will allow for better targeting of resources. The legislature further finds that there is a need to improve the data and the integration of data that is collected by state agencies and grant and loan recipients in order to better measure the outcomes of projects and programs. The legislature intends to begin implementing the recommendations contained in the joint legislative audit and review committee's report number 01-1 on investing in the environment in order to improve the efficiency, effectiveness, and accountability of these natural resource-related programs funded in the state capital budget." [2001 c 227 § 1.]

43.41.390 Implementation of federal REAL ID Act of 2005. A state agency or program may not expend funds to implement or comply with the REAL ID Act of 2005, P.L. 109-13, unless: (1) The requirements of RCW 46.20.191 are met; and (2) federal funds are received by the state of Washington and are (a) allocated to fund the implementation of the REAL ID Act of 2005 in the state, and (b) in amounts sufficient to cover the costs of the state implementing or complying with the REAL ID Act of 2005, as those costs are estimated by the office of financial management. The director of the office of financial management shall ensure compliance with this section. [2007 c 85 § 1.]

43.41.400 Education data center. (1) An education data center shall be established in the office of financial management. The education data center shall jointly, with the legislative education [evaluation] and accountability program committee, conduct collaborative analyses of early learning, K-12, and higher education programs and education issues across the P-20 system, which includes the department of early learning, the superintendent of public instruction, the professional educator standards board, the state board of education, the state board for community and technical colleges, the workforce training and education coordinating board, the higher education coordinating board, public and private non-profit four-year institutions of higher education, and the employment security department. The education data center shall conduct collaborative analyses under this section with the legislative evaluation and accountability program committee and provide data electronically to the legislative evaluation and accountability program committee, to the extent permitted by state and federal confidentiality requirements. The education data center shall be considered an authorized representative of the state educational agencies in this section under applicable federal and state statutes for purposes of accessing and compiling student record data for research purposes.

(2) The education data center shall:

(a) Coordinate with other state education agencies to compile and analyze education data, including data on student demographics that is disaggregated by distinct ethnic categories within racial subgroups, and complete P-20 research projects;

(b) Collaborate with the legislative evaluation and accountability program committee and the education and fiscal committees of the legislature in identifying the data to be compiled and analyzed to ensure that legislative interests are served;

(c) Track enrollment and outcomes through the public centralized higher education enrollment system;

(d) Assist other state educational agencies' collaborative efforts to develop a long-range enrollment plan for higher education including estimates to meet demographic and workforce needs; and

(e) Provide research that focuses on student transitions within and among the early learning, K-12, and higher education sectors in the P-20 system.

(3) The department of early learning, superintendent of public instruction, professional educator standards board, state board of education, state board for community and technical colleges, workforce training and education coordinating board, higher education coordinating board, public four-year institutions of higher education, and employment security department shall work with the education data center to develop data-sharing and research agreements, consistent with applicable security and confidentiality requirements, to facilitate the work of the center. Private, nonprofit institutions of higher education that provide programs of education beyond the high school level leading at least to the baccalaureate degree and are accredited by the Northwest association of schools and colleges or their peer accreditation bodies may also develop data-sharing and research agreements with the education data center, consistent with applicable security and confidentiality requirements. The education data center shall make data from collaborative analyses available to the education agencies and institutions that contribute data to the education data center to the extent allowed by federal and state security and confidentiality requirements applicable to the data of each contributing agency or institution. [2007 c 401 § 3.]

Findings—2007 c 401: See note following RCW 28A.300.500.

Chapter 43.42 RCW

OFFICE OF REGULATORY ASSISTANCE

Sections

43.42.005	Findings—Purpose—Intent.
43.42.010	Office created—Duties.
43.42.020	Operating principle—Providing information regarding permits.
43.42.030	Definitions.
43.42.040	Maintaining and furnishing information—Contact point—Service center—Web site.
43.42.050	Assisting project proponent—Project facilitator—Project scoping.
43.42.060	Coordinating permit agencies—Project coordinator—Cost reimbursement agreement.
43.42.070	Cost-reimbursement agreements.
43.42.080	Participating permit agencies—Timelines.
43.42.905	Decodified.

43.42.005 Findings—Purpose—Intent. (1) The legislature finds that the health and safety of its citizens, natural resources, and the environment are vital interests of the state that must be protected to preserve the state's quality of life. The legislature also finds that the state's economic well-being is a vital interest that depends upon the development of fair, accessible, and coordinated permitting and regulatory requirements that ensure that the state not only protects public health and safety and natural resources but also encourages appropriate activities that stimulate growth and development. The legislature further finds that Washington's permit-

ting and regulatory programs have established strict standards to protect public health and safety and the environment.

(2) The legislature also finds that, as the number of environmental and land use laws and requirements have grown in Washington, so have the number of permits required of business and government. The increasing number of permits and permitting agencies has generated the potential for conflict, overlap, and duplication among state, local, and federal permitting and regulatory requirements.

(3) The legislature further finds that not all project proponents require the same type of assistance. Proponents with small projects may merely need information and assistance in starting the permitting and application process, while intermediate-sized projects may require more of a facilitated and periodically assisted permitting process, and large complex projects may need extensive and more continuous coordination among local, state, and federal agencies and tribal governments.

(4) The legislature further finds that persons doing business in Washington state should have access to clear and appropriate information regarding regulations, permit requirements, and agency rule-making processes.

(5) The legislature, therefore, finds that a range of assistance and coordination options should be available to project proponents from a state office independent of any local, state, or federal permit agency. The legislature finds that citizens, businesses, and project proponents should be provided with:

(a) A reliable and consolidated source of information concerning federal, state, and local environmental and land use laws and procedures that may apply to any given project;

(b) Facilitated interagency forums for discussion of significant issues related to the multiple permitting processes if needed for some project proponents; and

(c) Active coordination of all applicable regulatory and land use permitting procedures if needed for some project proponents.

(6) The legislature declares that the purpose of this chapter is to:

(a) Assure that citizens, businesses, and project proponents will continue to be provided with vital information regarding environmental and land use laws and with assistance in complying with environmental and land use laws to promote understanding of these laws and to protect public health and safety and the environment;

(b) Ensure that facilitation of project permit decisions by permit agencies promotes both process efficiency and environmental protection;

(c) Allow for coordination of permit processing for large projects upon project proponents' request and at project proponents' expense to promote efficiency, ensure certainty, and avoid conflicts among permit agencies; and

(d) Provide these services through an office independent of any permit agency to ensure that any potential or perceived conflicts of interest related to providing these services or making permit decisions can be avoided.

(7) The legislature also declares that the purpose of this chapter is to provide citizens of the state with access to information regarding state regulations, permit requirements, and agency rule-making processes in Washington state.

(8) The legislature intends that establishing an office of regulatory assistance will provide these services without abrogating or limiting the authority of any agency to make decisions on permits and regulatory requirements that it requires or any rule-making agency to make decisions on regulations. The legislature therefore declares that the office of regulatory assistance shall have authority to provide these services but shall not have any authority to make decisions on permits. [2007 c 94 § 1; 2003 c 71 § 1; 2002 c 153 § 1.]

Reviser's note—Sunset Act application: The office of regulatory assistance is subject to review, termination, and possible extension under chapter 43.131 RCW, the Sunset Act. See RCW 43.131.401. RCW 43.42.005 through 43.42.070 and 43.42.900 through 43.42.905 are scheduled for future repeal under RCW 43.131.402.

Effective date—2003 c 71 § 2: "Section 2 of this act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately [April 18, 2003]." [2003 c 71 § 7.]

43.42.010 Office created—Duties. (1) The office of regulatory assistance is created in the office of financial management and shall be administered by the office of the governor to assist citizens, businesses, and project proponents.

(2) The office shall:

(a) Maintain and furnish information as provided in RCW 43.42.040;

(b) Furnish facilitation as provided in RCW 43.42.050;

(c) Furnish coordination as provided in RCW 43.42.060;

(d) Coordinate cost reimbursement as provided in RCW 43.42.070;

(e) Work with governmental agencies to continue to develop a range of permitting and regulatory assistance options for project proponents;

(f) Help local jurisdictions comply with the requirements of RCW 36.70B.080 by:

(i) Providing information about best practices and compliance with the requirements of RCW 36.70B.080; and

(ii) Providing technical assistance in reducing the turnaround time between submittal of an application for a development permit and the issuance of the permit;

(g) Work to develop informal processes for dispute resolution between agencies and permit proponents;

(h) Conduct customer surveys to evaluate its effectiveness; and

(i) Provide the following reports by June 1, 2008, and biennially thereafter, to the governor and the appropriate committees of the legislature:

(i) A performance report, based on the customer surveys required in (h) of this subsection;

(ii) A report on any conflicts identified by the office in the course of its duties arising from differing statutory or regulatory authorities, roles and missions of agencies, timing and sequencing of permitting and procedural requirements, or otherwise, and how these were resolved; and

(iii) A report regarding negotiation and implementation of voluntary cost-reimbursement agreements and use of outside independent consultants under RCW 43.42.070, including the nature and amount of work performed and implementation of requirements relating to costs.

(3) The office shall ensure the equitable delivery and provision of assistance services, regardless of project type,

scale, fund source, or assistance request. [2007 c 231 § 5; 2007 c 94 § 2; 2003 c 71 § 2; 2002 c 153 § 2.]

Reviser's note: This section was amended by 2007 c 94 § 2 and by 2007 c 231 § 5, each without reference to the other. Both amendments are incorporated in the publication of this section under RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

Findings—Recommendations—Reports encouraged—2007 c 231: See note following RCW 43.155.070.

Sunset Act application: See note following RCW 43.42.005.

43.42.020 Operating principle—Providing information regarding permits. (1) The office shall operate on the principle that citizens of the state of Washington should receive the following information regarding permits:

(a) A date and time for a decision on a permit or regulatory requirement;

(b) The information required for an agency to make a decision on a permit or regulatory requirement, recognizing that changes in the project or other circumstances may change the information required; and

(c) An estimate of the maximum amount of costs in fees, studies, or public processes that will be incurred by the project proponent.

(2) This section does not create an independent cause of action, affect any existing cause of action, or establish time limits for purposes of RCW 64.40.020. [2007 c 94 § 3; 2002 c 153 § 3.]

Sunset Act application: See note following RCW 43.42.005.

43.42.030 Definitions. The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

(1) "Office" means the office of regulatory assistance in the office of financial management established in RCW 43.42.010.

(2) "Permit" means any permit, certificate, use authorization, or other form of governmental review or approval required in order to construct, expand, or operate a project in the state of Washington.

(3) "Permit agency" means any state, local, or federal agency authorized by law to issue permits.

(4) "Project" means any activity, the conduct of which requires a permit or permits from one or more permit agencies.

(5) "Project proponent" means a citizen, business, or any entity applying for or seeking a permit or permits in the state of Washington. [2007 c 94 § 4; 2003 c 71 § 3; 2002 c 153 § 4.]

Sunset Act application: See note following RCW 43.42.005.

43.42.040 Maintaining and furnishing information—Contact point—Service center—Web site. (1) The office shall assist citizens, businesses, and project proponents by maintaining and furnishing information, including, but not limited to:

(a) To the extent possible, compiling and periodically updating one or more handbooks containing lists and explanations of permit laws, including all relevant local, state, federal, and tribal laws. In providing this information, the office shall seek the cooperation of relevant local, state, and federal agencies and tribal governments;

(b) Establishing and providing notice of a point of contact for obtaining information;

(c) Working closely and cooperatively with business license centers to provide efficient and nonduplicative service; and

(d) Developing a service center and a web site.

(2) The office shall coordinate among state agencies to develop an office web site that is linked through the office of the governor's web site and that contains information regarding permitting and regulatory requirements for businesses and citizens in Washington state. At a minimum, the web site shall provide information or links to information on:

(a) Federal, state, and local rule-making processes and permitting and regulatory requirements applicable to Washington businesses and citizens;

(b) Federal, state, and local licenses, permits, and approvals necessary to start and operate a business or develop real property in Washington;

(c) State and local building codes;

(d) Federal, state, and local economic development programs that may be available to businesses in Washington; and

(e) State and local agencies regulating or providing assistance to citizens and businesses operating a business or developing real property in Washington.

(3) This section does not create an independent cause of action, affect any existing cause of action, or create any new cause of action regarding the application of regulatory or permit requirements. [2007 c 94 § 5; 2003 c 71 § 4; 2002 c 153 § 5.]

Sunset Act application: See note following RCW 43.42.005.

43.42.050 Assisting project proponent—Project facilitator—Project scoping. At the request of a project proponent, the office shall assist the project proponent in determining what regulatory requirements, processes, and permits apply to the project, as provided in this section.

(1) The office shall assign a project facilitator who shall discuss applicable regulatory requirements, permits, and processes with the project proponent and explain the available options for obtaining required permits and regulatory review.

(2) If the project proponent and the project facilitator agree that the project would benefit from a project scoping, the project facilitator shall conduct a project scoping with the project proponent and the relevant permitting and regulatory agencies. The project facilitator shall invite the participation of the relevant federal agencies and tribal governments.

(a) The purpose of the project scoping is to identify the issues and information needs of the project proponent and the participating permit agencies regarding the project, share perspectives, and jointly develop a strategy for the processing of required permits by each participating permit agency.

(b) The scoping shall address:

(i) The permits that are required for the project;

(ii) The permit application forms and other application requirements of the participating permit agencies;

(iii) The specific information needs and issues of concern of each participant and their significance;

(iv) Any statutory or regulatory conflicts that might arise from the differing authorities and roles of the permit agencies;

(v) Any natural resources, including federal or state listed species, that might be adversely affected by the project and might cause an alteration of the project or require mitigation; and

(vi) The anticipated time required for permit decisions by each participating permit agency, including the time required to determine if the permit application is complete, to conduct environmental review, and to review and process the application. In determining the time required, full consideration must be given to achieving the greatest possible efficiencies through any concurrent studies and any consolidated applications, hearings, and comment periods.

(c) The outcome of the project scoping shall be documented in writing, furnished to the project proponent, and be made available to the public.

(d) The project scoping shall be completed within sixty days of the project proponent's request for a project scoping.

(e) Upon completion of the project scoping, the participating permit agencies shall proceed under their respective authority. The agencies are encouraged to remain in communication for purposes of coordination until their final permit decisions are made.

(3) This section does not create an independent cause of action, affect any existing cause of action, or establish time limits for purposes of RCW 64.40.020. [2007 c 94 § 6; 2003 c 54 § 4; 2002 c 153 § 6.]

Sunset Act application: See note following RCW 43.42.005.

43.42.060 Coordinating permit agencies—Project coordinator—Cost reimbursement agreement. (1) The office may coordinate the processing by participating permit agencies of permits required for a project, at the request of the project proponent through a cost reimbursement agreement as provided in subsection (3) of this section or with the agreement of the project proponent as provided in subsection (4) of this section.

(2) The office shall assign a project coordinator to perform any or all of the following functions, as specified by the terms of a cost reimbursement agreement under subsection (3) of this section or an agreement under subsection (4) of this section:

(a) Serve as the main point of contact for the project proponent;

(b) Conduct a project scoping as provided in RCW 43.42.050(2);

(c) Verify that the project proponent has all the information needed to complete applications;

(d) Coordinate the permit processes of the permit agencies;

(e) Manage the applicable administrative procedures;

(f) Work to assure that timely permit decisions are made by the permit agencies and maintain contact with the project proponent and the permit agencies to ensure adherence to schedules;

(g) Assist in resolving any conflict or inconsistency among permit requirements and conditions; and

(h) Coordinate with relevant federal permit agencies and tribal governments to the extent possible.

(3) At the request of a project proponent and as provided in RCW 43.42.070, the project coordinator shall coordinate negotiations among the project proponent, the office, and participating permit agencies to enter into a cost reimbursement agreement and shall coordinate implementation of the agreement, which shall govern coordination of permit processing by the participating permit agencies.

(4) For industrial projects of statewide significance or if the office determines that it is in the public interest to coordinate the processing of permits for certain projects that are complex in scope, require multiple permits, involve multiple jurisdictions, or involve a significant number of affected parties, the office shall, upon the proponent's request, enter into an agreement with the project proponent and the participating permit agencies to coordinate the processing of permits for the project. The office may limit the number of such agreements according to the resources available to the office and the permit agencies at the time. [2007 c 94 § 7; 2003 c 54 § 5; 2002 c 153 § 7.]

Sunset Act application: See note following RCW 43.42.005.

43.42.070 Cost-reimbursement agreements. (1) The office may coordinate negotiation and implementation of a written agreement among the project proponent, the office, and participating permit agencies to recover from the project proponent the reasonable costs incurred by the office in carrying out the provisions of RCW 43.42.050(2) and 43.42.060(2) and by participating permit agencies in carrying out permit processing tasks specified in the agreement.

(2) The office may coordinate negotiation and implementation of a written agreement among the project proponent, the office, and participating permit agencies to recover from the project proponent the reasonable costs incurred by outside independent consultants selected by the office and participating permit agencies to perform permit processing tasks.

(3) Outside independent consultants may only bill for the costs of performing those permit processing tasks that are specified in a cost-reimbursement agreement under this section. The billing process shall provide for accurate time and cost accounting and may include a billing cycle that provides for progress payments.

(4) The office shall adopt a policy to coordinate cost-reimbursement agreements with outside independent consultants. Cost-reimbursement agreements coordinated by the office under this section must be based on competitive bids that are awarded for each agreement from a prequalified consultant roster.

(5) Independent consultants hired under a cost-reimbursement agreement shall report directly to the permit agency. The office shall assure that final decisions are made by the permit agency and not by the consultant.

(6) The office shall develop procedures for determining, collecting, and distributing cost reimbursement for carrying out the provisions of this chapter.

(7) For a cost-reimbursement agreement, the office and participating permit agencies shall negotiate a work plan and schedule for reimbursement. Prior to distributing scheduled

reimbursement to the agencies, the office shall verify that the agencies have met the obligations contained in their work plan.

(8) Prior to commencing negotiations with the project proponent for a cost-reimbursement agreement, the office shall request work load analyses from each participating permitting agency. These analyses shall be available to the public. The work load of a participating permit agency may only be modified with the concurrence of the agency and if there is both good cause to do so and no significant impact on environmental review.

(9) The office shall develop guidance to ensure that, in developing cost-reimbursement agreements, conflicts of interest are eliminated.

(10) For project permit processes that it coordinates, the office shall coordinate the negotiation of all cost-reimbursement agreements executed under RCW 43.21A.690, 43.30.490, 43.70.630, 43.300.080, and 70.94.085. The office and the permit agencies shall be signatories to the agreements. Each permit agency shall manage performance of its portion of the agreement.

(11) If a permit agency or the project proponent foresees, at any time, that it will be unable to meet its obligations under the cost-reimbursement agreement, it shall notify the office and state the reasons. The office shall notify the participating permit agencies and the project proponent and, upon agreement of all parties, adjust the schedule, or, if necessary, coordinate revision of the work plan. [2007 c 94 § 8; 2003 c 70 § 7; 2002 c 153 § 8.]

Sunset Act application: See note following RCW 43.42.005.

43.42.080 Participating permit agencies—Timelines.

With the agreement of all participating permitting agencies and the permit applicant or project proponent, state permitting agencies may establish timelines to make permit decisions, including the time periods required to determine that the permit applications are complete, to review the applications, and to process the permits. Established timelines shall not be shorter than those otherwise required for each permit under other applicable provisions of law, but may extend and coordinate such timelines. The goal of the established timelines is to achieve the maximum efficiencies possible through concurrent studies and consolidation of applications, permit review, hearings, and comment periods. A timeline established under this subsection with the agreement of each permitting agency shall commit each permitting agency to act within the established timeline. [2007 c 94 § 9; 2004 c 32 § 1.]

43.42.905 Decodified. See Supplementary Table of Disposition of Former RCW Sections, this volume.

Chapter 43.43 RCW

WASHINGTON STATE PATROL

Sections

43.43.250	Retirement of members.
43.43.285	Special death benefit—Course of employment—Occupational disease or infection.
43.43.286	Rights reserved to the legislature—No future contractual rights.

43.43.400	Aquatic invasive species enforcement account—Aquatic invasive species enforcement program for recreational and commercial watercraft—Reports to the legislature.
43.43.751	Biological samples for missing persons investigations.
43.43.830	Background checks—Access to children or vulnerable persons—Definitions.
43.43.832	Background checks—Disclosure of information—Sharing of criminal background information by health care facilities.
43.43.837	Fingerprint-based background checks—Requirements for applicants and service providers—Fees—Rules to establish financial responsibility.
43.43.838	Record checks—Transcript of conviction record—Fees—Immunity—Rules.
43.43.842	Vulnerable adults—Additional licensing requirements for agencies, facilities, and individuals providing services.
43.43.944	Fire service training account.

43.43.250 Retirement of members. (1)(a) Until July 1, 2007, any member who has attained the age of sixty years shall be retired on the first day of the calendar month next succeeding that in which the member has attained the age of sixty. However, the requirement to retire at age sixty does not apply to a member serving as chief of the Washington state patrol.

(b) Beginning July 1, 2007, any active member who has obtained the age of sixty-five years shall be retired on the first day of the calendar month next succeeding that in which the member has attained the age of sixty-five. However, the requirement to retire at age sixty-five does not apply to a member serving as chief of the Washington state patrol.

(2) Any member who has completed twenty-five years of credited service or has attained the age of fifty-five may apply to retire as provided in RCW 43.43.260, by completing and submitting an application form to the department, setting forth at what time the member desires to be retired. [2007 c 87 § 1; 1982 1st ex.s. c 52 § 26; 1975-'76 2nd ex.s. c 116 § 1; 1969 c 12 § 3; 1965 c 8 § 43.43.250. Prior: 1963 c 175 § 1; 1957 c 162 § 3; 1951 c 140 § 4; 1947 c 250 § 14; Rem. Supp. 1947 § 6362-94.]

Effective dates—1982 1st ex.s. c 52: See note following RCW 2.10.180.

Construction—1969 c 12: See note following RCW 43.43.120.

43.43.285 Special death benefit—Course of employment—Occupational disease or infection.

(1) A one hundred fifty thousand dollar death benefit shall be paid to the member's estate, or such person or persons, trust or organization as the member shall have nominated by written designation duly executed and filed with the department. If there be no such designated person or persons still living at the time of the member's death, such member's death benefit shall be paid to the member's surviving spouse as if in fact such spouse had been nominated by written designation, or if there be no such surviving spouse, then to such member's legal representatives.

(2)(a) The benefit under this section shall be paid only where death occurs as a result of (i) injuries sustained in the course of employment; or (ii) an occupational disease or infection that arises naturally and proximately out of employment covered under this chapter. The determination of eligibility for the benefit shall be made consistent with Title 51 RCW by the department of labor and industries. The department of labor and industries shall notify the department of retirement systems by order under RCW 51.52.050.

(b) The retirement allowance paid to the spouse and dependent children of a member who is killed in the course of employment, as set forth in RCW 41.05.011(14), shall include reimbursement for any payments of premium rates to the Washington state health care authority under RCW 41.05.080. [2007 c 488 § 1; 2007 c 487 § 9; 1996 c 226 § 2.]

Reviser's note: This section was amended by 2007 c 487 § 9 and by 2007 c 488 § 1, each without reference to the other. Both amendments are incorporated in the publication of this section under RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

Short title—2007 c 488: "This act shall be known as "The Steve Frink's and Jim Saunder's Law" in honor of Steve Frink and Jim Saunders, Washington state patrol officers who were killed in the line of duty." [2007 c 488 § 5.]

Effective date—1996 c 226: See note following RCW 41.26.048.

43.43.286 Rights reserved to the legislature—No future contractual rights. The legislature reserves the right to amend or repeal the reimbursement provisions of chapter 488, Laws of 2007 in the future and no member or beneficiary has a contractual right to receive any distribution not granted prior to that time. [2007 c 488 § 4.]

Short title—2007 c 488: See note following RCW 43.43.285.

43.43.400 Aquatic invasive species enforcement account—Aquatic invasive species enforcement program for recreational and commercial watercraft—Reports to the legislature. (1) The definitions in this subsection apply throughout this section unless the context clearly requires otherwise:

(a) "Aquatic invasive species" means any invasive, prohibited, regulated, unregulated, or unlisted aquatic animal or plant species as defined under *RCW 77.08.010 (49) through (54), aquatic noxious weeds as defined under RCW 17.26.020(5)(c), and aquatic nuisance species as defined under RCW 77.60.130(1).

(b) "Recreational and commercial watercraft" includes the boat, as well as equipment used to transport the boat, and any auxiliary equipment such as attached or detached outboard motors.

(2) The aquatic invasive species enforcement account is created in the state treasury. Moneys directed to the account from RCW 88.02.050 must be deposited in the account. Expenditures from the account may only be used as provided in this section. Moneys in the account may be spent only after appropriation.

(3) Funds in the aquatic invasive species enforcement account may be appropriated to the Washington state patrol and the department of fish and wildlife to develop an aquatic invasive species enforcement program for recreational and commercial watercraft, which includes equipment used to transport the watercraft and auxiliary equipment such as attached or detached outboard motors. Funds must be expended as follows:

(a) By the Washington state patrol, to inspect recreational and commercial watercraft that are required to stop at port of entry weigh stations managed by the Washington state patrol. The watercraft must be inspected for the presence of aquatic invasive species; and

(b) By the department of fish and wildlife to:

(i) Establish random check stations, to inspect recreational and commercial watercraft as provided for in RCW 77.12.879(3);

(ii) Inspect or delegate inspection of recreational and commercial watercraft. If the department conducts the inspection, there will be no cost to the person requesting the inspection;

(iii) Provide training to all department employees that are deployed in the field to inspect recreational and commercial watercraft; and

(iv) Provide an inspection receipt verifying that the watercraft is not contaminated after the watercraft has been inspected at a check station or has been inspected at the request of the owner of the recreational or commercial watercraft. The inspection receipt is valid until the watercraft is used again.

(4) The Washington state patrol and the department of fish and wildlife shall submit a biennial report to the appropriate legislative committees describing the actions taken to implement this section along with suggestions on how to better fulfill the intent of chapter 464, Laws of 2005. The first report is due December 1, 2007. [2007 c 350 § 1; 2005 c 464 § 5.]

***Reviser's note:** RCW 77.08.010 was amended by 2007 c 254 § 1, changing subsections (49) through (54) to subsections (48) through (53).

Findings—Intent—2005 c 464: See note following RCW 88.02.050.

43.43.751 Biological samples for missing persons investigations. Biological samples taken for a missing person's investigation under RCW 68.50.320 shall be forwarded to the appropriate laboratory as soon as possible. The crime laboratory of the Washington state patrol will provide guidance to agencies regarding where samples should be sent. If substantial delays in testing occur or federal testing is no longer available, the legislature should be requested to provide funding to implement mitochondrial technology in the state of Washington. [2007 c 10 § 6; 2006 c 102 § 7.]

Intent—2007 c 10: See note following RCW 43.103.110.

Finding—Intent—2006 c 102: See note following RCW 36.28A.100.

43.43.830 Background checks—Access to children or vulnerable persons—Definitions. Unless the context clearly requires otherwise, the definitions in this section apply throughout RCW 43.43.830 through 43.43.845.

(1) "Applicant" means:

(a) Any prospective employee who will or may have unsupervised access to children under sixteen years of age or developmentally disabled persons or vulnerable adults during the course of his or her employment or involvement with the business or organization;

(b) Any prospective volunteer who will have regularly scheduled unsupervised access to children under sixteen years of age, developmentally disabled persons, or vulnerable adults during the course of his or her employment or involvement with the business or organization under circumstances where such access will or may involve groups of (i) five or fewer children under twelve years of age, (ii) three or fewer children between twelve and sixteen years of age, (iii) developmentally disabled persons, or (iv) vulnerable adults;

(c) Any prospective adoptive parent, as defined in RCW 26.33.020; or

(d) Any prospective custodian in a nonparental custody proceeding under chapter 26.10 RCW.

(2) "Business or organization" means a person, business, or organization licensed in this state, any agency of the state, or other governmental entity, that educates, trains, treats, supervises, houses, or provides recreation to developmentally disabled persons, vulnerable adults, or children under sixteen years of age, or that provides child day care, early learning, or early learning childhood education services, including but not limited to public housing authorities, school districts, and educational service districts.

(3) "Civil adjudication proceeding" is a judicial or administrative adjudicative proceeding that results in a finding of, or upholds an agency finding of, domestic violence, abuse, sexual abuse, neglect, abandonment, violation of a professional licensing standard regarding a child or vulnerable adult, or exploitation or financial exploitation of a child or vulnerable adult under any provision of law, including but not limited to chapter 13.34, 26.44, or 74.34 RCW, or rules adopted under chapters 18.51 and 74.42 RCW. "Civil adjudication proceeding" also includes judicial or administrative findings that become final due to the failure of the alleged perpetrator to timely exercise a legal right to administratively challenge such findings.

(4) "Conviction record" means "conviction record" information as defined in RCW 10.97.030 and 10.97.050 relating to a crime committed by either an adult or a juvenile. It does not include a conviction for an offense that has been the subject of an expungement, pardon, annulment, certificate of rehabilitation, or other equivalent procedure based on a finding of the rehabilitation of the person convicted, or a conviction that has been the subject of a pardon, annulment, or other equivalent procedure based on a finding of innocence. It does include convictions for offenses for which the defendant received a deferred or suspended sentence, unless the record has been expunged according to law.

(5) "Crime against children or other persons" means a conviction of any of the following offenses: Aggravated murder; first or second degree murder; first or second degree kidnapping; first, second, or third degree assault; first, second, or third degree assault of a child; first, second, or third degree rape; first, second, or third degree rape of a child; first or second degree robbery; first degree arson; first degree burglary; first or second degree manslaughter; first or second degree extortion; indecent liberties; incest; vehicular homicide; first degree promoting prostitution; communication with a minor; unlawful imprisonment; simple assault; sexual exploitation of minors; first or second degree criminal mistreatment; endangerment with a controlled substance; child abuse or neglect as defined in RCW 26.44.020; first or second degree custodial interference; first or second degree custodial sexual misconduct; malicious harassment; first, second, or third degree child molestation; first or second degree sexual misconduct with a minor; patronizing a juvenile prostitute; child abandonment; promoting pornography; selling or distributing erotic material to a minor; custodial assault; violation of child abuse restraining order; child buying or selling; prostitution; felony indecent exposure; criminal abandonment; or any of these crimes as they may be renamed in the future.

(6) "Crimes relating to drugs" means a conviction of a crime to manufacture, delivery, or possession with intent to manufacture or deliver a controlled substance.

(7) "Crimes relating to financial exploitation" means a conviction for first, second, or third degree extortion; first, second, or third degree theft; first or second degree robbery; forgery; or any of these crimes as they may be renamed in the future.

(8) "Unsupervised" means not in the presence of:

(a) Another employee or volunteer from the same business or organization as the applicant; or

(b) Any relative or guardian of any of the children or developmentally disabled persons or vulnerable adults to which the applicant has access during the course of his or her employment or involvement with the business or organization.

(9) "Vulnerable adult" means "vulnerable adult" as defined in chapter 74.34 RCW, except that for the purposes of requesting and receiving background checks pursuant to RCW 43.43.832, it shall also include adults of any age who lack the functional, mental, or physical ability to care for themselves.

(10) "Financial exploitation" means "financial exploitation" as defined in RCW 74.34.020.

(11) "Agency" means any person, firm, partnership, association, corporation, or facility which receives, provides services to, houses or otherwise cares for vulnerable adults, juveniles, or children, or which provides child day care, early learning, or early childhood education services. [2007 c 387 § 9; 2005 c 421 § 1; 2003 c 105 § 5; 2002 c 229 § 3; 1999 c 45 § 5; 1998 c 10 § 1; 1996 c 178 § 12; 1995 c 250 § 1; 1994 c 108 § 1; 1992 c 145 § 16. Prior: 1990 c 146 § 8; 1990 c 3 § 1101; prior: 1989 c 334 § 1; 1989 c 90 § 1; 1987 c 486 § 1.]

Effective date—2002 c 229: See note following RCW 9A.42.100.

Effective date—1996 c 178: See note following RCW 18.35.110.

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

At-risk children volunteer program: RCW 43.150.080.

Individuals with developmental disabilities: RCW 41.06.475.

State hospitals: RCW 72.23.035.

43.43.832 Background checks—Disclosure of information—Sharing of criminal background information by health care facilities. (1) The legislature finds that businesses and organizations providing services to children, developmentally disabled persons, and vulnerable adults need adequate information to determine which employees or licensees to hire or engage. The legislature further finds that many developmentally disabled individuals and vulnerable adults desire to hire their own employees directly and also need adequate information to determine which employees or licensees to hire or engage. Therefore, the Washington state patrol identification and criminal history section shall disclose, upon the request of a business or organization as defined in RCW 43.43.830, a developmentally disabled person, or a vulnerable adult as defined in RCW 43.43.830 or his or her guardian, an applicant's conviction record as defined in chapter 10.97 RCW.

(2) The legislature also finds that the Washington professional educator standards board may request of the Washing-

ton state patrol criminal identification system information regarding a certificate applicant's conviction record under subsection (1) of this section.

(3) The legislature also finds that law enforcement agencies, the office of the attorney general, prosecuting authorities, and the department of social and health services may request this same information to aid in the investigation and prosecution of child, developmentally disabled person, and vulnerable adult abuse cases and to protect children and adults from further incidents of abuse.

(4) The legislature further finds that the secretary of the department of social and health services must establish rules and set standards to require specific action when considering the information listed in subsection (1) of this section, and when considering additional information including but not limited to civil adjudication proceedings as defined in RCW 43.43.830 and any out-of-state equivalent, in the following circumstances:

(a) When considering persons for state employment in positions directly responsible for the supervision, care, or treatment of children, vulnerable adults, or individuals with mental illness or developmental disabilities;

(b) When considering persons for state positions involving unsupervised access to vulnerable adults to conduct comprehensive assessments, financial eligibility determinations, licensing and certification activities, investigations, surveys, or case management; or for state positions otherwise required by federal law to meet employment standards;

(c) When licensing agencies or facilities with individuals in positions directly responsible for the care, supervision, or treatment of children, developmentally disabled persons, or vulnerable adults, including but not limited to agencies or facilities licensed under chapter 74.15 or 18.51 RCW;

(d) When contracting with individuals or businesses or organizations for the care, supervision, case management, or treatment of children, developmentally disabled persons, or vulnerable adults, including but not limited to services contracted for under chapter 18.20, *18.48, 70.127, 70.128, 72.36, or 74.39A RCW or Title 71A RCW;

(e) When individual providers are paid by the state or providers are paid by home care agencies to provide in-home services involving unsupervised access to persons with physical, mental, or developmental disabilities or mental illness, or to vulnerable adults as defined in chapter 74.34 RCW, including but not limited to services provided under chapter 74.39 or 74.39A RCW.

(5) The director of the department of early learning shall investigate the conviction records, pending charges, and other information including civil adjudication proceeding records of current employees and of any person actively being considered for any position with the department who will or may have unsupervised access to children, or for state positions otherwise required by federal law to meet employment standards. "Considered for any position" includes decisions about (a) initial hiring, layoffs, reallocations, transfers, promotions, or demotions, or (b) other decisions that result in an individual being in a position that will or may have unsupervised access to children as an employee, an intern, or a volunteer.

(6) The director of the department of early learning shall adopt rules and investigate conviction records, pending

charges, and other information including civil adjudication proceeding records, in the following circumstances:

(a) When licensing or certifying agencies with individuals in positions that will or may have unsupervised access to children who are in child day care, in early learning programs, or receiving early childhood education services, including but not limited to licensees, agency staff, interns, volunteers, contracted providers, and persons living on the premises who are sixteen years of age or older;

(b) When authorizing individuals who will or may have unsupervised access to children who are in child day care, in early learning programs, or receiving early childhood learning education services in licensed or certified agencies, including but not limited to licensees, agency staff, interns, volunteers, contracted providers, and persons living on the premises who are sixteen years of age or older;

(c) When contracting with any business or organization for activities that will or may have unsupervised access to children who are in child day care, in early learning programs, or receiving early childhood learning education services;

(d) When establishing the eligibility criteria for individual providers to receive state paid subsidies to provide child day care or early learning services that will or may involve unsupervised access to children.

(7) Whenever a state conviction record check is required by state law, persons may be employed or engaged as volunteers or independent contractors on a conditional basis pending completion of the state background investigation. Whenever a national criminal record check through the federal bureau of investigation is required by state law, a person may be employed or engaged as a volunteer or independent contractor on a conditional basis pending completion of the national check. The Washington personnel resources board shall adopt rules to accomplish the purposes of this subsection as it applies to state employees.

(8)(a) For purposes of facilitating timely access to criminal background information and to reasonably minimize the number of requests made under this section, recognizing that certain health care providers change employment frequently, health care facilities may, upon request from another health care facility, share copies of completed criminal background inquiry information.

(b) Completed criminal background inquiry information may be shared by a willing health care facility only if the following conditions are satisfied: The licensed health care facility sharing the criminal background inquiry information is reasonably known to be the person's most recent employer, no more than twelve months has elapsed from the date the person was last employed at a licensed health care facility to the date of their current employment application, and the criminal background information is no more than two years old.

(c) If criminal background inquiry information is shared, the health care facility employing the subject of the inquiry must require the applicant to sign a disclosure statement indicating that there has been no conviction or finding as described in RCW 43.43.842 since the completion date of the most recent criminal background inquiry.

(d) Any health care facility that knows or has reason to believe that an applicant has or may have a disqualifying con-

viction or finding as described in RCW 43.43.842, subsequent to the completion date of their most recent criminal background inquiry, shall be prohibited from relying on the applicant's previous employer's criminal background inquiry information. A new criminal background inquiry shall be requested pursuant to RCW 43.43.830 through 43.43.842.

(e) Health care facilities that share criminal background inquiry information shall be immune from any claim of defamation, invasion of privacy, negligence, or any other claim in connection with any dissemination of this information in accordance with this subsection.

(f) Health care facilities shall transmit and receive the criminal background inquiry information in a manner that reasonably protects the subject's rights to privacy and confidentiality.

(g) For the purposes of this subsection, "health care facility" means a nursing home licensed under chapter 18.51 RCW, a boarding home licensed under chapter 18.20 RCW, or an adult family home licensed under chapter 70.128 RCW. [2007 c 387 § 10; 2006 c 263 § 826; 2005 c 421 § 2; 2000 c 87 § 1; 1997 c 392 § 524; 1995 c 250 § 2; 1993 c 281 § 51; 1990 c 3 § 1102. Prior: 1989 c 334 § 2; 1989 c 90 § 2; 1987 c 486 § 2.]

***Reviser's note:** Chapter 18.48 RCW was repealed in its entirety by 2002 c 223 § 2.

Findings—Purpose—Part headings not law—2006 c 263: See notes following RCW 28A.150.230.

Short title—Findings—Construction—Conflict with federal requirements—Part headings and captions not law—1997 c 392: See notes following RCW 74.39A.009.

Effective date—1993 c 281: See note following RCW 41.06.022.

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

43.43.837 Fingerprint-based background checks—Requirements for applicants and service providers—Fees—Rules to establish financial responsibility. (1) In order to determine the character, competence, and suitability of any applicant or service provider to have unsupervised access, the secretary may require a fingerprint-based background check through the Washington state patrol and the federal bureau of investigation at anytime, but shall require a fingerprint-based background check when the applicant or service provider has resided in the state less than three consecutive years before application, and:

(a) Is an applicant or service provider providing services to children or people with developmental disabilities under RCW 74.15.030;

(b) Is an individual residing in an applicant or service provider's home, facility, entity, agency, or business or who is authorized by the department to provide services to children or people with developmental disabilities under RCW 74.15.030; or

(c) Is an applicant or service provider providing in-home services funded by:

(i) Medicaid personal care under RCW 74.09.520;

(ii) Community options program entry system waiver services under RCW 74.39A.030;

(iii) Chore services under RCW 74.39A.110; or

(iv) Other home and community long-term care programs, established pursuant to chapters 74.39 and 74.39A RCW, administered by the department.

(2) The secretary shall require a fingerprint-based background check through the Washington state patrol identification and criminal history section and the federal bureau of investigation when the department seeks to approve an applicant or service provider for a foster or adoptive placement of children in accordance with federal and state law.

(3) Any secure facility operated by the department under chapter 71.09 RCW shall require applicants and service providers to undergo a fingerprint-based background check through the Washington state patrol identification and criminal history section and the federal bureau of investigation.

(4) Service providers and service provider applicants who are required to complete a fingerprint-based background check may be hired for a one hundred twenty-day provisional period as allowed under law or program rules when:

(a) A fingerprint-based background check is pending; and

(b) The applicant or service provider is not disqualified based on the immediate result of the background check.

(5) Fees charged by the Washington state patrol and the federal bureau of investigation for fingerprint-based background checks shall be paid by the department for applicants or service providers providing:

(a) Services to people with a developmental disability under RCW 74.15.030;

(b) In-home services funded by medicaid personal care under RCW 74.09.520;

(c) Community options program entry system waiver services under RCW 74.39A.030;

(d) Chore services under RCW 74.39A.110;

(e) Services under other home and community long-term care programs, established pursuant to chapters 74.39 and 74.39A RCW, administered by the department;

(f) Services in, or to residents of, a secure facility under RCW 71.09.115; and

(g) Foster care as required under RCW 74.15.030.

(6) Service providers licensed under RCW 74.15.030 must pay fees charged by the Washington state patrol and the federal bureau of investigation for conducting fingerprint-based background checks.

(7) Children's administration service providers licensed under RCW 74.15.030 may not pass on the cost of the background check fees to their applicants unless the individual is determined to be disqualified due to the background information.

(8) The department shall develop rules identifying the financial responsibility of service providers, applicants, and the department for paying the fees charged by law enforcement to roll, print, or scan fingerprints-based for the purpose of a Washington state patrol or federal bureau of investigation fingerprint-based background check.

(9) For purposes of this section, unless the context plainly indicates otherwise:

(a) "Applicant" means a current or prospective department or service provider employee, volunteer, student, intern, researcher, contractor, or any other individual who will or may have unsupervised access because of the nature of the work or services he or she provides. "Applicant" includes but

is not limited to any individual who will or may have unsupervised access and is:

(i) Applying for a license or certification from the department;

(ii) Seeking a contract with the department or a service provider;

(iii) Applying for employment, promotion, reallocation, or transfer;

(iv) An individual that a department client or guardian of a department client chooses to hire or engage to provide services to himself or herself or another vulnerable adult, juvenile, or child and who might be eligible to receive payment from the department for services rendered; or

(v) A department applicant who will or may work in a department-covered position.

(b) "Authorized" means the department grants an applicant, home, or facility permission to:

(i) Conduct licensing, certification, or contracting activities;

(ii) Have unsupervised access to vulnerable adults, juveniles, and children;

(iii) Receive payments from a department program; or

(iv) Work or serve in a department-covered position.

(c) "Department" means the department of social and health services.

(d) "Secretary" means the secretary of the department of social and health services.

(e) "Secure facility" has the meaning provided in RCW 71.09.020.

(f) "Service provider" means entities, facilities, agencies, businesses, or individuals who are licensed, certified, authorized, or regulated by, receive payment from, or have contracts or agreements with the department to provide services to vulnerable adults, juveniles, or children. "Service provider" includes individuals whom a department client or guardian of a department client may choose to hire or engage to provide services to himself or herself or another vulnerable adult, juvenile, or child and who might be eligible to receive payment from the department for services rendered. "Service provider" does not include those certified under chapter 70.96A RCW. [2007 c 387 § 1.]

43.43.838 Record checks—Transcript of conviction record—Fees—Immunity—Rules. (1) After January 1, 1988, and notwithstanding any provision of RCW 43.43.700 through 43.43.810 to the contrary, the state patrol shall furnish a transcript of the conviction record pertaining to any person for whom the state patrol or the federal bureau of investigation has a record upon the written request of:

(a) The subject of the inquiry;

(b) Any business or organization for the purpose of conducting evaluations under RCW 43.43.832;

(c) The department of social and health services;

(d) Any law enforcement agency, prosecuting authority, or the office of the attorney general;

(e) The department of social and health services for the purpose of meeting responsibilities set forth in chapter 74.15, 18.51, 18.20, or 72.23 RCW, or any later-enacted statute which purpose is to regulate or license a facility which handles vulnerable adults. However, access to conviction records pursuant to this subsection (1)(e) does not limit or

restrict the ability of the department to obtain additional information regarding conviction records and pending charges as set forth in *RCW 74.15.030(2)(b); or

(f) The department of early learning for the purpose of meeting responsibilities in chapter 43.215 RCW.

(2) The state patrol shall by rule establish fees for disseminating records under this section to recipients identified in subsection (1)(a) and (b) of this section. The state patrol shall also by rule establish fees for disseminating records in the custody of the national crime information center. The revenue from the fees shall cover, as nearly as practicable, the direct and indirect costs to the state patrol of disseminating the records. No fee shall be charged to a nonprofit organization for the records check. In the case of record checks using fingerprints requested by school districts and educational service districts, the state patrol shall charge only for the incremental costs associated with checking fingerprints in addition to name and date of birth. Record checks requested by school districts and educational service districts using only name and date of birth shall continue to be provided free of charge.

(3) No employee of the state, employee of a business or organization, or the business or organization is liable for defamation, invasion of privacy, negligence, or any other claim in connection with any lawful dissemination of information under RCW 43.43.830 through 43.43.840 or 43.43.760.

(4) Before July 26, 1987, the state patrol shall adopt rules and forms to implement this section and to provide for security and privacy of information disseminated under this section, giving first priority to the criminal justice requirements of this chapter. The rules may include requirements for users, audits of users, and other procedures to prevent use of civil adjudication record information or criminal history record information inconsistent with this chapter.

(5) Nothing in RCW 43.43.830 through 43.43.840 shall authorize an employer to make an inquiry not specifically authorized by this chapter, or be construed to affect the policy of the state declared in chapter 9.96A RCW. [2007 c 17 § 5; 2005 c 421 § 5; 1995 c 29 § 1; 1992 c 159 § 7; 1990 c 3 § 1104. Prior: 1989 c 334 § 4; 1989 c 90 § 4; 1987 c 486 § 5.]

*Reviser's note: RCW 74.15.030(2)(b) was amended by 2007 c 387 § 5, changing the scope of the subsection.

Findings—1992 c 159: See note following RCW 28A.400.303.

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

43.43.842 Vulnerable adults—Additional licensing requirements for agencies, facilities, and individuals providing services. (1)(a) The secretary of social and health services and the secretary of health shall adopt additional requirements for the licensure or relicensure of agencies, facilities, and licensed individuals who provide care and treatment to vulnerable adults, including nursing pools registered under chapter 18.52C RCW. These additional requirements shall ensure that any person associated with a licensed agency or facility having unsupervised access with a vulnerable adult shall not be the respondent in an active protective order under RCW 74.34.130, nor have been: (i) Convicted of a crime against persons as defined in RCW 43.43.830, except as provided in this section; (ii) convicted of crimes relating to financial exploitation as defined in RCW 43.43.830, except as provided in this section; or (iii) found in any disciplinary

board final decision to have abused a vulnerable adult under RCW 43.43.830.

(b) A person associated with a licensed agency or facility who has unsupervised access with a vulnerable adult shall make the disclosures specified in RCW 43.43.834(2). The person shall make the disclosures in writing, sign, and swear to the contents under penalty of perjury. The person shall, in the disclosures, specify all crimes against children or other persons, all crimes relating to financial exploitation, and all crimes relating to drugs as defined in RCW 43.43.830, committed by the person.

(2) The rules adopted under this section shall permit the licensee to consider the criminal history of an applicant for employment in a licensed facility when the applicant has one or more convictions for a past offense and:

(a) The offense was simple assault, assault in the fourth degree, or the same offense as it may be renamed, and three or more years have passed between the most recent conviction and the date of application for employment;

(b) The offense was prostitution, or the same offense as it may be renamed, and three or more years have passed between the most recent conviction and the date of application for employment;

(c) The offense was theft in the third degree, or the same offense as it may be renamed, and three or more years have passed between the most recent conviction and the date of application for employment;

(d) The offense was theft in the second degree, or the same offense as it may be renamed, and five or more years have passed between the most recent conviction and the date of application for employment;

(e) The offense was forgery, or the same offense as it may be renamed, and five or more years have passed between the most recent conviction and the date of application for employment.

The offenses set forth in (a) through (e) of this subsection do not automatically disqualify an applicant from employment by a licensee. Nothing in this section may be construed to require the employment of any person against a licensee's judgment.

(3) In consultation with law enforcement personnel, the secretary of social and health services and the secretary of health shall investigate, or cause to be investigated, the conviction record and the protection proceeding record information under their respective jurisdictions seeking licensure or relicensure. An individual responding to a criminal background inquiry request from his or her employer or potential employer shall disclose the information about his or her criminal history under penalty of perjury. The secretaries shall use the information solely for the purpose of determining eligibility for licensure or relicensure. Criminal justice agencies shall provide the secretaries such information as they may have and that the secretaries may require for such purpose. [2007 c 387 § 4; 1998 c 10 § 4; 1997 c 392 § 518; 1992 c 104 § 1; 1989 c 334 § 11.]

Short title—Findings—Construction—Conflict with federal requirements—Part headings and captions not law—1997 c 392: See notes following RCW 74.39A.009.

43.43.944 Fire service training account. (1) The fire service training account is hereby established in the state treasury. The fund shall consist of:

(a) All fees received by the Washington state patrol for fire service training;

(b) All grants and bequests accepted by the Washington state patrol under RCW 43.43.940;

(c) Twenty percent of all moneys received by the state on fire insurance premiums; and

(d) General fund—state moneys appropriated into the account by the legislature.

(2) Moneys in the account may be appropriated only for fire service training. The state patrol may use amounts appropriated from the fire service training account under this section to contract with the Washington state firefighters apprenticeship trust for the operation of the firefighter joint apprenticeship training program. The contract may call for payments on a monthly basis. During the 2007-2009 fiscal biennium, the legislature may appropriate funds from this account for school fire prevention activities within the Washington state patrol and additional sanitary wastewater treatment capacity at the state fire service training center.

(3) Any general fund—state moneys appropriated into the account shall be allocated solely to the firefighter joint apprenticeship training program. The Washington state patrol may contract with outside entities for the administration and delivery of the firefighter joint apprenticeship training program. [2007 c 520 § 6034; 2007 c 290 § 1; 2005 c 518 § 929; 2003 1st sp.s. c 25 § 919; 1999 c 117 § 2; 1995 c 369 § 21; 1986 c 266 § 61. Formerly RCW 43.63A.370.]

Reviser's note: This section was amended by 2007 c 290 § 1 and by 2007 c 520 § 6034, each without reference to the other. Both amendments are incorporated in the publication of this section under RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

Part headings not law—Severability—Effective dates—2007 c 520: See notes following RCW 43.19.125.

Severability—Effective date—2005 c 518: See notes following RCW 28A.305.210.

Severability—Effective date—2003 1st sp.s. c 25: See notes following RCW 19.28.351.

Application—Effective date—1995 c 369: See notes following RCW 43.43.930.

Severability—1986 c 266: See note following RCW 38.52.005.

Chapter 43.46 RCW ARTS COMMISSION

Sections

43.46.081 Poet laureate program.
43.46.085 Poet laureate account.

43.46.081 Poet laureate program. (1) The Washington state arts commission shall establish and administer the poet laureate program. The poet laureate shall engage in activities to promote and encourage poetry within the state, including but not limited to readings, workshops, lectures, or presentations for Washington educational institutions and communities in geographically diverse areas over a two-year term.

(2) Selection of a poet laureate shall be made by a committee appointed and coordinated by the commission. The committee may include representatives of the Washington

state library, the education community, the Washington commission for the humanities, publishing, and the community of Washington poets.

(3) The commission and the committee shall establish criteria to be used for the selection of a poet laureate. In addition to other criteria established, the poet laureate must be a published poet, a resident of Washington state, active in the poetry community, and willing and able to promote poetry in the state of Washington throughout the two-year term.

(4) The recommendation of the poet laureate selection committee shall be forwarded to the commission, which shall appoint the poet laureate with the approval of the governor.

(5) The poet laureate shall receive compensation at a level determined by the commission. Travel expenses shall be provided in accordance with RCW 43.03.050 and 43.03.060.

(6) The poet laureate may not serve more than two consecutive two-year terms.

(7) The commission shall fund the poet laureate program through gifts, grants, or endowments from public or private sources that are made from time to time, in trust or otherwise. [2007 c 128 § 2.]

Findings—2007 c 128: "The legislature wishes to recognize: (1) The value of poetry and the contribution Washington poets make to the culture of our state; (2) that poetry is a literary form respected and growing throughout all segments of Washington's population; (3) that awareness and appreciation of poetry encourages increased literacy and advanced communication skills; and (4) that Washington state has produced many excellent and nationally recognized poets." [2007 c 128 § 1.]

43.46.085 Poet laureate account. The poet laureate account is created in the custody of the state treasurer. All receipts from gifts, grants, or endowments from public or private sources must be deposited into the account. Expenditures from the account may only be used for the poet laureate program. Only the executive director of the commission or the executive director's designee may authorize expenditures from the account. The account is subject to allotment procedures under chapter 43.88 RCW, but an appropriation is not required for expenditures. [2007 c 128 § 3.]

Findings—2007 c 128: See note following RCW 43.46.081.

Chapter 43.60A RCW

DEPARTMENT OF VETERANS AFFAIRS

Sections

- 43.60A.150 Veterans conservation corps—Created.
- 43.60A.151 Veterans conservation corps—Employment assistance—Agreements for educational benefits—Receipt of gifts, grants, or federal moneys—Report.
- 43.60A.152 Collaboration with agencies implementing the Washington conservation corps—Report.
- 43.60A.153 Veterans conservation corps account.
- 43.60A.154 Agreements with federal entities for projects—Report.
- 43.60A.155 Cooperation with the salmon recovery funding board regarding project work—Report.
- 43.60A.165 Defenders' fund—Eligibility for assistance.
- 43.60A.190 Veteran-owned businesses.

43.60A.150 Veterans conservation corps—Created.

(1) The Washington veterans conservation corps is created. The department shall establish enrollment procedures for the program. Enrollees may choose to participate in either or both the volunteer projects list authorized in subsection (2) of

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this section, and the training, certification, and placement program authorized in RCW 43.60A.151.

(2) The department shall create a list of veterans who are interested in working on projects that restore Washington's natural habitat. The department shall promote the opportunity to volunteer for the veterans conservation corps through its local counselors and representatives. Only veterans who grant their approval may be included on the list. The department shall consult with the salmon recovery board, the recreation and conservation funding board, the department of natural resources, the department of fish and wildlife, and the state parks and recreation commission to determine the most effective ways to market the veterans conservation corps to agencies and local sponsors of habitat restoration projects. [2007 c 451 § 2; 2007 c 241 § 6; 2005 c 257 § 2.]

Reviser's note: This section was amended by 2007 c 241 § 6 and by 2007 c 451 § 2, each without reference to the other. Both amendments are incorporated in the publication of this section under RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

Intent—Effective date—2007 c 241: See notes following RCW 79A.25.005.

Findings—Purpose—2005 c 257: "The legislature finds that many Washington citizens are veterans of armed forces conflicts that have important skills that may be employed in projects that help to protect and restore Washington's rivers, streams, lakes, marine waters, and open lands, and help to maintain urban and suburban wastewater and storm water management systems. The legislature further finds that such work has demonstrated benefits for many veterans who are coping with posttraumatic stress disorder or have other mental health or substance abuse disorders related to their service in the armed forces. The legislature further finds that these projects provide an opportunity for veterans to obtain on-the-job training, leading to certification in specific skill sets and to living wage employment in environmental restoration and stewardship. Therefore, it is the purpose of this chapter to create the veterans conservation corps program to assist veterans in obtaining training, certification, and employment in the field of environmental restoration and management, and to provide state funding assistance for projects that restore Washington's waters, forests, and habitat through the participation of veterans." [2007 c 451 § 1; 2005 c 257 § 1.]

43.60A.151 Veterans conservation corps—Employment assistance—Agreements for educational benefits—Receipt of gifts, grants, or federal moneys—Report.

(1) The department shall assist veterans enrolled in the veterans conservation corps with obtaining employment in conservation programs and projects that restore Washington's natural habitat, maintain and steward local, state, and federal forest lands and other outdoor lands, maintain and improve urban and suburban storm water management facilities and other water management facilities, and other environmental maintenance, stewardship, and restoration projects. The department shall consult with the workforce training and education coordinating board, the state board for community and technical colleges, the higher education coordinating board, the employment security department, and other state agencies administering conservation corps programs, to incorporate training, education, and certification in environmental restoration and management fields into the program. The department may enter into agreements with community colleges, private schools, state or local agencies, or other entities to provide training and educational courses as part of the enrollee benefits from the program.

(2) The department may receive gifts, grants, federal funds, or other moneys from public or private sources, for the use and benefit of the veterans conservation corps program.

The funds shall be deposited to the veterans conservation corps account created in RCW 43.60A.153.

(3) The department shall submit a report to the appropriate committees of the legislature by December 1, 2008, on the status of the veterans conservation corps program, including the number of enrollees employed in projects, training provided, certifications earned, employment placements achieved, program funding provided from all sources, and the results of the pilot project authorized in section 4, chapter 451, Laws of 2007. [2007 c 451 § 3.]

43.60A.152 Collaboration with agencies implementing the Washington conservation corps—Report. (1) The department shall collaborate with the state agencies implementing the Washington conservation corps, created in chapter 43.220 RCW, to maximize the utilization of both conservation corps programs. These agencies shall work together to identify stewardship and maintenance projects on agency-managed lands that are suitable for work by veterans conservation corps enrollees. The department may expend funds appropriated to the veterans conservation corps program to defray the costs of education, training, and certification associated with the enrollees participating in such projects.

(2) By September 30, 2007, the department, in conjunction with the state agencies identified in subsection (1) of this section, shall provide to the office of financial management and to the appropriate committees of the senate and house of representatives a report that:

(a) Identifies projects on state agency-managed lands that are currently planned for veterans conservation corps enrollee participation;

(b) Identifies additional projects on state agency-managed lands that are suitable for veterans conservation corps enrollee participation and for which funding is currently in place for such participation; and

(c) Identifies additional projects on state agency-managed lands for which project implementation has been funded or is included in the agency's multiannual stewardship plans, and that are suitable for veterans conservation corps enrollee participation in the event that additional funding is provided to the department for associated training, education, and certification. [2007 c 451 § 5.]

43.60A.153 Veterans conservation corps account. The veterans conservation corps account is created in the state treasury. All moneys appropriated to the account or directed to the account from other sources must be deposited in the account. Moneys in the account may be spent only after appropriation. Expenditures from the account may be used only for purposes of the veterans conservation corps program. [2007 c 451 § 6.]

43.60A.154 Agreements with federal entities for projects—Report. (1) The department shall seek to enter agreements with the national park service, the United States forest service, the United States fish and wildlife service, and other federal agencies managing lands in Washington, for the employment of veterans conservation corps enrollees in maintenance, restoration, and stewardship projects. Up to twenty percent of the costs of the veterans conservation corps

enrollees participation in a federal project may be provided by the department, including the costs of training provided on the project.

(2) By September 30, 2008, the department shall provide a report to the governor and appropriate committees of the senate and house of representatives regarding agreements entered with federal agencies to employ veteran conservation corps enrollees on federal land projects, and any revisions to the program needed to increase the number of these agreements. [2007 c 451 § 7.]

43.60A.155 Cooperation with the salmon recovery funding board regarding project work—Report. (1) During calendar years 2007 and 2008 the salmon recovery funding board shall cooperate with the department of veterans affairs to inform salmon habitat project sponsors of the availability of veterans conservation corps enrollees to perform project work. From applications submitted, the board and the department shall identify projects that propose work suitable for corps enrollees and located near where enrollees are based or may be created. The department may provide the project applicants with information regarding the benefits of employing a veterans conservation corps enrollee in the project, including funding that the department may make available to assist with the project. Such funding shall be considered by the salmon recovery funding board as matched funding in evaluating the project for salmon recovery funding board funding.

(2) As an element of the report required under RCW 43.60A.151(3), the salmon recovery funding board and the department shall jointly report to the governor and the appropriate committees of the senate and house of representatives regarding projects funded during the 2007 and 2008 grant cycles that employ veterans conservation corps enrollees. The report shall include recommendations for increasing the use of veterans conservation corps enrollees in salmon habitat projects that receive funding from the salmon recovery funding board. [2007 c 451 § 8.]

43.60A.165 Defenders' fund—Eligibility for assistance. The defenders' fund is created to provide assistance to members of the Washington national guard and reservists who served in Operation Enduring Freedom, Operation Iraqi Freedom, or Operation Noble Eagle, and who are experiencing financial hardships in employment, education, housing, and health care due to the significant period of time away from home serving our country. The program shall be administered by the department. Eligibility determinations shall be made by the department. Eligible veterans may receive a one-time grant of no more than five hundred dollars, except that for the 2007-2009 biennium, the one-time grant may not exceed one thousand dollars. [2007 c 522 § 952; 2006 c 343 § 4.]

Sunset Act application: See note following RCW 43.60A.160.

Severability—Effective date—2007 c 522: See notes following RCW 15.64.050.

Findings—2006 c 343: See note following RCW 43.60A.160.

43.60A.190 Veteran-owned businesses. (1) The department shall:

(a) Develop and maintain a current list of veteran-owned businesses; and

(b) Make the list available on the department's public web site.

(2) In order to qualify as a veteran-owned business, the business must be at least fifty-one percent owned and controlled by:

(a) A veteran as defined in RCW 41.04.007; or

(b) An active or reserve member in any branch of the armed forces of the United States, including the national guard, coast guard, and armed forces reserves.

(3) The department shall create a logo for the purpose of identifying veteran-owned businesses to the public. The department shall put the logo on an adhesive sticker or decal suitable for display in a business window and distribute the stickers or decals to veteran-owned businesses listed with the department.

(4) Businesses may submit an application on a form prescribed by the department for inclusion on the list.

(5) The department may adopt rules necessary to implement this section. [2007 c 11 § 1.]

Chapter 43.63A RCW

DEPARTMENT OF COMMUNITY, TRADE, AND ECONOMIC DEVELOPMENT

Sections

43.63A.068	Advisory committee on policies and programs for children and families with incarcerated parents—Funding for programs and services.
43.63A.305	Independent youth housing program—Created—Collaboration with the department of social and health services—Duties of subcontractor organizations.
43.63A.307	Independent youth housing program—Definitions.
43.63A.309	Independent youth housing program—Eligible youth—Participation.
43.63A.311	Independent youth housing program—Subcontractor organization performance review and report.
43.63A.313	Independent youth housing program—Limitations.
43.63A.315	Independent youth housing account.
43.63A.460	Recodified as RCW 43.22A.020.
43.63A.465	Recodified as RCW 43.22A.030.

43.63A.068 Advisory committee on policies and programs for children and families with incarcerated parents—Funding for programs and services. (1)(a) The department of community, trade, and economic development shall establish an advisory committee to monitor, guide, and report on recommendations relating to policies and programs for children and families with incarcerated parents.

(b) The advisory committee shall include representatives of the department of corrections, the department of social and health services, the department of early learning, the office of the superintendent of public instruction, representatives of the private nonprofit and business sectors, child advocates, representatives of Washington state Indian tribes as defined under the federal Indian welfare act (25 U.S.C. Sec. 1901 et seq.), court administrators, the administrative office of the courts, the Washington association of sheriffs and police chiefs, jail administrators, the office of the governor, and others who have an interest in these issues.

(c) The advisory committee shall:

(i) Gather the data collected by the departments as required in RCW 72.09.495, 74.04.800, 43.215.065, and 28A.300.520;

(ii) Monitor and provide consultation on the implementation of recommendations contained in the 2006 children of incarcerated parents report;

(iii) Identify areas of need and develop recommendations for the legislature, the department of social and health services, the department of corrections, the department of early learning, and the office of the superintendent of public instruction to better meet the needs of children and families of persons incarcerated in department of corrections facilities; and

(iv) Advise the department of community, trade, and economic development regarding community programs the department should fund with moneys appropriated for this purpose in the operating budget. The advisory committee shall provide recommendations to the department regarding the following:

(A) The goals for geographic distribution of programs and funding;

(B) The scope and purpose of eligible services and the priority of such services;

(C) Grant award funding limits;

(D) Entities eligible to apply for the funding;

(E) Whether the funding should be directed towards starting or supporting new programs, expanding existing programs, or whether the funding should be open to all eligible services and providers; and

(F) Other areas the advisory committee determines appropriate.

(d) The children of incarcerated parents advisory committee shall update the legislature and governor annually on committee activities, with the first update due by January 1, 2008.

(2) The department of community, trade, and economic development shall select community programs or services to receive funding that focus on children and families of inmates incarcerated in a department of corrections facility and sustaining the family during the period of the inmate's incarceration.

(a) Programs or services which meet the needs of the children of incarcerated parents should be the greatest consideration in the programs that are identified by the department.

(b) The department shall consider the recommendations of the advisory committee regarding which services or programs the department should fund.

(c) The programs selected shall collaborate with an agency, or agencies, experienced in providing services to aid families and victims of sexual assault and domestic violence to ensure that the programs identify families who have a history of sexual assault or domestic violence and ensure the services provided are appropriate for the children and families. [2007 c 384 § 6.]

Intent—Finding—2007 c 384: See note following RCW 72.09.495.

43.63A.305 Independent youth housing program—Created—Collaboration with the department of social and health services—Duties of subcontractor organiza-

tions. (1) The independent youth housing program is created in the department to provide housing stipends to eligible youth to be used for independent housing. In developing a plan for the design, implementation, and operation of the independent youth housing program, the department shall:

(a) Adopt policies, requirements, and procedures necessary to administer the program;

(b) Contract with one or more eligible organizations described under RCW 43.185A.040 to provide services and conduct administrative activities as described in subsection (3) of this section;

(c) Establish eligibility criteria for youth to participate in the independent youth housing program, giving priority to youth who have been dependents of the state for at least one year;

(d) Refer interested youth to the designated subcontractor organization administering the program in the area in which the youth intends to reside;

(e) Develop a method for determining the amount of the housing stipend, first and last month's rent, and security deposit, where applicable, to be dedicated to participating youth. The method for determining a housing stipend must take into account a youth's age, the youth's total income from all sources, the fair market rent for the area in which the youth lives or intends to live, and a variety of possible living situations for the youth. The amount of housing stipends must be adjusted, by a method and formula established by the department, to promote the successful transition for youth to complete housing self-sufficiency over time;

(f) Ensure that the independent youth housing program is integrated and aligned with other state rental assistance and case management programs operated by the department, as well as case management and supportive services programs, including the independent living program, the transitional living program, and other related programs offered by the department of social and health services; and

(g) Consult with the department of social and health services and other stakeholders involved with dependent youth, homeless youth, and homeless young adults, as appropriate.

(2) The department of social and health services shall collaborate with the department in implementing and operating the independent youth housing program including, but not limited to, the following:

(a) Refer potential eligible youth to the department before the youth's eighteenth birthday, if feasible, to include an indication, if known, of where the youth plans to reside after aging out of foster care;

(b) Provide information to all youth aged fifteen or older, who are dependents of the state under chapter 13.34 RCW, about the independent youth housing program, encouraging dependents nearing their eighteenth birthday to consider applying for enrollment in the program;

(c) Encourage organizations participating in the independent living program and the transitional living program to collaborate with independent youth housing program providers whenever possible to capitalize on resources and provide the greatest amount and variety of services to eligible youth;

(d) Annually provide to the department data reflecting changes in the percentage of youth aging out of the state dependency system each year who are eligible for state assistance, as well as any other data and performance measures

that may assist the department to measure program success; and

(e) Annually, beginning by December 31, 2007, provide to the appropriate committees of the legislature and the inter-agency council on homelessness as described under RCW 43.185C.170 recommendations of strategies to reach the goals described in RCW 43.63A.311(2)(g).

(3) Under the independent youth housing program, subcontractor organizations shall:

(a) Use moneys awarded to the organizations for housing stipends, security deposits, first and last month's rent stipends, case management program costs, and administrative costs;

(i) Administrative costs for each subcontractor organization may not exceed twelve percent of the estimated total annual grant amount to the subcontractor organization;

(ii) All housing stipends must be payable only to a landlord or housing manager of any type of independent housing;

(b) Enroll eligible youth who are referred by the department and who choose to reside in their assigned service area;

(c) Enter eligible youth program participants into the homeless client management information system as described in RCW 43.185C.180;

(d) Monitor participating youth's housing status;

(e) Evaluate participating youth's eligibility and compliance with department policies and procedures at least twice a year;

(f) Assist participating youth to develop or update an independent living plan focused on obtaining and retaining independent housing or collaborate with a case manager with whom the youth is already involved to ensure that the youth has an independent living plan;

(g) Educate participating youth on tenant rights and responsibilities;

(h) Provide support to participating youth in the form of general case management and information and referral services, when necessary, or collaborate with a case manager with whom the youth is already involved to ensure that the youth is receiving the case management and information and referral services needed;

(i) Connect participating youth, when possible, with individual development account programs, other financial literacy programs, and other programs that are designed to help young people acquire economic independence and self-sufficiency, or collaborate with a case manager with whom the youth is already involved to ensure that the youth is receiving information and referrals to these programs, when appropriate;

(j) Submit expenditure and performance reports, including information related to the performance measures in RCW 43.63A.311, to the department on a time schedule determined by the department; and

(k) Provide recommendations to the department regarding program improvements and strategies that might assist the state to reach its goals as described in RCW 43.63A.311(2)(g). [2007 c 316 § 3.]

Finding—2007 c 316: "(1) The legislature finds that providing needy youth aging out of the state dependency system with safe and viable options for housing to avoid homelessness confers a valuable benefit on the public that is intended to improve public health, safety, and welfare.

(2) It is the goal of this state to:

(a) Ensure that all youth aging out of the state dependency system have

access to a decent, appropriate, and affordable home in a healthy safe environment to prevent such young people from experiencing homelessness; and

(b) Reduce each year the percentage of young people eligible for state assistance upon aging out of the state dependency system." [2007 c 316 § 1.]

Study—2007 c 316: "Beginning in September 2008, the Washington state institute for public policy shall conduct a study measuring the outcomes for youth who are participating or who have participated in the independent youth housing program created in section 3 of this act. The institute shall issue a report containing its preliminary findings to the legislature by December 1, 2009, and a final report by December 1, 2010." [2007 c 316 § 8.]

43.63A.307 Independent youth housing program—Definitions. The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

(1) "Department" means the department of community, trade, and economic development.

(2) "Eligible youth" means an individual who:

(a) On or after September 1, 2006, is at least eighteen, was a dependent of the state under chapter 13.34 RCW in the month before his or her eighteenth birthday, and has not yet reached the age of twenty-three;

(b) Except as provided in RCW 43.63A.309(2)(a), has a total income from all sources, except for temporary sources that include, but are not limited to, overtime wages, bonuses, or short-term temporary assignments, that does not exceed fifty percent of the area median income;

(c) Is not receiving services under RCW 74.13.031(10)(b);

(d) Complies with other eligibility requirements the department may establish.

(3) "Fair market rent" means the fair market rent in each county of the state, as determined by the United States department of housing and urban development.

(4) "Independent housing" means a housing unit that is not owned by or located within the home of the eligible youth's biological parents or any of the eligible youth's former foster care families or dependency guardians. "Independent housing" may include a unit in a transitional or other supportive housing facility.

(5) "Individual development account" or "account" means an account established by contract between a low-income individual and a sponsoring organization for the benefit of the low-income individual and funded through periodic contributions by the low-income individual that are matched with contributions by or through the sponsoring organization.

(6) "Subcontractor organization" means an eligible organization described under RCW 43.185A.040 that contracts with the department to administer the independent youth housing program. [2007 c 316 § 2.]

Finding—2007 c 316: See note following RCW 43.63A.305.

43.63A.309 Independent youth housing program—Eligible youth—Participation. (1) An eligible youth participating in the independent youth housing program must:

(a) Sign a program compliance agreement stating that the youth agrees to:

(i) Timely pay his or her portion of the independent housing cost;

(ii) Comply with an independent living plan; and

(iii) Comply with other program requirements and policies the department may establish; and

(b) Maintain his or her status as an eligible youth, except as provided in subsection (2) of this section.

(2) The department shall establish policies and procedures to allow the youth to remain in the program and continue to receive a housing stipend if the youth's total income exceeds fifty percent of the area median income during the course of his or her participation in the program. The policies must require the youth to:

(a) Participate in the individual development account program established under RCW 43.31.460 and invest a portion, to be determined by the department, of his or her income that exceeds fifty percent of the area median income in an individual development account; or

(b) If the youth is unable to participate in the individual development account program due to the program's capacity limits or eligibility requirements, participate in an alternate supervised savings program approved by the department, as long as the youth qualifies for and may participate in this savings program.

(3) An eligible youth may participate in the independent youth housing program for any duration of time and may apply to enroll in the program with the department at any time.

(4)(a) A youth may be terminated from the independent youth housing program for a violation of department policies.

(b) Youth who are terminated from the program may apply to the department for reenrollment in the program through a procedure to be developed by the department. The department shall establish criteria to evaluate a reenrollment application and may accept or deny a reenrollment application based on the department's evaluation. [2007 c 316 § 4.]

Finding—2007 c 316: See note following RCW 43.63A.305.

43.63A.311 Independent youth housing program—Subcontractor organization performance review and report. Beginning in 2007, the department must annually review and report on the performance of subcontractor organizations participating in the independent youth housing program, as well as the performance of the program as a whole.

(1) Reporting should be within the context of the state homeless housing strategic plan under RCW 43.185C.040 and any other relevant state or local homeless or affordable housing plans. The outcomes of the independent youth housing program must be included in the measurement of any performance measures described in chapter 43.185C RCW.

(2) The independent youth housing program report must include, at a minimum, an update on the following program performance measures, as well as any other performance measures the department may establish, for enrolled youth in consultation with the department of social and health services, to be measured statewide and by county:

(a) Increases in housing stability;

(b) Increases in economic self-sufficiency;

(c) Increases in independent living skills;

(d) Increases in education and job training attainment;

(e) Decreases in the use of all state-funded services over time;

(f) Decreases in the percentage of youth aging out of the state dependency system each year who are eligible for state assistance as reported to the department by the department of social and health services; and

(g) Recommendations to the legislature and to the inter-agency council on homelessness as described under RCW 43.185C.170 on program improvements and on departmental strategies that might assist the state to reach its goals of:

(i) Ensuring that all youth aging out of the state dependency system have access to a decent, appropriate, and affordable home in a healthy safe environment to prevent such youth from experiencing homelessness; and

(ii) Reducing each year the percentage of young people eligible for state assistance upon aging out of the state dependency system. [2007 c 316 § 5.]

Finding—2007 c 316: See note following RCW 43.63A.305.

43.63A.313 Independent youth housing program—Limitations. Chapter 316, Laws of 2007 does not create:

(1) An entitlement to services;

(2) Judicial authority to (a) extend the jurisdiction of juvenile court in a proceeding under chapter 13.34 RCW to a youth who has reached the age of eighteen or (b) order the provision of services to the youth; or

(3) A private right of action or claim on the part of any individual, entity, or agency against the department, the department of social and health services, or any contractor of the departments. [2007 c 316 § 6.]

Finding—2007 c 316: See note following RCW 43.63A.305.

43.63A.315 Independent youth housing account. The independent youth housing account is created in the state treasury. All revenue directed to the independent youth housing program must be deposited into this account. Moneys in the account may be spent only after appropriation. Expenditures from the account may only be used for the independent youth housing program as described in RCW 43.63A.305. [2007 c 316 § 7.]

Finding—2007 c 316: See note following RCW 43.63A.305.

43.63A.460 Recodified as RCW 43.22A.020. See Supplementary Table of Disposition of Former RCW Sections, this volume.

43.63A.465 Recodified as RCW 43.22A.030. See Supplementary Table of Disposition of Former RCW Sections, this volume.

Chapter 43.63B RCW MOBILE AND MANUFACTURED HOME INSTALLATION

Sections

43.63B.005 Recodified as RCW 43.22A.005.
43.63B.010 Recodified as RCW 43.22A.010.
43.63B.020 Recodified as RCW 43.22A.040.
43.63B.030 Recodified as RCW 43.22A.050.
43.63B.035 Recodified as RCW 43.22A.060.
43.63B.040 Recodified as RCW 43.22A.070.
43.63B.050 Recodified as RCW 43.22A.080.
43.63B.060 Recodified as RCW 43.22A.110.
43.63B.070 Recodified as RCW 43.22A.090.

43.63B.080 Recodified as RCW 43.22A.100.
43.63B.090 Recodified as RCW 43.22A.120.
43.63B.100 Recodified as RCW 43.22A.130.
43.63B.110 Recodified as RCW 43.22A.140.
43.63B.120 Recodified as RCW 43.22A.150.
43.63B.130 Recodified as RCW 43.22A.160.
43.63B.140 Recodified as RCW 43.22A.170.
43.63B.150 Recodified as RCW 43.22A.200.
43.63B.160 Recodified as RCW 43.22A.180.
43.63B.170 Recodified as RCW 43.22A.190.
43.63B.800 Recodified as RCW 43.22A.220.
43.63B.900 Recodified as RCW 43.22A.900.
43.63B.901 Recodified as RCW 43.22A.901.

43.63B.005 Recodified as RCW 43.22A.005. See Supplementary Table of Disposition of Former RCW Sections, this volume.

43.63B.010 Recodified as RCW 43.22A.010. See Supplementary Table of Disposition of Former RCW Sections, this volume.

43.63B.020 Recodified as RCW 43.22A.040. See Supplementary Table of Disposition of Former RCW Sections, this volume.

43.63B.030 Recodified as RCW 43.22A.050. See Supplementary Table of Disposition of Former RCW Sections, this volume.

43.63B.035 Recodified as RCW 43.22A.060. See Supplementary Table of Disposition of Former RCW Sections, this volume.

43.63B.040 Recodified as RCW 43.22A.070. See Supplementary Table of Disposition of Former RCW Sections, this volume.

43.63B.050 Recodified as RCW 43.22A.080. See Supplementary Table of Disposition of Former RCW Sections, this volume.

43.63B.060 Recodified as RCW 43.22A.110. See Supplementary Table of Disposition of Former RCW Sections, this volume.

43.63B.070 Recodified as RCW 43.22A.090. See Supplementary Table of Disposition of Former RCW Sections, this volume.

43.63B.080 Recodified as RCW 43.22A.100. See Supplementary Table of Disposition of Former RCW Sections, this volume.

43.63B.090 Recodified as RCW 43.22A.120. See Supplementary Table of Disposition of Former RCW Sections, this volume.

43.63B.100 Recodified as RCW 43.22A.130. See Supplementary Table of Disposition of Former RCW Sections, this volume.

43.63B.110 Recodified as RCW 43.22A.140. See Supplementary Table of Disposition of Former RCW Sections, this volume.

43.63B.120 Recodified as RCW 43.22A.150. See Supplementary Table of Disposition of Former RCW Sections, this volume.

43.63B.130 Recodified as RCW 43.22A.160. See Supplementary Table of Disposition of Former RCW Sections, this volume.

43.63B.140 Recodified as RCW 43.22A.170. See Supplementary Table of Disposition of Former RCW Sections, this volume.

43.63B.150 Recodified as RCW 43.22A.200. See Supplementary Table of Disposition of Former RCW Sections, this volume.

43.63B.160 Recodified as RCW 43.22A.180. See Supplementary Table of Disposition of Former RCW Sections, this volume.

43.63B.170 Recodified as RCW 43.22A.190. See Supplementary Table of Disposition of Former RCW Sections, this volume.

43.63B.800 Recodified as RCW 43.22A.220. See Supplementary Table of Disposition of Former RCW Sections, this volume.

43.63B.900 Recodified as RCW 43.22A.900. See Supplementary Table of Disposition of Former RCW Sections, this volume.

43.63B.901 Recodified as RCW 43.22A.901. See Supplementary Table of Disposition of Former RCW Sections, this volume.

Chapter 43.70 RCW

DEPARTMENT OF HEALTH

Sections

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43.70.056 Health care-associated infections—Data collection and reporting—Advisory committee—Rules.

(1) The definitions in this subsection apply throughout this section unless the context clearly requires otherwise.

(a) "Health care-associated infection" means a localized or systemic condition that results from adverse reaction to the presence of an infectious agent or its toxins and that was not present or incubating at the time of admission to the hospital.

(b) "Hospital" means a health care facility licensed under chapter 70.41 RCW.

(2)(a) A hospital shall collect data related to health care-associated infections as required under this subsection (2) on the following:

(i) Beginning July 1, 2008, central line-associated bloodstream infection in the intensive care unit;

(ii) Beginning January 1, 2009, ventilator-associated pneumonia; and

(iii) Beginning January 1, 2010, surgical site infection for the following procedures:

(A) Deep sternal wound for cardiac surgery, including coronary artery bypass graft;

(B) Total hip and knee replacement surgery; and

(C) Hysterectomy, abdominal and vaginal.

(b) Until required otherwise under (c) of this subsection, a hospital must routinely collect and submit the data required to be collected under (a) of this subsection to the national healthcare safety network of the United States centers for disease control and prevention in accordance with national healthcare safety network definitions, methods, requirements, and procedures.

(c)(i) With respect to any of the health care-associated infection measures for which reporting is required under (a) of this subsection, the department must, by rule, require hospitals to collect and submit the data to the centers for medicare and medicaid services according to the definitions, methods, requirements, and procedures of the hospital compare program, or its successor, instead of to the national healthcare safety network, if the department determines that:

(A) The measure is available for reporting under the hospital compare program, or its successor, under substantially the same definition; and

(B) Reporting under this subsection (2)(c) will provide substantially the same information to the public.

(ii) If the department determines that reporting of a measure must be conducted under this subsection (2)(c), the department must adopt rules to implement such reporting. The department's rules must require reporting to the centers for medicare and medicaid services as soon as practicable, but not more than one hundred twenty days, after the centers for medicare and medicaid services allow hospitals to report the respective measure to the hospital compare program, or its successor. However, if the centers for medicare and medicaid services allow infection rates to be reported using the centers for disease control and prevention's national healthcare safety network, the department's rules must require reporting that reduces the burden of data reporting and mini-

mizes changes that hospitals must make to accommodate requirements for reporting.

(d) Data collection and submission required under this subsection (2) must be overseen by a qualified individual with the appropriate level of skill and knowledge to oversee data collection and submission.

(e)(i) A hospital must release to the department, or grant the department access to, its hospital-specific information contained in the reports submitted under this subsection (2), as requested by the department.

(ii) The hospital reports obtained by the department under this subsection (2), and any of the information contained in them, are not subject to discovery by subpoena or admissible as evidence in a civil proceeding, and are not subject to public disclosure as provided in RCW 42.56.360.

(3) The department shall:

(a) Provide oversight of the health care-associated infection reporting program established in this section;

(b) By January 1, 2011, submit a report to the appropriate committees of the legislature based on the recommendations of the advisory committee established in subsection (5) of this section for additional reporting requirements related to health care-associated infections, considering the methodologies and practices of the United States centers for disease control and prevention, the centers for medicare and medicaid services, the joint commission, the national quality forum, the institute for healthcare improvement, and other relevant organizations;

(c) Delete, by rule, the reporting of categories that the department determines are no longer necessary to protect public health and safety;

(d) By December 1, 2009, and by each December 1st thereafter, prepare and publish a report on the department's web site that compares the health care-associated infection rates at individual hospitals in the state using the data reported in the previous calendar year pursuant to subsection (2) of this section. The department may update the reports quarterly. In developing a methodology for the report and determining its contents, the department shall consider the recommendations of the advisory committee established in subsection (5) of this section. The report is subject to the following:

(i) The report must disclose data in a format that does not release health information about any individual patient; and

(ii) The report must not include data if the department determines that a data set is too small or possesses other characteristics that make it otherwise unrepresentative of a hospital's particular ability to achieve a specific outcome; and

(e) Evaluate, on a regular basis, the quality and accuracy of health care-associated infection reporting required under subsection (2) of this section and the data collection, analysis, and reporting methodologies.

(4) The department may respond to requests for data and other information from the data required to be reported under subsection (2) of this section, at the requestor's expense, for special studies and analysis consistent with requirements for confidentiality of patient records.

(5)(a) The department shall establish an advisory committee which may include members representing infection control professionals and epidemiologists, licensed health care providers, nursing staff, organizations that represent

health care providers and facilities, health maintenance organizations, health care payers and consumers, and the department. The advisory committee shall make recommendations to assist the department in carrying out its responsibilities under this section, including making recommendations on allowing a hospital to review and verify data to be released in the report and on excluding from the report selected data from certified critical access hospitals.

(b) In developing its recommendations, the advisory committee shall consider methodologies and practices related to health care-associated infections of the United States centers for disease control and prevention, the centers for medicare and medicaid services, the joint commission, the national quality forum, the institute for healthcare improvement, and other relevant organizations.

(6) The department shall adopt rules as necessary to carry out its responsibilities under this section. [2007 c 261 § 2.]

Findings—2007 c 261: "The legislature finds that each year health care-associated infections affect two million Americans. These infections result in the unnecessary death of ninety thousand patients and costs the health care system 4.5 billion dollars. Hospitals should be implementing evidence-based measures to reduce hospital-acquired infections. The legislature further finds the public should have access to data on outcome measures regarding hospital-acquired infections. Data reporting should be consistent with national hospital reporting standards." [2007 c 261 § 1.]

43.70.110 License fees—Costs—Other charges—Waiver. (1) The secretary shall charge fees to the licensee for obtaining a license. After June 30, 1995, municipal corporations providing emergency medical care and transportation services pursuant to chapter 18.73 RCW shall be exempt from such fees, provided that such other emergency services shall only be charged for their pro rata share of the cost of licensure and inspection, if appropriate. The secretary may waive the fees when, in the discretion of the secretary, the fees would not be in the best interest of public health and safety, or when the fees would be to the financial disadvantage of the state.

(2) Except as provided in subsection (3) of this section, fees charged shall be based on, but shall not exceed, the cost to the department for the licensure of the activity or class of activities and may include costs of necessary inspection.

(3) License fees shall include amounts in addition to the cost of licensure activities in the following circumstances:

(a) For registered nurses and licensed practical nurses licensed under chapter 18.79 RCW, support of a central nursing resource center as provided in RCW 18.79.202, until June 30, 2013;

(b) For all health care providers licensed under RCW 18.130.040, the cost of regulatory activities for retired volunteer medical worker licensees as provided in RCW 18.130.360; and

(c) For physicians licensed under chapter 18.71 RCW, physician assistants licensed under chapter 18.71A RCW, osteopathic physicians licensed under chapter 18.57 RCW, osteopathic physicians' assistants licensed under chapter 18.57A RCW, naturopaths licensed under chapter 18.36A RCW, podiatrists licensed under chapter 18.22 RCW, chiropractors licensed under chapter 18.25 RCW, psychologists licensed under chapter 18.83 RCW, registered nurses licensed under chapter 18.79 RCW, optometrists licensed

under chapter 18.53 RCW, mental health counselors licensed under chapter 18.225 RCW, massage therapists licensed under chapter 18.108 RCW, clinical social workers licensed under chapter 18.225 RCW, and acupuncturists licensed under chapter 18.06 RCW, the license fees shall include up to an additional twenty-five dollars to be transferred by the department to the University of Washington for the purposes of RCW 43.70.112.

(4) Department of health advisory committees may review fees established by the secretary for licenses and comment upon the appropriateness of the level of such fees. [2007 c 259 § 11; 2006 c 72 § 3; 2005 c 268 § 2; 1993 sp.s. c 24 § 918; 1989 1st ex.s. c 9 § 263.]

Severability—Subheadings not law—2007 c 259: See notes following RCW 41.05.033.

Finding—2005 c 268: See note following RCW 18.79.202.

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

43.70.112 Online access to health care resources—University of Washington. Within the amounts transferred from the department of health under RCW 43.70.110(3), the University of Washington shall, through the health sciences library, provide online access to selected vital clinical resources, medical journals, decision support tools, and evidence-based reviews of procedures, drugs, and devices to the health professionals listed in RCW 43.70.110(3)(c). Online access shall be available no later than January 1, 2009. [2007 c 259 § 12.]

Severability—Subheadings not law—2007 c 259: See notes following RCW 41.05.033.

43.70.125 Health care facility certification—Unfunded federal mandates—Applicant fees. The federal government requires Washington health care facilities to be certified in order to receive federal health care program reimbursement. The department receives funding from the federal government to perform the certifications and recertifications of these health care facilities. When the federal government does not provide sufficient funding to cover all certifications and recertifications, the secretary may assess fees on certification and recertification applicants to fund the certifications and recertifications. [2007 c 279 § 1.]

43.70.323 Hospital infection control grant account. The hospital infection control grant account is created in the custody of the state treasury. All receipts from gifts, grants, bequests, devises, or other funds from public or private sources to support its activities must be deposited into the account. Expenditures from the account may be used only for awarding hospital infection control grants to hospitals and public agencies for establishing and maintaining hospital infection control and surveillance programs, for providing support for such programs, and for the administrative costs associated with the grant program. Only the secretary or the secretary's designee may authorize expenditures from the account. The account is subject to allotment procedures under chapter 43.88 RCW, but an appropriation is not required for expenditures. [2007 c 261 § 5.]

Findings—2007 c 261: See note following RCW 43.70.056.

43.70.510 Health care services coordinated quality improvement program—Rules. (*Effective July 1, 2009.*)

(1)(a) Health care institutions and medical facilities, other than hospitals, that are licensed by the department, professional societies or organizations, health care service contractors, health maintenance organizations, health carriers approved pursuant to chapter 48.43 RCW, and any other person or entity providing health care coverage under chapter 48.42 RCW that is subject to the jurisdiction and regulation of any state agency or any subdivision thereof may maintain a coordinated quality improvement program for the improvement of the quality of health care services rendered to patients and the identification and prevention of medical malpractice as set forth in RCW 70.41.200.

(b) All such programs shall comply with the requirements of RCW 70.41.200(1) (a), (c), (d), (e), (f), (g), and (h) as modified to reflect the structural organization of the institution, facility, professional societies or organizations, health care service contractors, health maintenance organizations, health carriers, or any other person or entity providing health care coverage under chapter 48.42 RCW that is subject to the jurisdiction and regulation of any state agency or any subdivision thereof, unless an alternative quality improvement program substantially equivalent to RCW 70.41.200(1)(a) is developed. All such programs, whether complying with the requirement set forth in RCW 70.41.200(1)(a) or in the form of an alternative program, must be approved by the department before the discovery limitations provided in subsections (3) and (4) of this section and the exemption under RCW 42.56.360(1)(c) and subsection (5) of this section shall apply. In reviewing plans submitted by licensed entities that are associated with physicians' offices, the department shall ensure that the exemption under RCW 42.56.360(1)(c) and the discovery limitations of this section are applied only to information and documents related specifically to quality improvement activities undertaken by the licensed entity.

(2) Health care provider groups of five or more providers may maintain a coordinated quality improvement program for the improvement of the quality of health care services rendered to patients and the identification and prevention of medical malpractice as set forth in RCW 70.41.200. For purposes of this section, a health care provider group may be a consortium of providers consisting of five or more providers in total. All such programs shall comply with the requirements of RCW 70.41.200(1) (a), (c), (d), (e), (f), (g), and (h) as modified to reflect the structural organization of the health care provider group. All such programs must be approved by the department before the discovery limitations provided in subsections (3) and (4) of this section and the exemption under RCW 42.56.360(1)(c) and subsection (5) of this section shall apply.

(3) Any person who, in substantial good faith, provides information to further the purposes of the quality improvement and medical malpractice prevention program or who, in substantial good faith, participates on the quality improvement committee shall not be subject to an action for civil damages or other relief as a result of such activity. Any person or entity participating in a coordinated quality improvement program that, in substantial good faith, shares information or documents with one or more other programs, committees, or boards under subsection (6) of this section is not

subject to an action for civil damages or other relief as a result of the activity or its consequences. For the purposes of this section, sharing information is presumed to be in substantial good faith. However, the presumption may be rebutted upon a showing of clear, cogent, and convincing evidence that the information shared was knowingly false or deliberately misleading.

(4) Information and documents, including complaints and incident reports, created specifically for, and collected and maintained by, a quality improvement committee are not subject to review or disclosure, except as provided in this section, or discovery or introduction into evidence in any civil action, and no person who was in attendance at a meeting of such committee or who participated in the creation, collection, or maintenance of information or documents specifically for the committee shall be permitted or required to testify in any civil action as to the content of such proceedings or the documents and information prepared specifically for the committee. This subsection does not preclude: (a) In any civil action, the discovery of the identity of persons involved in the medical care that is the basis of the civil action whose involvement was independent of any quality improvement activity; (b) in any civil action, the testimony of any person concerning the facts that form the basis for the institution of such proceedings of which the person had personal knowledge acquired independently of such proceedings; (c) in any civil action by a health care provider regarding the restriction or revocation of that individual's clinical or staff privileges, introduction into evidence information collected and maintained by quality improvement committees regarding such health care provider; (d) in any civil action challenging the termination of a contract by a state agency with any entity maintaining a coordinated quality improvement program under this section if the termination was on the basis of quality of care concerns, introduction into evidence of information created, collected, or maintained by the quality improvement committees of the subject entity, which may be under terms of a protective order as specified by the court; (e) in any civil action, disclosure of the fact that staff privileges were terminated or restricted, including the specific restrictions imposed, if any and the reasons for the restrictions; or (f) in any civil action, discovery and introduction into evidence of the patient's medical records required by rule of the department of health to be made regarding the care and treatment received.

(5) Information and documents created specifically for, and collected and maintained by, a quality improvement committee are exempt from disclosure under chapter 42.56 RCW.

(6) A coordinated quality improvement program may share information and documents, including complaints and incident reports, created specifically for, and collected and maintained by, a quality improvement committee or a peer review committee under RCW 4.24.250 with one or more other coordinated quality improvement programs maintained in accordance with this section or with RCW 70.41.200, a coordinated quality improvement committee maintained by an ambulatory surgical facility under RCW 70.230.070, a quality assurance committee maintained in accordance with RCW 18.20.390 or 74.42.640, or a peer review committee under RCW 4.24.250, for the improvement of the quality of

health care services rendered to patients and the identification and prevention of medical malpractice. The privacy protections of chapter 70.02 RCW and the federal health insurance portability and accountability act of 1996 and its implementing regulations apply to the sharing of individually identifiable patient information held by a coordinated quality improvement program. Any rules necessary to implement this section shall meet the requirements of applicable federal and state privacy laws. Information and documents disclosed by one coordinated quality improvement program to another coordinated quality improvement program or a peer review committee under RCW 4.24.250 and any information and documents created or maintained as a result of the sharing of information and documents shall not be subject to the discovery process and confidentiality shall be respected as required by subsection (4) of this section and RCW 4.24.250.

(7) The department of health shall adopt rules as are necessary to implement this section. [2007 c 273 § 21. Prior: 2006 c 8 § 113; 2005 c 291 § 2; 2005 c 274 § 302; 2005 c 33 § 6; 2004 c 145 § 2; 1995 c 267 § 7; 1993 c 492 § 417.]

Effective date—Implementation—2007 c 273: See RCW 70.230.900 and 70.230.901.

Findings—Intent—Part headings and subheadings not law—Severability—2006 c 8: See notes following RCW 5.64.010.

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

Findings—2005 c 33: See note following RCW 18.20.390.

Captions not law—Severability—Effective dates—1995 c 267: See notes following RCW 43.70.052.

Findings—Intent—1993 c 492: See notes following RCW 43.20.050.

Short title—Severability—Savings—Captions not law—Reservation of legislative power—Effective dates—1993 c 492: See RCW 43.72.910 through 43.72.915.

43.70.512 Public health—Required measurable outcomes. (1) Protecting the public's health across the state is a fundamental responsibility of the state. With any new state funding of the public health system as appropriated for the purposes of *sections 60 through 65 of this act, the state expects that measurable benefits will be realized to the health of the residents of Washington. A transparent process that shows the impact of increased public health spending on performance measures related to the health outcomes in subsection (2) of this section is of great value to the state and its residents. In addition, a well-funded public health system is expected to become a more integral part of the state's emergency preparedness system.

(2) Subject to the availability of amounts appropriated for the purposes of *sections 60 through 65 of this act, distributions to local health jurisdictions shall deliver the following outcomes:

- (a) Create a disease response system capable of responding at all times;
- (b) Stop the increase in, and reduce, sexually transmitted disease rates;
- (c) Reduce vaccine preventable diseases;
- (d) Build capacity to quickly contain disease outbreaks;
- (e) Decrease childhood and adult obesity and types I and II diabetes rates, and resulting kidney failure and dialysis;
- (f) Increase childhood immunization rates;
- (g) Improve birth outcomes and decrease child abuse;

- (h) Reduce animal-to-human disease rates; and
- (i) Monitor and protect drinking water across jurisdictional boundaries.

(3) Benchmarks for these outcomes shall be drawn from the national healthy people 2010 goals, other reliable data sets, and any subsequent national goals. [2007 c 259 § 60.]

***Reviser's note:** "Sections 60 through 65 of this act" include this section, RCW 43.70.514 through 43.70.518, and 43.70.522, and the 2007 c 259 amendments to RCW 43.70.520.

Severability—Subheadings not law—2007 c 259: See notes following RCW 41.05.033.

43.70.514 Public health—Definitions. The definitions in this section apply throughout *sections 60 through 65 of this act unless the context clearly requires otherwise.

(1) "Core public health functions of statewide significance" or "public health functions" means health services that:

(a) Address: Communicable disease prevention and response; preparation for, and response to, public health emergencies caused by pandemic disease, earthquake, flood, or terrorism; prevention and management of chronic diseases and disabilities; promotion of healthy families and the development of children; assessment of local health conditions, risks, and trends, and evaluation of the effectiveness of intervention efforts; and environmental health concerns;

(b) Promote uniformity in the public health activities conducted by all local health jurisdictions in the public health system, increase the overall strength of the public health system, or apply to broad public health efforts; and

(c) If left neglected or inadequately addressed, are reasonably likely to have a significant adverse impact on counties beyond the borders of the local health jurisdiction.

(2) "Local health jurisdiction" or "jurisdiction" means a county board of health organized under chapter 70.05 RCW, a health district organized under chapter 70.46 RCW, or a combined city and county health department organized under chapter 70.08 RCW. [2007 c 259 § 61.]

***Reviser's note:** "Sections 60 through 65 of this act" include this section, RCW 43.70.512, 43.70.516, 43.70.518, and 43.70.522, and the 2007 c 259 amendments to RCW 43.70.520.

Severability—Subheadings not law—2007 c 259: See notes following RCW 41.05.033.

43.70.516 Public health—Department's duties. (1) The department shall accomplish the tasks included in subsection (2) of this section by utilizing the expertise of varied interests, as provided in this subsection.

(a) In addition to the perspectives of local health jurisdictions, the state board of health, the Washington health foundation, and department staff that are currently engaged in development of the public health services improvement plan under RCW 43.70.520, the secretary shall actively engage:

(i) Individuals or entities with expertise in the development of performance measures, accountability and systems management, such as the University of Washington school of public health and community medicine, and experts in the development of evidence-based medical guidelines or public health practice guidelines; and

(ii) Individuals or entities who will be impacted by performance measures developed under this section and have

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relevant expertise, such as community clinics, public health nurses, large employers, tribal health providers, family planning providers, and physicians.

(b) In developing the performance measures, consideration shall be given to levels of performance necessary to promote uniformity in core public health functions of statewide significance among all local health jurisdictions, best scientific evidence, national standards of performance, and innovations in public health practice. The performance measures shall be developed to meet the goals and outcomes in RCW 43.70.512. The office of the state auditor shall provide advice and consultation to the committee to assist in the development of effective performance measures and health status indicators.

(c) On or before November 1, 2007, the experts assembled under this section shall provide recommendations to the secretary related to the activities and services that qualify as core public health functions of statewide significance and performance measures. The secretary shall provide written justification for any departure from the recommendations.

(2) By January 1, 2008, the department shall:

(a) Adopt a prioritized list of activities and services performed by local health jurisdictions that qualify as core public health functions of statewide significance as defined in RCW 43.70.514; and

(b) Adopt appropriate performance measures with the intent of improving health status indicators applicable to the core public health functions of statewide significance that local health jurisdictions must provide.

(3) The secretary may revise the list of activities and the performance measures in future years as appropriate. Prior to modifying either the list or the performance measures, the secretary must provide a written explanation of the rationale for such changes.

(4) The department and the local health jurisdictions shall abide by the prioritized list of activities and services and the performance measures developed pursuant to this section.

(5) The department, in consultation with representatives of county governments, shall provide local jurisdictions with financial incentives to encourage and increase local investments in core public health functions. The local jurisdictions shall not supplant existing local funding with such state-incented resources. [2007 c 259 § 62.]

Severability—Subheadings not law—2007 c 259: See notes following RCW 41.05.033.

43.70.518 Public health—Annual reports. Beginning November 15, 2009, the department shall report to the legislature and the governor annually on the distribution of funds to local health jurisdictions under *sections 60 through 65 of this act and the use of those funds. The initial report must discuss the performance measures adopted by the secretary and any impact the funding in chapter 259, Laws of 2007 has had on local health jurisdiction performance and health status indicators. Future reports shall evaluate trends in performance over time and the effects of expenditures on performance over time. [2007 c 259 § 63.]

***Reviser's note:** "Sections 60 through 65 of this act" include this section, RCW 43.70.512, 43.70.514, 43.70.516, and 43.70.522, and the 2007 c 259 amendments to RCW 43.70.520.

Severability—Subheadings not law—2007 c 259: See notes following RCW 41.05.033.

43.70.520 Public health services improvement plan—Performance measures. (1) The legislature finds that the public health functions of community assessment, policy development, and assurance of service delivery are essential elements in achieving the objectives of health reform in Washington state. The legislature further finds that the population-based services provided by state and local health departments are cost-effective and are a critical strategy for the long-term containment of health care costs. The legislature further finds that the public health system in the state lacks the capacity to fulfill these functions consistent with the needs of a reformed health care system. The legislature further finds that public health nurses and nursing services are an essential part of our public health system, delivering evidence-based care and providing core services including prevention of illness, injury, or disability; the promotion of health; and maintenance of the health of populations.

(2) The department of health shall develop, in consultation with local health departments and districts, the state board of health, the health services commission, area Indian health service, and other state agencies, health services providers, and citizens concerned about public health, a public health services improvement plan. The plan shall provide a detailed accounting of deficits in the core functions of assessment, policy development, assurance of the current public health system, how additional public health funding would be used, and describe the benefits expected from expanded expenditures.

(3) The plan shall include:

(a) Definition of minimum standards for public health protection through assessment, policy development, and assurances:

(i) Enumeration of communities not meeting those standards;

(ii) A budget and staffing plan for bringing all communities up to minimum standards;

(iii) An analysis of the costs and benefits expected from adopting minimum public health standards for assessment, policy development, and assurances;

(b) Recommended strategies and a schedule for improving public health programs throughout the state, including:

(i) Strategies for transferring personal health care services from the public health system, into the uniform benefits package where feasible; and

(ii) Linking funding for public health services to performance measures that relate to achieving improved health outcomes; and

(c) A recommended level of dedicated funding for public health services to be expressed in terms of a percentage of total health service expenditures in the state or a set per person amount; such recommendation shall also include methods to ensure that such funding does not supplant existing federal, state, and local funds received by local health departments, and methods of distributing funds among local health departments.

(4) The department shall coordinate this planning process with the study activities required in section 258, chapter 492, Laws of 1993.

(5) By March 1, 1994, the department shall provide initial recommendations of the public health services improvement plan to the legislature regarding minimum public health standards, and public health programs needed to address urgent needs, such as those cited in subsection (7) of this section.

(6) By December 1, 1994, the department shall present the public health services improvement plan to the legislature, with specific recommendations for each element of the plan to be implemented over the period from 1995 through 1997.

(7) Thereafter, the department shall update the public health services improvement plan for presentation to the legislature prior to the beginning of a new biennium.

(8) Among the specific population-based public health activities to be considered in the public health services improvement plan are: Health data assessment and chronic and infectious disease surveillance; rapid response to outbreaks of communicable disease; efforts to prevent and control specific communicable diseases, such as tuberculosis and acquired immune deficiency syndrome; health education to promote healthy behaviors and to reduce the prevalence of chronic disease, such as those linked to the use of tobacco; access to primary care in coordination with existing community and migrant health clinics and other not for profit health care organizations; programs to ensure children are born as healthy as possible and they receive immunizations and adequate nutrition; efforts to prevent intentional and unintentional injury; programs to ensure the safety of drinking water and food supplies; poison control; trauma services; and other activities that have the potential to improve the health of the population or special populations and reduce the need for or cost of health services. [2007 c 259 § 64; 1993 c 492 § 467.]

Severability—Subheadings not law—2007 c 259: See notes following RCW 41.05.033.

Findings—Intent—1993 c 492: See notes following RCW 43.20.050.

Short title—Severability—Savings—Captions not law—Reservation of legislative power—Effective dates—1993 c 492: See RCW 43.72.910 through 43.72.915.

Additional contents: RCW 43.70.550.

43.70.522 Public health performance measures—Assessing the use of funds—Secretary's duties. (1) Each local health jurisdiction shall submit to the secretary such data as the secretary determines is necessary to allow the secretary to assess whether the local health jurisdiction has used the funds in a manner consistent with achieving the performance measures in RCW 43.70.516.

(2) If the secretary determines that the data submitted demonstrates that the local health jurisdiction is not spending the funds in a manner consistent with achieving the performance measures, the secretary shall:

(a) Provide a report to the governor identifying the local health jurisdiction and the specific items that the secretary identified as inconsistent with achieving the performance measures; and

(b) Require that the local health jurisdiction submit a plan of correction to the secretary within sixty days of receiving notice from the secretary, which explains the measures that the jurisdiction will take to resume spending funds in a manner consistent with achieving the performance measures.

The secretary shall provide technical assistance to the local health jurisdiction to support the jurisdiction in successfully completing the activities included in the plan of correction.

(3) Upon a determination by the secretary that a local health jurisdiction that had previously been identified as not spending the funds in a manner consistent with achieving the performance measures has resumed consistency, the secretary shall notify the governor that the jurisdiction has returned to consistent status.

(4) Any local health jurisdiction that has not resumed spending funds in a manner consistent with achieving the performance measures within one year of the secretary reporting the jurisdiction to the governor shall be precluded from receiving any funds appropriated for the purposes of *sections 60 through 65 of this act. Funds may resume once the local health jurisdiction has demonstrated to the satisfaction of the secretary that it has returned to consistent status. [2007 c 259 § 65.]

***Reviser's note:** "Sections 60 through 65 of this act" include this section, RCW 43.70.512, 43.70.514, 43.70.516, and 43.70.518, and the 2007 c 259 amendments to RCW 43.70.520.

Severability—Subheadings not law—2007 c 259: See notes following RCW 41.05.033.

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

43.70.533 Chronic conditions—Training and technical assistance for primary care providers. (1) The department shall conduct a program of training and technical assistance regarding care of people with chronic conditions for providers of primary care. The program shall emphasize evidence-based high quality preventive and chronic disease care. The department may designate one or more chronic conditions to be the subject of the program.

(2) The training and technical assistance program shall include the following elements:

- (a) Clinical information systems and sharing and organization of patient data;
 - (b) Decision support to promote evidence-based care;
 - (c) Clinical delivery system design;
 - (d) Support for patients managing their own conditions;
- and

(e) Identification and use of community resources that are available in the community for patients and their families.

(3) In selecting primary care providers to participate in the program, the department shall consider the number and type of patients with chronic conditions the provider serves, and the provider's participation in the medicaid program, the basic health plan, and health plans offered through the public employees' benefits board. [2007 c 259 § 5.]

Severability—Subheadings not law—2007 c 259: See notes following RCW 41.05.033.

43.70.630 Cost-reimbursement agreements. (1) The department may enter into a written cost-reimbursement agreement with a permit applicant or project proponent to recover from the applicant or proponent the reasonable costs incurred by the department in carrying out the requirements of this chapter, as well as the requirements of other relevant laws, as they relate to permit coordination, environmental

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review, application review, technical studies, and permit processing. The cost-reimbursement agreement shall identify the specific tasks, costs, and schedule for work to be conducted under the agreement.

(2) The written cost-reimbursement agreement shall be negotiated with the permit applicant or project proponent. Under the provisions of a cost-reimbursement agreement, funds from the applicant or proponent shall be used by the department to contract with an independent consultant to carry out the work covered by the cost-reimbursement agreement. The department may also use funds provided under a cost-reimbursement agreement to assign current staff to review the work of the consultant, to provide necessary technical assistance when an independent consultant with comparable technical skills is unavailable, and to recover reasonable and necessary direct and indirect costs that arise from processing the permit. The department shall, in developing the agreement, ensure that final decisions that involve policy matters are made by the agency and not by the consultant. The department shall make an estimate of the number of permanent staff hours to process the permits, and shall contract with consultants to replace the time and functions committed by these permanent staff to the project. The billing process shall provide for accurate time and cost accounting and may include a billing cycle that provides for progress payments. Use of cost-reimbursement agreements shall not reduce the current level of staff available to work on permits not covered by cost-reimbursement agreements. The department may not use any funds under a cost-reimbursement agreement to replace or supplant existing funding. The restrictions of chapter 42.52 RCW apply to any cost-reimbursement agreement, and to any person hired as a result of a cost-reimbursement agreement. [2007 c 94 § 12; 2003 c 70 § 3; 2000 c 251 § 4.]

Intent—Captions not law—Effective date—2000 c 251: See notes following RCW 43.21A.690.

43.70.670 Human immunodeficiency virus insurance program. (1) "Human immunodeficiency virus insurance program," as used in this section, means a program that provides health insurance coverage for individuals with human immunodeficiency virus, as defined in RCW 70.24.017(7), who are not eligible for medical assistance programs from the department of social and health services as defined in RCW 74.09.010(8) and meet eligibility requirements established by the department of health.

(2) The department of health may pay for health insurance coverage on behalf of persons with human immunodeficiency virus, who meet department eligibility requirements, and who are eligible for "continuation coverage" as provided by the federal consolidated omnibus budget reconciliation act of 1985, group health insurance policies, or individual policies. [2007 c 259 § 38; 2003 c 274 § 2.]

Severability—Subheadings not law—2007 c 259: See notes following RCW 41.05.033.

Rules—2003 c 274: "The department of health shall adopt rules to implement this act." [2003 c 274 § 3.]

Effective date—2003 c 274: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect July 1, 2003." [2003 c 274 § 4.]

43.70.900 References to the secretary or department of social and health services—1989 1st ex.s. c 9. All references to the secretary or department of social and health services in the Revised Code of Washington shall be construed to mean the secretary or department of health when referring to the functions transferred in RCW 43.70.080, 18.104.005, 43.83B.005, 43.99D.005, 43.99E.005, 70.08.005, 70.22.005, 70.24.005, 70.40.005, 70.41.005, and 70.54.005. [2007 c 52 § 2; 1990 c 33 § 580; 1989 1st ex.s. c 9 § 801.]

Purpose—Statutory references—Severability—1990 c 33: See RCW 28A.900.100 through 28A.900.102.

Chapter 43.79 RCW STATE FUNDS

Sections

- 43.79.010 General fund, how constituted. *(Effective if the proposed amendment to Article XVI of the state Constitution is approved at the November 2007 general election.)*
- 43.79.060 State university permanent fund. *(Effective if the proposed amendment to Article XVI of the state Constitution is approved at the November 2007 general election.)*
- 43.79.110 Scientific permanent fund. *(Effective if the proposed amendment to Article XVI of the state Constitution is approved at the November 2007 general election.)*
- 43.79.130 Agricultural permanent fund. *(Effective if the proposed amendment to Article XVI of the state Constitution is approved at the November 2007 general election.)*
- 43.79.160 Normal school permanent fund. *(Effective if the proposed amendment to Article XVI of the state Constitution is approved at the November 2007 general election.)*
- 43.79.490 Budget stabilization account.
- 43.79.495 Budget stabilization account—Governance. *(Effective July 1, 2008, if the proposed amendment to Article VII of the state Constitution is approved at the November 2007 general election.)*
- 43.79.500 Uniformed service shared leave pool account. *(Effective October 1, 2007.)*

43.79.010 General fund, how constituted. *(Effective if the proposed amendment to Article XVI of the state Constitution is approved at the November 2007 general election.)* All moneys paid into the state treasury, except moneys received from taxes levied for specific purposes, and the several permanent funds of the state and the moneys derived therefrom, shall be paid into the general fund of the state. [2007 c 215 § 5; 1965 c 8 § 43.79.010. Prior: 1907 c 8 § 1; RRS § 5509.]

Finding—Intent—Contingent effective date—2007 c 215: See notes following RCW 39.42.070.

43.79.060 State university permanent fund. *(Effective if the proposed amendment to Article XVI of the state Constitution is approved at the November 2007 general election.)* There shall be in the state treasury a permanent fund known as the "state university permanent fund," into which shall be paid all moneys derived from the sale of lands granted, held, or devoted to state university purposes. [2007 c 215 § 6; 1965 c 8 § 43.79.060. Prior: 1907 c 168 § 1; RRS § 5518.]

Finding—Intent—Contingent effective date—2007 c 215: See notes following RCW 39.42.070.

43.79.110 Scientific permanent fund. *(Effective if the proposed amendment to Article XVI of the state Constitution is approved at the November 2007 general election.)*

There shall be in the state treasury a permanent fund known as the "scientific permanent fund," into which shall be paid all moneys derived from the sale of lands set apart by the enabling act or otherwise for a scientific school. The income derived from investments pursuant to RCW 43.84.080 and 43.33A.140 shall be credited to the Washington State University building account less the applicable allocations to the state treasurer's service fund pursuant to RCW 43.08.190 or to the state investment board expense account pursuant to RCW 43.33A.160. [2007 c 215 § 7; 1991 sp.s. c 13 § 96; 1965 c 8 § 43.79.110. Prior: 1901 c 81 § 4; RRS § 5526.]

Finding—Intent—Contingent effective date—2007 c 215: See notes following RCW 39.42.070.

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

43.79.130 Agricultural permanent fund. *(Effective if the proposed amendment to Article XVI of the state Constitution is approved at the November 2007 general election.)* There shall be in the state treasury a permanent fund known as the "agricultural permanent fund," into which shall be paid all moneys derived from the sale of lands set apart by the enabling act or otherwise for an agricultural college. The income derived from investments pursuant to RCW 43.84.080 and 43.33A.140 shall be credited to the Washington State University building account less the applicable allocations to the state treasurer's service fund pursuant to RCW 43.08.190 or to the state investment board expense account pursuant to RCW 43.33A.160. [2007 c 215 § 8; 1991 sp.s. c 13 § 94; 1965 c 8 § 43.79.130.]

Finding—Intent—Contingent effective date—2007 c 215: See notes following RCW 39.42.070.

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

43.79.160 Normal school permanent fund. *(Effective if the proposed amendment to Article XVI of the state Constitution is approved at the November 2007 general election.)* There shall be in the state treasury a permanent fund known as the "normal school permanent fund," into which shall be paid all moneys derived from the sale of lands set apart by the enabling act or otherwise for state normal schools. [2007 c 215 § 9; 1965 c 8 § 43.79.160.]

Finding—Intent—Contingent effective date—2007 c 215: See notes following RCW 39.42.070.

43.79.490 Budget stabilization account. The budget stabilization account shall be established and maintained in the state treasury. Moneys in the fund may be spent only after appropriation. [2007 c 484 § 1.]

Effective date—2007 c 484 § 1: "Section 1 of this act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately [May 15, 2007]." [2007 c 484 § 9.]

43.79.495 Budget stabilization account—Governance. *(Effective July 1, 2008, if the proposed amendment to Article VII of the state Constitution is approved at the November 2007 general election.)* (1) The budget stabilization account is governed by the provisions in Article VII, section . . . (Senate Joint Resolution No. 8206) and this section.

(2) By June 30th of each fiscal year, the state treasurer shall transfer an amount equal to one percent of the general state revenues for that fiscal year to the budget stabilization account.

(3) The state investment board has the full power to invest, reinvest, manage, contract, sell, or exchange investment moneys in the budget stabilization account. All investment and operating costs associated with the investment of money shall be paid pursuant to RCW 43.33A.160 and 43.84.160. With the exception of these expenses, the earnings from the investment of the money shall be retained by the account. All investments made by the state investment board shall be made with the exercise of that degree of judgment and care pursuant to RCW 43.33A.140 and the investment policies established by the state investment board. As deemed appropriate by the state investment board, moneys in the account may be commingled for investment with other funds subject to investment by the board.

(4) For the purposes of Article VII, section . . . (Senate Joint Resolution No. 8206), this section, and RCW 82.33.050, the state employment growth forecast shall be based on the total nonfarm payroll employment data series. [2007 c 484 § 2.]

Contingent effective date—2007 c 484 §§ 2-8: "Sections 2 through 8 of this act take effect July 1, 2008, if the proposed amendment to Article VII of the state Constitution (Senate Joint Resolution No. 8206) is validly submitted to and is approved and ratified by the voters at a general election held in November 2007. If the proposed amendment is not approved and ratified, sections 2 through 8 of this act are void in their entirety." [2007 c 484 § 10.]

43.79.500 Uniformed service shared leave pool account. (*Effective October 1, 2007.*) The uniformed service shared leave pool account is created in the custody of the state treasurer. All receipts from leave donated under the uniformed service shared leave pool under RCW 41.04.685 and any moneys appropriated or otherwise provided must be deposited into the account. Expenditures from the account may be used only for providing shared leave to employees under the uniformed service shared leave pool. Only the adjutant general or his or her designee may authorize expenditures from the account. The account is not subject to allotment procedures under chapter 43.88 RCW, and no appropriation is required for expenditures. [2007 c 25 § 3.]

Severability—Effective date—2007 c 25: See notes following RCW 41.04.685.

Chapter 43.79A RCW TREASURER'S TRUST FUND

Sections

43.79A.040 Management—Income—Investment income account—Distribution.

43.79A.040 Management—Income—Investment income account—Distribution. (1) Money in the treasurer's trust fund may be deposited, invested, and reinvested by the state treasurer in accordance with RCW 43.84.080 in the same manner and to the same extent as if the money were in the state treasury.

(2) All income received from investment of the treasurer's trust fund shall be set aside in an account in the trea-

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surey trust fund to be known as the investment income account.

(3) The investment income account may be utilized for the payment of purchased banking services on behalf of treasurer's trust funds including, but not limited to, depository, safekeeping, and disbursement functions for the state treasurer or affected state agencies. The investment income account is subject in all respects to chapter 43.88 RCW, but no appropriation is required for payments to financial institutions. Payments shall occur prior to distribution of earnings set forth in subsection (4) of this section.

(4)(a) Monthly, the state treasurer shall distribute the earnings credited to the investment income account to the state general fund except under (b) and (c) of this subsection.

(b) The following accounts and funds shall receive their proportionate share of earnings based upon each account's or fund's average daily balance for the period: The Washington promise scholarship account, the college savings program account, the Washington advanced college tuition payment program account, the agricultural local fund, the American Indian scholarship endowment fund, the foster care scholarship endowment fund, the foster care endowed scholarship trust fund, the students with dependents grant account, the basic health plan self-insurance reserve account, the contract harvesting revolving account, the Washington state combined fund drive account, the commemorative works account, the Washington international exchange scholarship endowment fund, the developmental disabilities endowment trust fund, the energy account, the fair fund, the family leave insurance account, the fruit and vegetable inspection account, the future teachers conditional scholarship account, the game farm alternative account, the GET ready for math and science scholarship account, the grain inspection revolving fund, the juvenile accountability incentive account, the law enforcement officers' and fire fighters' plan 2 expense fund, the local tourism promotion account, the produce railcar pool account, the regional transportation investment district account, the rural rehabilitation account, the stadium and exhibition center account, the youth athletic facility account, the self-insurance revolving fund, the sulfur dioxide abatement account, the children's trust fund, the Washington horse racing commission Washington bred owners' bonus fund account, the Washington horse racing commission class C purse fund account, the individual development account program account, the Washington horse racing commission operating account (earnings from the Washington horse racing commission operating account must be credited to the Washington horse racing commission class C purse fund account), the life sciences discovery fund, the Washington state heritage center account, and the reading achievement account. However, the earnings to be distributed shall first be reduced by the allocation to the state treasurer's service fund pursuant to RCW 43.08.190.

(c) The following accounts and funds shall receive eighty percent of their proportionate share of earnings based upon each account's or fund's average daily balance for the period: The advanced right of way revolving fund, the advanced environmental mitigation revolving account, the city and county advance right-of-way revolving fund, the federal narcotics asset forfeitures account, the high occupancy

vehicle account, the local rail service assistance account, and the miscellaneous transportation programs account.

(5) In conformance with Article II, section 37 of the state Constitution, no trust accounts or funds shall be allocated earnings without the specific affirmative directive of this section. [2007 c 523 § 5; 2007 c 357 § 21; 2007 c 214 § 14. Prior: 2006 c 311 § 21; 2006 c 120 § 2; prior: 2005 c 424 § 18; 2005 c 402 § 8; 2005 c 215 § 10; 2005 c 16 § 2; prior: 2004 c 246 § 8; 2004 c 58 § 10; prior: 2003 c 403 § 9; 2003 c 313 § 10; 2003 c 191 § 7; 2003 c 148 § 15; 2003 c 92 § 8; 2003 c 19 § 12; prior: 2002 c 322 § 5; 2002 c 204 § 7; 2002 c 61 § 6; prior: 2001 c 201 § 4; 2001 c 184 § 4; 2000 c 79 § 45; prior: 1999 c 384 § 8; 1999 c 182 § 2; 1998 c 268 § 1; prior: 1997 c 368 § 8; 1997 c 289 § 13; 1997 c 220 § 221 (Referendum Bill No. 48, approved June 17, 1997); 1997 c 140 § 6; 1997 c 94 § 3; 1996 c 253 § 409; prior: 1995 c 394 § 2; 1995 c 365 § 1; prior: 1993 sp.s. c 8 § 2; 1993 c 500 § 5; 1991 sp.s. c 13 § 82; 1973 1st ex.s. c 15 § 4.]

Reviser's note: This section was amended by 2007 c 214 § 14, 2007 c 357 § 21, and by 2007 c 523 § 5, each without reference to the other. All amendments are incorporated in the publication of this section under RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

Contingency—2007 c 523: See note following RCW 43.07.128.

Joint legislative task force—2007 c 357: See note following RCW 49.86.005.

Findings—2006 c 311: See note following RCW 36.120.020.

Captions not law—Liberal construction—Severability—Effective dates—2005 c 424: See RCW 43.350.900 through 43.350.903.

SEED act—Findings—Purpose—Short title—2005 c 402: See RCW 43.31.450 and 43.31.485.

Effective date—2004 c 246: See note following RCW 67.16.270.

Intent—2003 c 403: See RCW 70.210.010.

Findings—Severability—2003 c 313: See notes following RCW 79.15.500.

Severability—Effective date—2003 c 92: See RCW 41.26.905 and 41.26.906.

Finding—Intent—Short title—Captions not law—2003 c 19: See RCW 28B.133.005, 28B.133.900, and 28B.133.901.

Effective date—2002 c 322: See note following RCW 15.17.240.

Effective date—2002 c 204: See RCW 28B.119.900.

Effective date—Severability—2000 c 79: See notes following RCW 48.04.010.

Intent—Captions not law—1999 c 384: See notes following RCW 43.330.200.

Findings—Intent—Rules adoption—Severability—Effective date—1997 c 368: See notes following RCW 82.08.810.

Referendum—Other legislation limited—Legislators' personal intent not indicated—Reimbursements for election—Voters' pamphlet, election requirements—1997 c 220: See RCW 36.102.800 through 36.102.803.

Part headings not law—Severability—1997 c 220: See RCW 36.102.900 and 36.102.901.

Intent—1997 c 140: See note following RCW 47.12.330.

Effective date—1997 c 94: See note following RCW 47.04.210.

Findings—Purpose—Severability—Part headings not law—1996 c 253: See notes following RCW 28B.109.010.

Effective date—1995 c 394: See note following RCW 43.84.092.

Effective date—1995 c 365: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and shall take effect June 1, 1995." [1995 c 365 § 2.]

Effective date—Application—1993 sp.s. c 8: See note following RCW 43.84.092.

Finding—Severability—Effective date—1993 c 500: See notes following RCW 43.41.180.

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

Chapter 43.82 RCW STATE AGENCY HOUSING

Sections

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| 43.82.010 | Acquisition, lease, and disposal of real estate for state agencies—Long-range planning—Use of lease as collateral or security—Colocation and consolidation—Studies—Delegation of functions—Exemptions. |
| 43.82.035 | Predesign process for requests to lease, purchase, or build facilities for state programs—Approval of plans for major leased facilities. |
| 43.82.045 | Approval of leases—Privately owned buildings being planned or under construction. |
| 43.82.055 | Long-term facility needs—Six-year facility plan. |
| 43.82.150 | Inventory of state-owned or leased facilities—Report. |

43.82.010 Acquisition, lease, and disposal of real estate for state agencies—Long-range planning—Use of lease as collateral or security—Colocation and consolidation—Studies—Delegation of functions—Exemptions.

(1) The director of general administration, on behalf of the agency involved and after consultation with the office of financial management, shall purchase, lease, lease purchase, rent, or otherwise acquire all real estate, improved or unimproved, as may be required by elected state officials, institutions, departments, commissions, boards, and other state agencies, or federal agencies where joint state and federal activities are undertaken and may grant easements and transfer, exchange, sell, lease, or sublease all or part of any surplus real estate for those state agencies which do not otherwise have the specific authority to dispose of real estate. This section does not transfer financial liability for the acquired property to the department of general administration.

(2) Except for real estate occupied by federal agencies, the director shall determine the location, size, and design of any real estate or improvements thereon acquired or held pursuant to subsection (1) of this section. Facilities acquired or held pursuant to this chapter, and any improvements thereon, shall conform to standards adopted by the director and approved by the office of financial management governing facility efficiency unless a specific exemption from such standards is provided by the director of general administration. The director of general administration shall report to the office of financial management and the appropriate committees of the legislature annually on any exemptions granted pursuant to this subsection.

(3) The director of general administration may fix the terms and conditions of each lease entered into under this chapter, except that no lease shall extend greater than twenty years in duration. The director of general administration may enter into a long-term lease greater than ten years in duration upon a determination by the director of the office of financial management that the long-term lease provides a more favorable rate than would otherwise be available, it appears to a substantial certainty that the facility is necessary for use by the state for the full length of the lease term, and the facility meets the standards adopted pursuant to subsection (2) of this section. The director of general administration may enter into a long-term lease greater than ten years in duration if an

analysis shows that the life-cycle cost of leasing the facility is less than the life-cycle cost of purchasing or constructing a facility in lieu of leasing the facility.

(4) Except as permitted under chapter 39.94 RCW, no lease for or on behalf of any state agency may be used or referred to as collateral or security for the payment of securities offered for sale through a public offering. Except as permitted under chapter 39.94 RCW, no lease for or on behalf of any state agency may be used or referred to as collateral or security for the payment of securities offered for sale through a private placement without the prior written approval of the state treasurer. However, this limitation shall not prevent a lessor from assigning or encumbering its interest in a lease as security for the repayment of a promissory note provided that the transaction would otherwise be an exempt transaction under RCW 21.20.320. The state treasurer shall adopt rules that establish the criteria under which any such approval may be granted. In establishing such criteria the state treasurer shall give primary consideration to the protection of the state's credit rating and the integrity of the state's debt management program. If it appears to the state treasurer that any lease has been used or referred to in violation of this subsection or rules adopted under this subsection, then he or she may recommend that the governor cause such lease to be terminated. The department of general administration shall promptly notify the state treasurer whenever it may appear to the department that any lease has been used or referred to in violation of this subsection or rules adopted under this subsection.

(5) It is the policy of the state to encourage the colocation and consolidation of state services into single or adjacent facilities, whenever appropriate, to improve public service delivery, minimize duplication of facilities, increase efficiency of operations, and promote sound growth management planning.

(6) The director of general administration shall provide coordinated long-range planning services to identify and evaluate opportunities for colocating and consolidating state facilities. Upon the renewal of any lease, the inception of a new lease, or the purchase of a facility, the director of general administration shall determine whether an opportunity exists for colocating the agency or agencies in a single facility with other agencies located in the same geographic area. If a colocation opportunity exists, the director of general administration shall consult with the affected state agencies and the office of financial management to evaluate the impact colocation would have on the cost and delivery of agency programs, including whether program delivery would be enhanced due to the centralization of services. The director of general administration, in consultation with the office of financial management, shall develop procedures for implementing colocation and consolidation of state facilities.

(7) The director of general administration is authorized to purchase, lease, rent, or otherwise acquire improved or unimproved real estate as owner or lessee and to lease or sublet all or a part of such real estate to state or federal agencies. The director of general administration shall charge each using agency its proportionate rental which shall include an amount sufficient to pay all costs, including, but not limited to, those for utilities, janitorial and accounting services, and sufficient to provide for contingencies; which shall not

exceed five percent of the average annual rental, to meet unforeseen expenses incident to management of the real estate.

(8) If the director of general administration determines that it is necessary or advisable to undertake any work, construction, alteration, repair, or improvement on any real estate acquired pursuant to subsection (1) or (7) of this section, the director shall cause plans and specifications thereof and an estimate of the cost of such work to be made and filed in his or her office and the state agency benefiting thereby is hereby authorized to pay for such work out of any available funds: PROVIDED, That the cost of executing such work shall not exceed the sum of twenty-five thousand dollars. Work, construction, alteration, repair, or improvement in excess of twenty-five thousand dollars, other than that done by the owner of the property if other than the state, shall be performed in accordance with the public works law of this state.

(9) In order to obtain maximum utilization of space, the director of general administration shall make space utilization studies, and shall establish standards for use of space by state agencies. Such studies shall include the identification of opportunities for colocation and consolidation of state agency office and support facilities.

(10) The director of general administration may construct new buildings on, or improve existing facilities, and furnish and equip, all real estate under his or her management. Prior to the construction of new buildings or major improvements to existing facilities or acquisition of facilities using a lease purchase contract, the director of general administration shall conduct an evaluation of the facility design and budget using life-cycle cost analysis, value-engineering, and other techniques to maximize the long-term effectiveness and efficiency of the facility or improvement.

(11) All conveyances and contracts to purchase, lease, rent, transfer, exchange, or sell real estate and to grant and accept easements shall be approved as to form by the attorney general, signed by the director of general administration or the director's designee, and recorded with the county auditor of the county in which the property is located.

(12) The director of general administration may delegate any or all of the functions specified in this section to any agency upon such terms and conditions as the director deems advisable. By January 1st of each year, beginning January 1, 2008, the department shall submit an annual report to the office of financial management and the appropriate committees of the legislature on all delegated leases.

(13) This section does not apply to the acquisition of real estate by:

(a) The state college and universities for research or experimental purposes;

(b) The state liquor control board for liquor stores and warehouses; and

(c) The department of natural resources, the department of fish and wildlife, the department of transportation, and the state parks and recreation commission for purposes other than the leasing of offices, warehouses, and real estate for similar purposes.

(14) Notwithstanding any provision in this chapter to the contrary, the department of general administration may negotiate ground leases for public lands on which property is to be

acquired under a financing contract pursuant to chapter 39.94 RCW under terms approved by the state finance committee.

(15) The department of general administration shall report annually to the office of financial management and the appropriate fiscal committees of the legislature on facility leases executed for all state agencies for the preceding year, lease terms, and annual lease costs. The report must include leases executed under RCW 43.82.045 and subsection (12) of this section. [2007 c 506 § 8; 2004 c 277 § 906; 1997 c 117 § 1. Prior: 1994 c 264 § 28; 1994 c 219 § 7; 1990 c 47 § 1; 1988 c 36 § 20; 1982 c 41 § 1; 1969 c 121 § 1; 1967 c 229 § 1; 1965 c 8 § 43.82.010; prior: 1961 c 184 § 1; 1959 c 255 § 1.]

Findings—Intent—2007 c 506: See note following RCW 43.82.035.

Severability—Effective dates—2004 c 277: See notes following RCW 89.08.550.

Finding—1994 c 219: See note following RCW 43.88.030.

Effective dates—1982 c 41: "This act shall take effect July 1, 1982, with the exception of section 2 of this act, which shall take effect July 1, 1983." [1982 c 41 § 3.]

Departments to share occupancy costs—Capital projects surcharge: RCW 43.01.090.

East capitol site, acquisition and development: RCW 79.24.500 through 79.24.530.

Public works: Chapter 39.04 RCW.

Use of general administration services account in acquiring real estate: RCW 43.19.500.

43.82.035 Pre-design process for requests to lease, purchase, or build facilities for state programs—Approval of plans for major leased facilities. (1) The office of financial management shall design and implement a modified pre-design process for any space request to lease, purchase, or build facilities that involve (a) the housing of new state programs, (b) a major expansion of existing state programs, or (c) the relocation of state agency programs. This includes the consolidation of multiple state agency tenants into one facility. The office of financial management shall define facilities that meet the criteria described in (a) and (b) of this subsection.

(2) State agencies shall submit modified pre-designs to the office of financial management and the legislature. Modified pre-designs must include a problem statement, an analysis of alternatives to address programmatic and space requirements, proposed locations, and a financial assessment. For proposed projects of twenty thousand gross square feet or less, the agency may provide a cost-benefit analysis, rather than a life-cycle cost analysis, as determined by the office of financial management.

(3) Projects that meet the capital requirements for pre-design on major facility projects with an estimated project cost of five million dollars or more pursuant to chapter 43.88 RCW shall not be required to prepare a modified pre-design.

(4) The office of financial management shall require state agencies to identify plans for major leased facilities as part of the ten-year capital budget plan. State agencies shall not enter into new or renewed leases of more than one million dollars per year unless such leases have been approved by the office of financial management except when the need for the lease is due to an unanticipated emergency. The regular termination date on an existing lease does not constitute an

emergency. The department of general administration shall notify the office of financial management and the appropriate legislative fiscal committees if an emergency situation arises.

(5) For project proposals in which there are estimates of operational savings, the office of financial management shall require the agency or agencies involved to provide details including but not limited to fund sources and timelines. [2007 c 506 § 4.]

Findings—Intent—2007 c 506: "The legislature finds that the capital stock of facilities owned and leased by state agencies represents a significant financial investment by the citizens of the state of Washington. Capital construction projects funded in the state's capital budget require diligent analysis and approval by the governor and the legislature. In some cases, long-term leases obligate state agencies to a larger financial commitment than some capital construction projects without a comparable level of diligence. State facility analysis and portfolio management can be strengthened through greater oversight and support from the office of financial management and the legislature and with input from stakeholders.

The legislature finds that the state lacks specific policies and standards on conducting life-cycle cost analysis to determine the cost-effectiveness of owning or leasing state facilities and lacks clear guidance on when and how to use it. Further, there is limited oversight and review of the results of life-cycle cost analyses in the capital project review process. Unless decision makers are provided a thorough economic analysis, they cannot identify the most cost-effective alternative or identify opportunities for improving the cost-effectiveness of state facility alternatives.

The legislature finds that the statewide accounting system limits the ability of the office of financial management and the legislature to analyze agency expenditures that include only leases for land, buildings, and structures. Additionally, other statewide data systems that track state-owned and leased facility information are limited, onerous, and inflexible.

Therefore, it is the intent of the legislature to strengthen the office of financial management's oversight role in state facility analysis and decision making. Further, it is the intent of the legislature to support the office of financial management's and the department of general administration's need for technical expertise and data systems to conduct thorough analysis, long-term planning, and state facility portfolio management by providing adequate resources in the capital and operating budgets." [2007 c 506 § 1.]

43.82.045 Approval of leases—Privately owned buildings being planned or under construction. State agencies are prohibited from entering into lease agreements for privately owned buildings that are in the planning stage of development or under construction unless there is prior written approval by the director of the office of financial management. Approval of such leases shall not be delegated. Lease agreements described in this section must comply with RCW 43.82.035. [2007 c 506 § 5.]

Findings—Intent—2007 c 506: See note following RCW 43.82.035.

43.82.055 Long-term facility needs—Six-year facility plan. The office of financial management shall:

(1) Work with the department of general administration and all other state agencies to determine the long-term facility needs of state government; and

(2) Develop and submit a six-year facility plan to the legislature by January 1st of every odd-numbered year, beginning January 1, 2009, that includes state agency space requirements and other pertinent data necessary for cost-effective facility planning. The department of general administration shall assist with this effort as required by the office of financial management. [2007 c 506 § 6.]

Findings—Intent—2007 c 506: See note following RCW 43.82.035.

43.82.150 Inventory of state-owned or leased facilities—Report. (1) The office of financial management shall develop and maintain an inventory system to account for all owned or leased facilities utilized by state government. At a minimum, the inventory system must include the facility owner, location, type, condition, and size of each facility. In addition, for owned facilities, the inventory system must include the date and cost of original construction and the cost of any major remodeling or renovation. The inventory must be updated by June 30th of each year. The office of financial management shall publish a report summarizing information contained in the inventory system for each agency by October 1st of each year, beginning in 2010 and shall submit this report to the appropriate fiscal committees of the legislature.

(2) All agencies, departments, boards, commissions, and institutions of the state of Washington shall provide to the office of financial management a complete inventory of owned and leased facilities by September 1, 2010. The inventory must be updated and submitted to the office of financial management by September 1st of each subsequent year. The inventories required under this subsection must be submitted in a standard format prescribed by the office of financial management.

(3) The office of financial management shall report to the legislature by September 1, 2008, on recommended improvements to the inventory system, redevelopment costs, and an implementation schedule for the redevelopment of the inventory system. The report shall also make recommendations on other improvements that will improve accountability and assist in the evaluation of budget requests and facility management by the governor and the legislature.

(4) For the purposes of this section, "facilities" means buildings and other structures with walls and a roof. "Facilities" does not mean roads, bridges, parking areas, utility systems, and other similar improvements to real property. [2007 c 506 § 7; 1997 c 96 § 2; 1993 c 325 § 1.]

Findings—Intent—2007 c 506: See note following RCW 43.82.035.

Findings—Purpose—1997 c 96: "The legislature finds that the capital stock of facilities owned by state agencies represents a significant financial investment by the citizens of the state of Washington, and that providing agencies with the tools and incentives needed to adequately maintain state facilities is critically important to realizing the full value of this investment. The legislature also finds that ongoing reporting of facility inventory, condition, and maintenance information by agencies will improve accountability and assist in the evaluation of budget requests and facility management by the legislature and governor. The purpose of this act is to ensure that recent enhancements to facility and maintenance reporting systems implemented by the office of financial management, and a new program created by the department of general administration to provide maintenance information and technical assistance to state and local agencies, are sustained into the future." [1997 c 96 § 1.]

Chapter 43.83C RCW

RECREATION IMPROVEMENTS BOND ISSUE

Sections

43.83C.040 Administration of proceeds—Division into shares—Use of funds.

43.83C.040 Administration of proceeds—Division into shares—Use of funds. The proceeds from the sale of the bonds deposited in the *state and local improvements

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revolving account of the general fund under the terms of this chapter shall be divided into three shares as follows:

(1) Thirty-five percent of such proceeds shall be administered, subject to legislative appropriation, by the recreation and conservation funding board through the outdoor recreation account and allocated to the state of Washington, or any agency or department thereof, for the acquisition, preservation, and development of recreation areas and facilities by the state. The recreation and conservation funding board may use or permit the use of any portion of such share as matching funds in any case where federal, local, or other funds are made available on a matching basis for improvements within the purposes of this chapter.

(2) Thirty-five percent of such proceeds shall be administered, subject to legislative appropriation, by the recreation and conservation funding board through the outdoor recreation account and allocated to public bodies for the acquisition, preservation, development, and improvement of recreational areas and facilities within the jurisdiction of such bodies. The recreation and conservation funding board may use or permit the use of any portion of such share for loans or grants to public bodies including use as matching funds in any case where federal, local, or other funds are made available on a matching basis for improvements within the purposes of this chapter.

(3) Thirty percent of such proceeds shall be allocated to the state parks and recreation commission, subject to legislative appropriation, for improvement of existing state parks and the acquisition and preservation of historic sites and buildings. The commission may use or permit the use of any portion of such share as matching funds in any case where federal, local, or other funds are made available on a matching basis for improvements within the purposes of this chapter.

In the event that the bonds authorized by this chapter are sold in more than one series the above division into shares shall apply to the total proceeds of the bonds authorized by this chapter and not to the proceeds of each separate series. [2007 c 241 § 7; 1972 ex.s. c 129 § 4.]

***Reviser’s note:** The "state and local improvements revolving account" was created in RCW 43.83C.030 which was repealed by 2000 c 150 § 2, effective July 1, 2001.

Intent—Effective date—2007 c 241: See notes following RCW 79A.25.005.

Chapter 43.84 RCW

INVESTMENTS AND INTERFUND LOANS

Sections

- 43.84.092 Deposit of surplus balance investment earnings—Treasury income account—Accounts and funds credited. *(Effective until July 1, 2009.)*
- 43.84.092 Deposit of surplus balance investment earnings—Treasury income account—Accounts and funds credited. *(2007 c 484 § 4 effective July 1, 2008, if the proposed amendment to Article VII of the state Constitution is approved at the November 2007 general election.)*
- 43.84.092 Deposit of surplus balance investment earnings—Treasury income account—Accounts and funds credited. *(Effective July 1, 2009.)*
- 43.84.170 Investment of surplus moneys in common school fund, agricultural college fund, normal school fund, scientific school fund or university fund.

43.84.092 Deposit of surplus balance investment earnings—Treasury income account—Accounts and funds credited. (*Effective until July 1, 2009.*) (1) All earnings of investments of surplus balances in the state treasury shall be deposited to the treasury income account, which account is hereby established in the state treasury.

(2) The treasury income account shall be utilized to pay or receive funds associated with federal programs as required by the federal cash management improvement act of 1990. The treasury income account is subject in all respects to chapter 43.88 RCW, but no appropriation is required for refunds or allocations of interest earnings required by the cash management improvement act. Refunds of interest to the federal treasury required under the cash management improvement act fall under RCW 43.88.180 and shall not require appropriation. The office of financial management shall determine the amounts due to or from the federal government pursuant to the cash management improvement act. The office of financial management may direct transfers of funds between accounts as deemed necessary to implement the provisions of the cash management improvement act, and this subsection. Refunds or allocations shall occur prior to the distributions of earnings set forth in subsection (4) of this section.

(3) Except for the provisions of RCW 43.84.160, the treasury income account may be utilized for the payment of purchased banking services on behalf of treasury funds including, but not limited to, depository, safekeeping, and disbursement functions for the state treasury and affected state agencies. The treasury income account is subject in all respects to chapter 43.88 RCW, but no appropriation is required for payments to financial institutions. Payments shall occur prior to distribution of earnings set forth in subsection (4) of this section.

(4) Monthly, the state treasurer shall distribute the earnings credited to the treasury income account. The state treasurer shall credit the general fund with all the earnings credited to the treasury income account except:

(a) The following accounts and funds shall receive their proportionate share of earnings based upon each account's and fund's average daily balance for the period: The capitol building construction account, the Cedar River channel construction and operation account, the Central Washington University capital projects account, the charitable, educational, penal and reformatory institutions account, the Columbia river basin water supply development account, the common school construction fund, the county criminal justice assistance account, the county sales and use tax equalization account, the data processing building construction account, the deferred compensation administrative account, the deferred compensation principal account, the department of retirement systems expense account, the developmental disabilities community trust account, the drinking water assistance account, the drinking water assistance administrative account, the drinking water assistance repayment account, the Eastern Washington University capital projects account, the education construction fund, the education legacy trust account, the election account, the emergency reserve fund, the energy freedom account, The Evergreen State College capital projects account, the federal forest revolving account, the freight congestion relief account, the freight mobility investment account, the freight mobility multimodal account,

the health services account, the public health services account, the health system capacity account, the personal health services account, the state higher education construction account, the higher education construction account, the highway infrastructure account, the high-occupancy toll lanes operations account, the industrial insurance premium refund account, the judges' retirement account, the judicial retirement administrative account, the judicial retirement principal account, the local leasehold excise tax account, the local real estate excise tax account, the local sales and use tax account, the medical aid account, the mobile home park relocation fund, the multimodal transportation account, the municipal criminal justice assistance account, the municipal sales and use tax equalization account, the natural resources deposit account, the oyster reserve land account, the pension funding stabilization account, the perpetual surveillance and maintenance account, the public employees' retirement system plan 1 account, the public employees' retirement system combined plan 2 and plan 3 account, the public facilities construction loan revolving account beginning July 1, 2004, the public health supplemental account, the public works assistance account, the Puyallup tribal settlement account, the real estate appraiser commission account, the regional mobility grant program account, the resource management cost account, the rural Washington loan fund, the site closure account, the small city pavement and sidewalk account, the special wildlife account, the state employees' insurance account, the state employees' insurance reserve account, the state investment board expense account, the state investment board commingled trust fund accounts, the supplemental pension account, the Tacoma Narrows toll bridge account, the teachers' retirement system plan 1 account, the teachers' retirement system combined plan 2 and plan 3 account, the tobacco prevention and control account, the tobacco settlement account, the transportation infrastructure account, the transportation partnership account, the traumatic brain injury account, the tuition recovery trust fund, the University of Washington bond retirement fund, the University of Washington building account, the volunteer fire fighters' and reserve officers' relief and pension principal fund, the volunteer fire fighters' and reserve officers' administrative fund, the Washington fruit express account, the Washington judicial retirement system account, the Washington law enforcement officers' and fire fighters' system plan 1 retirement account, the Washington law enforcement officers' and fire fighters' system plan 2 retirement account, the Washington public safety employees' plan 2 retirement account, the Washington school employees' retirement system combined plan 2 and 3 account, the Washington state health insurance pool account, the Washington state patrol retirement account, the Washington State University building account, the Washington State University bond retirement fund, the water pollution control revolving fund, and the Western Washington University capital projects account. Earnings derived from investing balances of the agricultural permanent fund, the normal school permanent fund, the permanent common school fund, the scientific permanent fund, and the state university permanent fund shall be allocated to their respective beneficiary accounts. All earnings to be distributed under this subsection (4)(a) shall first be reduced by the allocation

to the state treasurer's service fund pursuant to RCW 43.08.190.

(b) The following accounts and funds shall receive eighty percent of their proportionate share of earnings based upon each account's or fund's average daily balance for the period: The aeronautics account, the aircraft search and rescue account, the county arterial preservation account, the department of licensing services account, the essential rail assistance account, the ferry bond retirement fund, the grade crossing protective fund, the high capacity transportation account, the highway bond retirement fund, the highway safety account, the motor vehicle fund, the motorcycle safety education account, the pilotage account, the public transportation systems account, the Puget Sound capital construction account, the Puget Sound ferry operations account, the recreational vehicle account, the rural arterial trust account, the safety and education account, the special category C account, the state patrol highway account, the transportation 2003 account (nickel account), the transportation equipment fund, the transportation fund, the transportation improvement account, the transportation improvement board bond retirement account, and the urban arterial trust account.

(5) In conformance with Article II, section 37 of the state Constitution, no treasury accounts or funds shall be allocated earnings without the specific affirmative directive of this section. [2007 c 514 § 3; 2007 c 356 § 9. Prior: 2006 c 337 § 11; (2006 c 337 § 10 expired July 1, 2006); 2006 c 311 § 23; (2006 c 311 § 22 expired July 1, 2006); 2006 c 171 § 10; (2006 c 171 § 9 expired July 1, 2006); 2006 c 56 § 10; (2006 c 56 § 9 expired July 1, 2006); 2006 c 6 § 8; prior: 2005 c 514 § 1106; 2005 c 353 § 4; 2005 c 339 § 23; 2005 c 314 § 110; 2005 c 312 § 8; 2005 c 94 § 2; 2005 c 83 § 5; prior: (2005 c 353 § 2 expired July 1, 2005); 2004 c 242 § 60; prior: 2003 c 361 § 602; 2003 c 324 § 1; 2003 c 150 § 2; 2003 c 48 § 2; prior: 2002 c 242 § 2; 2002 c 114 § 24; 2002 c 56 § 402; prior: 2001 2nd sp.s. c 14 § 608; (2001 2nd sp.s. c 14 § 607 expired March 1, 2002); 2001 c 273 § 6; (2001 c 273 § 5 expired March 1, 2002); 2001 c 141 § 3; (2001 c 141 § 2 expired March 1, 2002); 2001 c 80 § 5; (2001 c 80 § 4 expired March 1, 2002); 2000 2nd sp.s. c 4 § 6; prior: 2000 2nd sp.s. c 4 § 5; (2000 2nd sp.s. c 4 §§ 3, 4 expired September 1, 2000); 2000 c 247 § 702; 2000 c 79 § 39; (2000 c 79 §§ 37, 38 expired September 1, 2000); prior: 1999 c 380 § 9; 1999 c 380 § 8; 1999 c 309 § 929; (1999 c 309 § 928 expired September 1, 2000); 1999 c 268 § 5; (1999 c 268 § 4 expired September 1, 2000); 1999 c 94 § 4; (1999 c 94 §§ 2, 3 expired September 1, 2000); 1998 c 341 § 708; 1997 c 218 § 5; 1996 c 262 § 4; prior: 1995 c 394 § 1; 1995 c 122 § 12; prior: 1994 c 2 § 6 (Initiative Measure No. 601, approved November 2, 1993); 1993 sp.s. c 25 § 511; 1993 sp.s. c 8 § 1; 1993 c 500 § 6; 1993 c 492 § 473; 1993 c 445 § 4; 1993 c 329 § 2; 1993 c 4 § 9; 1992 c 235 § 4; 1991 sp.s. c 13 § 57; 1990 2nd ex.s. c 1 § 204; 1989 c 419 § 12; 1985 c 57 § 51.]

Reviser's note: This section was amended by 2007 c 356 § 9 and by 2007 c 514 § 3, each without reference to the other. Both amendments are incorporated in the publication of this section under RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

Short title—2007 c 356: See note following RCW 74.31.005.

Effective date—2006 c 337 § 11: "Section 11 of this act takes effect July 1, 2006." [2006 c 337 § 14.]

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Expiration date—2006 c 337 § 10: "Section 10 of this act expires July 1, 2006." [2006 c 337 § 13.]

Effective date—2006 c 311 § 23: "Section 23 of this act takes effect July 1, 2006." [2006 c 311 § 31.]

Expiration date—2006 c 311 § 22: "Section 22 of this act expires July 1, 2006." [2006 c 311 § 30.]

Findings—2006 c 311: See note following RCW 36.120.020.

Expiration date—2006 c 171 § 9: "Section 9 of this act expires July 1, 2006." [2006 c 171 § 14.]

Effective date—2006 c 171 §§ 8 and 10: See note following RCW 42.56.270.

Findings—Severability—2006 c 171: See RCW 15.110.005 and 15.110.901.

Expiration date—2006 c 56 § 9: "Section 9 of this act expires July 1, 2006." [2006 c 56 § 11.]

Effective dates—2006 c 56: See note following RCW 41.45.230.

Effective date—2006 c 6: See RCW 90.90.900.

Effective date—2005 c 514 § 1106: "Section 1106 of this act takes effect July 1, 2006." [2005 c 514 § 1313.]

Part headings not law—Severability—2005 c 514: See notes following RCW 82.12.808.

Effective dates—2005 c 353: See note following RCW 71A.20.170.

Effective date—2005 c 339 § 23: "Section 23 of this act takes effect July 1, 2006." [2005 c 339 § 25.]

Effective dates—2005 c 314 §§ 110 and 201-206: See note following RCW 46.17.010.

Part headings not law—2005 c 314: See note following RCW 46.17.010.

Effective dates—2005 c 312 §§ 6 and 8: See note following RCW 42.17.310.

Intent—Captions—2005 c 312: See notes following RCW 47.56.401.

Effective dates—2005 c 94: "(1) Section 1 of this act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect July 1, 2005.

(2) Section 2 of this act takes effect July 1, 2006." [2005 c 94 § 3.]

Findings—Effective dates—2005 c 83: See notes following RCW 47.26.340.

Effective date—2004 c 242: See RCW 41.37.901.

Findings—Part headings not law—Severability—2003 c 361: See notes following RCW 82.36.025.

Effective dates—2003 c 361: See note following RCW 82.08.020.

Effective date—2003 c 150 §§ 2 and 3: "Sections 2 and 3 of this act take effect July 1, 2005." [2003 c 150 § 4.]

Findings—Intent—2003 c 150; 2002 c 242: See note following RCW 43.160.085.

Effective date—2003 c 48: See note following RCW 29A.04.440.

Finding—Intent—2002 c 114: See RCW 47.46.011.

Captions not law—2002 c 114: See note following RCW 47.46.011.

Captions and subheadings not law—Severability—2002 c 56: See RCW 36.120.900 and 36.120.901.

Effective date—2001 2nd sp.s. c 14 § 608: "Section 608 of this act takes effect March 1, 2002." [2001 2nd sp.s. c 14 § 611.]

Expiration date—2001 2nd sp.s. c 14 § 607: "Section 607 of this act expires March 1, 2002." [2001 2nd sp.s. c 14 § 610.]

Severability—Effective date—2001 2nd sp.s. c 14: See notes following RCW 47.04.210.

Effective date—2001 c 273 § 6: "Section 6 of this act takes effect March 1, 2002." [2001 c 273 § 8.]

Expiration date—2001 c 273 § 5: "Section 5 of this act expires March 1, 2002." [2001 c 273 § 7.]

Effective date—2001 c 141 § 3: "Section 3 of this act takes effect March 1, 2002." [2001 c 141 § 6.]

Expiration date—2001 c 141 § 2: "Section 2 of this act expires March 1, 2002." [2001 c 141 § 5.]

Purpose—2001 c 141: "This act is needed to comply with federal law, which is the source of funds in the drinking water assistance account, used to fund the Washington state drinking water loan program as part of the federal safe drinking water act." [2001 c 141 § 1.]

Effective date—2001 c 80 § 5: "Section 5 of this act takes effect March 1, 2002." [2001 c 80 § 7.]

Expiration date—2001 c 80 § 4: "Section 4 of this act expires March 1, 2002." [2001 c 80 § 6.]

Findings—Intent—2001 c 80: See note following RCW 43.70.040.

Expiration date—2000 2nd sp.s. c 4 §§ 3 and 4: "Sections 3 and 4 of this act expire September 1, 2000." [2000 2nd sp.s. c 4 § 37.]

Effective date—2000 2nd sp.s. c 4 §§ 1-3 and 20: See note following RCW 82.08.020.

Effective dates—2000 2nd sp.s. c 4 §§ 4-10: See note following RCW 43.89.010.

Effective dates—Subchapter headings not law—2000 c 247: See RCW 41.40.931 and 41.40.932.

Expiration date—2000 c 79 §§ 37 and 38: "Sections 37 and 38 of this act expire September 1, 2000." [2000 c 79 § 49.]

Effective dates—2000 c 79 §§ 26, 38, and 39: See note following RCW 48.43.041.

Severability—2000 c 79: See note following RCW 48.04.010.

Severability—Effective date—1999 c 380: See RCW 43.99P.900 and 43.99P.901.

Expiration date—1999 c 309 § 928: "Section 928 of this act expires September 1, 2000." [1999 c 309 § 930.]

Effective dates—1999 c 309 §§ 927-929, 931, and 1101-1902: See note following RCW 43.79.480.

Severability—1999 c 309: See note following RCW 41.06.152.

Effective date—1999 c 268 § 5: "Section 5 of this act takes effect September 1, 2000." [1999 c 268 § 7.]

Expiration date—1999 c 268 § 4: "Section 4 of this act expires September 1, 2000." [1999 c 268 § 6.]

Expiration date—1999 c 94 §§ 2 and 3: "Sections 2 and 3 of this act expire September 1, 2000." [1999 c 94 § 36.]

Legislative finding—1999 c 94: "The legislature finds that a periodic review of the accounts and their uses is necessary. While creating new accounts may facilitate the implementation of legislative intent, the creation of too many accounts limits the effectiveness of performance-based budgeting. Too many accounts also limit the flexibility of the legislature to address emerging and changing issues in addition to creating administrative burdens for the responsible agencies. Accounts created for specific purposes may no longer be valid or needed. Accordingly, this act eliminates accounts that are not in use or are unneeded and consolidates accounts that are similar in nature." [1999 c 94 § 1.]

Effective dates—1999 c 94: "(1) Sections 1, 2, 5 through 24, 29 through 31, and 33 of this act are necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and take effect July 1, 1999.

(2) Section 4 of this act takes effect September 1, 2000.

(3) Sections 32 and 37 of this act are necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and take effect June 30, 1999.

(4) Sections 3, 25 through 28, and 34 of this act take effect July 1, 2000." [1999 c 94 § 35.]

Effective date—1998 c 341: See RCW 41.35.901.

Findings—Effective date—1997 c 218: See notes following RCW 70.119.030.

Transportation infrastructure account—Highway infrastructure account—Finding—Intent—Purpose—1996 c 262: See RCW 82.44.195.

Effective date—1996 c 262: See note following RCW 82.44.190.

Effective date—1995 c 394: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect June 1, 1995." [1995 c 394 § 3.]

Declaration—Intent—Purpose—1995 c 122: See RCW 59.21.006.

Severability—Effective date—1995 c 122: See RCW 59.21.904 and 59.21.905.

Severability—Effective dates—1994 c 2 (Initiative Measure No. 601): See RCW 43.135.903 and 43.135.904.

Severability—Effective dates—Part headings, captions not law—1993 sp.s. c 25: See notes following RCW 82.04.230.

Findings—Intent—1993 sp.s. c 25: See note following RCW 82.45.010.

Effective date—Application—1993 sp.s. c 8: "This act shall take effect July 1, 1993, but shall not be effective for earnings on balances prior to July 1, 1993." [1993 sp.s. c 8 § 3.]

Finding—Severability—Effective date—1993 c 500: See notes following RCW 43.41.180.

Findings—Intent—1993 c 492: See notes following RCW 43.20.050.

Short title—Severability—Savings—Captions not law—Reservation of legislative power—Effective dates—1993 c 492: See RCW 43.72.910 through 43.72.915.

Effective date—1993 c 329: See note following RCW 90.50A.020.

Legislative declaration—Effective date—1993 c 4: See notes following RCW 47.56.770.

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

Applicability—1990 2nd ex.s. c 1: See note following RCW 82.14.050.

Severability—1990 2nd ex.s. c 1: See note following RCW 82.14.300.

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

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

43.84.092 Deposit of surplus balance investment earnings—Treasury income account—Accounts and funds credited. (2007 c 484 § 4 effective July 1, 2008, if the proposed amendment to Article VII of the state Constitution is approved at the November 2007 general election.) (1) All earnings of investments of surplus balances in the state treasury shall be deposited to the treasury income account, which account is hereby established in the state treasury.

(2) The treasury income account shall be utilized to pay or receive funds associated with federal programs as required by the federal cash management improvement act of 1990. The treasury income account is subject in all respects to chapter 43.88 RCW, but no appropriation is required for refunds or allocations of interest earnings required by the cash management improvement act. Refunds of interest to the federal treasury required under the cash management improvement act fall under RCW 43.88.180 and shall not require appropriation. The office of financial management shall determine the amounts due to or from the federal government pursuant to the cash management improvement act. The office of financial management may direct transfers of funds between accounts as deemed necessary to implement the provisions of the cash management improvement act, and this subsection. Refunds or allocations shall occur prior to the distributions of earnings set forth in subsection (4) of this section.

(3) Except for the provisions of RCW 43.84.160, the treasury income account may be utilized for the payment of purchased banking services on behalf of treasury funds including, but not limited to, depository, safekeeping, and disbursement functions for the state treasury and affected state agencies. The treasury income account is subject in all respects to chapter 43.88 RCW, but no appropriation is

required for payments to financial institutions. Payments shall occur prior to distribution of earnings set forth in subsection (4) of this section.

(4) Monthly, the state treasurer shall distribute the earnings credited to the treasury income account. The state treasurer shall credit the general fund with all the earnings credited to the treasury income account except:

(a) The following accounts and funds shall receive their proportionate share of earnings based upon each account's and fund's average daily balance for the period: The budget stabilization account, the capitol building construction account, the Cedar River channel construction and operation account, the Central Washington University capital projects account, the charitable, educational, penal and reformatory institutions account, the Columbia river basin water supply development account, the common school construction fund, the county criminal justice assistance account, the county sales and use tax equalization account, the data processing building construction account, the deferred compensation administrative account, the deferred compensation principal account, the department of retirement systems expense account, the developmental disabilities community trust account, the drinking water assistance account, the drinking water assistance administrative account, the drinking water assistance repayment account, the Eastern Washington University capital projects account, the education construction fund, the education legacy trust account, the election account, the energy freedom account, The Evergreen State College capital projects account, the federal forest revolving account, the freight mobility investment account, the freight mobility multimodal account, the health services account, the public health services account, the health system capacity account, the personal health services account, the state higher education construction account, the higher education construction account, the highway infrastructure account, the high-occupancy toll lanes operations account, the industrial insurance premium refund account, the judges' retirement account, the judicial retirement administrative account, the judicial retirement principal account, the local leasehold excise tax account, the local real estate excise tax account, the local sales and use tax account, the medical aid account, the mobile home park relocation fund, the multimodal transportation account, the municipal criminal justice assistance account, the municipal sales and use tax equalization account, the natural resources deposit account, the oyster reserve land account, the pension funding stabilization account, the perpetual surveillance and maintenance account, the public employees' retirement system plan 1 account, the public employees' retirement system combined plan 2 and plan 3 account, the public facilities construction loan revolving account beginning July 1, 2004, the public health supplemental account, the public works assistance account, the Puyallup tribal settlement account, the real estate appraiser commission account, the regional mobility grant program account, the resource management cost account, the rural Washington loan fund, the site closure account, the small city pavement and sidewalk account, the special wildlife account, the state employees' insurance account, the state employees' insurance reserve account, the state investment board expense account, the state investment board commingled trust fund accounts, the supplemental pension account, the Tacoma

Narrows toll bridge account, the teachers' retirement system plan 1 account, the teachers' retirement system combined plan 2 and plan 3 account, the tobacco prevention and control account, the tobacco settlement account, the transportation infrastructure account, the transportation partnership account, the tuition recovery trust fund, the University of Washington bond retirement fund, the University of Washington building account, the volunteer fire fighters' and reserve officers' relief and pension principal fund, the volunteer fire fighters' and reserve officers' administrative fund, the Washington fruit express account, the Washington judicial retirement system account, the Washington law enforcement officers' and fire fighters' system plan 1 retirement account, the Washington law enforcement officers' and fire fighters' system plan 2 retirement account, the Washington public safety employees' plan 2 retirement account, the Washington school employees' retirement system combined plan 2 and 3 account, the Washington state health insurance pool account, the Washington state patrol retirement account, the Washington State University building account, the Washington State University bond retirement fund, the water pollution control revolving fund, and the Western Washington University capital projects account. Earnings derived from investing balances of the agricultural permanent fund, the normal school permanent fund, the permanent common school fund, the scientific permanent fund, and the state university permanent fund shall be allocated to their respective beneficiary accounts. All earnings to be distributed under this subsection (4)(a) shall first be reduced by the allocation to the state treasurer's service fund pursuant to RCW 43.08.190.

(b) The following accounts and funds shall receive eighty percent of their proportionate share of earnings based upon each account's or fund's average daily balance for the period: The aeronautics account, the aircraft search and rescue account, the county arterial preservation account, the department of licensing services account, the essential rail assistance account, the ferry bond retirement fund, the grade crossing protective fund, the high capacity transportation account, the highway bond retirement fund, the highway safety account, the motor vehicle fund, the motorcycle safety education account, the pilotage account, the public transportation systems account, the Puget Sound capital construction account, the Puget Sound ferry operations account, the recreational vehicle account, the rural arterial trust account, the safety and education account, the special category C account, the state patrol highway account, the transportation 2003 account (nickel account), the transportation equipment fund, the transportation fund, the transportation improvement account, the transportation improvement board bond retirement account, and the urban arterial trust account.

(5) In conformance with Article II, section 37 of the state Constitution, no treasury accounts or funds shall be allocated earnings without the specific affirmative directive of this section. [2007 c 484 § 4. Prior: 2006 c 337 § 11; (2006 c 337 § 10 expired July 1, 2006); 2006 c 311 § 23; (2006 c 311 § 22 expired July 1, 2006); 2006 c 171 § 10; (2006 c 171 § 9 expired July 1, 2006); 2006 c 56 § 10; (2006 c 56 § 9 expired July 1, 2006); 2006 c 6 § 8; prior: 2005 c 514 § 1106; 2005 c 353 § 4; 2005 c 339 § 23; 2005 c 314 § 110; 2005 c 312 § 8; 2005 c 94 § 2; 2005 c 83 § 5; prior: (2005 c 353 § 2 expired

July 1, 2005); 2004 c 242 § 60; prior: 2003 c 361 § 602; 2003 c 324 § 1; 2003 c 150 § 2; 2003 c 48 § 2; prior: 2002 c 242 § 2; 2002 c 114 § 24; 2002 c 56 § 402; prior: 2001 2nd sp.s. c 14 § 608; (2001 2nd sp.s. c 14 § 607 expired March 1, 2002); 2001 c 273 § 6; (2001 c 273 § 5 expired March 1, 2002); 2001 c 141 § 3; (2001 c 141 § 2 expired March 1, 2002); 2001 c 80 § 5; (2001 c 80 § 4 expired March 1, 2002); 2000 2nd sp.s. c 4 § 6; prior: 2000 2nd sp.s. c 4 § 5; (2000 2nd sp.s. c 4 §§ 3, 4 expired September 1, 2000); 2000 c 247 § 702; 2000 c 79 § 39; (2000 c 79 §§ 37, 38 expired September 1, 2000); prior: 1999 c 380 § 9; 1999 c 380 § 8; 1999 c 309 § 929; (1999 c 309 § 928 expired September 1, 2000); 1999 c 268 § 5; (1999 c 268 § 4 expired September 1, 2000); 1999 c 94 § 4; (1999 c 94 §§ 2, 3 expired September 1, 2000); 1998 c 341 § 708; 1997 c 218 § 5; 1996 c 262 § 4; prior: 1995 c 394 § 1; 1995 c 122 § 12; prior: 1994 c 2 § 6 (Initiative Measure No. 601, approved November 2, 1993); 1993 sp.s. c 25 § 511; 1993 sp.s. c 8 § 1; 1993 c 500 § 6; 1993 c 492 § 473; 1993 c 445 § 4; 1993 c 329 § 2; 1993 c 4 § 9; 1992 c 235 § 4; 1991 sp.s. c 13 § 57; 1990 2nd ex.s. c 1 § 204; 1989 c 419 § 12; 1985 c 57 § 51.]

Reviser's note: 2007 c 484 § 4 will be incorporated in the 2007 amendments to RCW 43.84.092 under RCW 1.12.025(2), if the proposed amendment to Article VII of the state Constitution is approved at the November 2007 general election.

Contingent effective date—2007 c 484 §§ 2-8: See note following RCW 43.79.495.

Effective date—2006 c 337 § 11: "Section 11 of this act takes effect July 1, 2006." [2006 c 337 § 14.]

Expiration date—2006 c 337 § 10: "Section 10 of this act expires July 1, 2006." [2006 c 337 § 13.]

Effective date—2006 c 311 § 23: "Section 23 of this act takes effect July 1, 2006." [2006 c 311 § 31.]

Expiration date—2006 c 311 § 22: "Section 22 of this act expires July 1, 2006." [2006 c 311 § 13.]

Findings—2006 c 311: See note following RCW 36.120.020.

Expiration date—2006 c 171 § 9: "Section 9 of this act expires July 1, 2006." [2006 c 171 § 14.]

Effective date—2006 c 171 §§ 8 and 10: See note following RCW 42.56.270.

Findings—Severability—2006 c 171: See RCW 15.110.005 and 15.110.901.

Expiration date—2006 c 56 § 9: "Section 9 of this act expires July 1, 2006." [2006 c 56 § 11.]

Effective dates—2006 c 56: See note following RCW 41.45.230.

Effective date—2006 c 6: See RCW 90.90.900.

Effective date—2005 c 514 § 1106: "Section 1106 of this act takes effect July 1, 2006." [2005 c 514 § 1313.]

Part headings not law—Severability—2005 c 514: See notes following RCW 82.12.808.

Effective dates—2005 c 353: See note following RCW 71A.20.170.

Effective date—2005 c 339 § 23: "Section 23 of this act takes effect July 1, 2006." [2005 c 339 § 25.]

Effective dates—2005 c 314 §§ 110 and 201-206: See note following RCW 46.17.010.

Part headings not law—2005 c 314: See note following RCW 46.17.010.

Effective dates—2005 c 312 §§ 6 and 8: See note following RCW 42.17.310.

Intent—Captions—2005 c 312: See notes following RCW 47.56.401.

Effective dates—2005 c 94: "(1) Section 1 of this act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect

July 1, 2005.

(2) Section 2 of this act takes effect July 1, 2006." [2005 c 94 § 3.]

Findings—Effective dates—2005 c 83: See notes following RCW 47.26.340.

Effective date—2004 c 242: See RCW 41.37.901.

Findings—Part headings not law—Severability—2003 c 361: See notes following RCW 82.36.025.

Effective dates—2003 c 361: See note following RCW 82.08.020.

Effective date—2003 c 150 §§ 2 and 3: "Sections 2 and 3 of this act take effect July 1, 2005." [2003 c 150 § 4.]

Findings—Intent—2003 c 150; 2002 c 242: See note following RCW 43.160.085.

Effective date—2003 c 48: See note following RCW 29A.04.440.

Finding—Intent—2002 c 114: See RCW 47.46.011.

Captions not law—2002 c 114: See note following RCW 47.46.011.

Captions and subheadings not law—Severability—2002 c 56: See RCW 36.120.900 and 36.120.901.

Effective date—2001 2nd sp.s. c 14 § 608: "Section 608 of this act takes effect March 1, 2002." [2001 2nd sp.s. c 14 § 611.]

Expiration date—2001 2nd sp.s. c 14 § 607: "Section 607 of this act expires March 1, 2002." [2001 2nd sp.s. c 14 § 610.]

Severability—Effective date—2001 2nd sp.s. c 14: See notes following RCW 47.04.210.

Effective date—2001 c 273 § 6: "Section 6 of this act takes effect March 1, 2002." [2001 c 273 § 8.]

Expiration date—2001 c 273 § 5: "Section 5 of this act expires March 1, 2002." [2001 c 273 § 7.]

Effective date—2001 c 141 § 3: "Section 3 of this act takes effect March 1, 2002." [2001 c 141 § 6.]

Expiration date—2001 c 141 § 2: "Section 2 of this act expires March 1, 2002." [2001 c 141 § 5.]

Purpose—2001 c 141: "This act is needed to comply with federal law, which is the source of funds in the drinking water assistance account, used to fund the Washington state drinking water loan program as part of the federal safe drinking water act." [2001 c 141 § 1.]

Effective date—2001 c 80 § 5: "Section 5 of this act takes effect March 1, 2002." [2001 c 80 § 7.]

Expiration date—2001 c 80 § 4: "Section 4 of this act expires March 1, 2002." [2001 c 80 § 6.]

Findings—Intent—2001 c 80: See note following RCW 43.70.040.

Expiration date—2000 2nd sp.s. c 4 §§ 3 and 4: "Sections 3 and 4 of this act expire September 1, 2000." [2000 2nd sp.s. c 4 § 37.]

Effective date—2000 2nd sp.s. c 4 §§ 1-3 and 20: See note following RCW 82.08.020.

Effective dates—2000 2nd sp.s. c 4 §§ 4-10: See note following RCW 43.89.010.

Effective dates—Subchapter headings not law—2000 c 247: See RCW 41.40.931 and 41.40.932.

Expiration date—2000 c 79 §§ 37 and 38: "Sections 37 and 38 of this act expire September 1, 2000." [2000 c 79 § 49.]

Effective dates—2000 c 79 §§ 26, 38, and 39: See note following RCW 48.43.041.

Severability—2000 c 79: See note following RCW 48.04.010.

Severability—Effective date—1999 c 380: See RCW 43.99P.900 and 43.99P.901.

Expiration date—1999 c 309 § 928: "Section 928 of this act expires September 1, 2000." [1999 c 309 § 930.]

Effective dates—1999 c 309 §§ 927-929, 931, and 1101-1902: See note following RCW 43.79.480.

Severability—1999 c 309: See note following RCW 41.06.152.

Effective date—1999 c 268 § 5: "Section 5 of this act takes effect September 1, 2000." [1999 c 268 § 7.]

Expiration date—1999 c 268 § 4: "Section 4 of this act expires September 1, 2000." [1999 c 268 § 6.]

Expiration date—1999 c 94 §§ 2 and 3: "Sections 2 and 3 of this act expire September 1, 2000." [1999 c 94 § 36.]

Legislative finding—1999 c 94: "The legislature finds that a periodic review of the accounts and their uses is necessary. While creating new accounts may facilitate the implementation of legislative intent, the creation of too many accounts limits the effectiveness of performance-based budgeting. Too many accounts also limit the flexibility of the legislature to address emerging and changing issues in addition to creating administrative burdens for the responsible agencies. Accounts created for specific purposes may no longer be valid or needed. Accordingly, this act eliminates accounts that are not in use or are unneeded and consolidates accounts that are similar in nature." [1999 c 94 § 1.]

Effective dates—1999 c 94: "(1) Sections 1, 2, 5 through 24, 29 through 31, and 33 of this act are necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and take effect July 1, 1999.

(2) Section 4 of this act takes effect September 1, 2000.

(3) Sections 32 and 37 of this act are necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and take effect June 30, 1999.

(4) Sections 3, 25 through 28, and 34 of this act take effect July 1, 2000." [1999 c 94 § 35.]

Effective date—1998 c 341: See RCW 41.35.901.

Findings—Effective date—1997 c 218: See notes following RCW 70.119.030.

Transportation infrastructure account—Highway infrastructure account—Finding—Intent—Purpose—1996 c 262: See RCW 82.44.195.

Effective date—1996 c 262: See note following RCW 82.44.190.

Effective date—1995 c 394: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect June 1, 1995." [1995 c 394 § 3.]

Declaration—Intent—Purpose—1995 c 122: See RCW 59.21.006.

Severability—Effective date—1995 c 122: See RCW 59.21.904 and 59.21.905.

Severability—Effective dates—1994 c 2 (Initiative Measure No. 601): See RCW 43.135.903 and 43.135.904.

Severability—Effective dates—Part headings, captions not law—1993 sp.s. c 25: See notes following RCW 82.04.230.

Findings—Intent—1993 sp.s. c 25: See note following RCW 82.45.010.

Effective date—Application—1993 sp.s. c 8: "This act shall take effect July 1, 1993, but shall not be effective for earnings on balances prior to July 1, 1993." [1993 sp.s. c 8 § 3.]

Finding—Severability—Effective date—1993 c 500: See notes following RCW 43.41.180.

Findings—Intent—1993 c 492: See notes following RCW 43.20.050.

Short title—Severability—Savings—Captions not law—Reservation of legislative power—Effective dates—1993 c 492: See RCW 43.72.910 through 43.72.915.

Effective date—1993 c 329: See note following RCW 90.50A.020.

Legislative declaration—Effective date—1993 c 4: See notes following RCW 47.56.770.

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

Applicability—1990 2nd ex.s. c 1: See note following RCW 82.14.050.

Severability—1990 2nd ex.s. c 1: See note following RCW 82.14.300.

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

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

43.84.092 Deposit of surplus balance investment earnings—Treasury income account—Accounts and funds credited. (Effective July 1, 2009.) (1) All earnings of investments of surplus balances in the state treasury shall be

deposited to the treasury income account, which account is hereby established in the state treasury.

(2) The treasury income account shall be utilized to pay or receive funds associated with federal programs as required by the federal cash management improvement act of 1990. The treasury income account is subject in all respects to chapter 43.88 RCW, but no appropriation is required for refunds or allocations of interest earnings required by the cash management improvement act. Refunds of interest to the federal treasury required under the cash management improvement act fall under RCW 43.88.180 and shall not require appropriation. The office of financial management shall determine the amounts due to or from the federal government pursuant to the cash management improvement act. The office of financial management may direct transfers of funds between accounts as deemed necessary to implement the provisions of the cash management improvement act, and this subsection. Refunds or allocations shall occur prior to the distributions of earnings set forth in subsection (4) of this section.

(3) Except for the provisions of RCW 43.84.160, the treasury income account may be utilized for the payment of purchased banking services on behalf of treasury funds including, but not limited to, depository, safekeeping, and disbursement functions for the state treasury and affected state agencies. The treasury income account is subject in all respects to chapter 43.88 RCW, but no appropriation is required for payments to financial institutions. Payments shall occur prior to distribution of earnings set forth in subsection (4) of this section.

(4) Monthly, the state treasurer shall distribute the earnings credited to the treasury income account. The state treasurer shall credit the general fund with all the earnings credited to the treasury income account except:

The following accounts and funds shall receive their proportionate share of earnings based upon each account's and fund's average daily balance for the period: The aeronautics account, the aircraft search and rescue account, the capitol building construction account, the Cedar River channel construction and operation account, the Central Washington University capital projects account, the charitable, educational, penal and reformatory institutions account, the Columbia river basin water supply development account, the common school construction fund, the county arterial preservation account, the county criminal justice assistance account, the county sales and use tax equalization account, the data processing building construction account, the deferred compensation administrative account, the deferred compensation principal account, the department of licensing services account, the department of retirement systems expense account, the developmental disabilities community trust account, the drinking water assistance account, the drinking water assistance administrative account, the drinking water assistance repayment account, the Eastern Washington University capital projects account, the education construction fund, the education legacy trust account, the election account, the emergency reserve fund, the energy freedom account, the essential rail assistance account, The Evergreen State College capital projects account, the federal forest revolving account, the ferry bond retirement fund, the freight congestion relief account, the freight mobility investment account, the freight mobility multimodal account, the grade crossing protective

fund, the health services account, the public health services account, the health system capacity account, the personal health services account, the high capacity transportation account, the state higher education construction account, the higher education construction account, the highway bond retirement fund, the highway infrastructure account, the highway safety account, the high-occupancy toll lanes operations account, the industrial insurance premium refund account, the judges' retirement account, the judicial retirement administrative account, the judicial retirement principal account, the local leasehold excise tax account, the local real estate excise tax account, the local sales and use tax account, the medical aid account, the mobile home park relocation fund, the motor vehicle fund, the motorcycle safety education account, the multimodal transportation account, the municipal criminal justice assistance account, the municipal sales and use tax equalization account, the natural resources deposit account, the oyster reserve land account, the pension funding stabilization account, the perpetual surveillance and maintenance account, the pilotage account, the public employees' retirement system plan 1 account, the public employees' retirement system combined plan 2 and plan 3 account, the public facilities construction loan revolving account beginning July 1, 2004, the public health supplemental account, the public transportation systems account, the public works assistance account, the Puget Sound capital construction account, the Puget Sound ferry operations account, the Puyallup tribal settlement account, the real estate appraiser commission account, the recreational vehicle account, the regional mobility grant program account, the resource management cost account, the rural arterial trust account, the rural Washington loan fund, the safety and education account, the site closure account, the small city pavement and sidewalk account, the special category C account, the special wildlife account, the state employees' insurance account, the state employees' insurance reserve account, the state investment board expense account, the state investment board commingled trust fund accounts, the state patrol highway account, the supplemental pension account, the Tacoma Narrows toll bridge account, the teachers' retirement system plan 1 account, the teachers' retirement system combined plan 2 and plan 3 account, the tobacco prevention and control account, the tobacco settlement account, the transportation 2003 account (nickel account), the transportation equipment fund, the transportation fund, the transportation improvement account, the transportation improvement board bond retirement account, the transportation infrastructure account, the transportation partnership account, the traumatic brain injury account, the tuition recovery trust fund, the University of Washington bond retirement fund, the University of Washington building account, the urban arterial trust account, the volunteer fire fighters' and reserve officers' relief and pension principal fund, the volunteer fire fighters' and reserve officers' administrative fund, the Washington fruit express account, the Washington judicial retirement system account, the Washington law enforcement officers' and fire fighters' system plan 1 retirement account, the Washington law enforcement officers' and fire fighters' system plan 2 retirement account, the Washington public safety employees' plan 2 retirement account, the Washington school employees' retirement system combined plan 2 and 3 account, the Wash-

ington state health insurance pool account, the Washington state patrol retirement account, the Washington State University building account, the Washington State University bond retirement fund, the water pollution control revolving fund, and the Western Washington University capital projects account. Earnings derived from investing balances of the agricultural permanent fund, the normal school permanent fund, the permanent common school fund, the scientific permanent fund, and the state university permanent fund shall be allocated to their respective beneficiary accounts. All earnings to be distributed under this subsection (4)(a) shall first be reduced by the allocation to the state treasurer's service fund pursuant to RCW 43.08.190.

(5) In conformance with Article II, section 37 of the state Constitution, no treasury accounts or funds shall be allocated earnings without the specific affirmative directive of this section. [2007 c 514 § 3; 2007 c 513 § 1; 2007 c 356 § 7. Prior: 2006 c 337 § 11; (2006 c 337 § 10 expired July 1, 2006); 2006 c 311 § 23; (2006 c 311 § 22 expired July 1, 2006); 2006 c 171 § 10; (2006 c 171 § 9 expired July 1, 2006); 2006 c 56 § 10; (2006 c 56 § 9 expired July 1, 2006); 2006 c 6 § 8; prior: 2005 c 514 § 1106; 2005 c 353 § 4; 2005 c 339 § 23; 2005 c 314 § 110; 2005 c 312 § 8; 2005 c 94 § 2; 2005 c 83 § 5; prior: (2005 c 353 § 2 expired July 1, 2005); 2004 c 242 § 60; prior: 2003 c 361 § 602; 2003 c 324 § 1; 2003 c 150 § 2; 2003 c 48 § 2; prior: 2002 c 242 § 2; 2002 c 114 § 24; 2002 c 56 § 402; prior: 2001 2nd sp.s. c 14 § 608; (2001 2nd sp.s. c 14 § 607 expired March 1, 2002); 2001 c 273 § 6; (2001 c 273 § 5 expired March 1, 2002); 2001 c 141 § 3; (2001 c 141 § 2 expired March 1, 2002); 2001 c 80 § 5; (2001 c 80 § 4 expired March 1, 2002); 2000 2nd sp.s. c 4 § 6; prior: 2000 2nd sp.s. c 4 § 5; (2000 2nd sp.s. c 4 §§ 3, 4 expired September 1, 2000); 2000 c 247 § 702; 2000 c 79 § 39; (2000 c 79 § 37, 38 expired September 1, 2000); prior: 1999 c 380 § 9; 1999 c 380 § 8; 1999 c 309 § 929; (1999 c 309 § 928 expired September 1, 2000); 1999 c 268 § 5; (1999 c 268 § 4 expired September 1, 2000); 1999 c 94 § 4; (1999 c 94 §§ 2, 3 expired September 1, 2000); 1998 c 341 § 708; 1997 c 218 § 5; 1996 c 262 § 4; prior: 1995 c 394 § 1; 1995 c 122 § 12; prior: 1994 c 2 § 6 (Initiative Measure No. 601, approved November 2, 1993); 1993 sp.s. c 25 § 511; 1993 sp.s. c 8 § 1; 1993 c 500 § 6; 1993 c 492 § 473; 1993 c 445 § 4; 1993 c 329 § 2; 1993 c 4 § 9; 1992 c 235 § 4; 1991 sp.s. c 13 § 57; 1990 2nd ex.s. c 1 § 204; 1989 c 419 § 12; 1985 c 57 § 51.]

Reviser's note: This section was amended by 2007 c 356 § 7, 2007 c 513 § 1, and by 2007 c 514 s 3, each without reference to the other. All amendments are incorporated in the publication of this section under RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

Effective date—2007 c 513: "This act takes effect July 1, 2009." [2007 c 513 § 2.]

Short title—2007 c 356: See note following RCW 74.31.005.

Effective date—2006 c 337 § 11: "Section 11 of this act takes effect July 1, 2006." [2006 c 337 § 14.]

Expiration date—2006 c 337 § 10: "Section 10 of this act expires July 1, 2006." [2006 c 337 § 13.]

Effective date—2006 c 311 § 23: "Section 23 of this act takes effect July 1, 2006." [2006 c 311 § 31.]

Expiration date—2006 c 311 § 22: "Section 22 of this act expires July 1, 2006." [2006 c 311 § 30.]

Findings—2006 c 311: See note following RCW 36.120.020.

Expiration date—2006 c 171 § 9: "Section 9 of this act expires July 1, 2006." [2006 c 171 § 14.]

Effective date—2006 c 171 §§ 8 and 10: See note following RCW 42.56.270.

Findings—Severability—2006 c 171: See RCW 15.110.005 and 15.110.901.

Expiration date—2006 c 56 § 9: "Section 9 of this act expires July 1, 2006." [2006 c 56 § 11.]

Effective dates—2006 c 56: See note following RCW 41.45.230.

Effective date—2006 c 6: See RCW 90.90.900.

Effective date—2005 c 514 § 1106: "Section 1106 of this act takes effect July 1, 2006." [2005 c 514 § 1313.]

Part headings not law—Severability—2005 c 514: See notes following RCW 82.12.808.

Effective dates—2005 c 353: See note following RCW 71A.20.170.

Effective date—2005 c 339 § 23: "Section 23 of this act takes effect July 1, 2006." [2005 c 339 § 25.]

Effective dates—2005 c 314 §§ 110 and 201-206: See note following RCW 46.17.010.

Part headings not law—2005 c 314: See note following RCW 46.17.010.

Effective dates—2005 c 312 §§ 6 and 8: See note following RCW 42.17.310.

Intent—Captions—2005 c 312: See notes following RCW 47.56.401.

Effective dates—2005 c 94: "(1) Section 1 of this act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect July 1, 2005.

(2) Section 2 of this act takes effect July 1, 2006." [2005 c 94 § 3.]

Findings—Effective dates—2005 c 83: See notes following RCW 47.26.340.

Effective date—2004 c 242: See RCW 41.37.901.

Findings—Part headings not law—Severability—2003 c 361: See notes following RCW 82.36.025.

Effective dates—2003 c 361: See note following RCW 82.08.020.

Effective date—2003 c 150 §§ 2 and 3: "Sections 2 and 3 of this act take effect July 1, 2005." [2003 c 150 § 4.]

Findings—Intent—2003 c 150; 2002 c 242: See note following RCW 43.160.085.

Effective date—2003 c 48: See note following RCW 29A.04.440.

Finding—Intent—2002 c 114: See RCW 47.46.011.

Captions not law—2002 c 114: See note following RCW 47.46.011.

Captions and subheadings not law—Severability—2002 c 56: See RCW 36.120.900 and 36.120.901.

Effective date—2001 2nd sp.s. c 14 § 608: "Section 608 of this act takes effect March 1, 2002." [2001 2nd sp.s. c 14 § 611.]

Expiration date—2001 2nd sp.s. c 14 § 607: "Section 607 of this act expires March 1, 2002." [2001 2nd sp.s. c 14 § 610.]

Severability—Effective date—2001 2nd sp.s. c 14: See notes following RCW 47.04.210.

Effective date—2001 c 273 § 6: "Section 6 of this act takes effect March 1, 2002." [2001 c 273 § 8.]

Expiration date—2001 c 273 § 5: "Section 5 of this act expires March 1, 2002." [2001 c 273 § 7.]

Effective date—2001 c 141 § 3: "Section 3 of this act takes effect March 1, 2002." [2001 c 141 § 6.]

Expiration date—2001 c 141 § 2: "Section 2 of this act expires March 1, 2002." [2001 c 141 § 5.]

Purpose—2001 c 141: "This act is needed to comply with federal law, which is the source of funds in the drinking water assistance account, used to fund the Washington state drinking water loan program as part of the federal safe drinking water act." [2001 c 141 § 1.]

Effective date—2001 c 80 § 5: "Section 5 of this act takes effect March 1, 2002." [2001 c 80 § 7.]

Expiration date—2001 c 80 § 4: "Section 4 of this act expires March 1, 2002." [2001 c 80 § 6.]

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Findings—Intent—2001 c 80: See note following RCW 43.70.040.

Expiration date—2000 2nd sp.s. c 4 §§ 3 and 4: "Sections 3 and 4 of this act expire September 1, 2000." [2000 2nd sp.s. c 4 § 37.]

Effective date—2000 2nd sp.s. c 4 §§ 1-3 and 20: See note following RCW 82.08.020.

Effective dates—2000 2nd sp.s. c 4 §§ 4-10: See note following RCW 43.89.010.

Effective dates—Subchapter headings not law—2000 c 247: See RCW 41.40.931 and 41.40.932.

Expiration date—2000 c 79 §§ 37 and 38: "Sections 37 and 38 of this act expire September 1, 2000." [2000 c 79 § 49.]

Effective dates—2000 c 79 §§ 26, 38, and 39: See note following RCW 48.43.041.

Severability—2000 c 79: See note following RCW 48.04.010.

Severability—Effective date—1999 c 380: See RCW 43.99P.900 and 43.99P.901.

Expiration date—1999 c 309 § 928: "Section 928 of this act expires September 1, 2000." [1999 c 309 § 930.]

Effective dates—1999 c 309 §§ 927-929, 931, and 1101-1902: See note following RCW 43.79.480.

Severability—1999 c 309: See note following RCW 41.06.152.

Effective date—1999 c 268 § 5: "Section 5 of this act takes effect September 1, 2000." [1999 c 268 § 7.]

Expiration date—1999 c 268 § 4: "Section 4 of this act expires September 1, 2000." [1999 c 268 § 6.]

Expiration date—1999 c 94 §§ 2 and 3: "Sections 2 and 3 of this act expire September 1, 2000." [1999 c 94 § 36.]

Legislative finding—1999 c 94: "The legislature finds that a periodic review of the accounts and their uses is necessary. While creating new accounts may facilitate the implementation of legislative intent, the creation of too many accounts limits the effectiveness of performance-based budgeting. Too many accounts also limit the flexibility of the legislature to address emerging and changing issues in addition to creating administrative burdens for the responsible agencies. Accounts created for specific purposes may no longer be valid or needed. Accordingly, this act eliminates accounts that are not in use or are unneeded and consolidates accounts that are similar in nature." [1999 c 94 § 1.]

Effective dates—1999 c 94: "(1) Sections 1, 2, 5 through 24, 29 through 31, and 33 of this act are necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and take effect July 1, 1999.

(2) Section 4 of this act takes effect September 1, 2000.

(3) Sections 32 and 37 of this act are necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and take effect June 30, 1999.

(4) Sections 3, 25 through 28, and 34 of this act take effect July 1, 2000." [1999 c 94 § 35.]

Effective date—1998 c 341: See RCW 41.35.901.

Findings—Effective date—1997 c 218: See notes following RCW 70.119.030.

Transportation infrastructure account—Highway infrastructure account—Finding—Intent—Purpose—1996 c 262: See RCW 82.44.195.

Effective date—1996 c 262: See note following RCW 82.44.190.

Effective date—1995 c 394: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect June 1, 1995." [1995 c 394 § 3.]

Declaration—Intent—Purpose—1995 c 122: See RCW 59.21.006.

Severability—Effective date—1995 c 122: See RCW 59.21.904 and 59.21.905.

Severability—Effective dates—1994 c 2 (Initiative Measure No. 601): See RCW 43.135.903 and 43.135.904.

Severability—Effective dates—Part headings, captions not law—1993 sp.s. c 25: See notes following RCW 82.04.230.

Findings—Intent—1993 sp.s. c 25: See note following RCW 82.45.010.

Effective date—Application—1993 sp.s. c 8: "This act shall take effect July 1, 1993, but shall not be effective for earnings on balances prior to July 1, 1993." [1993 sp.s. c 8 § 3.]

Finding—Severability—Effective date—1993 c 500: See notes following RCW 43.41.180.

Findings—Intent—1993 c 492: See notes following RCW 43.20.050.

Short title—Severability—Savings—Captions not law—Reservation of legislative power—Effective dates—1993 c 492: See RCW 43.72.910 through 43.72.915.

Effective date—1993 c 329: See note following RCW 90.50A.020.

Legislative declaration—Effective date—1993 c 4: See notes following RCW 47.56.770.

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

Applicability—1990 2nd ex.s. c 1: See note following RCW 82.14.050.

Severability—1990 2nd ex.s. c 1: See note following RCW 82.14.300.

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

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

43.84.170 Investment of surplus moneys in common school fund, agricultural college fund, normal school fund, scientific school fund or university fund. Whenever there are surplus moneys available for investment in the permanent common school fund, the agricultural college permanent fund, the normal school permanent fund, the scientific school permanent fund, or the university permanent fund, the state investment board has full power to invest or reinvest such funds in the manner prescribed by RCW 43.84.150 and 28A.515.330, and not otherwise. [2007 c 505 § 4; 1981 c 3 § 21; 1973 1st ex.s. c 103 § 14.]

Intent—Finding—2007 c 505: See note following RCW 28A.515.330.

Effective dates—Severability—1981 c 3: See notes following RCW 43.33A.010.

Severability—1973 1st ex.s. c 103: See note following RCW 2.10.080.

Agricultural permanent fund: RCW 43.79.130.

Normal school permanent fund: RCW 43.79.160.

Permanent common school fund: State Constitution Art. 9 § 3, RCW 28A.515.300.

Scientific permanent fund: RCW 43.79.110.

University permanent fund: RCW 43.79.060.

Chapter 43.86A RCW

SURPLUS FUNDS—INVESTMENT PROGRAM

Sections

43.86A.030 Time certificate of deposit investment program—Available funds—Allocation.

43.86A.060 Linked deposit program—Minority and women’s business enterprises.

43.86A.030 Time certificate of deposit investment program—Available funds—Allocation. (1) Funds held in public depositaries not as demand deposits as provided in RCW 43.86A.020 and 43.86A.030, shall be available for a time certificate of deposit investment program according to the following formula: The state treasurer shall apportion to all participating depositaries an amount equal to five percent of the three year average mean of general state revenues as certified in accordance with Article VIII, section 1(b) of the state Constitution, or fifty percent of the total surplus treasury

investment availability, whichever is less. Within thirty days after certification, those funds determined to be available according to this formula for the time certificate of deposit investment program shall be deposited in qualified public depositaries. These deposits shall be allocated among the participating depositaries on a basis to be determined by the state treasurer.

(2) The state treasurer may use up to one hundred fifty million dollars per year of all funds available under this section for the purposes of RCW 43.86A.060. The amounts made available to these public depositaries shall be equal to the amounts of outstanding loans made under RCW 43.86A.060.

(3) The formula so devised shall be a matter of public record giving consideration to, but not limited to deposits, assets, loans, capital structure, investments or some combination of these factors. However, if in the judgment of the state treasurer the amount of allocation for certificates of deposit as determined by this section will impair the cash flow needs of the state treasury, the state treasurer may adjust the amount of the allocation accordingly. [2007 c 500 § 1; 2005 c 302 § 2; 1993 c 512 § 33; 1982 c 74 § 1; 1973 c 123 § 3.]

Intent—2005 c 302: "The legislature intends that funds provided under the linked deposit program shall be used to create jobs and economic opportunity as well as to remedy the problem of a lack of access to capital by minority and women’s business enterprises." [2005 c 302 § 1.]

43.86A.060 Linked deposit program—Minority and women’s business enterprises.

(1) The state treasurer shall establish a linked deposit program for investment of deposits in qualified public depositaries. As a condition of participating in the program, qualified public depositaries must make qualifying loans as provided in this section. The state treasurer may purchase a certificate of deposit that is equal to the amount of the qualifying loan made by the qualified public depositary or may purchase a certificate of deposit that is equal to the aggregate amount of two or more qualifying loans made by one or more qualified public depositaries.

(2) Qualifying loans made under this section are those:

(a) Having terms that do not exceed ten years;

(b) Where an individual loan does not exceed one million dollars;

(c) That are made to a minority or women’s business enterprise that has received state certification under chapter 39.19 RCW;

(d) Where the interest rate on the loan to the minority or women’s business enterprise does not exceed an interest rate that is two hundred basis points below the interest rate the qualified public depositary would charge for a loan for a similar purpose and a similar term, except that, if the preference given by the state treasurer to the qualified public depositary under subsection (3) of this section is less than two hundred basis points, the qualified public depositary may reduce the preference given on the loan by an amount that corresponds to the reduction in preference below two hundred basis points given to the qualified public depositary; and

(e) Where the points or fees charged at loan closing do not exceed one percent of the loan amount.

(3) In setting interest rates of time certificate of deposits, the state treasurer shall offer rates so that a two hundred basis point preference will be given to the qualified public deposi-

tary, except that the treasurer shall lower the amount of the preference to ensure that the effective interest rate on the time certificate of deposit is not less than two percent.

(4) Upon notification by the state treasurer that a minority or women's business enterprise is no longer certified under chapter 39.19 RCW, the qualified public depository shall reduce the amount of qualifying loans by the outstanding balance of the loan made under this section to the minority or women's business enterprise.

(5) The office of minority and women's business enterprises has the authority to adopt rules to:

(a) Ensure that when making a qualified loan under the linked deposit program, businesses that have never received a loan under the linked deposit program are given first priority;

(b) Limit the total principal loan amount that any one business receives in qualified loans under the linked deposit program over the lifetime of the businesses;

(c) Limit the total principal loan amount that an owner of one or more businesses receives in qualified loans under the linked deposit program during the owner's lifetime; and

(d) Limit the total amount of any one qualified loan made under the linked deposit program. [2007 c 500 § 2; 2005 c 302 § 3; 2002 c 305 § 1; 1993 c 512 § 30.]

Intent—2005 c 302: See note following RCW 43.86A.030.

Finding—Intent—1993 c 512: "The legislature finds that minority and women's business enterprises have been historically excluded from access to capital in the marketplace. The lack of capital has been a major barrier to the development and expansion of business by various minority groups and women. There has been a significant amount of attention on the capital needs of minority and women's business enterprises. It is the intent of the legislature to remedy the problem of a lack of access to capital by minority and women's business enterprises, and other small businesses by authorizing the state treasurer to operate a program that links state deposits to business loans by financial institutions to minority and women's business enterprises." [1993 c 512 § 29.]

Chapter 43.99A RCW

OUTDOOR RECREATIONAL AREAS AND FACILITIES—1967 BOND ACT (REFERENDUM 18)

Sections

43.99A.070 Proceeds from sale of bonds—Administration—Disposition and use.

43.99A.070 Proceeds from sale of bonds—Administration—Disposition and use. The proceeds from the sale of bonds deposited in the outdoor recreation account of the general fund under the terms of RCW 43.99A.050 shall be administered by the recreation and conservation funding board. All such proceeds shall be divided into two equal shares. One share shall be allocated for the acquisition and development of outdoor recreation areas and facilities on behalf of the state as the legislature may direct by appropriation. The other share shall be allocated to public bodies as defined in RCW 79A.25.010 for the acquisition and development of outdoor recreational areas and facilities within the jurisdiction of such public bodies. The recreation and conservation funding board is authorized to use or permit the use of any funds derived from the sale of bonds authorized under this chapter as matching funds in any case where federal or other funds are made available on a matching basis for

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projects within the purposes of this chapter. [2007 c 241 § 8; 1967 ex.s. c 126 § 7.]

Intent—Effective date—2007 c 241: See notes following RCW 79A.25.005.

Chapter 43.99B RCW

OUTDOOR RECREATIONAL AREAS AND FACILITIES—BOND ISSUES

Sections

43.99B.016 Administration of proceeds.
43.99B.032 Administration of proceeds.

43.99B.016 Administration of proceeds. The proceeds from the sale of the bonds deposited in the outdoor recreation account of the general fund shall be administered by the recreation and conservation funding board, subject to legislative appropriation, and allocated to any agency or department of the state of Washington and, as grants, to public bodies for the acquisition and development of outdoor recreational areas and facilities within the jurisdiction of the agencies, departments, or public bodies. The recreation and conservation funding board may use or permit the use of any funds derived from the sale of the bonds authorized under RCW 43.99B.010 through 43.99B.026 as matching funds in any case where federal, local, or other funds are made available on a matching basis for projects within the purposes of RCW 43.99B.010 through 43.99B.026. [2007 c 241 § 9; 1979 ex.s. c 229 § 4.]

Intent—Effective date—2007 c 241: See notes following RCW 79A.25.005.

43.99B.032 Administration of proceeds. The proceeds from the sale of the bonds deposited in the outdoor recreation account of the general fund shall be allocated to the recreation and conservation funding board as grants to public bodies for the acquisition and development of outdoor recreational areas and facilities within the jurisdiction of the agencies, departments, or public bodies or to any agency or department of the state of Washington, subject to legislative appropriation. The recreation and conservation funding board may use or permit the use of any funds derived from the sale of the bonds authorized under RCW 43.99B.028 through 43.99B.040 as matching funds in any case where federal, local, or other funds are made available on a matching basis for projects within the purposes of RCW 43.99B.028 through 43.99B.040. [2007 c 241 § 10; 1981 c 236 § 3.]

Intent—Effective date—2007 c 241: See notes following RCW 79A.25.005.

Chapter 43.99N RCW

STADIUM AND EXHIBITION CENTER BOND ISSUE (REFERENDUM 48)

Sections

43.99N.060 Stadium and exhibition center account—Youth athletic facility account—Community outdoor athletic facility loans and grants.
43.99N.120 Loans—Terms and conditions of repayment and interest.

43.99N.060 Stadium and exhibition center account—Youth athletic facility account—Community outdoor athletic facility loans and grants. (1) The stadium and exhibition center account is created in the custody of the state treasurer. All receipts from the taxes imposed under RCW 82.14.0494 and distributions under RCW 67.70.240(5) shall be deposited into the account. Only the director of the office of financial management or the director’s designee may authorize expenditures from the account. The account is subject to allotment procedures under chapter 43.88 RCW. An appropriation is not required for expenditures from this account.

(2) Until bonds are issued under RCW 43.99N.020, up to five million dollars per year beginning January 1, 1999, shall be used for the purposes of subsection (3)(b) of this section, all remaining moneys in the account shall be transferred to the public stadium authority, created under RCW 36.102.020, to be used for public stadium authority operations and development of the stadium and exhibition center.

(3) After bonds are issued under RCW 43.99N.020, all moneys in the stadium and exhibition center account shall be used exclusively for the following purposes in the following priority:

(a) On or before June 30th of each year, the office of financial management shall accumulate in the stadium and exhibition center account an amount at least equal to the amount required in the next succeeding twelve months for the payment of principal of and interest on the bonds issued under RCW 43.99N.020;

(b) An additional reserve amount not in excess of the expected average annual principal and interest requirements of bonds issued under RCW 43.99N.020 shall be accumulated and maintained in the account, subject to withdrawal by the state treasurer at any time if necessary to meet the requirements of (a) of this subsection, and, following any withdrawal, reaccumulated from the first tax revenues and other amounts deposited in the account after meeting the requirements of (a) of this subsection; and

(c) The balance, if any, shall be transferred to the youth athletic facility account under subsection (4) of this section.

Any revenues derived from the taxes authorized by RCW 36.38.010(5) and 36.38.040 or other amounts that if used as provided under (a) and (b) of this subsection would cause the loss of any tax exemption under federal law for interest on bonds issued under RCW 43.99N.020 shall be deposited in and used exclusively for the purposes of the youth athletic facility account and shall not be used, directly or indirectly, as a source of payment of principal of or interest on bonds issued under RCW 43.99N.020, or to replace or reimburse other funds used for that purpose.

(4) Any moneys in the stadium and exhibition center account not required or permitted to be used for the purposes described in subsection (3)(a) and (b) of this section shall be deposited in the youth athletic facility account hereby created in the state treasury. Expenditures from the account may be used only for purposes of grants or loans to cities, counties, and qualified nonprofit organizations for community outdoor athletic facilities. For the 2005-2007 biennium, moneys in the account may also be used for a recreation level of service study for local and regional active recreation facilities. Only the director of the recreation and conservation office or the

director’s designee may authorize expenditures from the account. The account is subject to allotment procedures under chapter 43.88 RCW, but an appropriation is not required for expenditures. The athletic facility grants or loans may be used for acquiring, developing, equipping, maintaining, and improving community outdoor athletic facilities. Funds shall be divided equally between the development of new community outdoor athletic facilities, the improvement of existing community outdoor athletic facilities, and the maintenance of existing community outdoor athletic facilities. Cities, counties, and qualified nonprofit organizations must submit proposals for grants or loans from the account. To the extent that funds are available, cities, counties, and qualified nonprofit organizations must meet eligibility criteria as established by the director of the recreation and conservation office. The grants and loans shall be awarded on a competitive application process and the amount of the grant or loan shall be in proportion to the population of the city or county for where the community outdoor athletic facility is located. Grants or loans awarded in any one year need not be distributed in that year. The director of the recreation and conservation office may expend up to one and one-half percent of the moneys deposited in the account created in this subsection for administrative purposes. [2007 c 241 § 11; 2006 c 371 § 227; 2000 c 137 § 1; 1997 c 220 § 214 (Referendum Bill No. 48, approved June 17, 1997).]

Intent—Effective date—2007 c 241: See notes following RCW 79A.25.005.

Part headings not law—Severability—Effective date—2006 c 371: See notes following RCW 15.110.050.

43.99N.120 Loans—Terms and conditions of repayment and interest. The recreation and conservation funding board, in consultation with the community outdoor athletic fields advisory council, shall establish the terms and conditions of repayment and interest, based on financial considerations for any loans made under this section. Loans made under this section shall be low or no interest. [2007 c 241 § 12; 2000 c 137 § 2.]

Intent—Effective date—2007 c 241: See notes following RCW 79A.25.005.

Chapter 43.99T RCW

**FINANCING FOR APPROPRIATIONS—
2007-2009 BIENNIUM**

Sections

- 43.99T.010 General obligation bonds for capital and operating appropriations acts.
- 43.99T.020 Conditions and limitations.
- 43.99T.030 Retirement of bonds—Reimbursement of general fund from debt-limit general fund bond retirement account.
- 43.99T.040 Pledge and promise—Remedies.
- 43.99T.050 Payment of principal and interest—Additional means for raising money authorized.
- 43.99T.900 Severability—2007 c 521.
- 43.99T.901 Effective date—2007 c 521.

43.99T.010 General obligation bonds for capital and operating appropriations acts. For the purpose of providing funds to finance the projects described and authorized by the legislature in the capital and operating appropriations acts for the 2005-2007 and 2007-2009 fiscal bienniums, and all

costs incidental thereto, the state finance committee is authorized to issue general obligation bonds of the state of Washington in the sum of one billion nine hundred seventy-two million dollars, or as much thereof as may be required, to finance these projects and all costs incidental thereto. Bonds authorized in this section may be sold at such price as the state finance committee shall determine. No bonds authorized in this section may be offered for sale without prior legislative appropriation of the net proceeds of the sale of the bonds. [2007 c 521 § 1.]

43.99T.020 Conditions and limitations. The proceeds from the sale of the bonds authorized in RCW 43.99T.010 shall be deposited in the state building construction account created by RCW 43.83.020. The proceeds shall be transferred as follows:

(1) One billion six hundred ninety-three million dollars to remain in the state building construction account created by RCW 43.83.020;

(2) Thirty-six million dollars to the outdoor recreation account created by RCW 79A.25.060;

(3) Thirty-six million dollars to the habitat conservation account created by RCW 79A.15.020;

(4) Nineteen million dollars to the riparian protection account created by RCW 79A.15.120;

(5) Nine million dollars to the farmlands preservation account created by RCW 79A.15.130;

(6) One hundred forty million dollars to the state taxable building construction account. All receipts from taxable bond issues are to be deposited into the account. If the state finance committee deems it necessary to issue more than the amount specified in this subsection (6) as taxable bonds in order to comply with federal internal revenue service rules and regulations pertaining to the use of nontaxable bond proceeds, the proceeds of such additional taxable bonds shall be transferred to the state taxable building construction account in lieu of any transfer otherwise provided by this section. The state treasurer shall submit written notice to the director of financial management if it is determined that any such additional transfer to the state taxable building construction account is necessary. Moneys in the account may be spent only after appropriation.

These proceeds shall be used exclusively for the purposes specified in this section and for the payment of expenses incurred in the issuance and sale of the bonds issued for the purposes of this section, and shall be administered by the office of financial management subject to legislative appropriation. [2007 c 521 § 2.]

43.99T.030 Retirement of bonds—Reimbursement of general fund from debt-limit general fund bond retirement account. (1) The debt-limit general fund bond retirement account shall be used for the payment of the principal of and interest on the bonds authorized in RCW 43.99T.020 (1), (2), (3), (4), (5), and (6).

(2) The state finance committee shall, on or before June 30th of each year, certify to the state treasurer the amount needed in the ensuing twelve months to meet the bond retirement and interest requirements on the bonds authorized in RCW 43.99T.020 (1), (2), (3), (4), (5), and (6).

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(3) On each date on which any interest or principal and interest payment is due on bonds issued for the purposes of RCW 43.99T.020 (1), (2), (3), (4), (5), and (6) the state treasurer shall withdraw from any general state revenues received in the state treasury and deposit in the debt-limit general fund bond retirement account an amount equal to the amount certified by the state finance committee to be due on the payment date. [2007 c 521 § 3.]

43.99T.040 Pledge and promise—Remedies. (1) Bonds issued under RCW 43.99T.010 through 43.99T.030 shall state that they are a general obligation of the state of Washington, shall pledge the full faith and credit of the state to the payment of the principal thereof and the interest thereon, and shall contain an unconditional promise to pay the principal and interest as the same shall become due.

(2) The owner and holder of each of the bonds or the trustee for the owner and holder of any of the bonds may by mandamus or other appropriate proceeding require the transfer and payment of funds as directed in this section. [2007 c 521 § 4.]

43.99T.050 Payment of principal and interest—Additional means for raising money authorized. The legislature may provide additional means for raising moneys for the payment of the principal of and interest on the bonds authorized in RCW 43.99T.010, and RCW 43.99T.020 and 43.99T.030 shall not be deemed to provide an exclusive method for the payment. [2007 c 521 § 5.]

43.99T.900 Severability—2007 c 521. If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected. [2007 c 521 § 7.]

43.99T.901 Effective date—2007 c 521. This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately [May 15, 2007]. [2007 c 521 § 8.]

Chapter 43.101 RCW CRIMINAL JUSTICE TRAINING COMMISSION— EDUCATION AND TRAINING STANDARDS BOARDS

Sections

- 43.101.220 Training for corrections personnel.
- 43.101.350 Core training requirements.
- 43.101.365 Child abuse and neglect—Development of curriculum.

43.101.220 Training for corrections personnel. (1) The corrections personnel of the state and all counties and municipal corporations initially employed on or after January 1, 1982, shall engage in basic corrections training which complies with standards adopted by the commission. The training shall be successfully completed during the first six months of employment of the personnel, unless otherwise extended or waived by the commission, and shall be requisite to the continuation of employment.

(2) The commission shall provide the training required in this section, together with facilities, supplies, materials, and the room and board for noncommuting attendees. [2007 c 382 § 1; 1981 c 136 § 26.]

Effective date—1981 c 136: See RCW 72.09.900.

43.101.350 Core training requirements. (1) All law enforcement personnel initially hired to, transferred to, or promoted to a supervisory or management position on or after January 1, 1999, and all corrections personnel of the state and all counties and municipal corporations transferred or promoted to a supervisory or management position on or after January 1, 1982, shall, within the first six months of entry into the position, successfully complete the core training requirements prescribed by rule of the commission for the position, or obtain a waiver or extension of the core training requirements from the commission.

(2) Within one year after completion of the core training requirements of this section, all law enforcement personnel and corrections personnel shall successfully complete all remaining requirements for career level certification prescribed by rule of the commission applicable to their position or rank, or obtain a waiver or extension of the career level training requirements from the commission.

(3) The commission shall provide the training required in this section, together with facilities, supplies, materials, and the room and board for attendees who do not live within fifty miles of the training center. The training shall be delivered in the least disruptive manner to local law enforcement or corrections agencies, and will include but not be limited to regional on-site training, interactive training, and credit for training given by the home department.

(4) Nothing in this section affects or impairs the employment status of an employee whose employer does not provide the opportunity to engage in the required training. [2007 c 382 § 2; 1997 c 351 § 10.]

Severability—Effective date—1997 c 351: See notes following RCW 43.101.200.

43.101.365 Child abuse and neglect—Development of curriculum. (1) The commission, in consultation with the department of social and health services, the Washington association of sheriffs and police chiefs, and the Washington association of prosecuting attorneys, shall develop a curriculum related to child abuse and neglect to be included in the basic law enforcement training that must be successfully completed within the first fifteen months of employment of all law enforcement personnel.

(2) The curriculum must be incorporated into the basic law enforcement training program by July 1, 2008. [2007 c 410 § 4.]

Short title—2007 c 410: See note following RCW 13.34.138.

Chapter 43.103 RCW

WASHINGTON STATE FORENSIC INVESTIGATIONS COUNCIL

Sections

- 43.103.090 Powers.
43.103.110 Training modules for missing persons protocols.

43.103.090 Powers. (1) The council may:

(a) Meet at such times and places as may be designated by a majority vote of the council members or, if a majority cannot agree, by the chair;

(b) Adopt rules governing the council and the conduct of its meetings;

(c) Require reports from the chief of the Washington state patrol on matters pertaining to the bureau of forensic laboratory services;

(d) Authorize the expenditure of up to two hundred fifty thousand dollars per biennium from the council's death investigations account appropriation for the purpose of assisting local jurisdictions in the investigation of multiple deaths involving unanticipated, extraordinary, and catastrophic events, or involving multiple jurisdictions. The council shall adopt rules consistent with this subsection for the purposes of authorizing expenditure of the funds;

(e) Authorize the expenditure of up to twenty-five thousand dollars per biennium from the council's death investigations account appropriation for the purpose of assisting local jurisdictions to secure forensic anthropology services or other testing, to determine the identity of human remains upon a showing of financial need. The council shall adopt rules consistent with this subsection for the purposes of authorizing expenditure of the funds;

(f) Do anything, necessary or convenient, which enables the council to perform its duties and to exercise its powers; and

(g) Be actively involved in the preparation of the bureau of forensic laboratory services budget and approve the bureau of forensic laboratory services budget prior to formal submission to the office of financial management pursuant to RCW 43.88.030.

(2) The council shall:

(a) Prescribe qualifications for the position of director of the bureau of forensic laboratory services, after consulting with the chief of the Washington state patrol. The council shall submit to the chief of the Washington state patrol a list containing the names of up to three persons who the council believes meet its qualifications to serve as director of the bureau of forensic laboratory services. Minimum qualifications for the director of the bureau of forensic laboratory services must include successful completion of a background investigation and polygraph examination. If requested by the chief of the Washington state patrol, the forensic investigations council shall submit one additional list of up to three persons who the forensic investigations council believes meet its qualifications. The appointment must be from one of the lists of persons submitted by the forensic investigations council, and the director of the bureau of forensic laboratory services shall report to the office of the chief of the Washington state patrol;

(b) After consulting with the chief of the Washington state patrol and the director of the bureau of forensic laboratory services, the council shall appoint a toxicologist as state toxicologist, who shall report to the director of the bureau of forensic laboratory services. The appointee shall meet the minimum standards for employment with the Washington state patrol including successful completion of a background investigation and polygraph examination;

(c) Establish, after consulting with the chief of the Washington state patrol, the policies, objectives, and priorities of the bureau of forensic laboratory services, to be implemented and administered within constraints established by budgeted resources by the director of the bureau of forensic laboratory services;

(d) Set the salary for the director of the bureau of forensic laboratory services; and

(e) Set the salary for the state toxicologist. [2007 c 200 § 1. Prior: 1999 c 142 § 1; 1999 c 40 § 5; 1995 c 398 § 8; 1983 1st ex.s. c 16 § 9.]

Effective date—1999 c 40: See note following RCW 43.103.010.

43.103.110 Training modules for missing persons protocols. The Washington state forensic investigations council, in cooperation with the Washington association of coroners and medical examiners and other interested agencies, shall develop training modules that are essential to the effective implementation and use of missing persons protocols using funds provided in RCW 43.79.445. The training commission shall make the training modules available to small departments or those at remote locations with the least disruption. The modules shall include, but not be limited to: The reporting process, the use of forms and protocols, the effective use of resources, the collection and importance of evidence and preservation of biological evidence, and risk assessment of the individuals reported missing. [2007 c 10 § 2; 2006 c 102 § 3.]

Intent—2007 c 10: "It is the intent of this act to build upon the research and findings of the Washington state missing persons task force, assembled by the state attorney general in 2003, the United States department of justice, and the initiative taken in chapter 102, Laws of 2006, by the legislature to aid in recovery of missing persons and the identification of human remains." [2007 c 10 § 1.]

Finding—Intent—2006 c 102: See note following RCW 36.28A.100.

Chapter 43.105 RCW

DEPARTMENT OF INFORMATION SERVICES

Sections

43.105.032 Information services board—Members—Chairperson—Vacancies—Quorum—Compensation and travel expenses.

43.105.032 Information services board—Members—Chairperson—Vacancies—Quorum—Compensation and travel expenses. There is hereby created the Washington state information services board. The board shall be composed of fifteen members. Eight members shall be appointed by the governor, one of whom shall be a representative of higher education, one of whom shall be a representative of an agency under a statewide elected official other than the governor, one of whom must have direct experience using the software projects overseen by the board or reasonably expects to use the new software developed under the oversight of the board, and two of whom shall be representatives of the private sector. One member shall represent the judicial branch and be appointed by the chief justice of the supreme court. One member shall be the superintendent of public instruction or shall be appointed by the superintendent of public instruction. Two members shall represent the house of representatives and shall be selected by the speaker of the

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house of representatives with one representative chosen from each caucus of the house of representatives; two members shall represent the senate and shall be appointed by the president of the senate with one representative chosen from each caucus of the senate. One member shall be the director who shall be a voting member of the board. These members shall constitute the membership of the board with full voting rights. Members of the board shall serve at the pleasure of the appointing authority. The board shall select a chairperson from among its members.

Vacancies shall be filled in the same manner that the original appointments were made.

A majority of the members of the board shall constitute a quorum for the transaction of business.

Members of the board shall be compensated for service on the board in accordance with RCW 43.03.240 and shall be reimbursed for travel expenses as provided in RCW 43.03.050 and 43.03.060. [2007 c 158 § 1; 1999 c 241 § 2; 1996 c 137 § 10; 1992 c 20 § 8; 1987 c 504 § 4; 1984 c 287 § 86; 1975-'76 2nd ex.s. c 34 § 128; 1973 1st ex.s. c 219 § 5.]

Effective date—Application—1996 c 137: See notes following RCW 43.105.830.

Severability—Captions not law—1992 c 20: See notes following RCW 43.105.160.

Legislative findings—Severability—Effective date—1984 c 287: See notes following RCW 43.03.220.

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

Development of health care data standards: RCW 43.70.054.

Chapter 43.117 RCW

STATE COMMISSION ON ASIAN PACIFIC AMERICAN AFFAIRS

(Formerly: State commission on Asian-American affairs)

Sections

43.117.070 Duties of commission—State agencies to give assistance.

43.117.070 Duties of commission—State agencies to give assistance. (1) The commission shall examine and define issues pertaining to the rights and needs of Asian Pacific Americans, and make recommendations to the governor and state agencies with respect to desirable changes in program and law.

(2) The commission shall advise such state government agencies on the development and implementation of comprehensive and coordinated policies, plans, and programs focusing on the special problems and needs of Asian Pacific Americans.

(3) The commission shall coordinate and assist with statewide celebrations during the fourth week of Asian Pacific American Heritage Month that recognize the contributions to the state by Asian Pacific Americans in the arts, sciences, commerce, and education.

(4) The commission shall coordinate and assist educational institutions, public entities, and private organizations with celebrations of Korean-American day that recognize the contributions to the state by Korean-Americans in the arts, sciences, commerce, and education.

(5) Each state department and agency shall provide appropriate and reasonable assistance to the commission as

needed in order that the commission may carry out the purposes of this chapter. [2007 c 19 § 3; 2000 c 236 § 3; 1995 c 67 § 5; 1974 ex.s. c 140 § 7.]

Findings—2007 c 19: See note following RCW 1.16.050.

Effective date—2000 c 236: See note following RCW 43.117.010.

Chapter 43.121 RCW

COUNCIL FOR THE PREVENTION OF CHILD ABUSE AND NEGLECT

Sections

- 43.121.020 Council established—Members, chairperson—Appointment, qualifications, terms, vacancies.
- 43.121.170 Home visitation programs—Findings—Intent.
- 43.121.175 Home visitation programs—Definitions.
- 43.121.180 Home visitation programs—Funding—Home visitation services coordination or consolidation plan—Report.
- 43.121.185 Washington council for the prevention of child abuse and neglect renamed.

43.121.020 Council established—Members, chairperson—Appointment, qualifications, terms, vacancies.

(1) There is established in the executive office of the governor a Washington council for the prevention of child abuse and neglect subject to the jurisdiction of the governor.

(2) The council shall be composed of the chairperson and fourteen other members as follows:

(a) The chairperson and six other members shall be appointed by the governor and shall be selected for their interest and expertise in the prevention of child abuse. A minimum of four designees by the governor shall not be affiliated with governmental agencies. The appointments shall be made on a geographic basis to assure statewide representation. Members appointed by the governor shall serve for three-year terms. Vacancies shall be filled for any unexpired term by appointment in the same manner as the original appointments were made.

(b) The secretary of social and health services or the secretary's designee, the superintendent of public instruction or the superintendent's designee, the director of the department of early learning or the director's designee, and the secretary of the department of health or the secretary's designee shall serve as voting members of the council.

(c) In addition to the members of the council, four members of the legislature shall serve as nonvoting, ex officio members of the council, one from each political caucus of the house of representatives to be appointed by the speaker of the house of representatives and one from each political caucus of the senate to be appointed by the president of the senate. [2007 c 144 § 1; 1996 c 10 § 1; 1994 c 48 § 1; 1989 c 304 § 4; 1987 c 351 § 3; 1984 c 261 § 1; 1982 c 4 § 2.]

Legislative findings—1987 c 351: See note following RCW 70.58.085.

Severability—1984 c 261: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1984 c 261 § 8.]

43.121.170 Home visitation programs—Findings—Intent. The legislature finds that:

(1) The years from birth to three are critical in building the social, emotional, and cognitive developmental founda-

tions of a young child. Research into the brain development of young children reveals that children are born learning.

(2) The farther behind children are in their social, emotional, physical, and cognitive development, the more difficult it will be for them to catch up.

(3) A significant number of children age birth to five years are born with two or more of the following risk factors and have a greater chance of failure in school and beyond: Poverty; single or no parent; no parent employed full time or full year; all parents with disability; and mother without a high school degree.

(4) Parents and children involved in home visitation programs exhibit better birth outcomes, enhanced parent and child interactions, more efficient use of health care services, enhanced child development including improved school readiness, and early detection of developmental delays, as well as reduced welfare dependence, higher rates of school completion and job retention, reduction in frequency and severity of maltreatment, and higher rates of school graduation.

The legislature intends to promote the use of voluntary home visitation services to families as an early intervention strategy to alleviate the effect on child development of factors such as poverty, single parenthood, parental unemployment or underemployment, parental disability, or parental lack of a high school diploma, which research shows are risk factors for child abuse and neglect and poor educational outcomes. [2007 c 466 § 1.]

43.121.175 Home visitation programs—Definitions.

The definitions in this section apply throughout RCW 43.121.170 through 43.121.185 unless the context clearly requires otherwise.

(1) "Evidence-based" means a program or practice that has had multiple site random controlled trials across heterogeneous populations demonstrating that the program or practice is effective for the population.

(2) "Home visitation" means providing services in the permanent or temporary residence, or in other familiar surroundings, of the family receiving such services.

(3) "Research-based" means a program or practice that has some research demonstrating effectiveness, but that does not yet meet the standard of evidence-based practices. [2007 c 466 § 2.]

43.121.180 Home visitation programs—Funding—Home visitation services coordination or consolidation plan—Report.

(1) Within available funds, the children's trust of Washington shall fund evidence-based and research-based home visitation programs for improving parenting skills and outcomes for children. Home visitation programs must be voluntary and must address the needs of families to alleviate the effect on child development of factors such as poverty, single parenthood, parental unemployment or underemployment, parental disability, or parental lack of high school diploma, which research shows are risk factors for child abuse and neglect and poor educational outcomes.

(2) The children's trust of Washington shall develop a plan with the department of social and health services, the

department of health, the department of early learning, and the family policy council to coordinate or consolidate home visitation services for children and families and report to the appropriate committees of the legislature by December 1, 2007, with their recommendations for implementation of the plan. [2007 c 466 § 3.]

43.121.185 Washington council for the prevention of child abuse and neglect renamed. To recognize the focus on home visitation services, the Washington council for the prevention of child abuse and neglect is hereby renamed the children's trust of Washington. All references to the Washington council for the prevention of child abuse and neglect in the Revised Code of Washington shall be construed to mean the children's trust of Washington. [2007 c 466 § 4.]

Chapter 43.131 RCW

WASHINGTON SUNSET ACT OF 1977

Sections

- 43.131.393 Underground storage tank program—Termination.
- 43.131.394 Underground storage tank program—Repeal.
- 43.131.397 Repealed.
- 43.131.398 Repealed.
- 43.131.401 Office of regulatory assistance—Termination.
- 43.131.402 Office of regulatory assistance—Repeal.
- 43.131.407 Alternative public works contracting procedures—Termination.
- 43.131.408 Alternative public works contracting procedures—Repeal.

43.131.393 Underground storage tank program—Termination. The underground storage tank program shall be terminated on July 1, 2019, as provided in RCW 43.131.394. [2007 c 147 § 10; 1998 c 155 § 7.]

43.131.394 Underground storage tank program—Repeal. The following acts or parts of acts, as now existing or hereafter amended, are each repealed, effective July 1, 2020:

- (1) RCW 90.76.005 and 2007 c 147 § 1 & 1989 c 346 § 1;
- (2) RCW 90.76.010 and 2007 c 147 § 2, 1998 c 155 § 1, & 1989 c 346 § 2;
- (3) RCW 90.76.020 and 2007 c 147 § 3, 1998 c 155 § 2, & 1989 c 346 § 3;
- (4) RCW 90.76.040 and 1998 c 155 § 3 & 1989 c 346 § 5;
- (5) RCW 90.76.050 and 2007 c 147 § 4, 1998 c 155 § 4, & 1989 c 346 § 6;
- (6) RCW 90.76.060 and 1998 c 155 § 5 & 1989 c 346 § 7;
- (7) RCW 90.76.070 and 2007 c 147 § 5 & 1989 c 346 § 8;
- (8) RCW 90.76.080 and 2007 c 147 § 6, 1995 c 403 § 639, & 1989 c 346 § 9;
- (9) RCW 90.76.090 and 2007 c 147 § 7, 1998 c 155 § 6, & 1989 c 346 § 10;
- (10) RCW 90.76.100 and 1991 sp.s. c 13 § 72 & 1989 c 346 § 11;
- (11) RCW 90.76.110 and 2007 c 147 § 8, 1991 c 83 § 1, & 1989 c 346 § 12;
- (12) RCW 90.76.900 and 1989 c 346 § 15;

- (13) RCW 90.76.901 and 1989 c 346 § 14; and
- (14) RCW 90.76.902 and 1989 c 346 § 18. [2007 c 147 § 11; 1998 c 155 § 8.]

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

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

43.131.401 Office of regulatory assistance—Termination. The office of regulatory assistance established in RCW 43.42.010 and its powers and duties shall be terminated June 30, 2011, as provided in RCW 43.131.402. [2007 c 231 § 6; 2007 c 94 § 15; 2003 c 71 § 5; 2002 c 153 § 13.]

Findings—Recommendations—Reports encouraged—2007 c 231: See note following RCW 43.155.070.

Effective date—2007 c 94 § 15: "Section 15 of this act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately [April 18, 2007]." [2007 c 94 § 19.]

Review within existing resources—2002 c 153: "The joint legislative and audit review committee shall work within its existing resources in conducting the sunset review for the office of permit [regulatory] assistance." [2002 c 153 § 15.]

43.131.402 Office of regulatory assistance—Repeal. The following acts or parts of acts, as now existing or hereafter amended, are each repealed, effective June 30, 2012:

- (1) RCW 43.42.005 and 2003 c 71 § 1 & 2002 c 153 § 1;
- (2) RCW 43.42.010 and 2007 c 231 § 5, 2003 c 71 § 2, & 2002 c 153 § 2;
- (3) RCW 43.42.020 and 2002 c 153 § 3;
- (4) RCW 43.42.030 and 2003 c 71 § 3 & 2002 c 153 § 4;
- (5) RCW 43.42.040 and 2003 c 71 § 4 & 2002 c 153 § 5;
- (6) RCW 43.42.050 and 2002 c 153 § 6;
- (7) RCW 43.42.060 and 2002 c 153 § 7;
- (8) RCW 43.42.070 and 2002 c 153 § 8;
- (9) *RCW 43.42.905 and 2002 c 153 § 10;
- (10) RCW 43.42.900 and 2002 c 153 § 11; and
- (11) RCW 43.42.901 and 2002 c 153 § 12. [2007 c 231 § 7; 2007 c 94 § 16; 2003 c 71 § 6; 2002 c 153 § 14.]

Reviser's note: *(1) RCW 43.42.905 was decodified pursuant to 2007 c 94 § 17.

(2) This section was amended by 2007 c 94 § 16 and by 2007 c 231 § 7, each without reference to the other. Both amendments are incorporated in the publication of this section under RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

Findings—Recommendations—Reports encouraged—2007 c 231: See note following RCW 43.155.070.

43.131.407 Alternative public works contracting procedures—Termination. The alternative [public] works contracting procedures under chapter 39.10 RCW shall be terminated June 30, 2013, as provided in RCW 43.131.408. [2007 c 494 § 506.]

Part headings and captions not law—Effective dates—Severability—2007 c 494: See RCW 39.10.903 through 39.10.905.

43.131.408 Alternative public works contracting procedures—Repeal. The following acts or parts of acts, as

now existing or hereafter amended, are each repealed, effective June 30, 2014:

- (1) RCW 39.10.200 and 2007 c 494 § 1 & 1994 c 132 § 1;
 (2) RCW 39.10.210 and 2007 c 494 § 101 & 2005 c 469 § 3;
 (3) RCW 39.10.220 and 2007 c 494 § 102 & 2005 c 377 § 1;
 (4) RCW 39.10.230 and 2007 c 494 § 103 & 2005 c 377 § 2;
 (5) RCW 39.10.240 and 2007 c 494 § 104;
 (6) RCW 39.10.250 and 2007 c 494 § 105;
 (7) RCW 39.10.260 and 2007 c 494 § 106;
 (8) RCW 39.10.270 and 2007 c 494 § 107;
 (9) RCW 39.10.280 and 2007 c 494 § 108;
 (10) RCW 39.10.290 and 2007 c 494 § 109;
 (11) RCW 39.10.300 and 2007 c 494 § 201, 2003 c 352 § 2, 2003 c 300 § 4, 2002 c 46 § 1, & 2001 c 328 § 2;
 (12) RCW 39.10.310 and 2007 c 494 § 202 & 1994 c 132 § 8;
 (13) RCW 39.10.320 and 2007 c 494 § 203 & 1994 c 132 § 7;
 (14) RCW 39.10.330 and 2007 c 494 § 204;
 (15) RCW 39.10.340 and 2007 c 494 § 301, 2003 c 352 § 3, 2003 c 300 § 5, 2002 c 46 § 2, & 2001 c 328 § 3;
 (16) RCW 39.10.350 and 2007 c 494 § 302;
 (17) RCW 39.10.360 and 2007 c 494 § 303;
 (18) RCW 39.10.370 and 2007 c 494 § 304;
 (19) RCW 39.10.380 and 2007 c 494 § 305;
 (20) RCW 39.10.390 and 2007 c 494 § 306;
 (21) RCW 39.10.400 and 2007 c 494 § 307;
 (22) RCW 39.10.410 and 2007 c 494 § 308;
 (23) RCW 39.10.420 and 2007 c 494 § 401 & 2003 c 301 § 1;
 (24) RCW 39.10.430 and 2007 c 494 § 402;
 (25) RCW 39.10.440 and 2007 c 494 § 403;
 (26) RCW 39.10.450 and 2007 c 494 § 404;
 (27) RCW 39.10.460 and 2007 c 494 § 405;
 (28) RCW 39.10.470 and 2005 c 274 § 275 & 1994 c 132 § 10;
 (29) RCW 39.10.480 and 1994 c 132 § 9;
 (30) RCW 39.10.490 and 2007 c 494 § 501 & 2001 c 328 § 5;
 (31) RCW 39.10.500 and 2007 c 494 § 502;
 (32) RCW 39.10.510 and 2007 c 494 § 503;
 (33) RCW 39.10.900 and 1994 c 132 § 13;
 (34) RCW 39.10.901 and 1994 c 132 § 14; and
 (35) RCW 39.10.903 and 2007 c 494 § 510. [2007 c 494 § 507.]

Part headings and captions not law—Effective dates—Severability—2007 c 494: See RCW 39.10.903 through 39.10.905.

Chapter 43.135 RCW

STATE EXPENDITURES LIMITATIONS

Sections

- 43.135.035 Tax legislation—Conditions and restrictions—Ballot title—Declarations of emergency—Taxes on intangible property—Expenditure limit to reflect program cost shifting or fund transfer. *(Effective July 1, 2008, if the proposed amendment to Article VII of the state Constitution is approved at the November 2007 general election.)*

- 43.135.045 Emergency reserve fund—Transfers of excess balance—Appropriation conditions—Student achievement fund—Education construction fund. *(Effective unless the proposed amendment to Article VII of the state Constitution is approved at the November 2007 general election.)*
- 43.135.045 Student achievement fund—Appropriation conditions fund. *(Effective July 1, 2008, if the proposed amendment to Article VII of the state Constitution is approved at the November 2007 general election.)*
- 43.135.051 Repealed. *(Effective July 1, 2008, if the proposed amendment to Article VII of the state Constitution is approved at the November 2007 general election.)*

43.135.035 Tax legislation—Conditions and restrictions—Ballot title—Declarations of emergency—Taxes on intangible property—Expenditure limit to reflect program cost shifting or fund transfer. *(Effective July 1, 2008, if the proposed amendment to Article VII of the state Constitution is approved at the November 2007 general election.)*

(1) After July 1, 1995, any action or combination of actions by the legislature that raises state revenue or requires revenue-neutral tax shifts may be taken only if approved by a two-thirds vote of each house, and then only if state expenditures in any fiscal year, including the new revenue, will not exceed the state expenditure limits established under this chapter.

(2)(a) If the legislative action under subsection (1) of this section will result in expenditures in excess of the state expenditure limit, then the action of the legislature shall not take effect until approved by a vote of the people at a November general election. The state expenditure limit committee shall adjust the state expenditure limit by the amount of additional revenue approved by the voters under this section. This adjustment shall not exceed the amount of revenue generated by the legislative action during the first full fiscal year in which it is in effect. The state expenditure limit shall be adjusted downward upon expiration or repeal of the legislative action.

(b) The ballot title for any vote of the people required under this section shall be substantially as follows:

"Shall taxes be imposed on in order to allow a spending increase above last year's authorized spending adjusted for personal income growth?"

(3)(a) The state expenditure limit may be exceeded upon declaration of an emergency for a period not to exceed twenty-four months by a law approved by a two-thirds vote of each house of the legislature and signed by the governor. The law shall set forth the nature of the emergency, which is limited to natural disasters that require immediate government action to alleviate human suffering and provide humanitarian assistance. The state expenditure limit may be exceeded for no more than twenty-four months following the declaration of the emergency and only for the purposes contained in the emergency declaration.

(b) Additional taxes required for an emergency under this section may be imposed only until thirty days following the next general election, unless an extension is approved at that general election. The additional taxes shall expire upon expiration of the declaration of emergency. The legislature shall not impose additional taxes for emergency purposes under this subsection unless funds in the education construction fund have been exhausted.

(c) The state or any political subdivision of the state shall not impose any tax on intangible property listed in RCW 84.36.070 as that statute exists on January 1, 1993.

(4) If the cost of any state program or function is shifted from the state general fund or a related fund to another source of funding, or if moneys are transferred from the state general fund or a related fund to another fund or account, the state expenditure limit committee, acting pursuant to RCW 43.135.025(5), shall lower the state expenditure limit to reflect the shift. For the purposes of this section, a transfer of money from the state general fund or a related fund to another fund or account includes any state legislative action taken that has the effect of reducing revenues from a particular source, where such revenues would otherwise be deposited into the state general fund or a related fund, while increasing the revenues from that particular source to another state or local government account. This subsection does not apply to: (a) The dedication or use of lottery revenues under RCW 67.70.240(3) or property taxes under RCW 84.52.068, in support of education or education expenditures; or (b) a transfer of moneys to, or an expenditure from, the budget stabilization account.

(5) If the cost of any state program or function and the ongoing revenue necessary to fund the program or function are shifted to the state general fund or a related fund on or after January 1, 2007, the state expenditure limit committee, acting pursuant to RCW 43.135.025(5), shall increase the state expenditure limit to reflect the shift. [2007 c 484 § 6; 2005 c 72 § 5; 2005 c 72 § 2. Prior: 2001 c 3 § 8 (Initiative Measure No. 728, approved November 7, 2000); 2000 2nd sp.s. c 2 § 2; (2002 c 33 § 1 expired June 30, 2003); 1994 c 2 § 4 (Initiative Measure No. 601, approved November 2, 1993).]

Contingent effective date—2007 c 484 §§ 2-8: See note following RCW 43.79.495.

Findings—Effective dates—2005 c 72: See notes following RCW 43.135.010.

Short title—Purpose—Intent—Construction—Severability—Effective dates—2001 c 3 (Initiative Measure No. 728): See notes following RCW 28A.505.210.

Effective date—2000 2nd sp.s. c 2: See note following RCW 43.135.025.

43.135.045 Emergency reserve fund—Transfers of excess balance—Appropriation conditions—Student achievement fund—Education construction fund. (Effective unless the proposed amendment to Article VII of the state Constitution is approved at the November 2007 general election.) (1) The emergency reserve fund is established in the state treasury. During each fiscal year, the state treasurer shall transfer an amount from the state general fund to the emergency reserve fund. The amount transferred shall equal the amount by which total state revenue for the general fund and related funds exceeds the state expenditure limit, multiplied by the percentage that general fund expenditures are of total expenditures from the general fund and related funds. Transfers shall be made at the end of each fiscal quarter based on projections of state revenues, expenditures, and the state expenditure limit. The treasurer shall make transfers between these accounts as necessary to reconcile actual

annual revenues and the expenditure limit for fiscal year 2000 and thereafter.

(2) The legislature may appropriate moneys from the emergency reserve fund only with approval of at least two-thirds of the members of each house of the legislature, and then only if the appropriation does not cause total expenditures to exceed the state expenditure limit under this chapter.

(3) The emergency reserve fund balance shall not exceed five percent of annual general fund—state revenues as projected by the official state revenue forecast. Any balance in excess of five percent shall be transferred on a quarterly basis by the state treasurer as follows: Seventy-five percent to the student achievement fund hereby created in the state treasury and twenty-five percent to the general fund balance. The treasurer shall make transfers between these accounts as necessary to reconcile actual annual revenues for fiscal year 2000 and thereafter. When per-student state funding for the maintenance and operation of K-12 education meets a level of no less than ninety percent of the national average of total funding from all sources per student as determined by the most recent published data from the national center for education statistics of the United States department of education, as calculated by the office of financial management, further deposits to the student achievement fund shall be required only to the extent necessary to maintain the ninety-percent level. Remaining funds are part of the general fund balance and these funds are subject to the expenditure limits of this chapter.

(4) The education construction fund is hereby created in the state treasury.

(a) Funds may be appropriated from the education construction fund exclusively for common school construction or higher education construction. During the 2007-2009 fiscal biennium, funds may also be used for higher education facilities preservation and maintenance.

(b) Funds may be appropriated for any other purpose only if approved by a two-thirds vote of each house of the legislature and if approved by a vote of the people at the next general election. An appropriation approved by the people under this subsection shall result in an adjustment to the state expenditure limit only for the fiscal period for which the appropriation is made and shall not affect any subsequent fiscal period.

(5) Funds from the student achievement fund shall be appropriated to the superintendent of public instruction strictly for distribution to school districts to meet the provisions set out in the student achievement act. Allocations shall be made on an equal per full-time equivalent student basis to each school district. [2007 c 520 § 6035. Prior: 2005 c 518 § 931; (2005 c 488 § 920 expired June 30, 2007); 2005 c 314 § 401; 2005 c 72 § 6; 2003 1st sp.s. c 25 § 920; prior: (2003 1st sp.s. c 26 § 919 expired June 30, 2005); (2003 1st sp.s. c 26 § 918 expired June 30, 2005); (2002 c 33 § 2 expired June 30, 2003); prior: 2001 c 3 § 9 (Initiative Measure No. 728, approved November 7, 2000); 2000 2nd sp.s. c 5 § 1; 2000 2nd sp.s. c 2 § 3; 1994 c 2 § 3 (Initiative Measure No. 601, approved November 2, 1993).]

Part headings not law—Severability—Effective dates—2007 c 520: See notes following RCW 43.19.125.

Effective date—2005 c 518 § 931: "Section 931 (RCW 43.135.045) of this act is necessary for the immediate preservation of the public peace,

health, or safety, or support of the state government and its existing public institutions, and takes effect June 30, 2005." [2005 c 518 § 1808.]

Severability—2005 c 518: See note following RCW 28A.305.210.

Expiration date—2005 c 488 §§ 920 and 921: "Sections 920 and 921 of this act expire June 30, 2007." [2005 c 488 § 955.]

Part headings not law—Severability—Effective dates—2005 c 488: See notes following RCW 28B.50.360.

Effective date—2005 c 314 §§ 101-107, 109, 303-309, and 401: See note following RCW 46.68.290.

Part headings not law—2005 c 314: See note following RCW 46.17.010.

Findings—Effective dates—2005 c 72: See notes following RCW 43.135.010.

Expiration date—2003 1st sp.s. c 26: "Sections 918 through 921, 926, and 929 of this act expire June 30, 2005." [2003 1st sp.s. c 26 § 927.]

Severability—2003 1st sp.s. c 26: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [2003 1st sp.s. c 26 § 930.]

Effective dates—2003 1st sp.s. c 26: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately [June 26, 2003], except for section 919 of this act which takes effect June 30, 2003." [2003 1st sp.s. c 26 § 931.]

Severability—Effective date—2003 1st sp.s. c 25: See notes following RCW 19.28.351.

Expiration date—2002 c 33: "This act expires June 30, 2003." [2002 c 33 § 3.]

Effective date—2002 c 33: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately [March 13, 2002]." [2002 c 33 § 4.]

Short title—Purpose—Intent—Construction—Severability—Effective dates—2001 c 3 (Initiative Measure No. 728): See notes following RCW 28A.505.210.

Effective date—2000 2nd sp.s. c 2: See note following RCW 43.135.025.

43.135.045 Student achievement fund—Appropriation conditions—Education construction fund. (Effective July 1, 2008, if the proposed amendment to Article VII of the state Constitution is approved at the November 2007 general election.) (1) The student achievement fund is hereby created in the state treasury.

(2) The education construction fund is hereby created in the state treasury.

(a) Funds may be appropriated from the education construction fund exclusively for common school construction or higher education construction. During the 2007-2009 fiscal biennium, funds may also be used for higher education facilities preservation and maintenance.

(b) Funds may be appropriated for any other purpose only if approved by a two-thirds vote of each house of the legislature and if approved by a vote of the people at the next general election. An appropriation approved by the people under this subsection shall result in an adjustment to the state expenditure limit only for the fiscal period for which the appropriation is made and shall not affect any subsequent fiscal period.

(3) Funds from the student achievement fund shall be appropriated to the superintendent of public instruction strictly for distribution to school districts to meet the provisions set out in the student achievement act. Allocations shall be made on an equal per full-time equivalent student basis to

each school district. [2007 c 520 § 6035; 2007 c 484 § 5. Prior: 2005 c 518 § 931; (2005 c 488 § 920 expired June 30, 2007); 2005 c 314 § 401; 2005 c 72 § 6; 2003 1st sp.s. c 25 § 920; prior: (2003 1st sp.s. c 26 § 919 expired June 30, 2005); (2003 1st sp.s. c 26 § 918 expired June 30, 2005); (2002 c 33 § 2 expired June 30, 2003); prior: 2001 c 3 § 9 (Initiative Measure No. 728, approved November 7, 2000); 2000 2nd sp.s. c 5 § 1; 2000 2nd sp.s. c 2 § 3; 1994 c 2 § 3 (Initiative Measure No. 601, approved November 2, 1993).]

Reviser's note: This section was amended by 2007 c 484 § 5 and by 2007 c 520 § 6035, each without reference to the other. Both amendments are incorporated in the publication of this section under RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

Part headings not law—Severability—Effective dates—2007 c 520: See notes following RCW 43.19.125.

Contingent effective date—2007 c 484 §§ 2-8: See note following RCW 43.79.495.

Effective date—2005 c 518 § 931: "Section 931 (RCW 43.135.045) of this act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect June 30, 2005." [2005 c 518 § 1808.]

Severability—2005 c 518: See note following RCW 28A.305.210.

Expiration date—2005 c 488 §§ 920 and 921: "Sections 920 and 921 of this act expire June 30, 2007." [2005 c 488 § 955.]

Part headings not law—Severability—Effective dates—2005 c 488: See notes following RCW 28B.50.360.

Effective date—2005 c 314 §§ 101-107, 109, 303-309, and 401: See note following RCW 46.68.290.

Part headings not law—2005 c 314: See note following RCW 46.17.010.

Findings—Effective dates—2005 c 72: See notes following RCW 43.135.010.

Expiration date—2003 1st sp.s. c 26: "Sections 918 through 921, 926, and 929 of this act expire June 30, 2005." [2003 1st sp.s. c 26 § 927.]

Severability—2003 1st sp.s. c 26: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [2003 1st sp.s. c 26 § 930.]

Effective dates—2003 1st sp.s. c 26: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately [June 26, 2003], except for section 919 of this act which takes effect June 30, 2003." [2003 1st sp.s. c 26 § 931.]

Severability—Effective date—2003 1st sp.s. c 25: See notes following RCW 19.28.351.

Expiration date—2002 c 33: "This act expires June 30, 2003." [2002 c 33 § 3.]

Effective date—2002 c 33: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately [March 13, 2002]." [2002 c 33 § 4.]

Short title—Purpose—Intent—Construction—Severability—Effective dates—2001 c 3 (Initiative Measure No. 728): See notes following RCW 28A.505.210.

Effective date—2000 2nd sp.s. c 2: See note following RCW 43.135.025.

43.135.051 Repealed. (Effective July 1, 2008, if the proposed amendment to Article VII of the state Constitution is approved at the November 2007 general election.) See Supplementary Table of Disposition of Former RCW Sections, this volume.

Chapter 43.155 RCW
PUBLIC WORKS PROJECTS

Sections

- 43.155.050 Public works assistance account. (*Expires June 30, 2011.*)
 43.155.050 Public works assistance account. (*Effective June 30, 2011.*)
 43.155.070 Eligibility, priority, limitations, and exceptions.
 43.155.110 Puget Sound partners.

43.155.050 Public works assistance account. (*Expires June 30, 2011.*) (1) The public works assistance account is hereby established in the state treasury. Money may be placed in the public works assistance account from the proceeds of bonds when authorized by the legislature or from any other lawful source. Money in the public works assistance account shall be used to make loans and to give financial guarantees to local governments for public works projects. Moneys in the account may also be appropriated to provide for state match requirements under federal law for projects and activities conducted and financed by the board under the drinking water assistance account. Not more than fifteen percent of the biennial capital budget appropriation to the public works board from this account may be expended or obligated for preconstruction loans, emergency loans, or loans for capital facility planning under this chapter; of this amount, not more than ten percent of the biennial capital budget appropriation may be expended for emergency loans and not more than one percent of the biennial capital budget appropriation may be expended for capital facility planning loans. For the 2007-2009 biennium, moneys in the account may be used for grants for projects identified in section 138, chapter 488, Laws of 2005.

(2) The job development fund is hereby established in the state treasury. Up to fifty million dollars each biennium from the public works assistance account may be transferred into the job development fund. Money in the job development fund may be used solely for job development fund program grants, administrative expenses related to the administration of the job development fund program created in RCW 43.160.230, and for the report prepared by the joint legislative audit and review committee pursuant to RCW 44.28.801(2). Moneys in the job development fund may be spent only after appropriation. The board shall prepare a prioritized list of proposed projects of up to fifty million dollars as part of the department's 2007-09 biennial budget request. The board may provide an additional alternate job development fund project list of up to ten million dollars. The legislature may remove projects from the list recommended by the board. The legislature may not change the prioritization of projects recommended for funding by the board, but may add projects from the alternate list in order of priority, as long as the total funding does not exceed fifty million dollars. [2007 c 520 § 6036. Prior: 2005 c 488 § 925; 2005 c 425 § 4; 2001 c 131 § 2; prior: 1995 2nd sp.s. c 18 § 918; 1995 c 376 § 11; 1993 sp.s. c 24 § 921; 1985 c 471 § 8.]

Expiration date—2007 c 520 § 6036: "Section 6036 of this act expires June 30, 2011." [2007 c 520 § 6039.]

Part headings not law—Severability—Effective dates—2007 c 520: See notes following RCW 43.19.125.

Part headings not law—Severability—Effective dates—2005 c 488: See notes following RCW 28B.50.360.

[2007 RCW Supp—page 536]

Finding—Expiration date—Severability—2005 c 425: See notes following RCW 43.160.230.

Severability—Effective date—1995 2nd sp.s. c 18: See notes following RCW 19.118.110.

Findings—1995 c 376: See note following RCW 70.116.060.

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

Severability—Effective date—1985 c 471: See notes following RCW 82.04.260.

43.155.050 Public works assistance account. (*Effective June 30, 2011.*) The public works assistance account is hereby established in the state treasury. Money may be placed in the public works assistance account from the proceeds of bonds when authorized by the legislature or from any other lawful source. Money in the public works assistance account shall be used to make loans and to give financial guarantees to local governments for public works projects. Moneys in the account may also be appropriated to provide for state match requirements under federal law for projects and activities conducted and financed by the board under the drinking water assistance account. Not more than fifteen percent of the biennial capital budget appropriation to the public works board from this account may be expended or obligated for preconstruction loans, emergency loans, or loans for capital facility planning under this chapter; of this amount, not more than ten percent of the biennial capital budget appropriation may be expended for emergency loans and not more than one percent of the biennial capital budget appropriation may be expended for capital facility planning loans. For the 2007-2009 biennium, moneys in the account may be used for grants for projects identified in section 138, chapter 488, Laws of 2005 and section 1033, chapter 520, Laws of 2007. [2007 c 520 § 6037; 2005 c 488 § 925; 2001 c 131 § 2. Prior: 1995 2nd sp.s. c 18 § 918; 1995 c 376 § 11; 1993 sp.s. c 24 § 921; 1985 c 471 § 8.]

Part headings not law—Severability—Effective dates—2007 c 520: See notes following RCW 43.19.125.

Part headings not law—Severability—Effective dates—2005 c 488: See notes following RCW 28B.50.360.

Severability—Effective date—1995 2nd sp.s. c 18: See notes following RCW 19.118.110.

Findings—1995 c 376: See note following RCW 70.116.060.

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

Severability—Effective date—1985 c 471: See notes following RCW 82.04.260.

43.155.070 Eligibility, priority, limitations, and exceptions. (1) To qualify for loans or pledges under this chapter the board must determine that a local government meets all of the following conditions:

(a) The city or county must be imposing a tax under chapter 82.46 RCW at a rate of at least one-quarter of one percent;

(b) The local government must have developed a capital facility plan; and

(c) The local government must be using all local revenue sources which are reasonably available for funding public works, taking into consideration local employment and economic factors.

(2) Except where necessary to address a public health need or substantial environmental degradation, a county, city, or town planning under RCW 36.70A.040 must have adopted a comprehensive plan, including a capital facilities plan element, and development regulations as required by RCW 36.70A.040. This subsection does not require any county, city, or town planning under RCW 36.70A.040 to adopt a comprehensive plan or development regulations before requesting or receiving a loan or loan guarantee under this chapter if such request is made before the expiration of the time periods specified in RCW 36.70A.040. A county, city, or town planning under RCW 36.70A.040 which has not adopted a comprehensive plan and development regulations within the time periods specified in RCW 36.70A.040 is not prohibited from receiving a loan or loan guarantee under this chapter if the comprehensive plan and development regulations are adopted as required by RCW 36.70A.040 before submitting a request for a loan or loan guarantee.

(3) In considering awarding loans for public facilities to special districts requesting funding for a proposed facility located in a county, city, or town planning under RCW 36.70A.040, the board shall consider whether the county, city, or town planning under RCW 36.70A.040 in whose planning jurisdiction the proposed facility is located has adopted a comprehensive plan and development regulations as required by RCW 36.70A.040.

(4) The board shall develop a priority process for public works projects as provided in this section. The intent of the priority process is to maximize the value of public works projects accomplished with assistance under this chapter. The board shall attempt to assure a geographical balance in assigning priorities to projects. The board shall consider at least the following factors in assigning a priority to a project:

(a) Whether the local government receiving assistance has experienced severe fiscal distress resulting from natural disaster or emergency public works needs;

(b) Except as otherwise conditioned by RCW 43.155.110, whether the entity receiving assistance is a Puget Sound partner, as defined in RCW 90.71.010;

(c) Whether the project is referenced in the action agenda developed by the Puget Sound partnership under RCW 90.71.310;

(d) Whether the project is critical in nature and would affect the health and safety of a great number of citizens;

(e) Whether the applicant has developed and adhered to guidelines regarding its permitting process for those applying for development permits consistent with section 1(2), chapter 231, Laws of 2007;

(f) The cost of the project compared to the size of the local government and amount of loan money available;

(g) The number of communities served by or funding the project;

(h) Whether the project is located in an area of high unemployment, compared to the average state unemployment;

(i) Whether the project is the acquisition, expansion, improvement, or renovation by a local government of a public water system that is in violation of health and safety standards, including the cost of extending existing service to such a system;

(j) The relative benefit of the project to the community, considering the present level of economic activity in the community and the existing local capacity to increase local economic activity in communities that have low economic growth; and

(k) Other criteria that the board considers advisable.

(5) Existing debt or financial obligations of local governments shall not be refinanced under this chapter. Each local government applicant shall provide documentation of attempts to secure additional local or other sources of funding for each public works project for which financial assistance is sought under this chapter.

(6) Before November 1st of each year, the board shall develop and submit to the appropriate fiscal committees of the senate and house of representatives a description of the loans made under RCW 43.155.065, 43.155.068, and subsection (9) of this section during the preceding fiscal year and a prioritized list of projects which are recommended for funding by the legislature, including one copy to the staff of each of the committees. The list shall include, but not be limited to, a description of each project and recommended financing, the terms and conditions of the loan or financial guarantee, the local government jurisdiction and unemployment rate, demonstration of the jurisdiction's critical need for the project and documentation of local funds being used to finance the public works project. The list shall also include measures of fiscal capacity for each jurisdiction recommended for financial assistance, compared to authorized limits and state averages, including local government sales taxes; real estate excise taxes; property taxes; and charges for or taxes on sewerage, water, garbage, and other utilities.

(7) The board shall not sign contracts or otherwise financially obligate funds from the public works assistance account before the legislature has appropriated funds for a specific list of public works projects. The legislature may remove projects from the list recommended by the board. The legislature shall not change the order of the priorities recommended for funding by the board.

(8) Subsection (7) of this section does not apply to loans made under RCW 43.155.065, 43.155.068, and subsection (9) of this section.

(9) Loans made for the purpose of capital facilities plans shall be exempted from subsection (7) of this section.

(10) To qualify for loans or pledges for solid waste or recycling facilities under this chapter, a city or county must demonstrate that the solid waste or recycling facility is consistent with and necessary to implement the comprehensive solid waste management plan adopted by the city or county under chapter 70.95 RCW.

(11) After January 1, 2010, any project designed to address the effects of storm water or wastewater on Puget Sound may be funded under this section only if the project is not in conflict with the action agenda developed by the Puget Sound partnership under RCW 90.71.310. [2007 c 341 § 24; 2007 c 231 § 2; 2001 c 131 § 5; 1999 c 164 § 602; 1997 c 429 § 29; 1996 c 168 § 3; 1995 c 363 § 3; 1993 c 39 § 1; 1991 sp.s. c 32 § 23; 1990 1st ex.s. c 17 § 82; 1990 c 133 § 6; 1988 c 93 § 3; 1987 c 505 § 40; 1985 c 446 § 12.]

Reviser's note: This section was amended by 2007 c 231 § 2 and by 2007 c 341 § 24, each without reference to the other. Both amendments are

incorporated in the publication of this section under RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

Severability—Effective date—2007 c 341: See RCW 90.71.906 and 90.71.907.

Findings—Recommendations—Reports encouraged—2007 c 231: "(1) The legislature finds that permit programs have been legislatively established to protect the health, welfare, economy, and environment of Washington's citizens and to provide a fair, competitive opportunity for business innovation and consumer confidence. The legislature also finds that uncertainty in government processes to permit an activity by a citizen of Washington state is undesirable and erodes confidence in government. The legislature further finds that in the case of projects that would further economic development in the state, information about the permitting process is critical for an applicant's planning and financial assessment of the proposed project. The legislature also finds that applicants have a responsibility to provide complete and accurate information.

(2) The legislature recommends that applicants be provided with the following information when applying for a development permit from a city, county, or state agency:

(a) The minimum and maximum time an agency will need to make a decision on a permit, including public comment requirements;

(b) The minimum amount of information required for an agency to make a decision on a permit;

(c) When an agency considers an application complete for processing;

(d) The minimum and maximum costs in agency fees that will be incurred by the permit applicant; and

(e) The reasons for a denial of a permit in writing.

(3) In providing this information to applicants, an agency should base estimates on the best information available about the permitting program and prior applications for similar permits, as well as on the information provided by the applicant. New information provided by the applicant subsequent to the agency estimates may change the information provided by an agency per subsection (2) of this section. Project modifications by an applicant may result in more time, more information, or higher fees being required for permit processing.

(4) This section does not create an independent cause of action, affect any existing cause of action, or establish time limits for purposes of RCW 64.40.020.

(5) City, county, and state agencies issuing development permits are encouraged to track the progress in providing the information to applicants per subsection (2) of this section by preparing an annual report of its performance for the preceding fiscal year. The report should be posted on its web site [and] made available and provided to the appropriate standing committees of the senate and house of representatives." [2007 c 231 § 1.]

Findings—Intent—Part headings and subheadings not law—Effective date—Severability—1999 c 164: See notes following RCW 43.160.010.

Savings—1999 c 164 §§ 301-303, 305, 306, and 601-603: See note following RCW 82.60.020.

Effective date—1997 c 429 §§ 29, 30: "Sections 29 and 30 of this act are necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and take effect immediately [May 19, 1997]." [1997 c 429 § 55.]

Severability—1997 c 429: See note following RCW 36.70A.3201.

Finding—Purpose—1995 c 363: See note following RCW 43.155.068.

Effective date—1993 c 39: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and shall take effect July 1, 1993." [1993 c 39 § 2.]

Section headings not law—1991 sp.s. c 32: See RCW 36.70A.902.

Intent—1990 1st ex.s. c 17: See note following RCW 43.210.010.

Severability—Part, section headings not law—1990 1st ex.s. c 17: See RCW 36.70A.900 and 36.70A.901.

Findings—Severability—1990 c 133: See notes following RCW 36.94.140.

43.155.110 Puget Sound partners. In developing a priority process for public works projects under RCW 43.155.070, the board shall give preferences only to Puget Sound partners, as defined in RCW 90.71.010, over other

entities that are eligible to be included in the definition of Puget Sound partner. Entities that are not eligible to be a Puget Sound partner due to geographic location, composition, exclusion from the scope of the action agenda developed by the Puget Sound partnership under RCW 90.71.310, or for any other reason, shall not be given less preferential treatment than Puget Sound partners. [2007 c 341 § 25.]

Severability—Effective date—2007 c 341: See RCW 90.71.906 and 90.71.907.

Chapter 43.160 RCW

ECONOMIC DEVELOPMENT—PUBLIC FACILITIES LOANS AND GRANTS

Sections

- 43.160.060 Loans and grants to political subdivisions and federally recognized Indian tribes for public facilities authorized—Application—Requirements for financial assistance.
- 43.160.230 Job development fund program. (*Expires June 30, 2011.*)

43.160.060 Loans and grants to political subdivisions and federally recognized Indian tribes for public facilities authorized—Application—Requirements for financial assistance. The board is authorized to make direct loans to political subdivisions of the state and to federally recognized Indian tribes for the purposes of assisting the political subdivisions and federally recognized Indian tribes in financing the cost of public facilities, including development of land and improvements for public facilities, project-specific environmental, capital facilities, land use, permitting, feasibility, and marketing studies and plans; project design, site planning, and analysis; project debt and revenue impact analysis; as well as the construction, rehabilitation, alteration, expansion, or improvement of the facilities. A grant may also be authorized for purposes designated in this chapter, but only when, and to the extent that, a loan is not reasonably possible, given the limited resources of the political subdivision or the federally recognized Indian tribe and the finding by the board that financial circumstances require grant assistance to enable the project to move forward. However, at least ten percent of all financial assistance provided by the board in any biennium shall consist of grants to political subdivisions and federally recognized Indian tribes.

Application for funds shall be made in the form and manner as the board may prescribe. In making grants or loans the board shall conform to the following requirements:

- (1) The board shall not provide financial assistance:
 - (a) For a project the primary purpose of which is to facilitate or promote a retail shopping development or expansion.
 - (b) For any project that evidence exists would result in a development or expansion that would displace existing jobs in any other community in the state.
 - (c) For the acquisition of real property, including buildings and other fixtures which are a part of real property.
 - (d) For a project the primary purpose of which is to facilitate or promote gambling.
- (2) The board shall only provide financial assistance:
 - (a) For those projects which would result in specific private developments or expansions (i) in manufacturing, production, food processing, assembly, warehousing, advanced technology, research and development, and industrial distri-

bution; (ii) for processing recyclable materials or for facilities that support recycling, including processes not currently provided in the state, including but not limited to, de-inking facilities, mixed waste paper, plastics, yard waste, and problem-waste processing; (iii) for manufacturing facilities that rely significantly on recyclable materials, including but not limited to waste tires and mixed waste paper; (iv) which support the relocation of businesses from nondistressed urban areas to rural counties or rural natural resources impact areas; or (v) which substantially support the trading of goods or services outside of the state's borders.

(b) For projects which it finds will improve the opportunities for the successful maintenance, establishment, or expansion of industrial or commercial plants or will otherwise assist in the creation or retention of long-term economic opportunities.

(c) When the application includes convincing evidence that a specific private development or expansion is ready to occur and will occur only if the public facility improvement is made.

(3) The board shall prioritize each proposed project according to:

(a) The relative benefits provided to the community by the jobs the project would create, not just the total number of jobs it would create after the project is completed and according to the unemployment rate in the area in which the jobs would be located;

(b) The rate of return of the state's investment, that includes the expected increase in state and local tax revenues associated with the project; and

(c) Whether the applicant has developed and adhered to guidelines regarding its permitting process for those applying for development permits consistent with section 1(2), chapter 231, Laws of 2007.

(4) A responsible official of the political subdivision or the federally recognized Indian tribe shall be present during board deliberations and provide information that the board requests.

Before any financial assistance application is approved, the political subdivision or the federally recognized Indian tribe seeking the assistance must demonstrate to the community economic revitalization board that no other timely source of funding is available to it at costs reasonably similar to financing available from the community economic revitalization board. [2007 c 231 § 3; 2004 c 252 § 3. Prior: 2002 c 242 § 4; 2002 c 239 § 1; 1999 c 164 § 103; 1996 c 51 § 5; 1993 c 320 § 4; 1990 1st ex.s. c 17 § 73; 1989 c 431 § 62; 1987 c 422 § 5; 1985 c 446 § 3; 1983 1st ex.s. c 60 § 3; 1982 1st ex.s. c 40 § 6.]

Findings—Recommendations—Reports encouraged—2007 c 231: See note following RCW 43.155.070.

Findings—Intent—2002 c 242: See note following RCW 43.160.085.

Findings—Intent—Part headings and subheadings not law—Effective date—Severability—1999 c 164: See notes following RCW 43.160.010.

Severability—Effective dates—1996 c 51: See notes following RCW 43.160.010.

Intent—1990 1st ex.s. c 17: See note following RCW 43.210.010.

Severability—Part, section headings not law—1990 1st ex.s. c 17: See RCW 36.70A.900 and 36.70A.901.

Severability—Section captions not law—1989 c 431: See RCW 70.95.901 and 70.95.902.

43.160.230 Job development fund program. (Expires June 30, 2011.) (1) The job development fund program is created to provide grants for public infrastructure projects that will stimulate job creation or assist in job retention. The program is to be administered by the board. The board shall establish a competitive process to request and prioritize proposals and make grant awards.

(2) For the purposes of chapter 425, Laws of 2005, "public infrastructure projects" has the same meaning as "public facilities" as defined in RCW 43.160.020(11).

(3) The board shall conduct a statewide request for project applications. The board shall apply the following criteria for evaluation and ranking of applications:

(a) The relative benefits provided to the community by the jobs the project would create, including, but not limited to: (i) The total number of jobs; (ii) the total number of full-time, family wage jobs; (iii) the unemployment rate in the area; and (iv) the increase in employment in comparison to total community population;

(b) The present level of economic activity in the community and the existing local financial capacity to increase economic activity in the community;

(c) Whether the applicant has developed and adhered to guidelines regarding its permitting process for those applying for development permits consistent with section 1(2), chapter 231, Laws of 2007;

(d) The rate of return of the state's investment, that includes the expected increase in state and local tax revenues associated with the project;

(e) The lack of another timely source of funding available to finance the project which would likely prevent the proposed community or economic development, absent the financing available under chapter 425, Laws of 2005;

(f) The ability of the project to improve the viability of existing business entities in the project area;

(g) Whether or not the project is a partnership of multiple jurisdictions;

(h) Demonstration that the requested assistance will directly stimulate community and economic development by facilitating the creation of new jobs or the retention of existing jobs; and

(i) The availability of existing assets that applicants may apply to projects.

(4) Job development fund program grants may only be awarded to those applicants that have entered into or expect to enter into a contract with a private developer relating to private investment that will result in the creation or retention of jobs upon completion of the project. Job development fund program grants shall not be provided for any project where:

(a) The funds will not be used within the jurisdiction or jurisdictions of the applicants; or

(b) Evidence exists that the project would result in a development or expansion that would displace existing jobs in any other community in the state.

(5) The board shall, with the joint legislative audit and review committee, develop performance criteria for each grant and evaluation criteria to be used to evaluate both how

well successful applicants met the community and economic development objectives stated in their applications, and how well the job development fund program performed in creating and retaining jobs. [2007 c 231 § 4; 2005 c 425 § 2.]

Expiration date—2007 c 231 § 4: "Section 4 of this act expires June 30, 2011." [2007 c 231 § 8.]

Findings—Recommendations—Reports encouraged—2007 c 231: See note following RCW 43.155.070.

Finding—2005 c 425: "The legislature has and continues to recognize the vital importance of economic development to the health and prosperity of Washington state as indicated in RCW 43.160.010, 43.155.070(4)(g), 43.163.005, and 43.168.010. The legislature finds that current economic development programs and funding, which are primarily low-interest loan programs, can be enhanced by creating a grant program to assist with public infrastructure projects that directly stimulate community and economic development by supporting the creation of new jobs or the retention of existing jobs." [2005 c 425 § 1.]

Expiration date—2005 c 425: "This act expires June 30, 2011." [2005 c 425 § 6.]

Severability—2005 c 425: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [2005 c 425 § 7.]

Chapter 43.162 RCW

ECONOMIC DEVELOPMENT COMMISSION

Sections

43.162.005	Findings—Intent.
43.162.010	Washington state economic development commission—Membership—Rules.
43.162.015	Executive director.
43.162.020	Duties—Biennial report.
43.162.025	Additional authority.
43.162.030	Authority of governor and department of community, trade, and economic development not affected.

43.162.005 Findings—Intent. The legislature finds that Washington's innovation and trade-driven economy has provided tremendous opportunities for citizens of the state, but that there is no guarantee that globally competitive firms will continue to grow and locate in the state. The current economic development system is fragmented among numerous programs, councils, centers, and organizations with inadequate overall coordination and insufficient guidance built into the system to ensure that the system is responsive to its customers. The current economic development system's data-gathering and evaluation methods are inconsistent and unable to provide adequate information for determining how well the system is performing on a regular basis so the system may be held accountable for its outcomes.

The legislature also finds that developing a comprehensive economic development strategic plan to guide the operation of effective economic development programs, including workforce training, infrastructure development, small business assistance, technology transfer, and export assistance, is vital to the state's efforts to increase the competitiveness of state businesses, encourage employment growth, increase state revenues, and generate economic well-being. There is a need for responsive and consistent involvement of the private sector in the state's economic development efforts. The legislature finds that there is a need for the development of coordination criteria for business recruitment, expansion, and retention activities carried out by the state and local entities. It is the intent of the legislature to create an economic devel-

opment commission that will provide planning, coordination, evaluation, monitoring, and policy analysis and development for the state economic development system as a whole, and advice to the governor and legislature concerning the state economic development system. [2007 c 232 § 1; 2003 c 235 § 1.]

43.162.010 Washington state economic development commission—Membership—Rules. (1) The Washington state economic development commission is established to oversee the economic development strategies and policies of the department of community, trade, and economic development.

(2)(a) The Washington state economic development commission shall consist of eleven voting members appointed by the governor as follows: Six representatives of the private sector, one representative of labor, one representative of port districts, one representative of four-year state public higher education, one representative for state community or technical colleges, and one representative of associate development organizations. The director of the department of community, trade, and economic development, the director of the workforce training and education coordinating board, the commissioner of the employment security department, and the chairs and ranking minority members of the standing committees of the house of representatives and the senate overseeing economic development policies shall serve as nonvoting ex officio members.

The chair of the commission shall be a voting member selected by the governor with the consent of the senate, and shall serve at the pleasure of the governor. In selecting the chair, the governor shall seek a person who understands the future economic needs of the state and nation and the role the state's economic development system has in meeting those needs.

(b) In making the appointments, the governor shall consult with organizations that have an interest in economic development, including, but not limited to, industry associations, labor organizations, minority business associations, economic development councils, chambers of commerce, port associations, tribes, and the chairs of the legislative committees with jurisdiction over economic development.

(c) The members shall be representative of the geographic regions of the state, including eastern and central Washington, as well as represent the ethnic diversity of the state. Private sector members shall represent existing and emerging industries, small businesses, women-owned businesses, and minority-owned businesses. Members of the commission shall serve statewide interests while preserving their diverse perspectives, and shall be recognized leaders in their fields with demonstrated experience in economic development or disciplines related to economic development.

(3) Members appointed by the governor shall serve at the pleasure of the governor for three-year terms.

(4) The commission may establish committees as it desires, and may invite nonmembers of the commission to serve as committee members.

(5) The executive director of the commission shall be appointed by the governor with the consent of the voting members of the commission. The governor may dismiss the director only with the approval of a majority vote of the com-

mission. The commission, by a majority vote, may dismiss the executive director with the approval of the governor.

(6) The commission may adopt rules for its own governance. [2007 c 232 § 2; 2003 c 235 § 2.]

43.162.015 Executive director. (1) The commission shall employ an executive director. The executive director shall serve as chief executive officer of the commission and shall administer the provisions of this chapter, employ such personnel as may be necessary to implement the purposes of this chapter, utilize staff of existing operating agencies to the fullest extent possible, and employ outside consulting and service agencies when appropriate.

(2) The executive director may not be the chair of the commission.

(3) The executive director shall appoint necessary staff who shall be exempt from the provisions of chapter 41.06 RCW. The executive director's appointees shall serve at the executive director's pleasure on such terms and conditions as the executive director determines but subject to chapter 42.52 RCW.

(4) The executive director shall appoint and employ such other employees as may be required for the proper discharge of the functions of the commission.

(5) The executive director shall exercise such additional powers, other than rule making, as may be delegated by the commission. [2007 c 232 § 3.]

43.162.020 Duties—Biennial report. The Washington state economic development commission shall:

(1) Concentrate its major efforts on planning, coordination, evaluation, policy analysis, and recommending improvements to the state's economic development system using, but not limited to, the "Next Washington" plan and the global competitiveness council recommendations;

(2) Develop and maintain on a biennial basis a state comprehensive plan for economic development, including but not limited to goals, objectives, and priorities for the state economic development system; identify the elements local associate development organizations must include in their countywide economic development plans; and review the state system for consistency with the state comprehensive plan. In developing the state comprehensive plan for economic development, the commission shall use, but may not be limited to: Economic, labor market, and populations trend reports in office of financial management forecasts; the annual state economic climate report prepared by the economic climate council; joint office of financial management and employment security department labor force, industry employment, and occupational forecasts; the results of scientifically based outcome evaluations; the needs of industry associations, industry clusters, businesses, and employees as evidenced in formal surveys and other input;

(3) Establish and maintain an inventory of the programs of the state economic development system and related state programs; perform a biennial assessment of the ongoing and strategic economic development needs of the state; and assess the extent to which the economic development system and related programs represent a consistent, coordinated, efficient, and integrated approach to meet such needs; and

(4) Produce a biennial report to the governor and the legislature on progress by the commission in coordinating the state's economic development system and meeting the other obligations of this chapter, as well as include recommendations for any statutory changes necessary to enhance operational efficiencies or improve coordination.

The commission may delegate to the director any of the functions of this section. [2007 c 232 § 4; 2003 c 235 § 3.]

43.162.025 Additional authority. Subject to available funds, the Washington state economic development commission may:

(1) Periodically review for consistency with the state comprehensive plan for economic development the policies and plans established for:

(a) Business and technical assistance by the small business development center, the Washington manufacturing service, the Washington technology center, associate development organizations, the department of community, trade, and economic development, and the office of minority and women-owned business enterprises;

(b) Export assistance by the small business export finance assistance center, the international marketing program for agricultural commodities and trade, the department of agriculture, the center for international trade in forest products, associate development organizations, and the department of community, trade, and economic development; and

(c) Infrastructure development by the department of community, trade, and economic development and the department of transportation;

(2) Review and make recommendations to the office of financial management and the legislature on budget requests and legislative proposals relating to the state economic development system for purposes of consistency with the state comprehensive plan for economic development;

(3) Provide for coordination among the different agencies, organizations, and components of the state economic development system at the state level and at the regional level;

(4) Advocate for the state economic development system and for meeting the needs of industry associations, industry clusters, businesses, and employees;

(5) Identify partners and develop a plan to develop a consistent and reliable database on participation rates, costs, program activities, and outcomes from publicly funded economic development programs in this state by January 1, 2011.

(a) In coordination with the development of the database, the commission shall establish standards for data collection and maintenance for providers in the economic development system in a format that is accessible to use by the commission. The commission shall require a minimum of common core data to be collected by each entity providing economic development services with public funds and shall develop requirements for minimum common core data in consultation with the economic climate council, the office of financial management, and the providers of economic development services;

(b) The commission shall establish minimum common standards and metrics for program evaluation of economic

development programs, and monitor such program evaluations; and

(c) The commission shall, beginning no later than January 1, 2012, periodically administer, based on a schedule established by the commission, scientifically based outcome evaluations of the state economic development system including, but not limited to, surveys of industry associations, industry cluster associations, and businesses served by publicly funded economic development programs; matches with employment security department payroll and wage files; and matches with department of revenue tax files; and

(6) Evaluate proposals for expenditure from the economic development strategic reserve account and recommend expenditures from the account.

The commission may delegate to the director any of the functions of this section. [2007 c 232 § 5.]

43.162.030 Authority of governor and department of community, trade, and economic development not affected. Creation of the Washington state economic development commission shall not be construed to modify any authority or budgetary responsibility of the governor or the department of community, trade, and economic development. [2007 c 232 § 7; 2003 c 235 § 4.]

Chapter 43.167 RCW

COMMUNITY PRESERVATION AND DEVELOPMENT AUTHORITIES

Sections

43.167.010	Community preservation and development authorities—Formation—Board of directors.
43.167.020	Powers of authorities.
43.167.030	Duties of authorities.
43.167.040	Community preservation and development authority account.
43.167.050	Role of state and local government agencies.
43.167.060	Pioneer Square-International District community preservation and development authority.
43.167.900	Severability—2007 c 501.

43.167.010 Community preservation and development authorities—Formation—Board of directors. (1) The residents, property owners, employees, or business owners of an impacted community may propose formation of a community preservation and development authority. The proposal to form a community preservation and development authority must be presented in writing to the appropriate legislative committee in both the house of representatives and the senate. The proposal must contain proposed general geographic boundaries that will be used to define the community for the purposes of the authority. Proposals presented after January 1, 2008, must identify in its proposal one or more stable revenue sources that (a) have a nexus with the multiple publicly funded facilities that have adversely impacted the community, and (b) can be used to support future operating or capital projects that will be identified in the strategic plan required under RCW 43.167.030.

(2) Formation of the community preservation and development authority is subject to legislative authorization by statute. The legislature must find that (a) the area within the proposal's geographic boundaries meets the definition of "impacted community" contained in *section 2(4) of this act

and (b) those persons that have brought forth the proposal are members of the community as defined in *section 2(1) of this act and, if the authority were approved, would meet the definition of constituency contained in *section 2(3) of this act. For proposals brought after January 1, 2008, the legislature must also find that the community has identified one or more stable revenue sources as required in subsection (1) of this section. The legislature may then act to authorize the establishment of the community preservation and development authority in law.

(3) The affairs of a community preservation and development authority shall be managed by a board of directors, consisting of the following members:

(a) Two members who own, operate, or represent businesses within the community;

(b) Two members who are involved in providing non-profit community or social services within the community;

(c) Two members who are involved in the arts and entertainment within the community;

(d) Two members with knowledge of the community's culture and history; and

(e) One member who is involved in a nonprofit or public planning organization that directly serves the impacted community.

(4) No member of the board shall hold office for more than four years. Board positions shall be numbered one through nine, and the terms staggered as follows:

(a) Board members elected to positions one through five shall serve two-year terms, and if reelected, may serve no more than one additional two-year term.

(b) Board members initially elected to positions six through nine shall serve a three-year term only.

(c) Board members elected to positions six through nine after the initial three-year term shall serve two-year terms, and if reelected, may serve no more than one additional two-year term.

(5) With respect to an authority's initial board of directors: The state legislative delegation and those proposing formation of the authority shall jointly establish a committee to develop a list of candidates to stand for election once the authority has received legislative approval as established in subsection (2) of this section. For the purpose of developing the list and identifying those persons who meet the criteria in subsection (3)(a) through (e) of this section, community shall mean the proposed geographic boundaries as set out in the proposal. The board of directors shall be elected by the constituency during a meeting convened for that purpose by the state legislative delegation.

(6) With respect to subsequent elections of an authority's board of directors: A list of candidates shall be developed by the authority's existing board of directors and the election shall be held during the annual local town hall meeting as required in RCW 43.167.030. [2007 c 501 § 3.]

*Reviser's note: Section 2 of this act was vetoed by the governor.

43.167.020 Powers of authorities. (1) A community preservation and development authority shall have the power to:

(a) Accept gifts, grants, loans, or other aid from public or private entities; and

(b) Exercise such additional powers as may be authorized by law.

(2) A community preservation and development authority shall have no power of eminent domain nor any power to levy taxes or special assessments. [2007 c 501 § 4.]

43.167.030 Duties of authorities. A community preservation and development authority shall have the duty to:

(1) Establish specific geographic boundaries for the authority within its bylaws based on the general geographic boundaries established in the proposal submitted and approved by the legislature;

(2) Solicit input from members of its community and develop a strategic preservation and development plan to promote the health, safety, and economic well-being of the impacted community and to preserve its cultural and historical identity;

(3) Include within the strategic plan a prioritized list of projects identified and supported by the community, including capital or operating components that address one or more of the purposes under *section 1(3) of this act;

(4) Establish funding mechanisms to support projects and programs identified in the strategic plan including but not limited to grants and loans;

(5) Use gifts, grants, loans, and other aid from public or private entities to carry out projects identified in the strategic plan; and

(6) Demonstrate ongoing accountability for its actions by:

(a) Reporting to the appropriate committees of the legislature, one year after formation and every biennium thereafter, on the authority's strategic plan, activities, accomplishments, and any recommendations for statutory changes;

(b) Reporting any changes in the authority's geographic boundaries to the appropriate committees of the legislature when the legislature next convenes in regular session;

(c) Convening a local town hall meeting with its constituency on an annual basis to: (i) Report its activities and accomplishments from the previous year; (ii) present and receive input from members of the impacted community regarding its proposed strategic plan and activities for the upcoming year; and (iii) hold board member elections as necessary; and

(d) Maintaining books and records as appropriate for the conduct of its affairs. [2007 c 501 § 5.]

***Reviser's note:** Section 1 of this act was vetoed by the governor.

43.167.040 Community preservation and development authority account. The community preservation and development authority account is created in the state treasury. The account is composed of two subaccounts, one for moneys to be appropriated for operating purposes, and the other for moneys to be appropriated for capital purposes. Moneys in the account may be spent only after appropriation. Expenditures from the account may be used only for projects under this chapter. [2007 c 501 § 7.]

43.167.050 Role of state and local government agencies. Prior to making siting, design, and construction decisions for future major public facilities, public works projects,

or capital projects with significant public funding, state and local government agencies may:

(1) Communicate and consult with the community preservation and development authority and impacted community, including assessing the compatibility of the proposed project with the strategic plan adopted by the authority; and

(2) Make reasonable efforts to ensure that negative, cumulative effects of multiple projects upon the impacted community are minimized. [2007 c 501 § 8.]

43.167.060 Pioneer Square-International District community preservation and development authority. The legislature authorizes the establishment of the Pioneer Square-International District community preservation and development authority, which boundaries are those contained in the Pioneer Square-International District within the city of Seattle. [2007 c 501 § 6.]

43.167.900 Severability—2007 c 501. If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected. [2007 c 501 § 9.]

Chapter 43.185A RCW

AFFORDABLE HOUSING PROGRAM

Sections

43.185A.110 Affordable housing land acquisition revolving loan fund program.

43.185A.110 Affordable housing land acquisition revolving loan fund program. (1) The affordable housing land acquisition revolving loan fund program is created in the department to assist eligible organizations, described under RCW 43.185A.040, to purchase land for affordable housing development. The department shall contract with the Washington state housing finance commission to administer the affordable housing land acquisition revolving loan fund program. Within this program, the Washington state housing finance commission shall establish and administer the Washington state housing finance commission land acquisition revolving loan fund.

(2) As used in this chapter, "market rate" means the current average market interest rate that is determined at the time any individual loan is closed upon using a widely recognized current market interest rate measurement to be selected for use by the Washington state housing finance commission with the department's approval. This interest rate must be noted in an attachment to the closing documents for each loan.

(3) Under the affordable housing land acquisition revolving loan fund program:

(a) Loans may be made to purchase land on which to develop affordable housing. In addition to affordable housing, facilities intended to provide supportive services to affordable housing residents and low-income households in the nearby community may be developed on the land.

(b) Eligible organizations applying for a loan must include in the loan application a proposed affordable housing

development plan indicating the number of affordable housing units planned, a description of any other facilities being considered for the property, and an estimated timeline for completion of the development. The Washington state housing finance commission may require additional information from loan applicants and may consider the efficient use of land, project readiness, organizational capacity, and other factors as criteria in awarding loans.

(c) Forty percent of the loans shall go to eligible applicants operating homeownership programs for low-income households in which the households participate in the construction of their homes. Sixty percent of loans shall go to other eligible organizations. If the entire forty percent for applicants operating self-help homeownership programs cannot be lent to these types of applicants, the remainder shall be lent to other eligible organizations.

(d) Within five years of receiving a loan, a loan recipient must present the Washington state housing finance commission with an updated development plan, including a proposed development design, committed and anticipated additional financial resources to be dedicated to the development, and an estimated development schedule, which indicates completion of the development within eight years of loan receipt. This updated development plan must be substantially consistent with the development plan submitted as part of the original loan application as required in (b) of this subsection.

(e) Within eight years of receiving a loan, a loan recipient must develop affordable housing on the property for which the loan was made and place the affordable housing into service.

(f) A loan recipient must preserve the affordable housing developed on the property acquired under this section as affordable housing for a minimum of thirty years.

(4) If a loan recipient does not place affordable housing into service on a property for which a loan has been received under this section within the eight-year period specified in subsection (3)(e) of this section, or if a loan recipient fails to use the property for the intended affordable housing purpose consistent with the loan recipient's original affordable housing development plan, then the loan recipient must pay to the Washington state housing finance commission an amount consisting of the principal of the original loan plus compounded interest calculated at the current market rate. The Washington state housing finance commission shall develop guidelines for the time period in which this repayment must take place, which must be noted in the original loan agreement. The Washington state housing finance commission may grant a partial or total exemption from this repayment requirement if it determines that a development is substantially complete or that the property has been substantially used in keeping with the original affordable housing purpose of the loan. Any repayment funds received as a result of non-compliance with loan requirements shall be deposited into the Washington state housing finance commission land acquisition revolving loan fund for the purposes of the affordable housing land acquisition revolving loan fund program.

(5) The Washington state housing finance commission, with approval from the department, may adopt guidelines and requirements that are necessary to administer the affordable housing land acquisition revolving loan fund program.

(6) Interest rates on property loans granted under this section may not exceed one percent. All loan repayment moneys received shall be deposited into the Washington state housing finance commission affordable housing land acquisition revolving loan fund for the purposes of the affordable housing land acquisition revolving loan fund program.

(7) The Washington state housing finance commission must develop performance measures for the program, which must be approved by the department, including, at a minimum, measures related to:

(a) The ability of eligible organizations to access land for affordable housing development;

(b) The total number of dwelling units by housing type and the total number of very low-income households and persons served; and

(c) The financial efficiency of the program as demonstrated by factors, including the cost per unit developed for affordable housing units in different areas of the state and a measure of the effective use of funds to produce the greatest number of units for low-income households.

(8) By December 1st of each year, beginning in 2007, the Washington state housing finance commission shall report to the department and the appropriate committees of the legislature using, at a minimum, the performance measures developed under subsection (7) of this section. [2007 c 428 § 2.]

Findings—2007 c 428: "The legislature finds that protecting the public health, safety, and welfare by providing affordable housing resources to needy or vulnerable persons is a fundamental purpose of government. The legislature further finds that assisting eligible organizations to purchase land for affordable housing development and related supportive services facilities confers a valuable benefit on the public that constitutes consideration for financing assistance to eligible organizations in the form of low-interest loans, subject to restrictions that provide continued protection of the public interest." [2007 c 428 § 1.]

Contingency—2007 c 428: "If specific funding for the purposes of this act, referencing this act by bill or chapter number, is not provided by June 30, 2007, in the omnibus appropriations act, this act is null and void." [2007 c 428 § 3.] Funding was provided in 2007 c 520 § 1044 (capital budget).

Chapter 43.185C RCW

HOMELESS HOUSING AND ASSISTANCE

Sections

43.185C.010	Definitions.
43.185C.060	Home security fund account.
43.185C.190	Affordable housing for all account.
43.185C.200	Transitional housing assistance to offenders—Pilot program.

43.185C.010 Definitions. The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

(1) "Department" means the department of community, trade, and economic development.

(2) "Director" means the director of the department of community, trade, and economic development.

(3) "Homeless person" means an individual living outside or in a building not meant for human habitation or which they have no legal right to occupy, in an emergency shelter, or in a temporary housing program which may include a transitional and supportive housing program if habitation time limits exist. This definition includes substance abusers, people with mental illness, and sex offenders who are homeless.

(4) "Washington homeless census" means an annual statewide census conducted as a collaborative effort by towns, cities, counties, community-based organizations, and state agencies, with the technical support and coordination of the department, to count and collect data on all homeless individuals in Washington.

(5) "Home security fund account" means the state treasury account receiving the state's portion of income from revenue from the sources established by RCW 36.22.179, RCW 36.22.1791, and all other sources directed to the homeless housing and assistance program.

(6) "Homeless housing grant program" means the vehicle by which competitive grants are awarded by the department, utilizing moneys from the *homeless housing account, to local governments for programs directly related to housing homeless individuals and families, addressing the root causes of homelessness, preventing homelessness, collecting data on homeless individuals, and other efforts directly related to housing homeless persons.

(7) "Local government" means a county government in the state of Washington or a city government, if the legislative authority of the city affirmatively elects to accept the responsibility for housing homeless persons within its borders.

(8) "Housing continuum" means the progression of individuals along a housing-focused continuum with homelessness at one end and homeownership at the other.

(9) "Local homeless housing task force" means a voluntary local committee created to advise a local government on the creation of a local homeless housing plan and participate in a local homeless housing program. It must include a representative of the county, a representative of the largest city located within the county, at least one homeless or formerly homeless person, such other members as may be required to maintain eligibility for federal funding related to housing programs and services and if feasible, a representative of a private nonprofit organization with experience in low-income housing.

(10) "Long-term private or public housing" means subsidized and unsubsidized rental or owner-occupied housing in which there is no established time limit for habitation of less than two years.

(11) "Interagency council on homelessness" means a committee appointed by the governor and consisting of, at least, policy level representatives of the following entities: (a) The department of community, trade, and economic development; (b) the department of corrections; (c) the department of social and health services; (d) the department of veterans affairs; and (e) the department of health.

(12) "Performance measurement" means the process of comparing specific measures of success against ultimate and interim goals.

(13) "Community action agency" means a nonprofit private or public organization established under the economic opportunity act of 1964.

(14) "Housing authority" means any of the public corporations created by chapter 35.82 RCW.

(15) "Homeless housing program" means the program authorized under this chapter as administered by the department at the state level and by the local government or its designated subcontractor at the local level.

(16) "Homeless housing plan" means the ten-year plan developed by the county or other local government to address housing for homeless persons.

(17) "Homeless housing strategic plan" means the ten-year plan developed by the department, in consultation with the interagency council on homelessness and the affordable housing advisory board.

(18) "Washington homeless client management information system" means a data base of information about homeless individuals in the state used to coordinate resources to assist homeless clients to obtain and retain housing and reach greater levels of self-sufficiency or economic independence when appropriate, depending upon their individual situations. [2007 c 427 § 3; 2006 c 349 § 6; 2005 c 484 § 3.]

*Reviser's note: The "homeless housing account" was changed to the "home security fund account" by 2007 c 427 § 6.

Finding—2006 c 349: See note following RCW 43.185.130.

43.185C.060 Home security fund account. The home security fund account is created in the state treasury, subject to appropriation. The state's portion of the surcharge established in RCW 36.22.179 and 36.22.1791 must be deposited in the account. Expenditures from the account may be used only for homeless housing programs as described in this chapter. [2007 c 427 § 6; 2005 c 484 § 10.]

43.185C.190 Affordable housing for all account. The affordable housing for all account is created in the state treasury, subject to appropriation. The state's portion of the surcharges established in RCW 36.22.178 shall be deposited in the account. Expenditures from the account may only be used for affordable housing programs. [2007 c 427 § 2.]

43.185C.200 Transitional housing assistance to offenders—Pilot program. (1) The department of community, trade, and economic development shall establish a pilot program to provide grants to eligible organizations, as described in RCW 43.185.060, to provide transitional housing assistance to offenders who are reentering the community and are in need of housing.

(2) There shall be a minimum of two pilot programs established in two counties. The pilot programs shall be selected through a request for proposal process and in consultation with the department of corrections. The department shall select the pilot sites by January 1, 2008.

(3) The pilot program shall:

(a) Be operated in collaboration with the community justice center existing in the location of the pilot site;

(b) Offer transitional supportive housing that includes individual support and mentoring available on an ongoing basis, life skills training, and close working relationships with community justice centers and community corrections officers. Supportive housing services can be provided directly by the housing operator, or in partnership with community-based organizations;

(c) In providing assistance, give priority to offenders who are designated as high risk or high needs as well as those determined not to have a viable release plan by the department of corrections;

(d) Optimize available funding by utilizing cost-effective community-based shared housing arrangements or other noninstitutional living arrangements; and

(e) Provide housing assistance for a period of time not to exceed twelve months for a participating offender.

(4) The department may also use up to twenty percent of the funding appropriated in the operating budget for this section to support the development of additional supportive housing resources for offenders who are reentering the community.

(5) The department shall:

(a) Collaborate with the department of corrections in developing criteria to determine who will qualify for housing assistance; and

(b) Gather data, and report to the legislature by November 1, 2008, on the number of offenders seeking housing, the number of offenders eligible for housing, the number of offenders who receive the housing, and the number of offenders who commit new crimes while residing in the housing to the extent information is available.

(6) The department of corrections shall collaborate with organizations receiving grant funds to:

(a) Help identify appropriate housing solutions in the community for offenders;

(b) Where possible, facilitate an offender's application for housing prior to discharge;

(c) Identify enhancements to training provided to offenders prior to discharge that may assist an offender in effectively transitioning to the community;

(d) Maintain communication between the organization receiving grant funds, the housing provider, and corrections staff supervising the offender; and

(e) Assist the offender in accessing resources and services available through the department of corrections and a community justice center.

(7) The state, department of community, trade, and economic development, department of corrections, local governments, local housing authorities, eligible organizations as described in RCW 43.185.060, and their employees are not liable for civil damages arising from the criminal conduct of an offender solely due to the placement of an offender in housing provided under this section or the provision of housing assistance.

(8) Nothing in this section allows placement of an offender into housing without an analysis of the risk the offender may pose to that particular community or other residents. [2007 c 483 § 604.]

Finding—Intent—2007 c 483: See note following RCW 59.18.600.

Findings—Part headings not law—Severability—2007 c 483: See RCW 72.78.005, 72.78.900, and 72.78.901.

Chapter 43.215 RCW

DEPARTMENT OF EARLY LEARNING

Sections

43.215.005	Finding—Purpose.
43.215.010	Definitions.
43.215.020	Department created—Primary duties.
43.215.065	Policies to support children of incarcerated parents.
43.215.090	Early learning advisory council—Statewide early learning plan.

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43.215.100	Voluntary quality rating and improvement system—Report to the legislature.
43.215.110	Partnership responsibilities—Department's duties—Partnership's duties.
43.215.120	Parental notification of report alleging sexual misconduct or abuse—Notice of parental rights.
43.215.200	Director's licensing duties.
43.215.205	Minimum requirements for licensure.
43.215.215	Character, suitability, and competence to provide child care and early learning services—Fingerprint criminal history record checks.
43.215.2201	Repealed.
43.215.255	License fees.
43.215.300	Licenses—Denial, suspension, revocation, modification, nonrenewal—Proceedings—Penalties.
43.215.305	Licenses—Denial, revocation, suspension, or modification—Notice—Effective date of action—Adjudicative proceeding.
43.215.307	Civil fines—Notice—Adjudicative proceeding.
43.215.350	Negotiated rule making.
43.215.355	Negotiated rule making—Statewide unit of family child care licensees—Antitrust immunity, intent.
43.215.360	Minimum licensing requirements—Window blind pull cords.
43.215.370	Reporting actions against agency licensees—Posting on web site.
43.215.502	Child care provider rules review.
43.215.525	Child day care centers, family day care providers—Required postings—Disclosure of complaints.
43.215.530	Child day care centers, family day care providers—Public access to reports and enforcement action notices.
43.215.535	Day care insurance.
43.215.545	Child care services.

43.215.005 Finding—Purpose. (1) The legislature recognizes that:

(a) Parents are their children's first and most important teachers and decision makers;

(b) Research across disciplines now demonstrates that what happens in the earliest years makes a critical difference in children's readiness to succeed in school and life;

(c) Washington's competitiveness in the global economy requires a world-class education system that starts early and supports life-long learning;

(d) Washington state currently makes substantial investments in voluntary child care and early learning services and supports, but because services are fragmented across multiple state agencies, and early learning providers lack the supports and incentives needed to improve the quality of services they provide, many parents have difficulty accessing high quality early learning services;

(e) A more cohesive and integrated voluntary early learning system would result in greater efficiencies for the state, increased partnership between the state and the private sector, improved access to high quality early learning services, and better employment and early learning outcomes for families and all children.

(2) The legislature finds that the early years of a child's life are critical to the child's healthy brain development and that the quality of caregiving during the early years can significantly impact the child's intellectual, social, and emotional development.

(3) The purpose of this chapter is:

(a) To establish the department of early learning;

(b) To coordinate and consolidate state activities relating to child care and early learning programs;

(c) To safeguard and promote the health, safety, and well-being of children receiving child care and early learning assistance, which is paramount over the right of any person to provide care;

(d) To provide tools to promote the hiring of suitable providers of child care by:

(i) Providing parents with access to information regarding child care providers;

(ii) Providing parents with child care licensing action histories regarding child care providers; and

(iii) Requiring background checks of applicants for employment in any child care facility licensed or regulated under current law;

(e) To promote linkages and alignment between early learning programs and elementary schools and support the transition of children and families from prekindergarten environments to kindergarten;

(f) To promote the development of a sufficient number and variety of adequate child care and early learning facilities, both public and private; and

(g) To license agencies and to assure the users of such agencies, their parents, the community at large and the agencies themselves that adequate minimum standards are maintained by all child care and early learning facilities.

(4) This chapter does not expand the state's authority to license or regulate activities or programs beyond those licensed or regulated under existing law. [2007 c 415 § 1; 2006 c 265 § 101.]

Captions not law—2007 c 415: "Captions used in this act are not any part of the law." [2007 c 415 § 11.]

43.215.010 Definitions. The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

(1) "Agency" means any person, firm, partnership, association, corporation, or facility that provides child care and early learning services outside a child's own home and includes the following irrespective of whether there is compensation to the agency:

(a) "Child day care center" means an agency that regularly provides child day care and early learning services for a group of children for periods of less than twenty-four hours;

(b) "Early learning" includes but is not limited to programs and services for child care; state, federal, private, and nonprofit preschool; child care subsidies; child care resource and referral; parental education and support; and training and professional development for early learning professionals;

(c) "Family day care provider" means a child day care provider who regularly provides child day care and early learning services for not more than twelve children in the provider's home in the family living quarters;

(d) "Nongovernmental private-public partnership" means an entity registered as a nonprofit corporation in Washington state with a primary focus on early learning, school readiness, and parental support, and an ability to raise a minimum of five million dollars in contributions;

(e) "Service provider" means the entity that operates a community facility.

(2) "Agency" does not include the following:

(a) Persons related to the child in the following ways:

(i) Any blood relative, including those of half-blood, and including first cousins, nephews or nieces, and persons of preceding generations as denoted by prefixes of grand, great, or great-great;

(ii) Stepfather, stepmother, stepbrother, and stepsister;

(iii) A person who legally adopts a child or the child's parent as well as the natural and other legally adopted children of such persons, and other relatives of the adoptive parents in accordance with state law; or

(iv) Spouses of any persons named in (i), (ii), or (iii) of this subsection (2)(a), even after the marriage is terminated;

(b) Persons who are legal guardians of the child;

(c) Persons who care for a neighbor's or friend's child or children, with or without compensation, where the person providing care for periods of less than twenty-four hours does not conduct such activity on an ongoing, regularly scheduled basis for the purpose of engaging in business, which includes, but is not limited to, advertising such care;

(d) Parents on a mutually cooperative basis exchange care of one another's children;

(e) Nursery schools or kindergartens that are engaged primarily in educational work with preschool children and in which no child is enrolled on a regular basis for more than four hours per day;

(f) Schools, including boarding schools, that are engaged primarily in education, operate on a definite school year schedule, follow a stated academic curriculum, accept only school-age children, and do not accept custody of children;

(g) Seasonal camps of three months' or less duration engaged primarily in recreational or educational activities;

(h) Facilities providing care to children for periods of less than twenty-four hours whose parents remain on the premises to participate in activities other than employment;

(i) Any agency having been in operation in this state ten years before June 8, 1967, and not seeking or accepting monies or assistance from any state or federal agency, and is supported in part by an endowment or trust fund;

(j) An agency operated by any unit of local, state, or federal government or an agency, located within the boundaries of a federally recognized Indian reservation, licensed by the Indian tribe;

(k) An agency located on a federal military reservation, except where the military authorities request that such agency be subject to the licensing requirements of this chapter;

(l) An agency that offers early learning and support services, such as parent education, and does not provide child care services on a regular basis.

(3) "Applicant" means a person who requests or seeks employment in an agency.

(4) "Department" means the department of early learning.

(5) "Director" means the director of the department.

(6) "Employer" means a person or business that engages the services of one or more people, especially for wages or salary to work in an agency.

(7) "Enforcement action" means denial, suspension, revocation, modification, or nonrenewal of a license pursuant to RCW 43.215.300(1) or assessment of civil monetary penalties pursuant to RCW 43.215.300(3).

(8) "Probationary license" means a license issued as a disciplinary measure to an agency that has previously been issued a full license but is out of compliance with licensing standards.

(9) "Requirement" means any rule, regulation, or standard of care to be maintained by an agency. [2007 c 415 § 2; 2007 c 394 § 2; 2006 c 265 § 102.]

Reviser's note: This section was amended by 2007 c 394 § 2 and by 2007 c 415 § 2, each without reference to the other. Both amendments are incorporated in the publication of this section under RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

Captions not law—2007 c 415: See note following RCW 43.215.005.

Finding—Declaration—2007 c 394: "The legislature finds that education is the single most effective investment that can be made in children, the state, the economy, and the future. A well-educated citizenry is essential both for the preservation of democracy and for enhancing the state's ability to compete in the knowledge-based global economy.

As recommended by Washington learns, the legislature declares that the overarching goal for education in the state is to have a world-class, learner-focused, seamless education system that educates more Washingtonians to the highest levels of educational attainment." [2007 c 394 § 1.]

Captions not law—2007 c 394: "Captions used in this act are not any part of the law." [2007 c 394 § 8.]

43.215.020 Department created—Primary duties.

(1) The department of early learning is created as an executive branch agency. The department is vested with all powers and duties transferred to it under this chapter and such other powers and duties as may be authorized by law.

(2) The primary duties of the department are to implement state early learning policy and to coordinate, consolidate, and integrate child care and early learning programs in order to administer programs and funding as efficiently as possible. The department's duties include, but are not limited to, the following:

(a) To support both public and private sectors toward a comprehensive and collaborative system of early learning that serves parents, children, and providers and to encourage best practices in child care and early learning programs;

(b) To make early learning resources available to parents and caregivers;

(c) To carry out activities, including providing clear and easily accessible information about quality and improving the quality of early learning opportunities for young children, in cooperation with the nongovernmental private-public partnership;

(d) To administer child care and early learning programs;

(e) To standardize internal financial audits, oversight visits, performance benchmarks, and licensing criteria, so that programs can function in an integrated fashion;

(f) To support the implementation of the nongovernmental private-public partnership and cooperate with that partnership in pursuing its goals including providing data and support necessary for the successful work of the partnership;

(g) To work cooperatively and in coordination with the early learning council;

(h) To collaborate with the K-12 school system at the state and local levels to ensure appropriate connections and smooth transitions between early learning and K-12 programs; and

(i) Upon the development of an early learning information system, to make available to parents timely inspection and licensing action information through the internet and other means.

(3) The department's programs shall be designed in a way that respects and preserves the ability of parents and legal guardians to direct the education, development, and upbringing of their children. The department shall include parents and legal guardians in the development of policies

and program decisions affecting their children. [2007 c 394 § 5; 2006 c 265 § 103.]

Finding—Declaration—Captions not law—2007 c 394: See notes following RCW 43.215.010.

43.215.065 Policies to support children of incarcerated parents. (1)(a) The director of the department of early learning shall review current department policies and assess the adequacy and availability of programs targeted at persons who receive assistance who are the children and families of a person who is incarcerated in a department of corrections facility. Great attention shall be focused on programs and policies affecting foster youth who have a parent who is incarcerated.

(b) The director shall adopt policies that support the children of incarcerated parents and meet their needs with the goal of facilitating normal child development, while reducing intergenerational incarceration.

(2) The director shall conduct the following activities to assist in implementing the requirements of subsection (1) of this section:

(a) Gather information and data on the recipients of assistance who are the children and families of inmates incarcerated in department of corrections facilities; and

(b) Participate in the children of incarcerated parents advisory committee and report information obtained under this section to the advisory committee. [2007 c 384 § 4.]

Intent—Finding—2007 c 384: See note following RCW 72.09.495.

43.215.090 Early learning advisory council—State-wide early learning plan. (1) The early learning advisory council is established to advise the department on statewide early learning community needs and progress.

(2) The council shall work in conjunction with the department to develop a statewide early learning plan that crosses systems and sectors to promote alignment of private and public sector actions, objectives, and resources, and to ensure school readiness.

(3) The council shall include diverse, statewide representation from public, nonprofit, and for-profit entities. Its membership shall reflect regional, racial, and cultural diversity to adequately represent the needs of all children and families in the state.

(4) Council members shall serve two-year terms. However, to stagger the terms of the council, the initial appointments for twelve of the members shall be for one year. Once the initial one-year to two-year terms expire, all subsequent terms shall be for two years, with the terms expiring on June 30th of the applicable year. The terms shall be staggered in such a way that, where possible, the terms of members representing a specific group do not expire simultaneously.

(5) The council shall consist of not more than twenty-five members, as follows:

(a) The governor shall appoint at least one representative from each of the following: The department, the office of financial management, the department of social and health services, the department of health, the higher education coordinating board, and the state board for community and technical colleges;

(b) One representative from the office of the superintendent of public instruction, to be appointed by the superintendent of public instruction;

(c) The governor shall appoint at least seven leaders in early childhood education, with at least one representative with experience or expertise in each of the following areas: Children with disabilities, the K-12 system, family day care providers, and child care centers;

(d) Two members of the house of representatives, one from each caucus, and two members of the senate, one from each caucus, to be appointed by the speaker of the house of representatives and the president of the senate, respectively;

(e) Two parents, one of whom serves on the department's parent advisory council, to be appointed by the governor;

(f) Two representatives of the private-public partnership created in RCW 43.215.070, to be appointed by the partnership board;

(g) One representative designated by sovereign tribal governments; and

(h) One representative from the Washington federation of independent schools.

(6) The council shall be cochaired by one representative of a state agency and one nongovernmental member, to be elected by the council for two-year terms.

(7) Each member of the board shall be compensated in accordance with RCW 43.03.240 and reimbursed for travel expenses incurred in carrying out the duties of the board in accordance with RCW 43.03.050 and 43.03.060.

(8) The department shall provide staff support to the council. [2007 c 394 § 3.]

Finding—Declaration—Captions not law—2007 c 394: See notes following RCW 43.215.010.

43.215.100 Voluntary quality rating and improvement system—Report to the legislature. Subject to the availability of amounts appropriated for this specific purpose, the department, in collaboration with community and statewide partners, shall implement a voluntary quality rating and improvement system applicable to licensed or certified child care centers and homes and early education programs. The purpose of the voluntary quality rating and improvement system is to give parents clear and easily accessible information about the quality of child care and early education programs, support improvement in early learning programs throughout the state, increase the readiness of children for school, and close the disparity in access to quality care. Before final implementation of the voluntary quality rating and improvement system, the department shall report to the appropriate policy and fiscal committees of the legislature. Nothing in this section changes the department's responsibility to collectively bargain over mandatory subjects. [2007 c 394 § 4.]

Finding—Declaration—Captions not law—2007 c 394: See notes following RCW 43.215.010.

43.215.110 Partnership responsibilities—Department's duties—Partnership's duties. (1) In order to meet its partnership responsibilities, the department shall:

(a) Work collaboratively with the nongovernmental private-public partnership; and

(b) Actively seek public and private money for distribution as grants to the nongovernmental private-public partnership.

(2) In order to meet its partnership responsibilities, the nongovernmental private-public partnership shall:

(a) Work with and complement existing statewide efforts by enhancing parent resources and support, child care, preschool, and other early learning environments;

(b) Accept and expend funds to be used for quality improvement initiatives, including but not limited to parent resources and support, and support the alignment of existing funding streams and coordination of efforts across sectors;

(c) In conjunction with the department, provide leadership to early learning private-public partnerships forming in communities across the state. These local partnerships shall be encouraged to seek local funding and develop strategies to improve coordination and exchange information between the community, early care and education programs, and the K-12 system; and

(d) Assist the statewide movement to high quality early learning and the support of parents as a child's first and best teacher. [2007 c 394 § 6.]

Finding—Declaration—Captions not law—2007 c 394: See notes following RCW 43.215.010.

43.215.120 Parental notification of report alleging sexual misconduct or abuse—Notice of parental rights.

The department and an agency must, at the first opportunity but in all cases within forty-eight hours of receiving a report alleging sexual misconduct or abuse by an agency employee, notify the parents or guardian of a child alleged to be the victim, target, or recipient of the misconduct or abuse. The department and an agency shall provide parents annually with information regarding their rights under the public records act, chapter 42.56 RCW, to request the public records regarding the employee. [2007 c 415 § 8.]

Captions not law—2007 c 415: See note following RCW 43.215.005.

43.215.200 Director's licensing duties. It shall be the director's duty with regard to licensing:

(1) In consultation and with the advice and assistance of persons representative of the various type agencies to be licensed, to designate categories of child care facilities for which separate or different requirements shall be developed as may be appropriate whether because of variations in the ages and other characteristics of the children served, variations in the purposes and services offered or size or structure of the agencies to be licensed, or because of any other factor relevant thereto;

(2) In consultation and with the advice and assistance of parents or guardians, and persons representative of the various type agencies to be licensed, to adopt and publish minimum requirements for licensing applicable to each of the various categories of agencies to be licensed under this chapter;

(3) In consultation with law enforcement personnel, the director shall investigate the conviction record or pending charges of each agency and its staff seeking licensure or relicensure, and other persons having unsupervised access to children in care;

(4) To issue, revoke, or deny licenses to agencies pursuant to this chapter. Licenses shall specify the category of care

that an agency is authorized to render and the ages and number of children to be served;

(5) To prescribe the procedures and the form and contents of reports necessary for the administration of this chapter and to require regular reports from each licensee;

(6) To inspect agencies periodically to determine whether or not there is compliance with this chapter and the requirements adopted under this chapter;

(7) To review requirements adopted under this chapter at least every two years and to adopt appropriate changes after consultation with affected groups for child day care requirements; and

(8) To consult with public and private agencies in order to help them improve their methods and facilities for the care and early learning of children. [2007 c 415 § 3; 2006 c 265 § 301.]

Captions not law—2007 c 415: See note following RCW 43.215.005.

43.215.205 Minimum requirements for licensure.

Applications for licensure shall require, at a minimum, the following information:

(1) The size and suitability of a facility and the plan of operation for carrying out the purpose for which an applicant seeks a license;

(2) The character, suitability, and competence of an agency and other persons associated with an agency directly responsible for the care of children;

(3) The number of qualified persons required to render the type of care for which an agency seeks a license;

(4) The health, safety, cleanliness, and general adequacy of the premises to provide for the comfort, care, and well-being of children;

(5) The provision of necessary care and early learning, including food, supervision, and discipline; physical, mental, and social well-being; and educational and recreational opportunities for those served;

(6) The financial ability of an agency to comply with minimum requirements established under this chapter; and

(7) The maintenance of records pertaining to the care of children. [2007 c 415 § 4.]

Captions not law—2007 c 415: See note following RCW 43.215.005.

43.215.215 Character, suitability, and competence to provide child care and early learning services—Fingerprint criminal history record checks.

(1) In determining whether an individual is of appropriate character, suitability, and competence to provide child care and early learning services to children, the department may consider the history of past involvement of child protective services or law enforcement agencies with the individual for the purpose of establishing a pattern of conduct, behavior, or inaction with regard to the health, safety, or welfare of a child. No report of child abuse or neglect that has been destroyed or expunged under RCW 26.44.031 may be used for such purposes. No unfounded or inconclusive allegation of child abuse or neglect as defined in RCW 26.44.020 may be disclosed to a provider licensed under this chapter.

(2) In order to determine the suitability of applicants for an agency license, licensees, their employees, and other persons who have unsupervised access to children in care, and

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who have not resided in the state of Washington during the three-year period before being authorized to care for children, shall be fingerprinted.

(a) The fingerprints shall be forwarded to the Washington state patrol and federal bureau of investigation for a criminal history record check.

(b) The fingerprint criminal history record checks shall be at the expense of the licensee. The licensee may not pass this cost on to the employee or prospective employee, unless the employee is determined to be unsuitable due to his or her criminal history record.

(c) The director shall use the information solely for the purpose of determining eligibility for a license and for determining the character, suitability, and competence of those persons or agencies, excluding parents, not required to be licensed who are authorized to care for children.

(d) Criminal justice agencies shall provide the director such information as they may have and that the director may require for such purpose. [2007 c 415 § 5.]

Captions not law—2007 c 415: See note following RCW 43.215.005.

43.215.2201 Repealed. See Supplementary Table of Disposition of Former RCW Sections, this volume.

43.215.255 License fees. (1) The director shall charge fees to the licensee for obtaining a license. The director may waive the fees when, in the discretion of the director, the fees would not be in the best interest of public health and safety, or when the fees would be to the financial disadvantage of the state.

(2) Fees charged shall be based on, but shall not exceed, the cost to the department for the licensure of the activity or class of activities and may include costs of necessary inspection.

(3) The director shall establish the fees charged by rule. [2007 c 17 § 1.]

43.215.300 Licenses—Denial, suspension, revocation, modification, nonrenewal—Proceedings—Penalties.

(1) An agency may be denied a license, or any license issued pursuant to this chapter may be suspended, revoked, modified, or not renewed by the director upon proof (a) that the agency has failed or refused to comply with the provisions of this chapter or the requirements adopted pursuant to this chapter; or (b) that the conditions required for the issuance of a license under this chapter have ceased to exist with respect to such licenses. RCW 43.215.305 governs notice of a license denial, revocation, suspension, or modification and provides the right to an adjudicative proceeding.

(2) In any adjudicative proceeding regarding the denial, modification, suspension, or revocation of any license under this chapter, the department's decision shall be upheld if it is supported by a preponderance of the evidence.

(3) The department may assess civil monetary penalties upon proof that an agency has failed or refused to comply with the rules adopted under this chapter or that an agency subject to licensing under this chapter is operating without a license except that civil monetary penalties shall not be levied against a licensed foster home. Monetary penalties levied against unlicensed agencies that submit an application for

licensure within thirty days of notification and subsequently become licensed will be forgiven. These penalties may be assessed in addition to or in lieu of other disciplinary actions. Civil monetary penalties, if imposed, may be assessed and collected, with interest, for each day an agency is or was out of compliance. Civil monetary penalties shall not exceed seventy-five dollars per violation for a family day care home and two hundred fifty dollars per violation for child day care centers. Each day upon which the same or substantially similar action occurs is a separate violation subject to the assessment of a separate penalty. The department shall provide a notification period before a monetary penalty is effective and may forgive the penalty levied if the agency comes into compliance during this period. The department may suspend, revoke, or not renew a license for failure to pay a civil monetary penalty it has assessed pursuant to this chapter within ten days after such assessment becomes final. RCW 43.215.307 governs notice of a civil monetary penalty and provides the right to an adjudicative proceeding. The preponderance of evidence standard shall apply in adjudicative proceedings related to assessment of civil monetary penalties.

(4)(a) In addition to or in lieu of an enforcement action being taken, the department may place a child day care center or family day care provider on nonreferral status if the center or provider has failed or refused to comply with this chapter or rules adopted under this chapter or an enforcement action has been taken. The nonreferral status may continue until the department determines that: (i) No enforcement action is appropriate; or (ii) a corrective action plan has been successfully concluded.

(b) Whenever a child day care center or family day care provider is placed on nonreferral status, the department shall provide written notification to the child day care center or family day care provider.

(5) The department shall notify appropriate public and private child care resource and referral agencies of the department's decision to: (a) Take an enforcement action against a child day care center or family day care provider; or (b) place or remove a child day care center or family day care provider on nonreferral status. [2007 c 17 § 2; 2006 c 265 § 311.]

43.215.305 Licenses—Denial, revocation, suspension, or modification—Notice—Effective date of action—Adjudicative proceeding. (1) The department shall give written notice of the denial of an application for a license to the applicant or his or her agent. The department shall give written notice of revocation, suspension, or modification of a license to the licensee or his or her agent. The notice shall state the reasons for the action. The notice shall be personally served in the manner of service of a summons in a civil action or shall be given in another manner that shows proof of receipt.

(2) Except as otherwise provided in this subsection and in subsection (4) of this section, revocation, suspension, or modification is effective twenty-eight days after the licensee or the agent receives the notice.

(a) The department may make the date the action is effective later than twenty-eight days after receipt. If the department does so, it shall state the effective date in the written notice given the licensee or agent.

(b) The department may make the date the action is effective sooner than twenty-eight days after receipt when necessary to protect the public health, safety, or welfare. When the department does so, it shall state the effective date and the reasons supporting the effective date in the written notice given to the licensee or agent.

(c) When the department has received certification pursuant to chapter 74.20A RCW from the division of child support that the licensee is a person who is not in compliance with a support order, the department shall provide that the suspension is effective immediately upon receipt of the suspension notice by the licensee.

(3) Except for licensees suspended for noncompliance with a support order under chapter 74.20A RCW, a license applicant or licensee who is aggrieved by a department denial, revocation, suspension, or modification has the right to an adjudicative proceeding. The proceeding is governed by the administrative procedure act, chapter 34.05 RCW. The application must be in writing, state the basis for contesting the adverse action, include a copy of the adverse notice, be served on and received by the department within twenty-eight days of the license applicant's or licensee's receiving the adverse notice, and be served in a manner that shows proof of receipt.

(4)(a) If the department gives a licensee twenty-eight or more days' notice of revocation, suspension, or modification and the licensee files an appeal before its effective date, the department shall not implement the adverse action until the final order has been entered. The presiding or reviewing officer may permit the department to implement part or all of the adverse action while the proceedings are pending if the appellant causes an unreasonable delay in the proceeding, if the circumstances change so that implementation is in the public interest, or for other good cause.

(b) If the department gives a licensee less than twenty-eight days' notice of revocation, suspension, or modification and the licensee timely files a sufficient appeal, the department may implement the adverse action on the effective date stated in the notice. The presiding or reviewing officer may order the department to stay implementation of part or all of the adverse action while the proceedings are pending if staying implementation is in the public interest or for other good cause. [2007 c 17 § 3.]

43.215.307 Civil fines—Notice—Adjudicative proceeding. (1) The department shall give written notice to the person against whom it assesses a civil fine. The notice shall state the reasons for the adverse action. The notice shall be personally served in the manner of service of a summons in a civil action or shall be given in another manner that shows proof of receipt.

(2) Except as otherwise provided in subsection (4) of this section, the civil fine is due and payable twenty-eight days after receipt. The department may make the date the fine is due later than twenty-eight days after receipt. When the department does so, it shall state the effective date in the written notice given the person against whom it assesses the fine.

(3) The person against whom the department assesses a civil fine has the right to an adjudicative proceeding. The proceeding is governed by the administrative procedure act, chapter 34.05 RCW. The application must be in writing,

state the basis for contesting the fine, include a copy of the adverse notice, be served on and received by the department within twenty-eight days of the person's receiving the notice of civil fine, and be served in a manner that shows proof of receipt.

(4) If the person files a timely and sufficient appeal, the department shall not implement the action until the final order has been served. The presiding or reviewing officer may permit the department to implement part or all of the action while the proceedings are pending if the appellant causes an unreasonable delay in the proceedings or for other good cause. [2007 c 17 § 4.]

43.215.350 Negotiated rule making. The director shall have the power and it shall be the director's duty to engage in negotiated rule making pursuant to RCW 34.05.310(2)(a) with the exclusive representative of the family child care licensees selected in accordance with RCW 43.215.355 and with other affected interests before adopting requirements that affect family child care licensees. [2007 c 17 § 15.]

43.215.355 Negotiated rule making—Statewide unit of family child care licensees—Antitrust immunity, intent. (1) Solely for the purposes of negotiated rule making pursuant to RCW 34.05.310(2)(a) and 43.215.350, a statewide unit of all family child care licensees is appropriate. As of June 7, 2006, the exclusive representative of family child care licensees in the statewide unit shall be the representative selected as the majority representative in the election held under the directive of the governor to the secretary of the department of social and health services, dated September 16, 2005. If family child care licensees seek to select a different representative thereafter, the family child care licensees may request that the American arbitration association conduct an election and certify the results of the election.

(2) In enacting this section, the legislature intends to provide state action immunity under federal and state antitrust laws for the joint activities of family child care licensees and their exclusive representative to the extent such activities are authorized by this chapter. [2007 c 17 § 16.]

43.215.360 Minimum licensing requirements—Window blind pull cords. (1) Minimum licensing requirements under this chapter shall include a prohibition on the use of window blinds or other window coverings with pull cords or inner cords capable of forming a loop and posing a risk of strangulation to young children. Window blinds and other coverings that have been manufactured or properly retrofitted in a manner that eliminates the formation of loops posing a risk of strangulation are not prohibited under this section.

(2) When developing and periodically reviewing minimum licensing requirements related to safety of the premises, the director shall consult and give serious consideration to publications of the United States consumer product safety commission.

(3) The department may provide information as available regarding reduced cost or no-cost options for retrofitting or replacing unsafe window blinds and window coverings. [2007 c 299 § 1.]

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Short title—2007 c 299: "This act may be known and cited as the Jaclyn Frank act." [2007 c 299 § 2.]

43.215.370 Reporting actions against agency licensees—Posting on web site. For the purposes of reporting actions taken against agency licensees, upon the development of an early learning information system, the following actions shall be posted to the department's web site accessible by the public: Suspension, surrender, revocation, denial, stayed suspension, or reinstatement of a license. [2007 c 415 § 9.]

Captions not law—2007 c 415: See note following RCW 43.215.005.

43.215.502 Child care provider rules review. In conjunction with child care providers and other early learning leaders, the department shall review and revise child care provider rules in order to emphasize the need for mutual respect among parents, providers, and state staff who enforce rules. Revised rules shall clearly focus on keeping children safe and improving early learning outcomes for children. The department shall develop a plan by July 2007 that outlines the process and timelines to complete the rules review. Nothing in this section changes the department's responsibility to collectively bargain over mandatory subjects. [2007 c 394 § 7.]

Finding—Declaration—Captions not law—2007 c 394: See notes following RCW 43.215.010.

43.215.525 Child day care centers, family day care providers—Required postings—Disclosure of complaints. (1) Every child day care center and family day care provider shall prominently post the following items, clearly visible to parents and staff:

- (a) The license issued under this chapter;
- (b) The department's toll-free telephone number established by RCW 43.215.520;
- (c) The notice of any pending enforcement action. The notice must be posted immediately upon receipt. The notice must be posted for at least two weeks or until the violation causing the enforcement action is corrected, whichever is longer;

(d) A notice that inspection reports and any notices of enforcement actions for the previous three years are available from the licensee and the department; and

(e) Any other information required by the department.

(2) The department shall disclose the receipt, general nature, and resolution or current status of all complaints on record with the department after July 24, 2005, against a child day care center or family day care provider that result in an enforcement action. Information may be posted:

(a) On a web site; or

(b) In a physical location that is easily accessed by parents and potential employers.

(3) This section shall not be construed to require the disclosure of any information that is exempt from public disclosure under chapter 42.56 RCW. [2007 c 415 § 6; 2006 c 209 § 11; 2005 c 473 § 4. Formerly RCW 74.15.320.]

Captions not law—2007 c 415: See note following RCW 43.215.005.

Effective date—2006 c 209: See RCW 42.56.903.

Purpose—2005 c 473: See note following RCW 74.15.300.

43.215.530 Child day care centers, family day care providers—Public access to reports and enforcement action notices. (1) Every child day care center and family day care provider shall have readily available for review by the department, parents, and the public a copy of each inspection report and notice of enforcement action received by the center or provider from the department for the past three years. This subsection only applies to reports and notices received on or after July 24, 2005.

(2) The department shall make available to the public during business hours all inspection reports and notices of enforcement actions involving child day care centers and family day care providers. The department shall include in the inspection report a statement of the corrective measures taken by the center or provider.

(3) The department may make available on a publicly accessible web site all inspection reports and notices of licensing actions, including the corrective measures required or taken, involving child day care centers and family day care providers.

(4) This section shall not be construed to require the disclosure of any information that is exempt from public disclosure under chapter 42.56 RCW. [2007 c 415 § 7; 2006 c 209 § 12; 2005 c 473 § 5. Formerly RCW 74.15.330.]

Captions not law—2007 c 415: See note following RCW 43.215.005.

Effective date—2006 c 209: See RCW 42.56.903.

Purpose—2005 c 473: See note following RCW 74.15.300.

43.215.535 Day care insurance. (1) Every licensed child day care center shall, at the time of licensure or renewal and at any inspection, provide to the department proof that the licensee has day care insurance as defined in RCW 48.88.020, or is self-insured pursuant to chapter 48.90 RCW.

(a) Every licensed child day care center shall comply with the following requirements:

(i) Notify the department when coverage has been terminated;

(ii) Post at the day care center, in a manner likely to be observed by patrons, notice that coverage has lapsed or been terminated;

(iii) Provide written notice to parents that coverage has lapsed or terminated within thirty days of lapse or termination.

(b) Liability limits under this subsection shall be the same as set forth in RCW 48.88.050.

(c) The department may take action as provided in RCW 43.215.300 if the licensee fails to maintain in full force and effect the insurance required by this subsection.

(d) This subsection applies to child day care centers holding licenses, initial licenses, and probationary licenses under this chapter.

(e) A child day care center holding a license under this chapter on July 24, 2005, is not required to be in compliance with this subsection until the time of renewal of the license or until January 1, 2006, whichever is sooner.

(2)(a) Every licensed family day care provider shall, at the time of licensure or renewal either:

(i) Provide to the department proof that the licensee has day care insurance as defined in RCW 48.88.020, or other applicable insurance; or

(ii) Provide written notice of their insurance status on a standard form developed by the department to parents with a child enrolled in family day care and keep a copy of the notice to each parent on file. Family day care providers may choose to opt out of the requirement to have day care or other applicable insurance but must provide written notice of their insurance status to parents with a child enrolled and shall not be subject to the requirements of (b) or (c) of this subsection.

(b) Any licensed family day care provider that provides to the department proof that the licensee has insurance as provided under (a)(i) of this subsection shall comply with the following requirements:

(i) Notify the department when coverage has been terminated;

(ii) Post at the day care home, in a manner likely to be observed by patrons, notice that coverage has lapsed or been terminated;

(iii) Provide written notice to parents that coverage has lapsed or terminated within thirty days of lapse or termination.

(c) Liability limits under (a)(i) of this subsection shall be the same as set forth in RCW 48.88.050.

(d) The department may take action as provided in RCW 43.215.300 if the licensee fails to comply with the requirements of this subsection.

(e) A family day care provider holding a license under this chapter on July 24, 2005, is not required to be in compliance with this subsection until the time of renewal of the license or until January 1, 2006, whichever is sooner.

(3) Noncompliance or compliance with the provisions of this section shall not constitute evidence of liability or nonliability in any injury litigation. [2007 c 415 § 10; 2005 c 473 § 7. Formerly RCW 74.15.340.]

Captions not law—2007 c 415: See note following RCW 43.215.005.

Purpose—2005 c 473: See note following RCW 74.15.300.

43.215.545 Child care services. The department of early learning shall:

(1) Work in conjunction with the statewide child care resource and referral network as well as local governments, nonprofit organizations, businesses, and community child care advocates to create local child care resource and referral organizations. These organizations may carry out needs assessments, resource development, provider training, technical assistance, and parent information and training;

(2) Actively seek public and private money for distribution as grants to the statewide child care resource and referral network and to existing or potential local child care resource and referral organizations;

(3) Adopt rules regarding the application for and distribution of grants to local child care resource and referral organizations. The rules shall, at a minimum, require an applicant to submit a plan for achieving the following objectives:

(a) Provide parents with information about child care resources, including location of services and subsidies;

(b) Carry out child care provider recruitment and training programs, including training under RCW 74.25.040;

(c) Offer support services, such as parent and provider seminars, toy-lending libraries, and substitute banks;

(d) Provide information for businesses regarding child care supply and demand;

(e) Advocate for increased public and private sector resources devoted to child care;

(f) Provide technical assistance to employers regarding employee child care services; and

(g) Serve recipients of temporary assistance for needy families and working parents with incomes at or below household incomes of one hundred seventy-five percent of the federal poverty line;

(4) Provide staff support and technical assistance to the statewide child care resource and referral network and local child care resource and referral organizations;

(5) Maintain a statewide child care licensing data bank and work with department licensors to provide information to local child care resource and referral organizations about licensed child care providers in the state;

(6) Through the statewide child care resource and referral network and local resource and referral organizations, compile data about local child care needs and availability for future planning and development;

(7) Coordinate with the statewide child care resource and referral network and local child care resource and referral organizations for the provision of training and technical assistance to child care providers; and

(8) Collect and assemble information regarding the availability of insurance and of federal and other child care funding to assist state and local agencies, businesses, and other child care providers in offering child care services. [2006 c 265 § 204; 2005 c 490 § 10; 1997 c 58 § 404; 1993 c 453 § 2; 1991 sp.s. c 16 § 924; 1989 c 381 § 5. Formerly RCW 74.13.0903.]

Part headings not law—Effective date—Severability—2006 c 265: See RCW 43.215.904 through 43.215.906.

Effective date—2005 c 490: See note following RCW 43.215.540.

Finding—1997 c 58: "The legislature finds that informed choice is consistent with individual responsibility and that parents should be given a range of options for available child care while participating in the program." [1997 c 58 § 401.]

Short title—Part headings, captions, table of contents not law—Exemptions and waivers from federal law—Conflict with federal requirements—Severability—1997 c 58: See RCW 74.08A.900 through 74.08A.904.

Finding—1993 c 453: "The legislature finds that building a system of quality, affordable child care requires coordinated efforts toward constructing partnerships at state and community levels. Through the office of child care policy, the department of social and health services is responsible for facilitating the coordination of child care efforts and establishing working partnerships among the affected entities within the public and private sectors. Through these collaborative efforts, the office of child care policy encouraged the coalition of locally based child care resource and referral agencies into a statewide network. The statewide network, in existence since 1989, supports the development and operation of community-based resource and referral programs, improves the quality and quantity of child care available in Washington by fostering statewide strategies, and generates then nurtures effective public-private partnerships. The statewide network provides important training, standards of service, and general technical assistance to its locally based child care resource and referral programs. The locally based programs enrich the availability, affordability, and quality of child care in their communities." [1993 c 453 § 1.]

Effective date—1993 c 453: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and shall take effect immediately [May 17, 1993]." [1993 c 453 § 3.]

[2007 RCW Supp—page 554]

Severability—Effective date—1991 sp.s. c 16: See notes following RCW 9.46.100.

Findings—Severability—1989 c 381: See notes following RCW 74.13.085.

Chapter 43.300 RCW

DEPARTMENT OF FISH AND WILDLIFE

Sections

43.300.080 Cost-reimbursement agreements.

43.300.090 Notification requirements.

43.300.080 Cost-reimbursement agreements. (1) The department may enter into a written cost-reimbursement agreement with a permit applicant or project proponent to recover from the applicant or proponent the reasonable costs incurred by the department in carrying out the requirements of this chapter, as well as the requirements of other relevant laws, as they relate to permit coordination, environmental review, application review, technical studies, and permit processing. The cost-reimbursement agreement shall identify the specific tasks, costs, and schedule for work to be conducted under the agreement.

(2) The written cost-reimbursement agreement shall be negotiated with the permit applicant or project proponent. Under the provisions of a cost-reimbursement agreement, funds from the applicant shall be used by the department to contract with an independent consultant to carry out the work covered by the cost-reimbursement agreement. The department may also use funds provided under a cost-reimbursement agreement to assign current staff to review the work of the consultant, to provide necessary technical assistance when an independent consultant with comparable technical skills is unavailable, and to recover reasonable and necessary direct and indirect costs that arise from processing the permit. The department shall, in developing the agreement, ensure that final decisions that involve policy matters are made by the agency and not by the consultant. The department shall make an estimate of the number of permanent staff hours to process the permits, and shall contract with consultants to replace the time and functions committed by these permanent staff to the project. The billing process shall provide for accurate time and cost accounting and may include a billing cycle that provides for progress payments. Use of cost-reimbursement agreements shall not reduce the current level of staff available to work on permits not covered by cost-reimbursement agreements. The department may not use any funds under a cost-reimbursement agreement to replace or supplant existing funding. The restrictions of chapter 42.52 RCW apply to any cost-reimbursement agreement, and to any person hired as a result of a cost-reimbursement agreement. [2007 c 94 § 13; 2003 c 70 § 4; 2000 c 251 § 5.]

Intent—Captions not law—Effective date—2000 c 251: See notes following RCW 43.21A.690.

43.300.090 Notification requirements. Actions under this chapter are subject to the notification requirements of RCW 43.17.400. [2007 c 62 § 6.]

Finding—Intent—Severability—2007 c 62: See notes following RCW 43.17.400.

Chapter 43.325 RCW

ENERGY FREEDOM PROGRAM

Sections

43.325.001	Findings—2006 c 171. (<i>Expires June 30, 2016.</i>)
43.325.005	Findings—2007 c 348.
43.325.010	Definitions. (<i>Expires June 30, 2016.</i>)
43.325.020	Energy freedom program—Established. (<i>Expires June 30, 2016.</i>)
43.325.030	Coordinator—Duties.
43.325.040	Energy freedom account—Green energy incentive account. (<i>Expires June 30, 2016.</i>)
43.325.050	Director's report. (<i>Expires June 30, 2016.</i>)
43.325.060	Suspension or cancellation of assistance. (<i>Expires June 30, 2016.</i>)
43.325.070	Applications—Criteria. (<i>Expires June 30, 2016.</i>)
43.325.080	Electricity and biofuel usage goals—Rules.
43.325.090	Refueling projects.
43.325.100	Framework to mitigate climate change—Report.
43.325.110	Vehicle electrification demonstration grant program.
43.325.900	Expiration date—Transfer of moneys—2006 c 171 §§ 1-7.
43.325.901	Severability—2006 c 171.
43.325.902	Servicing and management of projects in effect before July 1, 2007.
43.325.903	Part headings not law—2007 c 348.
43.325.904	Effective date—2007 c 348 §§ 205 and 301-307.

43.325.001 Findings—2006 c 171. (*Expires June 30, 2016.*) The legislature finds that:

(1) Washington's dependence on energy supplied from outside the state and volatile global energy markets makes its economy and citizens vulnerable to unpredictable and high energy prices;

(2) Washington's dependence on petroleum-based fuels increases energy costs for citizens and businesses;

(3) Diesel soot from diesel engines ranks as the highest toxic air pollutant in Washington, leading to hundreds of premature deaths and increasing rates of asthma and other lung diseases;

(4) The use of biodiesel results in significantly less air pollution than traditional diesel fuels;

(5) Improper disposal and treatment of organic waste from farms and livestock operations can have a significant negative impact on water quality;

(6) Washington has abundant supplies of organic wastes from farms that can be used for energy production and abundant farmland where crops could be grown to supplement or supplant petroleum-based fuels;

(7) The use of energy and fuel derived from these sources can help citizens and businesses conserve energy and reduce the use of petroleum-based fuels, would improve air and water quality in Washington, reduce environmental risks from farm wastes, create new markets for farm products, and provide new industries and jobs for Washington citizens;

(8) The bioenergy industry is a new and developing industry that is, in part, limited by the availability of capital for the construction of facilities for converting farm and forest products into energy and fuels;

(9) Instead of leaving our economy at the mercy of global events, and the policies of foreign nations, Washington state should adopt a policy of energy independence; and

(10) The energy freedom program is meant to lead Washington state towards energy independence.

Therefore, the legislature finds that it is in the public interest to encourage the rapid adoption and use of bioenergy, to develop a viable bioenergy industry within Washington state, to promote public research and development in bioen-

ergy sources and markets, and to support a viable agriculture industry to grow bioenergy crops. To accomplish this, the energy freedom program is established to promote public research and development in bioenergy, and to stimulate the construction of facilities in Washington to generate energy from farm sources or convert organic matter into fuels. [2006 c 171 § 1. Formerly RCW 15.110.005.]

43.325.005 Findings—2007 c 348. (1) The legislature finds that excessive dependence on fossil fuels jeopardizes Washington's economic security, environmental integrity, and public health. Accelerated development and use of clean fuels and clean vehicle technologies will reduce the drain on Washington's economy from importing fossil fuels. As fossil fuel prices rise, clean fuels and vehicles can save consumers money while promoting the development of a major, sustainable industry that provides good jobs and a new source of rural prosperity. In addition, clean fuels and vehicles protect public health by reducing toxic air and climate change emissions.

(2) The legislature also finds that climate change is expected to have significant impacts in the Pacific Northwest region in the near and long-term future. These impacts include: Increased temperatures, declining snowpack, more frequent heavy rainfall and flooding, receding glaciers, rising sea levels, increased risks to public health due to insect and rodent-borne diseases, declining salmon populations, and increased drought and risk of forest fires. The legislature recognizes the need at this time to continue to gather and analyze information related to climate protection. This analysis will allow prudent steps to be taken to avoid, mitigate, or respond to climate impacts and protect our communities.

(3) Finally, the legislature finds that to reduce fossil fuel dependence, build our clean energy economy, and reduce climate impacts, the state should develop policies and incentives that help businesses, consumers, and farmers gain greater access to affordable clean fuels and vehicles and to produce clean fuels in the state. These policies and incentives should include: Incentives for replacement of the most polluting diesel engines, especially in school buses; transitional incentives for development of the most promising in-state clean fuels and fuel feedstocks, including biodiesel crops, ethanol from plant waste, and liquid natural gas from landfill or wastewater treatment gases; reduced fossil fuel consumption by state fleets; development of promising new technologies for displacing petroleum with electricity, such as "plug-in hybrids"; and impact analysis and emission accounting procedures that prepare Washington to respond and prosper as climate change impacts occur, and as policies and markets to reduce climate pollution are developed. [2007 c 348 § 1.]

43.325.010 Definitions. (*Expires June 30, 2016.*) The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

(1) "Applicant" means any political subdivision of the state, including port districts, counties, cities, towns, special purpose districts, and other municipal corporations or quasi-municipal corporations. "Applicant" may also include feder-

ally recognized tribes and state institutions of higher education with appropriate research capabilities.

(2) "Alternative fuel" means all products or energy sources used to propel motor vehicles, other than conventional gasoline, diesel, or reformulated gasoline. "Alternative fuel" includes, but is not limited to, cellulose, liquefied petroleum gas, liquefied natural gas, compressed natural gas, bio-fuels, biodiesel fuel, E85 motor fuel, fuels containing seventy percent or more by volume of alcohol fuel, fuels that are derived from biomass, hydrogen fuel, anhydrous ammonia fuel, nonhazardous motor fuel, or electricity, excluding onboard electric generation.

(3) "Assistance" includes loans, leases, product purchases, or other forms of financial or technical assistance.

(4) "Biofuel" includes, but is not limited to, biodiesel, ethanol, and ethanol blend fuels and renewable liquid natural gas or liquid compressed natural gas made from biogas.

(5) "Biogas" includes waste gases derived from landfills and wastewater treatment plants and dairy and farm wastes.

(6) "Cellulose" means lignocellulosic, hemicellulosic, or other cellulosic matter that is available on a renewable or recurring basis, including dedicated energy crops and trees, wood and wood residues, plants, grasses, agricultural residues, fibers, animal wastes and other waste materials, and municipal solid waste.

(7) "Coordinator" means the person appointed by the director of the department of community, trade, and economic development.

(8) "Department" means the department of community, trade, and economic development.

(9) "Director" means the director of the department of community, trade, and economic development.

(10) "Green highway zone" means an area in the state designated by the department that is within reasonable proximity of state route number 5, state route number 90, and state route number 82.

(11) "Peer review committee" means a board, appointed by the director, that includes bioenergy specialists, energy conservation specialists, scientists, and individuals with specific recognized expertise.

(12) "Project" means the construction of facilities, including the purchase of equipment, to convert farm products or wastes into electricity or gaseous or liquid fuels or other coproducts associated with such conversion. These specifically include fixed or mobile facilities to generate electricity or methane from the anaerobic digestion of organic matter, and fixed or mobile facilities for extracting oils from canola, rape, mustard, and other oilseeds. "Project" may also include the construction of facilities associated with such conversion for the distribution and storage of such feedstocks and fuels.

(13) "Refueling project" means the construction of new alternative fuel refueling facilities, as well as upgrades and expansion of existing refueling facilities, that will enable these facilities to offer alternative fuels to the public.

(14) "Research and development project" means research and development, by an institution of higher education as defined in subsection (1) of this section, relating to:

(a) Bioenergy sources including but not limited to biomass and associated gases; or

(b) The development of markets for bioenergy coproducts. [2007 c 348 § 301; 2006 c 171 § 2. Formerly RCW 15.110.010.]

43.325.020 Energy freedom program—Established. (Expires June 30, 2016.) (1) The energy freedom program is established within the department. The director may establish policies and procedures necessary for processing, reviewing, and approving applications made under this chapter.

(2) When reviewing applications submitted under this program, the director shall consult with those agencies and other public entities having expertise and knowledge to assess the technical and business feasibility of the project and probability of success. These agencies may include, but are not limited to, Washington State University, the University of Washington, the department of ecology, the department of natural resources, the department of agriculture, the department of general administration, local clean air authorities, and the Washington state conservation commission.

(3) Except as provided in subsection (4) of this section, the director, in cooperation with the department of agriculture, may approve an application only if the director finds:

(a) The project will convert farm products, wastes, cellulose, or biogas directly into electricity or biofuel or other coproducts associated with such conversion;

(b) The project demonstrates technical feasibility and directly assists in moving a commercially viable project into the marketplace for use by Washington state citizens;

(c) The facility will produce long-term economic benefits to the state, a region of the state, or a particular community in the state;

(d) The project does not require continuing state support;

(e) The assistance will result in new jobs, job retention, or higher incomes for citizens of the state;

(f) The state is provided an option under the assistance agreement to purchase a portion of the fuel or feedstock to be produced by the project, exercisable by the department of general administration;

(g) The project will increase energy independence or diversity for the state;

(h) The project will use feedstocks produced in the state, if feasible, except this criterion does not apply to the construction of facilities used to distribute and store fuels that are produced from farm products or wastes;

(i) Any product produced by the project will be suitable for its intended use, will meet accepted national or state standards, and will be stored and distributed in a safe and environmentally sound manner;

(j) The application provides for adequate reporting or disclosure of financial and employment data to the director, and permits the director to require an annual or other periodic audit of the project books; and

(k) For research and development projects, the application has been independently reviewed by a peer review committee as defined in RCW 43.325.010 and the findings delivered to the director.

(4) When reviewing an application for a refueling project, the coordinator may award a grant or a loan to an applicant if the director finds:

(a) The project will offer alternative fuels to the motoring public;

(b) The project does not require continued state support;

(c) The project is located within a green highway zone as defined in RCW 43.325.010;

(d) The project will contribute towards an efficient and adequately spaced alternative fuel refueling network along the green highways designated in RCW 47.17.020, 47.17.135, and 47.17.140; and

(e) The project will result in increased access to alternative fueling infrastructure for the motoring public along the green highways designated in RCW 47.17.020, 47.17.135, and 47.17.140.

(5)(a) The director may approve a project application for assistance under subsection (3) of this section up to five million dollars. In no circumstances shall this assistance constitute more than fifty percent of the total project cost.

(b) The director may approve a refueling project application for a grant or a loan under subsection (4) of this section up to fifty thousand dollars. In no circumstances shall a grant or a loan award constitute more than fifty percent of the total project cost.

(6) The director shall enter into agreements with approved applicants to fix the terms and rates of the assistance to minimize the costs to the applicants, and to encourage establishment of a viable bioenergy or biofuel industry. The agreement shall include provisions to protect the state's investment, including a requirement that a successful applicant enter into contracts with any partners that may be involved in the use of any assistance provided under this program, including services, facilities, infrastructure, or equipment. Contracts with any partners shall become part of the application record.

(7) The director may defer any payments for up to twenty-four months or until the project starts to receive revenue from operations, whichever is sooner. [2007 c 348 § 302; 2006 c 171 § 3. Formerly RCW 15.110.020.]

43.325.030 Coordinator—Duties. The director of the department shall appoint a coordinator that is responsible for:

(1) Managing, directing, inventorying, and coordinating state efforts to promote, develop, and encourage a biofuels market in Washington;

(2) Developing, coordinating, and overseeing the implementation of a plan, or series of plans, for the production, transport, distribution, and delivery of biofuels produced predominantly from recycled products or Washington feedstocks;

(3) Working with the departments of transportation and general administration, and other applicable state and local governmental entities and the private sector, to ensure the development of biofuel fueling stations for use by state and local governmental motor vehicle fleets, and to provide greater availability of public biofuel fueling stations for use by state and local governmental motor vehicle fleets;

(4) Coordinating with the Western Washington University alternative automobile program for opportunities to support new Washington state technology for conversion of fossil fuel fleets to biofuel, hybrid, or alternative fuel propulsion;

(5) Coordinating with the University of Washington's college of forest management and the Olympic natural resources center for the identification of barriers to using the state's forest resources for fuel production, including the economic and transportation barriers of physically bringing forest biomass to the market;

(6) Coordinating with the department of agriculture and Washington State University for the identification of other barriers for future biofuels development and development of strategies for furthering the penetration of the Washington state fossil fuel market with Washington produced biofuels, particularly among public entities. [2007 c 348 § 205.]

43.325.040 Energy freedom account—Green energy incentive account. (Expires June 30, 2016.)

(1) The energy freedom account is created in the state treasury. All receipts from appropriations made to the account and any loan payments of principal and interest derived from loans made under this chapter must be deposited into the account. Monies in the account may be spent only after appropriation. Expenditures from the account may be used only for assistance for projects consistent with this chapter or otherwise authorized by the legislature.

(2) The green energy incentive account is created in the state treasury as a subaccount of the energy freedom account. All receipts from appropriations made to the green energy incentive account shall be deposited into the account, and may be spent only after appropriation. Expenditures from the account may be used only for:

(a) Refueling projects awarded under this chapter;

(b) Pilot projects for plug-in hybrids, including grants provided for the electrification program set forth in RCW 43.325.110; and

(c) Demonstration projects developed with state universities as defined in RCW 28B.10.016 and local governments that result in the design and building of a hydrogen vehicle fueling station.

(3) Any state agency receiving funding from the energy freedom account is prohibited from retaining greater than three percent of any funding provided from the energy freedom account for administrative overhead or other deductions not directly associated with conducting the research, projects, or other end products that the funding is designed to produce unless this provision is waived in writing by the director.

(4) Any university, institute, or other entity that is not a state agency receiving funding from the energy freedom account is prohibited from retaining greater than fifteen percent of any funding provided from the energy freedom account for administrative overhead or other deductions not directly associated with conducting the research, projects, or other end products that the funding is designed to produce.

(5) Subsections (2) through (4) of this section do not apply to assistance awarded for projects under RCW 43.325.020(3). [2007 c 348 § 305; 2006 c 371 § 223; 2006 c 171 § 6. Formerly RCW 15.110.050.]

Part headings not law—2006 c 371: "Part headings in this act are not any part of the law." [2006 c 371 § 240.]

Severability—2006 c 371: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [2006 c 371 § 241.]

Effective date—2006 c 371: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately [March 31, 2006]." [2006 c 371 § 242.]

43.325.050 Director's report. (Expires June 30, 2016.) The director shall report to the legislature and governor on the status of the energy freedom program created under this chapter, on or before December 1, 2006, and annually thereafter. This report must include information on the projects that have been funded, the status of these projects, and their environmental, energy savings, and job creation benefits. [2006 c 171 § 7. Formerly RCW 15.110.060.]

43.325.060 Suspension or cancellation of assistance. (Expires June 30, 2016.) (1) Upon written notice to the recipient of any assistance under this program, the director may suspend or cancel the assistance if any of the following occur:

(a) The recipient fails to make satisfactory and reasonable progress to complete the project, or the director concludes the recipient will be unable to complete the project or any portion of it; or

(b) The recipient has made misrepresentations in any information furnished to the director in connection with the project.

(2) In the event that any assistance has been awarded to the recipient under this program at the time of breach, or failure of the recipient to satisfactorily perform, the director may require that the full amount or value of the assistance, or a portion thereof, be repaid within a period specified by the director. [2006 c 171 § 4. Formerly RCW 15.110.030.]

43.325.070 Applications—Criteria. (Expires June 30, 2016.) (1) If the total requested dollar amount of assistance awarded for projects under RCW 43.325.020(3) exceeds the amount available in the energy freedom account created in RCW 43.325.040, the applications must be prioritized based upon the following criteria:

(a) The extent to which the project will help reduce dependence on petroleum fuels and imported energy either directly or indirectly;

(b) The extent to which the project will reduce air and water pollution either directly or indirectly;

(c) The extent to which the project will establish a viable bioenergy or biofuel production capacity in Washington;

(d) The benefits to Washington's agricultural producers;

(e) The benefits to the health of Washington's forests;

(f) The beneficial uses of biogas; and

(g) The number and quality of jobs and economic benefits created by the project.

(2) This section does not apply to grants or loans awarded for refueling projects under RCW 43.325.020(4). [2007 c 348 § 303; 2006 c 171 § 5. Formerly RCW 15.110.040.]

43.325.080 Electricity and biofuel usage goals—Rules. By June 1, 2010, the department shall adopt rules to define practicability and clarify how state agencies and local government subdivisions will be evaluated in determining

whether they have met the goals set out in RCW 43.19.648(1). At a minimum, the rules must address:

(1) Criteria for determining how the goal in RCW 43.19.648(1) will be met by June 1, 2015;

(2) Factors considered to determine compliance with the goal in RCW 43.19.648(1), including but not limited to: The regional availability of fuels; vehicle costs; differences between types of vehicles, vessels, or equipment; the cost of program implementation; and cost differentials in different parts of the state; and

(3) A schedule for phased-in progress towards meeting the goal in RCW 43.19.648(1) that may include different schedules for different fuel applications or different quantities of biofuels. [2007 c 348 § 204.]

43.325.090 Refueling projects. If the total requested dollar amount of funds for refueling projects under RCW 43.325.020(4) exceeds the amount available for refueling projects in the energy freedom account created in RCW 43.325.040, the applications must be prioritized based upon the following criteria:

(1) The extent to which the project will help reduce dependence on petroleum fuels and imported energy either directly or indirectly;

(2) The extent to which the project will reduce air and water pollution either directly or indirectly;

(3) The extent to which the project will establish a viable bioenergy production capacity in Washington;

(4) The extent to which the project will make biofuels more accessible to the motoring public;

(5) The benefits to Washington's agricultural producers; and

(6) The number and quality of jobs and economic benefits created by the project. [2007 c 348 § 304.]

43.325.100 Framework to mitigate climate change—Report. (1) The department of community, trade, and economic development and the department of ecology shall develop a framework for the state of Washington to participate in emerging regional, national, and to the extent possible, global markets to mitigate climate change, on a multisector basis. This framework must include, but not be limited to, credible, verifiable, replicable inventory and accounting methodologies for each sector involved, along with the completion of the stakeholder process identified in executive order number 07-02 creating the Washington state climate change challenge.

(2) The department of community, trade, and economic development and the department of ecology shall include the forestry sector and work closely with the department of natural resources on those recommendations.

(3) The department must provide a report to the legislature by December 1, 2008. The report may be included within the report produced for executive order number 07-02. [2007 c 348 § 403.]

43.325.110 Vehicle electrification demonstration grant program. (1) The vehicle electrification demonstration grant program is established within the department of community, trade, and economic development. The director

may establish policies and procedures necessary for processing, reviewing, and approving applications made under this chapter.

(2) The director may approve an application for a vehicle electrification demonstration project only if the director finds:

(a) The applicant is a state agency, public school district, public utility district, or a political subdivision of the state, including port districts, counties, cities, towns, special purpose districts, and other municipal corporations or quasi-municipal corporations or a state institution of higher education;

(b) The project partially funds the purchase of or conversion of existing vehicles to plug-in hybrid electric vehicles or battery electric vehicles for use in the applicant's fleet or operations;

(c) The project partners with an electric utility and demonstrates technologies to allow controlled vehicle charging, including the use of power electronics or wireless technologies, to regulate time-of-day and duration of charging;

(d) The project provides matching resources; and

(e) The project provides evaluation of fuel savings, greenhouse gas reductions, battery capabilities, energy management system, charge controlling technologies, and other relevant information determined on the advice of the vehicle electrification work group.

(3) The director may approve an application for a vehicle electrification demonstration project if the project, in addition to meeting the requirements of subsection (2) of this section, also demonstrates charging using on-site renewable resources or vehicle-to-grid capabilities that enable the vehicle to discharge electricity into the grid. [2007 c 348 § 408.]

43.325.900 Expiration date—Transfer of moneys—2006 c 171 §§ 1-7. Sections 1 through 7 of this act expire June 30, 2016. Any moneys in the energy freedom account on that date and any moneys received pursuant to assistance made under this chapter must be deposited in the general fund. [2006 c 171 § 11. Formerly RCW 15.110.900.]

43.325.901 Severability—2006 c 171. If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected. [2006 c 171 § 15. Formerly RCW 15.110.901.]

43.325.902 Servicing and management of projects in effect before July 1, 2007. (1) Energy freedom program projects funded pursuant to RCW 43.325.040 or by the legislature pursuant to sections 191 and 192, chapter 371, Laws of 2006 for which the department of agriculture has signed loan agreements and disbursed funds prior to June 30, 2007, shall continue to be serviced by the department of agriculture.

(2) Energy freedom program projects funded pursuant to RCW 43.325.040 or by the legislature pursuant to sections 191 and 192, chapter 371, Laws of 2006 for which moneys have been appropriated but loan agreements or disbursements have not been completed must be transferred to the department for project management on July 1, 2007, subject to the

ongoing requirements of the energy freedom program. [2007 c 348 § 307.]

43.325.903 Part headings not law—2007 c 348. Part headings used in this act are not any part of the law. [2007 c 348 § 501.]

43.325.904 Effective date—2007 c 348 §§ 205 and 301-307. Sections 205 and 301 through 307 of this act are necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and take effect July 1, 2007. [2007 c 348 § 503.]

Chapter 43.330 RCW

DEPARTMENT OF COMMUNITY, TRADE, AND ECONOMIC DEVELOPMENT

Sections

43.330.010	Definitions.
43.330.080	Coordination of community and economic development services—Contracts with county-designated associate development organizations—Scope of services.
43.330.082	Contracting associate development organizations—Performance measures—Remediation plans—Reports.
43.330.084	Washington state quality award—Reimbursement of application fee.
43.330.086	Contracts with associate development organizations—Schedule of awards.
43.330.090	Economic diversification strategies—Targeted industry clusters—Film and video production—Industry cluster advisory committee.
43.330.094	Tourism development and promotion account—Promotion of tourism industry.
43.330.095	Repealed.
43.330.096	Recodified as RCW 43.336.060.
43.330.270	Innovation partnership zones.
43.330.280	Innovation partnerships—Duties of state economic development commission and workforce training and education coordinating board—Working group.
43.330.290	Microenterprise development program.

43.330.010 Definitions. Unless the context clearly requires otherwise, the definitions in this section apply throughout this chapter.

(1) "Associate development organization" means a local economic development nonprofit corporation that is broadly representative of community interests.

(2) "Department" means the department of community, trade, and economic development.

(3) "Director" means the director of the department of community, trade, and economic development.

(4) "Financial institution" means a bank, trust company, mutual savings bank, savings and loan association, or credit union authorized to do business in this state under state or federal law.

(5) "Microenterprise development organization" means a community development corporation, a nonprofit development organization, a nonprofit social services organization or other locally operated nonprofit entity that provides services to low-income entrepreneurs.

(6) "Statewide microenterprise association" means a nonprofit entity with microenterprise development organizations as members that serves as an intermediary between the department of community, trade, and economic development

and local microenterprise development organizations. [2007 c 322 § 2; 1993 c 280 § 3.]

Findings—Purpose—Intent—2007 c 322: See note following RCW 43.330.290.

43.330.080 Coordination of community and economic development services—Contracts with county-designated associate development organizations—Scope of services. The department shall contract with county-designated associate development organizations to increase the support for and coordination of community and economic development services in communities or regional areas. The organizations contracted with in each community or regional area shall be broadly representative of community and economic interests. The organization shall be capable of identifying key economic and community development problems, developing appropriate solutions, and mobilizing broad support for recommended initiatives. The contracting organization shall work with and include local governments, local chambers of commerce, workforce development councils, port districts, labor groups, institutions of higher education, community action programs, and other appropriate private, public, or nonprofit community and economic development groups. The scope of services delivered under these contracts shall include two broad areas of work:

(1) Direct assistance, including business planning, to companies who need support to stay in business, expand, or relocate to Washington from out of state or other countries. Assistance includes:

(a) Working with the appropriate partners, including but not limited to, local governments, workforce development organizations, port districts, community colleges and higher education institutions, export assistance providers, the Washington manufacturing services, the Washington state quality award, council, small business assistance programs, and other federal, state, and local programs to facilitate the alignment of planning efforts and the seamless delivery of business support services in the county;

(b) Providing information on state and local permitting processes, tax issues, and other essential information for operating, expanding, or locating a business in Washington;

(c) Marketing Washington and local areas as excellent locations to expand or relocate a business and positioning Washington as a globally competitive place to grow business, which may include developing and executing regional plans to attract companies from out of state;

(d) Working with businesses on site location and selection assistance;

(e) Providing business retention and expansion services, including business outreach and monitoring efforts to identify and address challenges and opportunities faced by businesses; and

(f) Participate [Participating] in economic development system-wide discussions regarding gaps in business start-up assistance in Washington; and

(2) Support for regional economic research and regional planning efforts to implement target industry strategies and other economic development strategies that support increased living standards and increase foreign direct investment throughout Washington. Activities include:

(a) Participation in regional planning efforts involving combined strategies around workforce development and economic development policies and programs. The contracting organization shall participate with the state board for community and technical colleges as created in RCW 28B.50.050, and any community and technical colleges in providing for the coordination of job skills training within its region;

(b) Collecting and reporting data as specified by the contract with the department for statewide systemic analysis. The department shall consult with the Washington state economic development commission in the establishment of such uniform data as is needed to conduct a statewide systemic analysis of the state's economic development programs and expenditures. In cooperation with other local, regional, and state planning efforts, contracting organizations may provide insight into the needs of target industry clusters, business expansion plans, early detection of potential relocations or layoffs, training needs, and other appropriate economic information;

(c) In conjunction with other governmental jurisdictions and institutions, participate in the development of a county-wide economic development plan, consistent with the state comprehensive plan for economic development developed by the Washington state economic development commission. [2007 c 249 § 2; 1997 c 60 § 1; 1993 c 280 § 11.]

Findings—Intent—2007 c 249: "The legislature finds that economic development success requires coordinated state and local efforts. The legislature further finds that economic development happens at the local level. County-designated associate development organizations serve as a networking tool and resource hub for business retention, expansion, and relocation in Washington. Economic development success requires an adequately funded and coordinated state effort and an adequately funded and coordinated local effort. The legislature intends to bolster the partnership between state and local economic development efforts, provide increased funding for local economic development services, and increase local economic development service effectiveness, efficiency, and outcomes." [2007 c 249 § 1.]

43.330.082 Contracting associate development organizations—Performance measures—Remediation plans—Reports. (1) Contracting associate development organizations shall provide the department with measures of their performance. Annual reports shall include information on the impact of the contracting organization on employment, wages, tax revenue, and capital investment. Specific measures shall be developed in the contracting process between the department and the contracting organization every two years. Performance measures should be consistent across regions to allow for statewide evaluation.

(2)(a) The department and contracting organizations shall agree upon specific target levels for the performance measures in subsection (1) of this section. Comparison of agreed thresholds and actual performance shall occur annually.

(b) Contracting organizations that fail to achieve the agreed performance targets in more than one-half of the agreed measures shall develop remediation plans to address performance gaps. The remediation plans shall include revised performance thresholds specifically chosen to provide evidence of progress in making the identified service changes.

(c) Contracts and state funding shall be terminated for one year for organizations that fail to achieve the agreed upon

progress toward improved performance defined under (b) of this subsection. During the year in which termination for nonperformance is in effect, organizations shall review alternative delivery strategies to include reorganization of the contracting organization, merging of previous efforts with existing regional partners, and other specific steps toward improved performance. At the end of the period of termination, the department may contract with the associate development organization or its successor as it deems appropriate.

(3) The department shall report to the legislature and the Washington economic development commission by December 31st of each year on the performance results of the contracts with associate development organizations. [2007 c 249 § 3.]

Findings—Intent—2007 c 249: See note following RCW 43.330.080.

43.330.084 Washington state quality award—Reimbursement of application fee. Up to five associate development organizations per year contracting with the department under chapter 249, Laws of 2007 that apply for the Washington state quality award or its equivalent shall receive reimbursement for the award application fee, but may not be reimbursed more than once every three years. [2007 c 249 § 4.]

Findings—Intent—2007 c 249: See note following RCW 43.330.080.

43.330.086 Contracts with associate development organizations—Schedule of awards. To the extent that funds are specifically appropriated therefor, contracts with associate development organizations for the provision of services under RCW 43.330.080(1) shall be awarded according to the following annual schedule:

(1) For associate development associations serving urban counties, which are counties other than rural counties as defined in RCW 43.160.020, a locally matched allocation of up to ninety cents per capita, totaling no more than three hundred thousand dollars per organization; and

(2) For associate development associations in rural counties, as defined in RCW 43.160.020, a per county base allocation of up to forty thousand dollars and a locally matched allocation of up to ninety cents per capita. [2007 c 249 § 5.]

Findings—Intent—2007 c 249: See note following RCW 43.330.080.

43.330.090 Economic diversification strategies—Targeted industry clusters—Film and video production—Industry cluster advisory committee. (1) The department shall work with private sector organizations, industry and cluster associations, federal agencies, state agencies that use a cluster-based approach to service delivery, local governments, local associate development organizations, and higher education and training institutions in the development of industry cluster-based strategies to diversify the economy, facilitate technology transfer and diffusion, and increase value-added production. The industry clusters targeted by the department may include, but are not limited to, aerospace, agriculture, food processing, forest products, marine services, health and biomedical, software, digital and interactive media, transportation and distribution, and micro-electronics. The department shall, on a continuing basis, evaluate the potential return to the state from devoting additional resources to an industry cluster-based approach to economic

development and identifying and assisting additional clusters. The department shall use information gathered in each service delivery region in formulating its industry cluster-based strategies and shall assist local communities in identifying regional industry clusters and developing industry cluster-based strategies.

(2)(a) The department shall promote, market, and encourage growth in the production of films and videos, as well as television commercials within the state; to this end the department is directed to assist in the location of a film and video production studio within the state.

(b) The department may, in carrying out its efforts to encourage film and video production in the state, solicit and receive gifts, grants, funds, fees, and endowments, in trust or otherwise, from tribal, local, or other governmental entities, as well as private sources, and may expend the same or any income therefrom for the encouragement of film and video production. All revenue received for such purposes shall be deposited into the film and video promotion account created in RCW 43.330.092.

(3) In assisting in the development of regional and statewide industry cluster-based strategies, the department's activities shall include, but are not limited to:

(a) Facilitating regional focus group discussions and conducting studies to identify industry clusters, appraise the current information linkages within a cluster, and identify issues of common concern within a cluster;

(b) Supporting industry and cluster associations, publications of association and cluster directories, and related efforts to create or expand the activities of industry and cluster associations;

(c) Administering a competitive grant program to fund activities designed to further regional cluster growth. In administering the program, the department shall work with an industry cluster advisory committee with equal representation from the work force training and education coordinating board, the state board for community and technical colleges, the employment security department, business, and labor.

(i) The industry cluster advisory committee shall recommend criteria for evaluating applications for grant funds and recommend applicants for receipt of grant funds.

(ii) Applicants must include organizations from at least two counties and participants from the local business community. Eligible organizations include, but are not limited to, local governments, economic development councils, chambers of commerce, federally recognized Indian tribes, work force development councils, and educational institutions.

(iii) Applications must evidence financial participation of the partner organizations.

(iv) Priority shall be given to applicants which will use the grant funds to build linkages and joint projects, to develop common resources and common training, and to develop common research and development projects or facilities.

(v) The maximum amount of a grant is one hundred thousand dollars.

(vi) A maximum of one hundred thousand dollars total can go to King, Pierce, Kitsap, and Snohomish counties combined.

(vii) No more than ten percent of funds received for the grant program may be used by the department for administrative costs.

(4) As used in subsection (3) of this section, "industry cluster" means a geographic concentration of interdependent competitive firms that do business with each other. "Industry cluster" also includes firms that sell inside and outside of the geographic region as well as support firms that supply raw materials, components, and business services. [2007 c 228 § 201; 2006 c 105 § 1; 2005 c 136 § 14; 2003 c 153 § 2; 1998 c 245 § 85; 1994 c 144 § 1; 1993 c 280 § 12.]

Part headings not law—2007 c 228: See RCW 43.336.900.

Savings—Effective date—2005 c 136: See notes following RCW 43.168.020.

Findings—2003 c 153: "The legislature finds that tourism is a growing sector of the Washington economy. Washington has a diverse geography, geology, climate, and natural resources, and offers abundant opportunities for wildlife viewing. Nature-based tourism is the fastest growing outdoor activity and segment of the travel industry and the state can take advantage of this by marketing Washington's natural assets to international as well as national tourist markets. Expanding tourism efforts can provide Washington residents with jobs and local communities with needed revenues.

The legislature also finds that current efforts to promote Washington's natural resources and nature-based tourism to national and international markets are too diffuse and limited by funding and that a collaborative effort among state and local governments, tribes, and private enterprises can serve to leverage the investments in nature-based tourism made by each." [2003 c 153 § 1.]

Effective date—1994 c 144: "This act shall take effect July 1, 1994." [1994 c 144 § 3.]

43.330.094 Tourism development and promotion account—Promotion of tourism industry. The tourism development and promotion account is created in the state treasury. All receipts from RCW 36.102.060(10) must be deposited into the account. Moneys in the account may be spent only after appropriation. Expenditures from the account may be used by the department of community, trade, and economic development only for the purposes of expanding and promoting the tourism industry in the state of Washington. [2007 c 228 § 202; 2003 c 153 § 4; 1997 c 220 § 223 (Referendum Bill No. 48, approved June 17, 1997).]

Part headings not law—2007 c 228: See RCW 43.336.900.

Findings—2003 c 153: See note following RCW 43.330.090.

Referendum—Other legislation limited—Legislators' personal intent not indicated—Reimbursements for election—Voters' pamphlet, election requirements—1997 c 220: See RCW 36.102.800 through 36.102.803.

Part headings not law—Severability—1997 c 220: See RCW 36.102.900 and 36.102.901.

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

43.330.096 Recodified as RCW 43.336.060. See Supplementary Table of Disposition of Former RCW Sections, this volume.

43.330.270 Innovation partnership zones. (1) The director shall designate innovation partnership zones on the basis of the following criteria:

(a) Innovation partnership zones must have three types of institutions operating within their boundaries, or show evidence of planning and local partnerships that will lead to dense concentrations of these institutions:

(i) Research capacity in the form of a university or community college fostering commercially valuable research, nonprofit institutions creating commercially applicable innovations, or a national laboratory;

(ii) Dense proximity of globally competitive firms in a research-based industry or industries or of individual firms with innovation strategies linked to (a)(i) of this subsection. A globally competitive firm may be signified through international organization for standardization 9000 or 1400 certification, or other recognized evidence of international success; and

(iii) Training capacity either within the zone or readily accessible to the zone. The training capacity requirement may be met by the same institution as the research capacity requirement, to the extent both are associated with an educational institution in the proposed zone.

(b) The support of a local jurisdiction, a research institution, an educational institution, an industry or cluster association, a workforce development council, and an associate development organization, port, or chamber of commerce;

(c) Identifiable boundaries for the zone within which the applicant will concentrate efforts to connect innovative researchers, entrepreneurs, investors, industry associations or clusters, and training providers. The geographic area defined should lend itself to a distinct identity and have the capacity to accommodate firm growth;

(d) The innovation partnership zone administrator must be an economic development council, port, workforce development council, city, or county.

(2) On October 1st of each year, the director shall designate innovation partnership zones on the basis of applications that meet the legislative criteria, estimated economic impact of the zone, evidence of forward planning for the zone, and other criteria as recommended by the Washington state economic development commission. Estimated economic impact must include evidence of anticipated private investment, job creation, innovation, and commercialization. The director shall require evidence that zone applicants will promote commercialization, innovation, and collaboration among zone residents.

(3) Innovation partnership zones are eligible for funds and other resources as provided by the legislature or at the discretion of the governor.

(4) If the innovation partnership zone meets the other requirements of the fund sources, then the zone is eligible for the following funds relating to:

(a) The local infrastructure financing tools program;

(b) The sales and use tax for public facilities in rural counties; and

(c) Job skills.

(5) An innovation partnership zone shall be designated as a zone for a four-year period. At the end of the four-year period, the zone must reapply for the designation through the department.

(6) The department shall convene annual information sharing events for innovation partnership zone administrators and other interested parties.

(7) An innovation partnership zone shall provide performance measures as required by the director, including but not limited to private investment measures, job creation measures, and measures of innovation such as licensing of ideas

in research institutions, patents, or other recognized measures of innovation. The Washington state economic development commission shall review annually the individual innovation partnership zone's performance measures and make recommendations to the department regarding additional zone designation criteria. [2007 c 227 § 1.]

43.330.280 Innovation partnerships—Duties of state economic development commission and workforce training and education coordinating board—Working group.

(1) The Washington state economic development commission shall, with the advice of an innovation partnership advisory group selected by the commission, have oversight responsibility for the implementation of the state's efforts to further innovation partnerships throughout the state. The commission shall:

(a) Provide information and advice to the department of community, trade, and economic development to assist in the implementation of the innovation partnership zone program, including criteria to be used in the selection of grant applicants for funding;

(b) Document clusters of companies throughout the state that have comparative competitive advantage or the potential for comparative competitive advantage, using the process and criteria for identifying strategic clusters developed by the working group specified in subsection (2) of this section;

(c) Conduct an innovation opportunity analysis to identify (i) the strongest current intellectual assets and research teams in the state focused on emerging technologies and their commercialization, and (ii) faculty and researchers that could increase their focus on commercialization of technology if provided the appropriate technical assistance and resources;

(d) Based on its findings and analysis, and in conjunction with the higher education coordinating board and research institutions:

(i) Develop a plan to build on existing, and develop new, intellectual assets and innovation research teams in the state in research areas where there is a high potential to commercialize technologies. The commission shall present the plan to the governor and legislature by December 31, 2007. The higher education coordinating board shall be responsible for implementing the plan in conjunction with the publicly funded research institutions in the state. The plan shall address the following elements and such other elements as the commission deems important:

(A) Specific mechanisms to support, enhance, or develop innovation research teams and strengthen their research and commercialization capacity in areas identified as useful to strategic clusters and innovative firms in the state;

(B) Identification of the funding necessary for laboratory infrastructure needed to house innovation research teams;

(C) Specification of the most promising research areas meriting enhanced resources and recruitment of significant entrepreneurial researchers to join or lead innovation research teams;

(D) The most productive approaches to take in the recruitment, in the identified promising research areas, of a minimum of ten significant entrepreneurial researchers over the next ten years to join or lead innovation research teams;

(E) Steps to take in solicitation of private sector support for the recruitment of entrepreneurial researchers and the commercialization activity of innovation research teams; and

(F) Mechanisms for ensuring the location of innovation research teams in innovation partnership zones;

(ii) Provide direction for the development of comprehensive entrepreneurial assistance programs at research institutions. The programs may involve multidisciplinary students, faculty, entrepreneurial researchers, entrepreneurs, and investors in building business models and evolving business plans around innovative ideas. The programs may provide technical assistance and the support of an entrepreneur-in-residence to innovation research teams and offer entrepreneurial training to faculty, researchers, undergraduates, and graduate students. Curriculum leading to a certificate in entrepreneurship may also be offered;

(e) Develop performance measures to be used in evaluating the performance of innovation research teams, the implementation of the plan and programs under (d)(i) and (ii) of this subsection, and the performance of innovation partnership zone grant recipients, including but not limited to private investment measures, business initiation measures, job creation measures, and measures of innovation such as licensing of ideas in research institutions, patents, or other recognized measures of innovation. The performance measures developed shall be consistent with the economic development commission's comprehensive plan for economic development and its standards and metrics for program evaluation. The commission shall report to the legislature and the governor by December 31, 2008, on the measures developed; and

(f) Using the performance measures developed, perform a biennial assessment and report, the first of which shall be due December 31, 2012, on:

(i) Commercialization of technologies developed at state universities, found at other research institutions in the state, and facilitated with public assistance at existing companies;

(ii) Outcomes of the funding of innovation research teams and recruitment of significant entrepreneurial researchers;

(iii) Comparison with other states of Washington's outcomes from the innovation research teams and efforts to recruit significant entrepreneurial researchers; and

(iv) Outcomes of the grants for innovation partnership zones.

The report shall include recommendations for modifications of chapter 227, Laws of 2007 and of state commercialization efforts that would enhance the state's economic competitiveness.

(2) The economic development commission and the workforce training and education coordinating board shall jointly convene a working group to:

(a) Specify the process and criteria for identification of substate geographic concentrations of firms or employment in an industry and the industry's customers, suppliers, supporting businesses, and institutions, which process will include the use of labor market information from the employment security department and local labor markets; and

(b) Establish criteria for identifying strategic clusters which are important to economic prosperity in the state, considering cluster size, growth rate, and wage levels among other factors. [2007 c 227 § 2.]

43.330.290 Microenterprise development program.

The microenterprise development program is established in the department of community, trade, and economic development. In implementing the program, the department:

(1) Shall provide organizational support to a statewide microenterprise association and shall contract with the association for the delivery of services and distribution of grants;

(a) The association shall serve as the department's agent in carrying out the purpose and service delivery requirements of this section;

(b) The association's contract with the department shall specify that in administering the funds provided for under subsection (3) of this section, the association may use no greater than ten percent of the funds to cover administrative expenses;

(2) Shall provide funds for capacity building for the statewide microenterprise association and microenterprise development organizations throughout the state;

(3) Shall provide grants to microenterprise development organizations for the delivery of training and technical assistance services;

(4) Shall identify and facilitate the availability of state, federal, and private sources of funds which may enhance microenterprise development in the state;

(5) Shall develop with the statewide microenterprise association criteria for the distribution of grants to microenterprise development organizations. Such criteria may include:

(a) The geographic representation of all regions of the state, including both urban and rural communities;

(b) The ability of the microenterprise development organization to provide business development services in low-income communities;

(c) The scope of services offered by a microenterprise development organization and their efficiency in delivery of such services;

(d) The ability of the microenterprise development organization to monitor the progress of its customers and identify technical and financial assistance needs;

(e) The ability of the microenterprise development organization to work with other organizations, public entities, and financial institutions to meet the technical and financial assistance needs of its customers;

(f) The sufficiency of operating funds for the microenterprise development organization; and

(g) Such other criteria as agreed by the department and the association;

(6) Shall require the statewide microenterprise association and any microenterprise development organization receiving funds through the microenterprise development program to raise and contribute to the effort funded by the microenterprise development program an amount equal to twenty-five percent of the microenterprise development program funds received. Such matching funds may come from private foundations, federal or local sources, financial institutions, or any other source other than funds appropriated from the legislature;

(7) Shall require under its contract with the statewide microenterprise association an annual accounting of program outcomes, including job creation, access to capital, leveraging of nonstate funds, and other outcome measures specified

by the department. By January 1, 2012, the joint legislative audit and review committee shall use these outcome data and other relevant information to evaluate the program's effectiveness; and

(8) May adopt rules as necessary to implement this section. [2007 c 322 § 3.]

Findings—Purpose—Intent—2007 c 322: "(1) The legislature finds that:

(a) Microenterprises are an important portion of Washington's economy, providing approximately twenty percent of the employment in Washington and playing a vital role in job creation.

(b) While community-based microenterprise development organizations have expanded their assistance to their microentrepreneur customers in recent years, there remains a lack of access to capital, training, and technical assistance for low-income microentrepreneurs.

(c) Support for microenterprise development offers a means to expand business and job creation in low-income communities in both rural and urban areas of the state.

(d) Local and state charitable foundation support, federal program funding, and private sector support can be leveraged by a statewide program for development of microenterprises.

(2) It is the purpose of this act to assist microenterprises in job creation by increasing the training, technical assistance, and financial resources available to microenterprises. It is the intention of the legislature to carry out this purpose by enabling the department of community, trade, and economic development to contract with a statewide microenterprise association with the potential to provide organizational support and administer grants to local microenterprise development organizations, subject to the requirements of this act, and to leverage additional funds from sources other than moneys appropriated from the general fund." [2007 c 322 § 1.]

Chapter 43.336 RCW**WASHINGTON TOURISM COMMISSION**

Sections

43.336.010	Definitions.
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43.336.050	Tourism enterprise account.
43.336.060	Tourism development program—Report to the legislature.
43.336.900	Part headings not law—2007 c 228.

43.336.010 Definitions. The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

(1) "Commission" means the Washington tourism commission.

(2) "Department" means the department of community, trade, and economic development.

(3) "Director" means the director of the department.

(4) "Executive director" means the executive director of the commission. [2007 c 228 § 101.]

43.336.020 Commission created—Composition—Terms—Executive director—Rule-making authority. (1) The Washington tourism commission is created.

(2) The commission shall be cochaired by the director of the department or the director's designee, and by an industry-member representative who is elected by the commission members.

(3) The commission shall have nineteen members. In appointing members, the governor shall endeavor to balance the geographic and demographic composition of the commission to include members with special expertise from tourism

organizations, local jurisdictions, and small businesses directly engaged in tourism-related activities. Before making appointments to the Washington tourism commission, the governor shall consider nominations from recognized organizations that represent the entities or interests identified in this section. Commission members shall be appointed by the governor as follows:

(a) Three members to represent the lodging industry, at least two of which shall be chosen from a list of three nominees per position submitted by the state's largest lodging industry trade association. Members should represent all property categories and different regions of the state;

(b) Three representatives from nonprofit destination marketing organizations or visitor and convention bureaus;

(c) Three industry representatives from the arts, entertainment, attractions, or recreation industry;

(d) Four private industry representatives, two from each of the business categories in this subsection:

(i) The food, beverage, and wine industries; and

(ii) The travel and transportation industries;

(e) Four legislative members, one from each major caucus of the senate, designated by the president of the senate, and one from each major caucus of the house of representatives, designated by the speaker of the house of representatives;

(f) The chairman of the Washington convention and trade center; and

(g) The director or the director's designee.

(4)(a) Terms of nonlegislative members shall be three years, except that initial terms shall be staggered such that terms of one-third of the initial members shall expire each year.

(b) Terms of legislative members shall be two years.

(c) Vacancies shall be appointed in the same manner as the original appointment.

(d) A member appointed by the governor may not be absent from more than fifty percent of the regularly scheduled meetings in any one calendar year. Any member who exceeds this absence limitation is deemed to have withdrawn from the office and may be replaced by the governor.

(5) Members shall be reimbursed for travel expenses as provided in RCW 43.03.050 and 43.03.060.

(6) The commission shall meet at least four times per year, but may meet more frequently as necessary.

(7) A majority of members currently appointed constitutes a quorum.

(8) Staff support shall be provided by the department, and staff shall report to the executive director.

(9) The director, in consultation with the commission, shall appoint an executive director.

(10) The commission may adopt rules under chapter 34.05 RCW as necessary to carry out the purposes of this chapter. [2007 c 228 § 102.]

43.336.030 Tourism industry expansion—Coordinated program—Strategic plan—Tourism marketing plan. (1) The commission shall pursue a coordinated program to expand the tourism industry throughout the state in cooperation with the public and private tourism development organizations. The commission shall develop and approve,

and update as necessary, a six-year strategic plan that includes, but is not limited to:

(a) Promoting Washington as a tourism destination to national and international markets to include nature-based and wildlife viewing tourism;

(b) Providing information to businesses and local communities on tourism opportunities that could expand local revenues;

(c) Assisting local communities to strengthen their tourism partnerships, including their relationships with state and local agencies;

(d) Providing leadership training and assistance to local communities to facilitate the development and implementation of local tourism plans;

(e) Coordinating the development of a statewide tourism marketing plan that must be adopted by March 31, 2008, and every two years thereafter. If the commission does not adopt a marketing plan by March 31st of even-numbered years, the director has the authority to approve a tourism marketing plan for implementation. The plan shall specifically address mechanisms for: (i) Funding national and international marketing and nature-based tourism efforts; (ii) interagency cooperation; and (iii) integrating the state plan with local tourism plans.

(2) The commission may, in carrying out its efforts to expand the tourism industry in the state:

(a) Solicit and receive gifts, grants, funds, fees, and endowments, in trust or otherwise, from tribal, local, or other governmental entities, as well as private sources, and may expend the same or any income therefrom for tourism purposes. All revenue received for tourism purposes shall be deposited into the tourism enterprise account created in RCW 43.336.050;

(b) Host conferences and strategic planning workshops relating to the promotion of nature-based and wildlife viewing tourism;

(c) Conduct or contract for tourism-related studies;

(d) Contract with individuals, businesses, or public entities to carry out its tourism-related activities under this section; and

(e) Provide tourism-related organizations with marketing and other technical assistance.

(3) Staff shall implement the strategic plan and the tourism marketing plan. [2007 c 228 § 103.]

43.336.040 Tourism competitive grant program. (1) A tourism competitive grant program is created as an ongoing program to enhance local efforts that support tourism-related activities. The commission shall develop and publicize formal selection criteria for the grant program. Subject to available funding, the commission shall solicit applications and award grants to successful applicants at least once a year.

(2) Eligible applicants include, but are not limited to, local governments, nonprofit organizations, and federally recognized Indian tribes.

(3) Criteria should include the return on investment of state funding, the availability of other financial resources to the applicant, the level of community support, and other criteria deemed necessary by the commission.

(4) Maximum grant amounts shall be determined by the commission. Grant awards must reflect geographic and demographic diversity and a variety of activities. Successful applicants must provide matching funds equal to the amount of the grant. In-kind donations shall not be considered in the match calculation.

(5) No portion of the grant may be used for an applicant's administrative costs. [2007 c 228 § 104.]

43.336.050 Tourism enterprise account. The tourism enterprise account is created in the custody of the state treasurer.

(1) All receipts from RCW 43.336.030(2)(a) must be deposited into the account. Only the executive director or the executive director's designee may authorize expenditures from the account. The account is subject to allotment procedures under chapter 43.88 RCW, but an appropriation is not required for expenditures.

(2) Moneys transferred from the state convention and trade [center] account to this account, as provided in RCW 67.40.040, shall be available for expenditure in accordance with the requirements of this section. As provided under subsection (3) of this section, moneys must be matched with private sector cash contributions, the value of an advertising equivalency contribution, or through an in-kind contribution. The commission shall determine criteria for what qualifies as an in-kind contribution. The moneys subject to match may be expended as private match is received or with evidence of qualified expenditure.

(3)(a) Twenty-five percent of the moneys transferred in fiscal year 2009 are subject to a match;

(b) Fifty percent of the moneys transferred in fiscal year 2010 are subject to a match; and

(c) One hundred percent of the moneys transferred in fiscal year 2011, and thereafter, are subject to a match.

(4) Expenditures from the account may be used by the department of community, trade, and economic development only for the purposes of expanding and promoting the tourism industry in the state of Washington. [2007 c 228 § 105.]

43.336.060 Tourism development program—Report to the legislature. On or before June 30th of each fiscal year, the commission shall submit a report to the appropriate policy and fiscal committees of the house of representatives and senate that describes the tourism development program for the previous fiscal year and quantifies the financial benefits to the state. The report must contain information concerning targeted markets, benefits to different areas of the state, return on the state's investment, grants disbursed under the tourism competitive grant program, a copy of the most recent strategic plan, and other relevant information related to tourism development. [2007 c 228 § 107; 1998 c 299 § 5. Formerly RCW 43.330.096.]

Intent—Effective date—1998 c 299: See notes following RCW 43.88.093.

43.336.900 Part headings not law—2007 c 228. Part headings used in this act are not any part of the law. [2007 c 228 § 204.]

[2007 RCW Supp—page 566]

Chapter 43.362 RCW

REGIONAL TRANSFER OF DEVELOPMENT RIGHTS PROGRAM

Sections

43.362.005 Findings.

43.362.010 Definitions.

43.362.020 Regional transfer of development rights program.

43.362.005 Findings. The legislature finds that current concern over the rapid and increasing loss of rural, agricultural, and forested land has led to the exploration of creative approaches to preserving these important lands. The legislature finds also that the creation of a regional transfer of development rights marketplace will assist in slowing the conversion of these lands.

The legislature further finds that transferring development rights is a market-based technique that encourages the voluntary transfer of growth from places where a community would like to see less development, referred to as sending areas, to places where a community would like to see more development, referred to as receiving areas. Under this technique, permanent deed restrictions are placed on the sending area properties to ensure that the land will be used only for approved activities such as farming, forest management, conservation, or passive recreation. Also under this technique, the costs of purchasing the recorded development restrictions are borne by the developers who receive the building credit or bonus.

Accordingly, the legislature has determined that it is good public policy to build upon existing transfer of development rights programs, pilot projects, and private initiatives that foster effective use of transferred development rights through the creation of a market-based program that focuses on the central Puget Sound region. [2007 c 482 § 1.]

43.362.010 Definitions. The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

(1) "Department" means the department of community, trade, and economic development.

(2) "Nongovernmental entities" includes nonprofit or membership organizations with experience or expertise in transferring development rights.

(3) "Transfer of development rights" includes methods for protecting land from development by voluntarily removing the development rights from a sending area and transferring them to a receiving area for the purpose of increasing development density in the receiving area. [2007 c 482 § 2.]

43.362.020 Regional transfer of development rights program. Subject to the availability of amounts appropriated for this specific purpose, the department shall fund a process to develop a regional transfer of development rights program that comports with chapter 36.70A RCW that:

(1) Encourages King, Kitsap, Pierce, and Snohomish counties, and the cities within these counties, to participate in the development and implementation of regional frameworks and mechanisms that make transfer of development rights programs viable and successful. The department shall encourage and embrace the efforts in any of these counties or

cities to develop local transfer of development rights programs. In fulfilling the requirements of this chapter, the department shall work with the Puget Sound regional council and its growth management policy board to develop a process that satisfies the requirements of this chapter. In the development of a process to create a regional transfer of development rights program, the Puget Sound regional council and its growth management policy board shall develop policies to discourage, or prohibit if necessary, the transfer of development rights from a sending area that would negatively impact the future economic viability of the sending area. The department shall also work with an advisory committee to develop a regional transfer of development rights marketplace that includes, but is not limited to, supporting strategies for financing infrastructure and conservation. The department shall establish an advisory committee of nine stakeholders with representatives of the following interests:

(a) Two qualified nongovernmental organizations with expertise in the transfer of development rights. At least one organization must have a statewide expertise in growth management planning and in the transfer of development rights and at least one organization must have a local perspective on market-based conservation strategies and transfer of development rights;

(b) Two representatives from real estate and development;

(c) One representative with a county government perspective;

(d) Two representatives from cities of different sizes and geographic areas within the four-county region; and

(e) Two representatives of the agricultural industry; and

(2) Allows the department to utilize recommendations of the interested local governments, nongovernmental entities, and the Puget Sound regional council to develop recommendations and strategies for a regional transfer of development rights marketplace with supporting strategies for financing infrastructure and conservation that represents the consensus of the governmental and nongovernmental parties engaged in the process. However, if agreement between the parties cannot be reached, the department shall make recommendations to the legislature that seek to balance the needs and interests of the interested governmental and nongovernmental parties. The department may contract for expertise to accomplish any of the following tasks. Recommendations developed under this subsection must:

(a) Identify opportunities for cities, counties, and the state to achieve significant benefits through using transfer of development rights programs and the value in modifying criteria by which capital budget funds are allocated, including but not limited to, existing state grant programs to provide incentives for local governments to implement transfer of development rights programs;

(b) Address challenges to the creation of an efficient and transparent transfer of development rights market, including the creation of a transfer of development rights bank, brokerage, or direct buyer-seller exchange;

(c) Address issues of certainty to buyers and sellers of development rights that address long-term environmental benefits and perceived inequities in land values and permitting processes;

(d) Address the means for assuring that appropriate values are recognized and updated, as well as specifically addressing the need to maintain the quality of life in receiving neighborhoods and the protection of environmental values over time;

(e) Identify opportunities and challenges that, if resolved, would result in cities throughout the Puget Sound region participating in a transfer of development rights market;

(f) Compare the uses of a regional transfer of development rights program to other existing land conservation strategies to protect rural and resource lands and implement the growth management act; and

(g) Identify appropriate sending areas so as to protect future growth and economic development needs of the sending areas. [2007 c 482 § 3.]

Chapter 43.370 RCW

STATEWIDE HEALTH RESOURCES STRATEGY

Sections

43.370.010	Definitions.
43.370.020	Office of financial management—Duties—Technical advisory committee.
43.370.030	Development of strategy—Goals and principles—Required elements—Reports—Public hearings.
43.370.040	Department of health—Certificate of need review program.
43.370.050	Requests for data and other information.
43.370.900	Severability—Subheadings not law—2007 c 259.

43.370.010 Definitions. The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

(1) "Health care provider" means an individual who holds a license issued by a disciplining authority identified in RCW 18.130.040 and who practices his or her profession in a health care facility or provides a health service.

(2) "Health facility" or "facility" means hospices licensed under chapter 70.127 RCW, hospitals licensed under chapter 70.41 RCW, rural health care facilities as defined in RCW 70.175.020, psychiatric hospitals licensed under chapter 71.12 RCW, nursing homes licensed under chapter 18.51 RCW, community mental health centers licensed under chapter 71.05 or 71.24 RCW, kidney disease treatment centers, ambulatory diagnostic, treatment, or surgical facilities, drug and alcohol treatment facilities licensed under chapter 70.96A RCW, and home health agencies licensed under chapter 70.127 RCW, and includes such facilities if owned and operated by a political subdivision, including a public hospital district, or instrumentality of the state and such other facilities as required by federal law and implementing regulations.

(3) "Health service" or "service" means that service, including primary care service, offered or provided by health care facilities and health care providers relating to the prevention, cure, or treatment of illness, injury, or disease.

(4) "Health service area" means a geographic region appropriate for effective health planning that includes a broad range of health services.

(5) "Office" means the office of financial management.

(6) "Strategy" means the statewide health resources strategy. [2007 c 259 § 50.]

43.370.020 Office of financial management—Duties—Technical advisory committee. (1) The office shall serve as a coordinating body for public and private efforts to improve quality in health care, promote cost-effectiveness in health care, and plan health facility and health service availability. In addition, the office shall facilitate access to health care data collected by public and private organizations as needed to conduct its planning responsibilities.

(2) The office shall:

(a) Conduct strategic health planning activities related to the preparation of the strategy, as specified in this chapter;

(b) Develop a computerized system for accessing, analyzing, and disseminating data relevant to strategic health planning responsibilities. The office may contract with an organization to create the computerized system capable of meeting the needs of the office;

(c) Maintain access to deidentified data collected and stored by any public and private organizations as necessary to support its planning responsibilities, including state purchased health care program data, hospital discharge data, and private efforts to collect utilization and claims-related data. The office is authorized to enter into any data sharing agreements and contractual arrangements necessary to obtain data or to distribute data. Among the sources of deidentified data that the office may access are any databases established pursuant to the recommendations of the health information infrastructure advisory board established by chapter 261, Laws of 2005. The office may store limited data sets as necessary to support its activities. Unless specifically authorized, the office shall not collect data directly from the records of health care providers and health care facilities, but shall make use of databases that have already collected such information; and

(d) Conduct research and analysis or arrange for research and analysis projects to be conducted by public or private organizations to further the purposes of the strategy.

(3) The office shall establish a technical advisory committee to assist in the development of the strategy. Members of the committee shall include health economists, health planners, representatives of government and nongovernment health care purchasers, representatives of state agencies that use or regulate entities with an interest in health planning, representatives of acute care facilities, representatives of long-term care facilities, representatives of community-based long-term care providers, representatives of health care providers, a representative of one or more federally recognized Indian tribes, and representatives of health care consumers. The committee shall include members with experience in the provision of health services to rural communities. [2007 c 259 § 51.]

43.370.030 Development of strategy—Goals and principles—Required elements—Reports—Public hearings. (1) The office, in consultation with the technical advisory committee established under RCW 43.370.020, shall develop a statewide health resources strategy. The strategy shall establish statewide health planning policies and goals related to the availability of health care facilities and services, quality of care, and cost of care. The strategy shall identify needs according to geographic regions suitable for comprehensive health planning as designated by the office.

(2) The development of the strategy shall consider the following general goals and principles:

(a) That excess capacity of health services and facilities place considerable economic burden on the public who pay for the construction and operation of these facilities as patients, health insurance purchasers, carriers, and taxpayers; and

(b) That the development and ongoing maintenance of current and accurate health care information and statistics related to cost and quality of health care, as well as projections of need for health facilities and services, are essential to effective strategic health planning.

(3) The strategy, with public input by health service areas, shall include:

(a) A health system assessment and objectives component that:

(i) Describes state and regional population demographics, health status indicators, and trends in health status and health care needs; and

(ii) Identifies key policy objectives for the state health system related to access to care, health outcomes, quality, and cost-effectiveness;

(b) A health care facilities and services plan that shall assess the demand for health care facilities and services to inform state health planning efforts and direct certificate of need determinations, for those facilities and services subject to certificate of need as provided in chapter 70.38 RCW. The plan shall include:

(i) An inventory of each geographic region's existing health care facilities and services;

(ii) Projections of need for each category of health care facility and service, including those subject to certificate of need;

(iii) Policies to guide the addition of new or expanded health care facilities and services to promote the use of quality, evidence-based, cost-effective health care delivery options, including any recommendations for criteria, standards, and methods relevant to the certificate of need review process; and

(iv) An assessment of the availability of health care providers, public health resources, transportation infrastructure, and other considerations necessary to support the needed health care facilities and services in each region;

(c) A health care data resource plan that identifies data elements necessary to properly conduct planning activities and to review certificate of need applications, including data related to inpatient and outpatient utilization and outcomes information, and financial and utilization information related to charity care, quality, and cost. The plan shall inventory existing data resources, both public and private, that store and disclose information relevant to the health planning process, including information necessary to conduct certificate of need activities pursuant to chapter 70.38 RCW. The plan shall identify any deficiencies in the inventory of existing data resources and the data necessary to conduct comprehensive health planning activities. The plan may recommend that the office be authorized to access existing data sources and conduct appropriate analyses of such data or that other agencies expand their data collection activities as statutory authority permits. The plan may identify any computing infrastructure deficiencies that impede the proper storage,

transmission, and analysis of health planning data. The plan shall provide recommendations for increasing the availability of data related to health planning to provide greater community involvement in the health planning process and consistency in data used for certificate of need applications and determinations;

(d) An assessment of emerging trends in health care delivery and technology as they relate to access to health care facilities and services, quality of care, and costs of care. The assessment shall recommend any changes to the scope of health care facilities and services covered by the certificate of need program that may be warranted by these emerging trends. In addition, the assessment may recommend any changes to criteria used by the department to review certificate of need applications, as necessary;

(e) A rural health resource plan to assess the availability of health resources in rural areas of the state, assess the unmet needs of these communities, and evaluate how federal and state reimbursement policies can be modified, if necessary, to more efficiently and effectively meet the health care needs of rural communities. The plan shall consider the unique health care needs of rural communities, the adequacy of the rural health workforce, and transportation needs for accessing appropriate care.

(4) The office shall submit the initial strategy to the governor and the appropriate committees of the senate and house of representatives by January 1, 2010. Every two years the office shall submit an updated strategy. The health care facilities and services plan as it pertains to a distinct geographic planning region may be updated by individual categories on a rotating, biannual schedule.

(5) The office shall hold at least one public hearing and allow opportunity to submit written comments prior to the issuance of the initial strategy or an updated strategy. A public hearing shall be held prior to issuing a draft of an updated health care facilities and services plan, and another public hearing shall be held before final adoption of an updated health care facilities and services plan. Any hearing related to updating a health care facilities and services plan for a specific planning region shall be held in that region with sufficient notice to the public and an opportunity to comment. [2007 c 259 § 52.]

43.370.040 Department of health—Certificate of need review program. The office shall submit the strategy to the department of health to direct its activities related to the certificate of need review program under chapter 70.38 RCW. As the health care facilities and services plan is updated for any specific geographic planning region, the office shall submit that plan to the department of health to direct its activities related to the certificate of need review program under chapter 70.38 RCW. The office shall not issue determinations of the merits of specific project proposals submitted by applicants for certificates of need. [2007 c 259 § 53.]

43.370.050 Requests for data and other information.

(1) The office may respond to requests for data and other information from its computerized system for special studies and analysis consistent with requirements for confidentiality

of patient, provider, and facility-specific records. The office may require requestors to pay any or all of the reasonable costs associated with such requests that might be approved.

(2) Data elements related to the identification of individual patient's, provider's, and facility's care outcomes are confidential, are exempt from RCW 42.56.030 through 42.56.570 and 42.17.350 through 42.17.450, and are not subject to discovery by subpoena or admissible as evidence. [2007 c 259 § 54.]

43.370.900 Severability--Subheadings not law--2007 c 259. See notes following RCW 41.05.033.

Title 44

STATE GOVERNMENT—LEGISLATIVE

Chapters

44.04 General provisions.

44.28 Joint legislative audit and review committee.

44.68 Joint legislative systems administrative committee.

44.73 Legislative gift center.

Chapter 44.04 RCW

GENERAL PROVISIONS

Sections

44.04.170 Information from municipal associations.

44.04.170 Information from municipal associations.

It shall be the duty of each association of municipal corporations or municipal officers, which is recognized by law and utilized as an official agency for the coordination of the policies and/or administrative programs of municipal corporations, to submit biennially, or oftener as necessary, to the governor and to the legislature the joint recommendations of such participating municipalities regarding changes which would affect the efficiency of such municipal corporations. Such associations shall include but shall not be limited to the Washington state association of fire commissioners and the Washington state school directors' association. [2007 c 31 § 7; 1999 c 153 § 59; 1970 ex.s. c 69 § 2.]

Part headings not law—1999 c 153: See note following RCW 57.04.050.

Purpose—1970 ex.s. c 69: "It is the purpose of this act to assist the legislature in obtaining adequate information as to the needs of its municipal corporations and other public agencies and their recommendations for improvements." [1970 ex.s. c 69 § 1.]

Intent—Construction—1970 ex.s. c 69: "The intent of this act is to clarify and implement the powers of the public agencies to which it relates and nothing herein shall be construed to impair or limit the existing powers of any municipal corporation or association." [1970 ex.s. c 69 § 3.]

Chapter 44.28 RCW

JOINT LEGISLATIVE AUDIT AND REVIEW COMMITTEE

Sections

44.28.815 Review of streamlined sales and use tax mitigation—Report. (Effective July 1, 2008, until July 1, 2011.)

44.28.815 Review of streamlined sales and use tax mitigation—Report. (*Effective July 1, 2008, until July 1, 2011.*) (1) During calendar year 2010, the joint legislative audit and review committee shall review the mitigation provisions for local taxing jurisdictions under RCW 82.14.390 and 82.14.500 to determine the extent to which the mitigation provisions address the needs of local taxing jurisdictions for which the sourcing provisions in RCW 82.14.490 and the chapter 6, Laws of 2007 amendments to RCW 82.14.020 had the greatest fiscal impact. In conducting the study, the committee shall solicit input from the oversight committee created in RCW 82.14.500 and additional local taxing jurisdictions as the committee determines. The department of revenue and the state treasurer shall provide the committee with any data within their purview that the committee considers necessary to conduct the review. The committee shall report to the legislature the results of its findings, and any recommendations for changes to the mitigation provisions under RCW 82.14.390 and 82.14.500, by December 31, 2010.

(2) The definitions in RCW 82.14.495 apply to this section.

(3) This section expires July 1, 2011. [2007 c 6 § 905.]

Part headings not law—Savings—Effective date—Severability—2007 c 6: See notes following RCW 82.32.020.

Findings—Intent—2007 c 6: See note following RCW 82.14.495.

Chapter 44.68 RCW

JOINT LEGISLATIVE SYSTEMS ADMINISTRATIVE COMMITTEE

Sections

44.68.010	Definitions.
44.68.030	Administrative committee—Membership, coordinator as secretary.
44.68.040	Legislative systems coordinator—Employment, duties.
44.68.050	Administrative committee—Powers and duties.
44.68.060	Legislative service center—Duties—Protection of information—Bill drafts.
44.68.070	Repealed.
44.68.085	Salaries and expenses of employees—Vouchers—Authority to draw on funds—Transfer of moneys.
44.68.105	Systems committee, administrative committee, center—Exemption.
44.68.900	Effective date—2007 c 18.

44.68.010 Definitions. Unless the context clearly requires otherwise, the definitions in this section apply throughout this chapter.

(1) "Administrative committee" means the joint legislative systems administrative committee created under RCW 44.68.030.

(2) "Center" means the legislative service center established under RCW 44.68.060.

(3) "Coordinator" means the legislative systems coordinator employed under RCW 44.68.040.

(4) "Systems committee" means the joint legislative systems committee created under RCW 44.68.020. [2007 c 18 § 1; 1986 c 61 § 1.]

44.68.030 Administrative committee—Membership, coordinator as secretary. (1) The joint legislative systems administrative committee is created to manage the information processing and communications systems of the legisla-

ture. The administrative committee consists of five members appointed as follows:

(a) The secretary of the senate, and another senate staff person appointed by and serving at the pleasure of the secretary;

(b) The chief clerk of the house of representatives, and another house of representatives staff person appointed by and serving at the pleasure of the chief clerk; and

(c) The code reviser, or the code reviser's designee, serving in a nonvoting capacity.

(2) The coordinator shall serve as the secretary of the administrative committee. [2007 c 18 § 2; 1986 c 61 § 3.]

44.68.040 Legislative systems coordinator—Employment, duties. Subject to RCW 44.04.260:

(1) The systems committee, after consultation with the administrative committee, shall employ a legislative systems coordinator. The coordinator shall serve at the pleasure of the systems committee, which shall fix the coordinator's salary.

(2)(a) The coordinator shall serve as the executive and administrative head of the center, and shall assist the administrative committee in managing the information processing and communications systems of the legislature as directed by the administrative committee;

(b) In accordance with an adopted personnel plan, the coordinator shall employ or engage and fix the compensation for personnel required to carry out the purposes of this chapter;

(c) The coordinator shall enter into contracts for: (i) The sale, exchange, or acquisition of equipment, supplies, services, and facilities required to carry out the purposes of this chapter; and (ii) the distribution of legislative information. [2007 c 18 § 3; 2001 c 259 § 17; 1986 c 61 § 4.]

44.68.050 Administrative committee—Powers and duties. The administrative committee shall, subject to the approval of the systems committee and subject to RCW 44.04.260:

(1) Adopt policies, procedures, and standards regarding the information processing and communications systems of the legislature;

(2) Establish appropriate charges for services, equipment, and publications provided by the legislative information processing and communications systems, applicable to legislative and nonlegislative users as determined by the administrative committee;

(3) Adopt a compensation plan for personnel required to carry out the purposes of this chapter;

(4) Approve strategic and tactical information technology plans and provide guidance in operational matters required to carry out (a) the purposes of this chapter; and (b) the distribution of legislative information;

(5) Generally assist the systems committee in carrying out its responsibilities under this chapter, as directed by the systems committee. [2007 c 18 § 4; 2001 c 259 § 18; 1986 c 61 § 5.]

44.68.060 Legislative service center—Duties—Protection of information—Bill drafts. (1) The administrative committee, subject to the approval of the systems committee, shall establish a legislative service center. The center shall provide automatic data processing services, equipment, training, and support to the legislature and legislative agencies. The center may also, by agreement, provide services to agencies of the judicial and executive branches of state government and other governmental entities, and provide public access to legislative information. All operations of the center shall be subject to the general supervision of the administrative committee in accordance with the policies, procedures, and standards established under RCW 44.68.050.

(2) Except as provided otherwise in subsection (3) of this section, determinations regarding the security, disclosure, and disposition of information placed or maintained in the center shall rest solely with the originator and shall be made in accordance with any law regulating the disclosure of such information. The originator is the person who directly places information in the center.

(3) When utilizing the center to carry out the bill drafting functions required under RCW 1.08.027, the code reviser shall be considered the originator as defined in RCW 44.68.060. However, determinations regarding the security, disclosure, and disposition of drafts placed or maintained in the center shall be made by the person requesting the code reviser's services and the code reviser, acting as the originator, shall comply with and carry out such determinations as directed by that person. A measure once introduced shall not be considered a draft under this subsection. [2007 c 18 § 5; 1986 c 61 § 6.]

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

44.68.085 Salaries and expenses of employees—Vouchers—Authority to draw on funds—Transfer of moneys. Subject to RCW 44.04.260, all expenses incurred, including salaries and expenses of employees, shall be paid upon voucher forms as provided and signed by the coordinator. Vouchers may be drawn on funds appropriated by law for the systems committee, administrative committee, and center: PROVIDED, That the senate, house of representatives, and code reviser may authorize the systems committee, administrative committee, and center to draw on funds appropriated by the legislature for related information technology expenses. The senate and house of representatives may transfer moneys appropriated for legislative expenses to the systems committee, administrative committee, and center, in addition to charges made under RCW 44.68.050(2). [2007 c 18 § 6.]

44.68.105 Systems committee, administrative committee, center—Exemption. The systems committee, administrative committee, and center are hereby expressly exempted from the provisions of chapter 43.105 RCW. [2007 c 18 § 7.]

44.68.900 Effective date—2007 c 18. This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect July 1, 2007. [2007 c 18 § 10.]

Chapter 44.73 RCW LEGISLATIVE GIFT CENTER

Sections

44.73.005	Findings.
44.73.010	Legislative gift center—Created—Retail sale of products—Governance—Planning.
44.73.020	Legislative gift center account.

44.73.005 Findings. The legislature finds that Washington is committed to economic development and supporting the tourism industry, and that economic development is achieved by promoting the state and the goods produced around the state. The legislature further finds that tourism is encouraged providing a memorable experience and an opportunity for visitors to take something back home with them to remind them of this experience. There are many visitors every day to the legislative building, including tourists, school children, and people from around the state visiting the state capitol. These visitors offer an opportunity for the state to showcase its products and history. Therefore, the legislature finds that a gift center in the legislative building would be an appropriate response to this opportunity, and further, that such a gift center could provide a source of revenue to help fund the oral history program and to pay for the restoration and repurchase of historical capitol furnishings. [2007 c 453 § 1.]

44.73.010 Legislative gift center—Created—Retail sale of products—Governance—Planning. (1) There is created in the legislature a legislative gift center for the retail sale of products bearing the state seal, Washington state souvenirs, other Washington products, and other products as approved. Wholesale purchase of products for sale at the legislative gift center is not subject to competitive bidding.

(2) Governance for the legislative gift center shall be under the chief clerk of the house of representatives and the secretary of the senate. They may designate a legislative staff member as the lead staff person to oversee management and operation of the gift shop.

(3) The chief clerk of the house of representatives and secretary of the senate shall consult with the department of general administration in planning, siting, and maintaining legislative building space for the gift center.

(4) Products bearing the "Seal of the State of Washington" as described in Article XVIII, section 1 of the Washington state Constitution and RCW 1.20.080, must be purchased from the secretary of state pursuant to an agreement between the chief clerk of the house of representatives, the secretary of the senate, and the secretary of state. [2007 c 453 § 2.]

44.73.020 Legislative gift center account. (1) The legislative gift center account is created in the custody of the state treasurer. All moneys received by the gift center from the sale of Washington state souvenirs, other Washington

products, and other products as approved shall be deposited in the account. Expenditures from the account may be used only for the operations and maintenance of the gift center, including the purchase of inventory, and for other purposes as provided in this section. Only the chief clerk of the house of representatives and the secretary of the senate, or the lead staff person designated by them to oversee management and operation of the gift shop, may authorize expenditures from the account. The account is subject to allotment procedures under chapter 43.88 RCW, but an appropriation is not required for expenditures.

(2) Net profits, after expenses, from the sale of Washington state souvenirs, other Washington products, and products approved by the legislative gift center, shall be deposited as provided in this subsection:

(a) Twenty-five percent in the legislative oral history account in chapter 44.04 RCW (created in *Substitute House Bill No. 1741);

(b) Twenty-five percent in the oral history, state library, and archives account created in RCW 43.07.380; and

(c) Fifty percent in the capitol furnishings preservation committee account created in RCW 27.48.040.

(3) Net profits, after expenses, from the sale of items bearing the state seal by the legislative gift center shall be deposited in the capitol furnishings preservation committee account created in RCW 27.48.040. A full accounting thereof shall be provided to the secretary of state.

(4) The legislative gift center may designate special sales, the proceeds of which shall go to an account specified at the time of designation. [2007 c 453 § 3.]

*Reviser's note: Substitute House Bill No. 1741 was not enacted during the 2007 legislative session.

Title 46

MOTOR VEHICLES

Chapters

- 46.04 Definitions.
- 46.09 Off-road and nonhighway vehicles.
- 46.12 Certificates of ownership and registration.
- 46.16 Vehicle licenses.
- 46.20 Drivers' licenses—Identicators.
- 46.25 Uniform commercial driver's license act.
- 46.29 Financial responsibility.
- 46.32 Vehicle inspection.
- 46.37 Vehicle lighting and other equipment.
- 46.44 Size, weight, load.
- 46.52 Accidents—Reports—Abandoned vehicles.
- 46.55 Towing and impoundment.
- 46.61 Rules of the road.
- 46.63 Disposition of traffic infractions.
- 46.66 Washington auto theft prevention authority.
- 46.68 Disposition of revenue.
- 46.70 Dealers and manufacturers.
- 46.81A Motorcycle skills education program.
- 46.82 Driver training schools.
- 46.87 Proportional registration.

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Chapter 46.04 RCW

DEFINITIONS

Sections

- 46.04.272 Lightweight stud.
- 46.04.295 Medium-speed electric vehicle.
- 46.04.320 Motor vehicle.
- 46.04.480 Revoke.

46.04.272 Lightweight stud. (1) "Lightweight stud" means a stud intended for installation and use in a vehicle tire. As used in this title, this means a stud that is recommended by the manufacturer of the tire for the type and size of the tire and that:

(a) Weighs no more than 1.5 grams if the stud conforms to Tire Stud Manufacturing Institute (TSMI) stud size 14 or less;

(b) Weighs no more than 2.3 grams if the stud conforms to TSMI stud size 15 or 16; or

(c) Weighs no more than 3.0 grams if the stud conforms to TSMI stud size 17 or larger.

(2) A lightweight stud may contain any materials necessary to achieve the lighter weight.

(3) Subsection (1) of this section does not apply to retractable studs as described in RCW 46.37.420. [2007 c 140 § 1; 1999 c 219 § 1.]

46.04.295 Medium-speed electric vehicle. "Medium-speed electric vehicle" means a self-propelled, electrically powered four-wheeled motor vehicle, equipped with a roll cage or crush-proof body design, whose speed attainable in one mile is more than thirty miles per hour but not more than thirty-five miles per hour and otherwise meets or exceeds the federal regulations set forth in 49 C.F.R. Sec. 571.500. [2007 c 510 § 2.]

Effective date—2007 c 510: See note following RCW 46.04.320.

46.04.320 Motor vehicle. "Motor vehicle" means every vehicle that is self-propelled and every vehicle that is propelled by electric power obtained from overhead trolley wires, but not operated upon rails. "Motor vehicle" includes a neighborhood electric vehicle as defined in RCW 46.04.357. "Motor vehicle" includes a medium-speed electric vehicle as defined in RCW 46.04.295. An electric personal assistive mobility device is not considered a motor vehicle. A power wheelchair is not considered a motor vehicle. [2007 c 510 § 1. Prior: 2003 c 353 § 1; 2003 c 141 § 2; 2002 c 247 § 2; 1961 c 12 § 46.04.320; prior: 1959 c 49 § 33; 1955 c 384 § 10; prior: (i) 1943 c 153 § 1, part; 1937 c 188 § 1, part; Rem. Supp. 1943 § 6312-1, part; 1923 c 181 § 1, part; 1921 c 96 § 2, part; 1919 c 59 § 1, part; 1917 c 155 § 1, part; 1915 c 142 § 2, part; RRS § 6313, part. (ii) 1937 c 189 § 1, part; RRS § 6360-1, part; 1929 c 180 § 1, part; 1927 c 309 § 2, part; RRS § 6362-2, part.]

Effective date—2007 c 510: "This act takes effect August 1, 2007." [2007 c 510 § 6.]

Effective date—2003 c 353: "This act takes effect August 1, 2003." [2003 c 353 § 12.]

Legislative review—2002 c 247: See note following RCW 46.04.1695.

46.04.480 Revoke. "Revoke," in all its forms, means the invalidation for a period of one calendar year and thereaf-

ter until reissue. However, under the provisions of RCW 46.20.285, 46.20.311, 46.20.265, or 46.61.5055, and chapters 46.32 and 46.65 RCW, the invalidation may last for a period other than one calendar year. [2007 c 419 § 4; 1995 c 332 § 10; 1994 c 275 § 38; 1988 c 148 § 8; 1985 c 407 § 1; 1983 c 165 § 14; 1983 c 165 § 13; 1979 c 62 § 7; 1961 c 12 § 46.04.480. Prior: 1959 c 49 § 52; prior: (i) 1943 c 153 § 1, part; 1937 c 188 § 1, part; Rem. Supp. 1943 § 6312-1, part. (ii) 1937 c 189 § 1, part; RRS § 6360-1, part.]

Findings—Short title—Application—2007 c 419: See notes following RCW 46.16.004.

Severability—Effective dates—1995 c 332: See notes following RCW 46.20.308.

Short title—Effective date—1994 c 275: See notes following RCW 46.04.015.

Legislative finding—Severability—1988 c 148: See notes following RCW 13.40.265.

Effective dates—1985 c 407: "Sections 2 and 4 of this act are necessary for the immediate preservation of the public peace, health, and safety, the support of the state government and its existing public institutions, and shall take effect July 1, 1985. The remainder of the act shall take effect January 1, 1986." [1985 c 407 § 8.]

Legislative finding, intent—Effective dates—Severability—1983 c 165: See notes following RCW 46.20.308.

Severability—1979 c 62: See note following RCW 46.65.020.

Chapter 46.09 RCW

OFF-ROAD AND NONHIGHWAY VEHICLES

Sections

46.09.020	Definitions.
46.09.110	Disposition of ORV moneys.
46.09.165	Nonhighway and off-road vehicle activities program account.
46.09.170	Refunds from motor vehicle fund—Distribution—Use (<i>as amended by 2007 c 241</i>).
46.09.170	Refunds from motor vehicle fund—Distribution—Use (<i>as amended by 2007 c 522</i>).
46.09.240	Administration and distribution of ORV moneys.
46.09.250	Statewide plan.
46.09.280	Nonhighway and off-road vehicle activities advisory committee.

46.09.020 Definitions. The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

(1) "Advisory committee" means the nonhighway and off-road vehicle activities advisory committee established in RCW 46.09.280.

(2) "Board" means the recreation and conservation funding board established in RCW 79A.25.110.

(3) "Dealer" means a person, partnership, association, or corporation engaged in the business of selling off-road vehicles at wholesale or retail in this state.

(4) "Department" means the department of licensing.

(5) "Highway," for the purpose of this chapter only, means the entire width between the boundary lines of every roadway publicly maintained by the state department of transportation or any county or city with funding from the motor vehicle fund. A highway is generally capable of travel by a conventional two-wheel drive passenger automobile during most of the year and in use by such vehicles.

(6) "Motorized vehicle" means a vehicle that derives motive power from an internal combustion engine.

(7) "Nonhighway road" means any road owned or managed by a public agency or any private road for which the owner has granted an easement for public use for which appropriations from the motor vehicle fund were not used for (a) original construction or reconstruction in the last twenty-five years; or (b) maintenance in the last four years.

(8) "Nonhighway road recreation facilities" means recreational facilities that are adjacent to, or accessed by, a nonhighway road and intended primarily for nonhighway road recreational users.

(9) "Nonhighway road recreational user" means a person whose purpose for consuming fuel on a nonhighway road or off-road is primarily for nonhighway road recreational purposes, including, but not limited to, hunting, fishing, camping, sightseeing, wildlife viewing, picnicking, driving for pleasure, kayaking/canoeing, and gathering berries, firewood, mushrooms, and other natural products.

(10) "Nonhighway vehicle" means any motorized vehicle including an ORV when used for recreational purposes on nonhighway roads, trails, or a variety of other natural terrain.

Nonhighway vehicle does not include:

(a) Any vehicle designed primarily for travel on, over, or in the water;

(b) Snowmobiles or any military vehicles; or

(c) Any vehicle eligible for a motor vehicle fuel tax exemption or rebate under chapter 82.36 RCW while an exemption or rebate is claimed. This exemption includes but is not limited to farm, construction, and logging vehicles.

(11) "Nonmotorized recreational facilities" means recreational trails and facilities that are adjacent to, or accessed by, a nonhighway road and intended primarily for nonmotorized recreational users.

(12) "Nonmotorized recreational user" means a person whose purpose for consuming fuel on a nonhighway road or off-road is primarily for nonmotorized recreational purposes including, but not limited to, walking, hiking, backpacking, climbing, cross-country skiing, snowshoeing, mountain biking, horseback riding, and pack animal activities.

(13) "Off-road vehicle" or "ORV" means any nonstreet licensed vehicle when used for recreational purposes on nonhighway roads, trails, or a variety of other natural terrain. Such vehicles include, but are not limited to, all-terrain vehicles, motorcycles, four-wheel drive vehicles, and dune buggies.

(14) "Operator" means each person who operates, or is in physical control of, any nonhighway vehicle.

(15) "Organized competitive event" means any competition, advertised in advance through written notice to organized clubs or published in local newspapers, sponsored by recognized clubs, and conducted at a predetermined time and place.

(16) "ORV recreation facilities" include, but are not limited to, ORV trails, trailheads, campgrounds, ORV sports parks, and ORV use areas, designated for ORV use by the managing authority that are intended primarily for ORV recreational users.

(17) "ORV recreational user" means a person whose purpose for consuming fuel on nonhighway roads or off-road is primarily for ORV recreational purposes, including but not limited to riding an all-terrain vehicle, motorcycling, or driving a four-wheel drive vehicle or dune buggy.

(18) "ORV sports park" means a facility designed to accommodate competitive ORV recreational uses including, but not limited to, motocross racing, four-wheel drive competitions, and flat track racing. Use of ORV sports parks can be competitive or noncompetitive in nature.

(19) "ORV trail" means a multiple-use corridor designated by the managing authority and maintained for recreational use by motorized vehicles.

(20) "ORV use permit" means a permit issued for operation of an off-road vehicle under this chapter.

(21) "Owner" means the person other than the lienholder, having an interest in or title to a nonhighway vehicle, and entitled to the use or possession thereof.

(22) "Person" means any individual, firm, partnership, association, or corporation. [2007 c 241 § 13; 2004 c 105 § 1; 1986 c 206 § 1; 1979 c 158 § 129; 1977 ex.s. c 220 § 1; 1972 ex.s. c 153 § 3; 1971 ex.s. c 47 § 7.]

Intent—Effective date—2007 c 241: See notes following RCW 79A.25.005.

Effective date—1986 c 206: "This act shall take effect on June 30, 1986." [1986 c 206 § 17.]

Purpose—1972 ex.s. c 153: See RCW 79A.35.070.

46.09.110 Disposition of ORV moneys. The moneys collected by the department under this chapter shall be distributed from time to time but at least once a year in the following manner:

The department shall retain enough money to cover expenses incurred in the administration of this chapter: PROVIDED, That such retention shall never exceed eighteen percent of fees collected.

The remaining moneys shall be distributed for ORV recreation facilities by the board in accordance with RCW 46.09.170(2)(d)(ii)(A). [2007 c 241 § 14; 2004 c 105 § 2; 1986 c 206 § 6; 1985 c 57 § 60; 1977 ex.s. c 220 § 9; 1972 ex.s. c 153 § 11; 1971 ex.s. c 47 § 16.]

Intent—Effective date—2007 c 241: See notes following RCW 79A.25.005.

Effective date—1986 c 206: See note following RCW 46.09.020.

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

Purpose—1972 ex.s. c 153: See RCW 79A.35.070.

46.09.165 Nonhighway and off-road vehicle activities program account. The nonhighway and off-road vehicle activities program account is created in the state treasury. Moneys in this account are subject to legislative appropriation. The recreation and conservation funding board shall administer the account for purposes specified in this chapter and shall hold it separate and apart from all other money, funds, and accounts of the board. Grants, gifts, or other financial assistance, proceeds received from public bodies as administrative cost contributions, and any moneys made available to the state of Washington by the federal government for outdoor recreation may be deposited into the account. [2007 c 241 § 15; 1995 c 166 § 11.]

Intent—Effective date—2007 c 241: See notes following RCW 79A.25.005.

46.09.170 Refunds from motor vehicle fund—Distribution—Use (as amended by 2007 c 241). (1) From time to time, but at least once each year, the state treasurer shall refund from the motor vehicle fund one percent

of the motor vehicle fuel tax revenues collected under chapter 82.36 RCW, based on a tax rate of: (a) Nineteen cents per gallon of motor vehicle fuel from July 1, 2003, through June 30, 2005; (b) twenty cents per gallon of motor vehicle fuel from July 1, 2005, through June 30, 2007; (c) twenty-one cents per gallon of motor vehicle fuel from July 1, 2007, through June 30, 2009; (d) twenty-two cents per gallon of motor vehicle fuel from July 1, 2009, through June 30, 2011; and (e) twenty-three cents per gallon of motor vehicle fuel beginning July 1, 2011, and thereafter, less proper deductions for refunds and costs of collection as provided in RCW 46.68.090.

(2) The treasurer shall place these funds in the general fund as follows:

(a) Thirty-six percent shall be credited to the ORV and nonhighway vehicle account and administered by the department of natural resources solely for acquisition, planning, development, maintenance, and management of ORV, nonmotorized, and nonhighway road recreation facilities, and information programs and maintenance of nonhighway roads;

(b) Three and one-half percent shall be credited to the ORV and nonhighway vehicle account and administered by the department of fish and wildlife solely for the acquisition, planning, development, maintenance, and management of ORV, nonmotorized, and nonhighway road recreation facilities and the maintenance of nonhighway roads;

(c) Two percent shall be credited to the ORV and nonhighway vehicle account and administered by the parks and recreation commission solely for the acquisition, planning, development, maintenance, and management of ORV, nonmotorized, and nonhighway road recreation facilities; and

(d) Fifty-eight and one-half percent shall be credited to the nonhighway and off-road vehicle activities program account to be administered by the ~~(committee)~~ board for planning, acquisition, development, maintenance, and management of ORV, nonmotorized, and nonhighway road recreation facilities and for education, information, and law enforcement programs. The funds under this subsection shall be expended in accordance with the following limitations:

(i) Not more than thirty percent may be expended for education, information, and law enforcement programs under this chapter;

(ii) Not less than seventy percent may be expended for ORV, nonmotorized, and nonhighway road recreation facilities. Except as provided in (d)(iii) of this subsection, of this amount:

(A) Not less than thirty percent, together with the funds the ~~(committee)~~ board receives under RCW 46.09.110, may be expended for ORV recreation facilities;

(B) Not less than thirty percent may be expended for nonmotorized recreation facilities. Funds expended under this subsection (2)(d)(ii)(B) shall be known as Ira Spring outdoor recreation facilities funds; and

(C) Not less than thirty percent may be expended for nonhighway road recreation facilities;

(iii) The ~~(committee)~~ board may waive the minimum percentage cited in (d)(ii) of this subsection due to insufficient requests for funds or projects that score low in the ~~(committee's)~~ board's project evaluation. Funds remaining after such a waiver must be allocated in accordance with ~~(committee)~~ board policy.

(3) On a yearly basis an agency may not, except as provided in RCW 46.09.110, expend more than ten percent of the funds it receives under this chapter for general administration expenses incurred in carrying out this chapter.

(4) During the 2003-05 fiscal biennium, the legislature may appropriate such amounts as reflect the excess fund balance in the NOVA account to the ~~(interagency committee for outdoor recreation)~~ board, the department of natural resources, the department of fish and wildlife, and the state parks and recreation commission. This appropriation is not required to follow the specific distribution specified in subsection (2) of this section. [2007 c 241 § 16; 2004 c 105 § 6; (2004 c 105 § 5 expired June 30, 2005). Prior: (2003 1st sp.s. c 26 § 920 expired June 30, 2005); 2003 1st sp.s. c 25 § 922; 2003 c 361 § 407; 1995 c 166 § 9; 1994 c 264 § 36; 1990 c 42 § 115; 1988 c 36 § 25; 1986 c 206 § 8; 1979 c 158 § 130; 1977 ex.s. c 220 § 14; 1975 1st ex.s. c 34 § 1; 1974 ex.s. c 144 § 3; 1972 ex.s. c 153 § 15; 1971 ex.s. c 47 § 22.]

Intent—Effective date—2007 c 241: See notes following RCW 79A.25.005.

46.09.170 Refunds from motor vehicle fund—Distribution—Use (as amended by 2007 c 522). (1) From time to time, but at least once each year, the state treasurer shall refund from the motor vehicle fund one percent of the motor vehicle fuel tax revenues collected under chapter 82.36 RCW, based on a tax rate of: (a) Nineteen cents per gallon of motor vehicle fuel from July 1, 2003, through June 30, 2005; (b) twenty cents per gallon of motor vehicle fuel from July 1, 2005, through June 30, 2007; (c) twenty-one cents per gallon of motor vehicle fuel from July 1, 2007, through June 30,

2009; (d) twenty-two cents per gallon of motor vehicle fuel from July 1, 2009, through June 30, 2011; and (e) twenty-three cents per gallon of motor vehicle fuel beginning July 1, 2011, and thereafter, less proper deductions for refunds and costs of collection as provided in RCW 46.68.090.

(2) The treasurer shall place these funds in the general fund as follows:

(a) Thirty-six percent shall be credited to the ORV and nonhighway vehicle account and administered by the department of natural resources solely for acquisition, planning, development, maintenance, and management of ORV, nonmotorized, and nonhighway road recreation facilities, and information programs and maintenance of nonhighway roads;

(b) Three and one-half percent shall be credited to the ORV and nonhighway vehicle account and administered by the department of fish and wildlife solely for the acquisition, planning, development, maintenance, and management of ORV, nonmotorized, and nonhighway road recreation facilities and the maintenance of nonhighway roads;

(c) Two percent shall be credited to the ORV and nonhighway vehicle account and administered by the parks and recreation commission solely for the acquisition, planning, development, maintenance, and management of ORV, nonmotorized, and nonhighway road recreation facilities; and

(d) Fifty-eight and one-half percent shall be credited to the nonhighway and off-road vehicle activities program account to be administered by the committee for planning, acquisition, development, maintenance, and management of ORV, nonmotorized, and nonhighway road recreation facilities and for education, information, and law enforcement programs. The funds under this subsection shall be expended in accordance with the following limitations:

(i) Not more than thirty percent may be expended for education, information, and law enforcement programs under this chapter;

(ii) Not less than seventy percent may be expended for ORV, nonmotorized, and nonhighway road recreation facilities. Except as provided in (d)(iii) of this subsection, of this amount:

(A) Not less than thirty percent, together with the funds the committee receives under RCW 46.09.110, may be expended for ORV recreation facilities;

(B) Not less than thirty percent may be expended for nonmotorized recreation facilities. Funds expended under this subsection (2)(d)(ii)(B) shall be known as Ira Spring outdoor recreation facilities funds; and

(C) Not less than thirty percent may be expended for nonhighway road recreation facilities;

(iii) The committee may waive the minimum percentage cited in (d)(ii) of this subsection due to insufficient requests for funds or projects that score low in the committee's project evaluation. Funds remaining after such a waiver must be allocated in accordance with committee policy.

(3) On a yearly basis an agency may not, except as provided in RCW 46.09.110, expend more than ten percent of the funds it receives under this chapter for general administration expenses incurred in carrying out this chapter.

(4) During the ~~((2003-05))~~ 2007-09 fiscal biennium, the legislature may appropriate such amounts as reflect the excess fund balance in the NOVA account to ~~((the interagency committee for outdoor recreation;))~~ the department of natural resources ~~((the department of fish and wildlife, and the state parks and recreation commission))~~ for planning and designing consistent off-road vehicle signage at department-managed recreation sites, and for planning recreation opportunities on department-managed lands in the Reiter block and Ahtanum state forest. This appropriation is not required to follow the specific distribution specified in subsection (2) of this section. [2007 c 522 § 953; 2004 c 105 § 6; (2004 c 105 § 5 expired June 30, 2005). Prior: (2003 1st sp.s. c 26 § 920 expired June 30, 2005); 2003 1st sp.s. c 25 § 922; 2003 c 361 § 407; 1995 c 166 § 9; 1994 c 264 § 36; 1990 c 42 § 115; 1988 c 36 § 25; 1986 c 206 § 8; 1979 c 158 § 130; 1977 ex.s. c 220 § 14; 1975 1st ex.s. c 34 § 1; 1974 ex.s. c 144 § 3; 1972 ex.s. c 153 § 15; 1971 ex.s. c 47 § 22.]

Reviser's note: RCW 46.09.170 was amended twice during the 2007 legislative session, each without reference to the other. For rule of construction concerning sections amended more than once during the same legislative session, see RCW 1.12.025.

Severability—Effective date—2007 c 522: See notes following RCW 15.64.050.

Expiration dates—Effective dates—2004 c 105 §§ 3-6: See note following RCW 46.09.130.

Expiration date—Severability—Effective dates—2003 1st sp.s. c 26: See notes following RCW 43.135.045.

Severability—Effective date—2003 1st sp.s. c 25: See note following RCW 19.28.351.

Findings—Part headings not law—Severability—2003 c 361: See notes following RCW 82.36.025.

Effective dates—2003 c 361: See note following RCW 82.08.020.

Purpose—Headings—Severability—Effective dates—Application—Implementation—1990 c 42: See notes following RCW 82.36.025.

Effective date—1986 c 206: See note following RCW 46.09.020.

Effective date—1975 1st ex.s. c 34: "This 1975 amendatory act is necessary for the immediate preservation of the public peace, health, and safety, the support of the state government and its existing public institutions, and shall take effect July 1, 1975." [1975 1st ex.s. c 34 § 4.]

Purpose—1972 ex.s. c 153: See RCW 79A.35.070.

46.09.240 Administration and distribution of ORV moneys. (1) After deducting administrative expenses and the expense of any programs conducted under this chapter, the board shall, at least once each year, distribute the funds it receives under RCW 46.09.110 and 46.09.170 to state agencies, counties, municipalities, federal agencies, nonprofit ORV organizations, and Indian tribes. Funds distributed under this section to nonprofit ORV organizations may be spent only on projects or activities that benefit ORV recreation on lands once publicly owned that come into private ownership in a federally approved land exchange completed between January 1, 1998, and January 1, 2005.

(2) The board shall adopt rules governing applications for funds administered by the recreation and conservation office under this chapter and shall determine the amount of money distributed to each applicant. Agencies receiving funds under this chapter for capital purposes shall consider the possibility of contracting with the state parks and recreation commission, the department of natural resources, or other federal, state, and local agencies to employ the youth development and conservation corps or other youth crews in completing the project.

(3) The board shall require each applicant for acquisition or development funds under this section to comply with the requirements of either the state environmental policy act, chapter 43.21C RCW, or the national environmental policy act (42 U.S.C. Sec. 4321 et seq.). [2007 c 241 § 17; 2004 c 105 § 7; 1998 c 144 § 1; 1991 c 363 § 122; 1986 c 206 § 9; 1977 ex.s. c 220 § 17.]

Intent—Effective date—2007 c 241: See notes following RCW 79A.25.005.

Purpose—Captions not law—1991 c 363: See notes following RCW 2.32.180.

Effective date—1986 c 206: See note following RCW 46.09.020.

46.09.250 Statewide plan. The board shall maintain a statewide plan which shall be updated at least once every third biennium and shall be used by all participating agencies to guide distribution and expenditure of funds under this chapter. [2007 c 241 § 18; 1986 c 206 § 11; 1977 ex.s. c 220 § 18.]

Intent—Effective date—2007 c 241: See notes following RCW 79A.25.005.

Effective date—1986 c 206: See note following RCW 46.09.020.

46.09.280 Nonhighway and off-road vehicle activities advisory committee. (1) The board shall establish the nonhighway and off-road vehicle activities advisory committee to provide advice regarding the administration of this chapter.

The committee consists of governmental representatives, land managers, and a proportional representation of persons with recreational experience in areas identified in the most recent fuel use study, including but not limited to people with ORV, hiking, equestrian, mountain biking, hunting, fishing, and wildlife viewing experience.

(2) After the advisory committee has made recommendations regarding the expenditure of the fuel tax revenue portion of the nonhighway and off-road vehicle account moneys, the advisory committee's ORV and mountain biking recreationists, governmental representatives, and land managers will make recommendations regarding the expenditure of funds received under RCW 46.09.110.

(3) At least once a year, the board, the department of natural resources, the department of fish and wildlife, and the state parks and recreation commission shall report to the nonhighway and off-road vehicle activities advisory committee on the expenditures of funds received under RCW 46.09.110 and 46.09.170 and must proactively seek the advisory committee's advice regarding proposed expenditures.

(4) The advisory committee shall advise these agencies regarding the allocation of funds received under RCW 46.09.170 to ensure that overall expenditures reflect consideration of the results of the most recent fuel use study. [2007 c 241 § 19; 2004 c 105 § 8; 2003 c 185 § 1; 1986 c 206 § 13.]

Intent—Effective date—2007 c 241: See notes following RCW 79A.25.005.

Effective date—1986 c 206: See note following RCW 46.09.020.

Chapter 46.12 RCW CERTIFICATES OF OWNERSHIP AND REGISTRATION

Sections

46.12.030	Certificate of ownership—Application—Contents—Examination of vehicle.
46.12.040	Certificate of ownership—Fees.
46.12.101	Transfer of ownership—Requirements—Penalty, exceptions.
46.12.170	Procedure when security interest is granted on vehicle.

46.12.030 Certificate of ownership—Application—Contents—Examination of vehicle. (1) The application for a certificate of ownership shall be upon a form furnished or approved by the department and shall contain:

(a) A full description of the vehicle, which shall contain the proper vehicle identification number, the number of miles indicated on the odometer at the time of delivery of the vehicle, and any distinguishing marks of identification;

(b) The name and address of the person who is to be the registered owner of the vehicle and, if the vehicle is subject to a security interest, the name and address of the secured party;

(c) Such other information as the department may require.

(2) The department may in any instance, in addition to the information required on the application, require additional information and a physical examination of the vehicle or of any class of vehicles, or either.

(3)(a) A physical examination of the vehicle is mandatory if (i) it has been rebuilt after surrender of the certificate of ownership to the department under RCW 46.12.070 due to the vehicle's destruction or declaration as a total loss and (ii)

it is not retained by the registered owner at the time of the vehicle's destruction or declaration as a total loss. The inspection must verify that the vehicle identification number is genuine and agrees with the number shown on the title and registration certificate. The inspection must be made by a member of the Washington state patrol or other person authorized by the department to make such inspections.

(b)(i) A physical examination of the vehicle is mandatory if the vehicle was declared totaled or salvage under the laws of this state, or the vehicle is presented with documents from another state showing the vehicle was totaled or salvage and has not been reissued a valid registration from that state after the declaration of total loss or salvage.

(ii) The inspection must verify that the vehicle identification number is genuine and agrees with the number shown on the original documents supporting the vehicle purchase or ownership.

(iii) A Washington state patrol VIN specialist must ensure that all major component parts used for the reconstruction of a salvage or rebuildable vehicle were obtained legally. Original invoices for new and used parts must be from a vendor that is registered with the department of revenue for the collection of retail sales or use taxes or comparable agency in the jurisdiction where the major component parts were purchased. The invoices must include the name and address of the business, a description of the part or parts sold, the date of sale, and the amount of sale to include all taxes paid unless exempted by the department of revenue or comparable agency in the jurisdiction where the major component parts were purchased. Original invoices for used parts must be from a vehicle wrecker licensed under chapter 46.80 RCW or a comparable business in the jurisdiction outside Washington state where the major component part was purchased. If the parts or components were purchased from a private individual, the private individual must have title to the vehicle the parts were taken from, except as provided by RCW 46.04.3815, and the bill of sale for the parts must be notarized. The bills of sale must include the names and addresses of the sellers and purchasers, a description of the vehicle, the part or parts being sold, including the make, model, year, and identification or serial number, that date of sale, and the purchase price of the vehicle or part or parts. If the presenter is unable to provide an acceptable release of interest or proof of ownership for a vehicle or major component part as described above, an inspection must be completed for ownership-in-doubt purposes as prescribed by WAC 308-56A-210.

(iv) A vehicle presented for inspection must have all damaged major component parts replaced or repaired to meet RCW and WAC requirements before inspection of the salvage vehicle by the Washington state patrol.

(4) To the extent that the Washington state patrol has a backlog of vehicle inspections that it is to perform under this section, chapter 420, Laws of 2007 shall not be construed to reduce the vehicle inspection workload of the Washington state patrol.

(5) Rebuilt or salvage vehicles licensed in Washington must meet the requirements found under chapter 46.37 RCW to be driven upon public roadways.

(6) The application shall be subscribed by the person applying to be the registered owner and be sworn to by that

applicant in the manner described by RCW 9A.72.085. The department shall retain the application in either the original, computer, or photostatic form. [2007 c 420 § 1; 2005 c 173 § 1; 2004 c 188 § 1; 2001 c 125 § 1. Prior: 1995 c 274 § 1; 1995 c 256 § 23; 1990 c 238 § 1; 1975 c 25 § 8; 1974 ex.s. c 128 § 1; 1972 ex.s. c 99 § 2; 1967 c 32 § 8; 1961 c 12 § 46.12.030; prior: 1947 c 164 § 1, part; 1937 c 188 § 3, part; Rem. Supp. 1947 § 6312-2, part.]

Effective date—2001 c 125: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect July 1, 2001." [2001 c 125 § 5.]

Effective date, implementation—1990 c 238: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and shall take effect May 1, 1990. The director of licensing shall immediately take such steps as are necessary to ensure that this act is implemented on its effective date." [1990 c 238 § 9.]

Effective date—1974 ex.s. c 128: "This 1974 amendatory act shall take effect July 1, 1974." [1974 ex.s. c 128 § 3.]

Notice of liability insurance requirement: RCW 46.16.212.

46.12.040 Certificate of ownership—Fees. (1) The application for an original certificate of ownership accompanied by a draft, money order, certified bank check, or cash for five dollars, together with the last preceding certificates or other satisfactory evidence of ownership, shall be forwarded to the director.

(2) The fee shall be in addition to any other fee for the license registration of the vehicle. The certificate of ownership shall not be required to be renewed annually, or at any other time, except as by law provided.

(3) In addition to the application fee and any other fee for the license registration of a vehicle, the department shall collect from the applicant a fee of fifteen dollars for vehicles previously registered in any other state or country. The proceeds from the fee shall be deposited in accordance with RCW 46.68.020. For vehicles requiring a physical examination, the inspection fee shall be sixty-five dollars, fifteen dollars of which shall be deposited into the state patrol highway account created under RCW 46.68.030, and the remainder of which shall be deposited in accordance with RCW 46.68.020. [2007 c 420 § 2; 2004 c 200 § 1; 2002 c 352 § 3; 2001 c 125 § 2; 1990 c 238 § 2; 1989 c 110 § 1; 1975 1st ex.s. c 138 § 1; 1974 ex.s. c 128 § 2; 1961 c 12 § 46.12.040. Prior: 1951 c 269 § 1; 1947 c 164 § 1, part; 1937 c 188 § 3, part; Rem. Supp. 1947 § 6312-3, part.]

Effective date—2004 c 200: "This act takes effect July 1, 2004." [2004 c 200 § 4.]

Effective dates—2002 c 352: See note following RCW 46.09.070.

Effective date—2001 c 125: See note following RCW 46.12.030.

Effective date, implementation—1990 c 238: See note following RCW 46.12.030.

Effective date—1974 ex.s. c 128: See note following RCW 46.12.030.

46.12.101 Transfer of ownership—Requirements—Penalty, exceptions. A transfer of ownership in a motor vehicle is perfected by compliance with the requirements of this section.

(1)(a) If an owner transfers his or her interest in a vehicle, other than by the creation, deletion, or change of a security interest, the owner shall, at the time of the delivery of the

vehicle, execute an assignment to the transferee and provide an odometer disclosure statement under RCW 46.12.124 on the certificate of ownership or as the department otherwise prescribes, and cause the certificate and assignment to be transmitted to the transferee. The owner shall notify the department or its agents or subagents, in writing, on the appropriate form, of the date of the sale or transfer, the name and address of the owner and of the transferee, the transferee's driver's license number if available, and such description of the vehicle, including the vehicle identification number, as may be required in the appropriate form provided or approved for that purpose by the department. The report of sale will be deemed properly filed if all information required in this section is provided on the form and includes a department-authorized notation that the document was received by the department, its agents, or subagents on or before the fifth day after the sale of the vehicle, excluding Saturdays, Sundays, and state and federal holidays. Agents and subagents shall immediately electronically transmit the seller's report of sale to the department. Reports of sale processed and recorded by the department's agents or subagents may be subject to fees as specified in RCW 46.01.140 (4)(a) or (5)(b). By January 1, 2003, the department shall create a system enabling the seller of a vehicle to transmit the report of sale electronically. The system created by the department must immediately indicate on the department's vehicle record that a seller's report of sale has been filed.

(b) By January 1, 2008, the department shall provide instructions on release of interest forms that allow the seller of a vehicle to release his or her interest in a vehicle at the same time a financial institution, as defined in RCW 30.22.040, releases their lien on the vehicle.

(2) The requirements of subsection (1) of this section to provide an odometer disclosure statement apply to the transfer of vehicles held for lease when transferred to a lessee and then to the lessor at the end of the leasehold and to vehicles held in a fleet when transferred to a purchaser.

(3) Except as provided in RCW 46.70.122 the transferee shall within fifteen days after delivery to the transferee of the vehicle, execute the application for a new certificate of ownership in the same space provided therefor on the certificate or as the department prescribes, and cause the certificates and application to be transmitted to the department accompanied by a fee of five dollars in addition to any other fees required.

(4) Upon request of the owner or transferee, a secured party in possession of the certificate of ownership shall, unless the transfer was a breach of its security agreement, either deliver the certificate to the transferee for transmission to the department or, when the secured party receives the owner's assignment from the transferee, it shall transmit the transferee's application for a new certificate, the existing certificate, and the required fee to the department. Compliance with this section does not affect the rights of the secured party.

(5) If a security interest is reserved or created at the time of the transfer, the certificate of ownership shall be retained by or delivered to the person who becomes the secured party, and the parties shall comply with the provisions of RCW 46.12.170.

(6) If the purchaser or transferee fails or neglects to make application to transfer the certificate of ownership and license

registration within fifteen days after the date of delivery of the vehicle, he or she shall on making application for transfer be assessed a twenty-five dollar penalty on the sixteenth day and two dollars additional for each day thereafter, but not to exceed one hundred dollars. The director may by rule establish conditions under which the penalty will not be assessed when an application for transfer is delayed for reasons beyond the control of the purchaser. Conditions for not assessing the penalty may be established for but not limited to delays caused by:

- (a) The department requesting additional supporting documents;
- (b) Extended hospitalization or illness of the purchaser;
- (c) Failure of a legal owner to release his or her interest;
- (d) Failure, negligence, or nonperformance of the department, auditor, or subagent;
- (e) The transferee had no knowledge of the filing of the vehicle report of sale and signs an affidavit to the fact.

Failure or neglect to make application to transfer the certificate of ownership and license registration within forty-five days after the date of delivery of the vehicle is a misdemeanor.

(7) Upon receipt of an application for reissue or replacement of a certificate of ownership and transfer of license registration, accompanied by the endorsed certificate of ownership or other documentary evidence as is deemed necessary, the department shall, if the application is in order and if all provisions relating to the certificate of ownership and license registration have been complied with, issue new certificates of title and license registration as in the case of an original issue and shall transmit the fees together with an itemized detailed report to the state treasurer.

(8) Once each quarter the department shall report to the department of revenue a list of those vehicles for which a seller's report has been received but no transfer of title has taken place. [2007 c 96 § 1; 2006 c 291 § 2. Prior: 2004 c 223 § 1; 2004 c 200 § 2; 2003 c 264 § 7; 2002 c 279 § 1; 1998 c 203 § 11; 1991 c 339 § 19; 1990 c 238 § 4; 1987 c 127 § 1; 1984 c 39 § 1; 1972 ex.s. c 99 § 1; 1969 ex.s. c 281 § 38; 1969 ex.s. c 42 § 1; 1967 c 140 § 7.]

Effective date—2004 c 200: See note following RCW 46.12.040.

Finding—1998 c 203: See note following RCW 46.55.105.

Effective date, implementation—1990 c 238: See note following RCW 46.12.030.

Effective date—1967 c 140: See note following RCW 46.12.010.

Definitions: RCW 46.12.005.

46.12.170 Procedure when security interest is granted on vehicle. (1) If, after a certificate of ownership is issued, a security interest is granted on the vehicle described therein, the registered owner or secured party shall, within ten days thereafter, present an application to the department, to which shall be attached the certificate of ownership last issued covering the vehicle, or such other documentation as may be required by the department, which application shall be upon a form approved by the department and shall be accompanied by a fee of five dollars in addition to all other fees. The department, if satisfied that there should be a reissue of the certificate, shall note such change upon the vehicle

records and issue to the secured party a new certificate of ownership.

(2) Whenever there is no outstanding secured obligation and no commitment to make advances and incur obligations or otherwise give value, the secured party must either:

(a) Assign the certificate of ownership to the debtor or the debtor's assignee or transferee, and transmit the certificate to the department with an accompanying fee of five dollars in addition to all other fees; or

(b) Assign the certificate of ownership to the debtor's assignee or transferee together with the debtor's or debtor's assignee's release of interest.

(3) Upon receipt of the certificate of ownership and the debtor's release of interest and required fees as provided in subsection (2)(a) of this section, the department shall issue a new certificate of ownership and transmit it to the registered owner.

(4) If the affected secured party fails to either assign the certificate of ownership to the debtor or the debtor's assignee or transferee or transmit the certificate of ownership to the department within ten days after proper demand, that secured party shall be liable to the debtor or the debtor's assignee or transferee for one hundred dollars, and in addition for any loss caused to the debtor or the debtor's assignee or transferee by such failure. [2007 c 96 § 2; 2002 c 352 § 5. Prior: 1997 c 432 § 5; 1997 c 241 § 5; 1994 c 262 § 6; 1979 ex.s. c 113 § 2; 1975 c 25 § 13; 1967 c 140 § 4; 1961 c 12 § 46.12.170; prior: 1951 c 269 § 4; 1947 c 164 § 5; 1939 c 182 § 2; 1937 c 188 § 7; Rem. Supp. 1947 § 6312-7.]

Effective dates—2002 c 352: See note following RCW 46.09.070.

Effective date—1967 c 140: See note following RCW 46.12.010.

Definitions: RCW 46.12.005.

Chapter 46.16 RCW VEHICLE LICENSES

Sections

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46.16.004 Definitions. For the purposes of this chapter unless the context clearly requires otherwise:

(1) "Commercial motor vehicle," for the purposes of requiring a department of transportation number, means the same as defined in RCW 46.25.010(6), or a motor vehicle used in commerce when the motor vehicle: (a) Has a gross vehicle weight rating of 11,794 kilograms or more (26,001 pounds or more) inclusive of a towed unit of a gross vehicle weight rating of more than 4,536 kilograms (10,000 pounds or more); (b) has a gross vehicle weight rating of 11,794 kilograms or more (26,001 pounds or more); or (c) is used in the

transportation of hazardous materials, as defined in RCW 46.25.010(13);

(2) "Department" means the department of licensing;

(3) "Department of transportation number" means a department of transportation number from the federal motor carrier safety administration;

(4) "Interstate commercial motor vehicle" means a commercial vehicle that operates in more than one state;

(5) "Intrastate commercial motor vehicle" means a commercial vehicle that operates exclusively within the state of Washington;

(6) "Motor carrier" means a person or entity who has been issued a department of transportation number and who owns a commercial motor vehicle. [2007 c 419 § 3.]

Findings—2007 c 419: "The legislature finds and declares that it is the policy of the state of Washington to prevent the loss of human lives and the loss of property and vehicles, and to protect the traveling environment of the state of Washington through sound and consistent regulatory provisions for interstate and intrastate motor carriers.

The legislature further finds and declares that it is a policy of the state of Washington to require commercial motor vehicles operating on state roadways to comply with rigorous federal and state safety regulations. The legislature also finds that intrastate and interstate commercial motor vehicles should comply with consistent state and federal commercial vehicle regulations." [2007 c 419 § 1.]

Short title—2007 c 419: "This act may be known and cited as the Tony Qamar and Daniel Johnson act." [2007 c 419 § 2.]

Application—2007 c 419: "This act does not apply to:

(1) Commercial motor vehicles that are operated under a permit and subject to economic regulation under chapters 81.68, 81.70, 81.77, and 81.80 RCW; and

(2) Vehicles exempted from registration by RCW 46.16.020." [2007 c 419 § 18.]

46.16.010 Licenses and plates required—Penalties—

Exceptions—Expired registration, impoundment. (1) It is unlawful for a person to operate any vehicle over and along a public highway of this state without first having obtained and having in full force and effect a current and proper vehicle license and display vehicle license number plates therefor as by this chapter provided.

(2) Failure to make initial registration before operation on the highways of this state is a traffic infraction, and any person committing this infraction shall pay a penalty of five hundred twenty-nine dollars, no part of which may be suspended or deferred.

(3) Failure to renew an expired registration before operation on the highways of this state is a traffic infraction.

(4) The licensing of a vehicle in another state by a resident of this state, as defined in RCW 46.16.028, evading the payment of any tax or license fee imposed in connection with registration, is a gross misdemeanor punishable as follows:

(a) For a first offense, up to one year in the county jail and payment of a fine of five hundred twenty-nine dollars plus twice the amount of delinquent taxes and fees, no part of which may be suspended or deferred;

(b) For a second or subsequent offense, up to one year in the county jail and payment of a fine of five hundred twenty-nine dollars plus four times the amount of delinquent taxes and fees, no part of which may be suspended or deferred;

(c) For fines levied under (b) of this subsection, an amount equal to the avoided taxes and fees owed will be deposited in the vehicle licensing fraud account created in the state treasury;

(d) The avoided taxes and fees shall be deposited and distributed in the same manner as if the taxes and fees were properly paid in a timely fashion.

(5) These provisions shall not apply to the following vehicles:

(a) Motorized foot scooters;

(b) Electric-assisted bicycles;

(c) Off-road vehicles operating on nonhighway roads under RCW 46.09.115;

(d) Farm vehicles if operated within a radius of fifteen miles of the farm where principally used or garaged, farm tractors and farm implements including trailers designed as cook or bunk houses used exclusively for animal herding temporarily operating or drawn upon the public highways, and trailers used exclusively to transport farm implements from one farm to another during the daylight hours or at night when such equipment has lights that comply with the law;

(e) Spray or fertilizer applicator rigs designed and used exclusively for spraying or fertilization in the conduct of agricultural operations and not primarily for the purpose of transportation, and nurse rigs or equipment auxiliary to the use of and designed or modified for the fueling, repairing, or loading of spray and fertilizer applicator rigs and not used, designed, or modified primarily for the purpose of transportation;

(f) Fork lifts operated during daylight hours on public highways adjacent to and within five hundred feet of the warehouses which they serve: PROVIDED FURTHER, That these provisions shall not apply to vehicles used by the state parks and recreation commission exclusively for park maintenance and operations upon public highways within state parks;

(g) "Trams" used for transporting persons to and from facilities related to the horse racing industry as regulated in chapter 67.16 RCW, as long as the public right-of-way routes over which the trams operate are not more than one mile from end to end, the public rights-of-way over which the tram operates have an average daily traffic of not more than 15,000 vehicles per day, and the activity is in conformity with federal law. The operator must be a licensed driver and at least eighteen years old. For the purposes of this section, "tram" also means a vehicle, or combination of vehicles linked together with a single mode of propulsion, used to transport persons from one location to another;

(h) "Special highway construction equipment" defined as follows: Any vehicle which is designed and used primarily for grading of highways, paving of highways, earth moving, and other construction work on highways and which is not designed or used primarily for the transportation of persons or property on a public highway and which is only incidentally operated or moved over the highway. It includes, but is not limited to, road construction and maintenance machinery so designed and used such as portable air compressors, air drills, asphalt spreaders, bituminous mixers, bucket loaders, track laying tractors, ditchers, leveling graders, finishing machines, motor graders, paving mixers, road rollers, scarifiers, earth moving scrapers and carryalls, lighting plants, welders, pumps, power shovels and draglines, self-propelled and tractor-drawn earth moving equipment and machinery, including dump trucks and tractor-dump trailer combinations which either (i) are in excess of the legal

width, or (ii) which, because of their length, height, or unladen weight, may not be moved on a public highway without the permit specified in RCW 46.44.090 and which are not operated laden except within the boundaries of the project limits as defined by the contract, and other similar types of construction equipment, or (iii) which are driven or moved upon a public highway only for the purpose of crossing such highway from one property to another, provided such movement does not exceed five hundred feet and the vehicle is equipped with wheels or pads which will not damage the roadway surface.

Exclusions:

"Special highway construction equipment" does not include any of the following:

Dump trucks originally designed to comply with the legal size and weight provisions of this code notwithstanding any subsequent modification which would require a permit, as specified in RCW 46.44.090, to operate such vehicles on a public highway, including trailers, truck-mounted transit mixers, cranes and shovels, or other vehicles designed for the transportation of persons or property to which machinery has been attached.

(6) The following vehicles, whether operated solo or in combination, are exempt from license registration and displaying license plates as required by this chapter:

(a) A converter gear used to convert a semitrailer into a trailer or a two-axle truck or tractor into a three or more axle truck or tractor or used in any other manner to increase the number of axles of a vehicle. Converter gear includes an auxiliary axle, booster axle, dolly, and jeep axle.

(b) A tow dolly that is used for towing a motor vehicle behind another motor vehicle. The front or rear wheels of the towed vehicle are secured to and rest on the tow dolly that is attached to the towing vehicle by a tow bar.

(c) An off-road vehicle operated on a street, road, or highway as authorized under RCW 46.09.180.

(7)(a) A motor vehicle subject to initial or renewal registration under this section shall not be registered to a natural person unless the person at time of application:

(i) Presents an unexpired Washington state driver's license; or

(ii) Certifies that he or she is:

(A) A Washington resident who does not operate a motor vehicle on public roads; or

(B) Exempt from the requirement to obtain a Washington state driver's license under RCW 46.20.025.

(b) For shared or joint ownership, the department will set up procedures to verify that all owners meet the requirements of this subsection.

(c) A person falsifying residency is guilty of a gross misdemeanor punishable only by a fine of five hundred twenty-nine dollars.

(d) The department may adopt rules necessary to implement this subsection, including rules under which a natural person applying for registration may be exempt from the requirements of this subsection where the person provides evidence satisfactory to the department that he or she has a valid and compelling reason for not being able to meet the requirements of this subsection.

(8) A vehicle with an expired registration of more than forty-five days parked on a public street may be impounded

by a police officer under RCW 46.55.113(2). [2007 c 242 § 2; 2006 c 212 § 1. Prior: 2005 c 350 § 1; 2005 c 323 § 2; 2005 c 213 § 6; prior: 2003 c 353 § 8; 2003 c 53 § 238; 2000 c 229 § 1; 1999 c 277 § 4; prior: 1997 c 328 § 2; 1997 c 241 § 13; 1996 c 184 § 1; 1993 c 238 § 1; 1991 c 163 § 1; 1989 c 192 § 2; 1986 c 186 § 1; 1977 ex.s. c 148 § 1; 1973 1st ex.s. c 17 § 2; 1972 ex.s. c 5 § 2; 1969 c 27 § 3; 1967 c 202 § 2; 1963 ex.s. c 3 § 51; 1961 ex.s. c 21 § 32; 1961 c 12 § 46.16.010; prior: 1955 c 265 § 1; 1947 c 33 § 1; 1937 c 188 § 15; Rem. Supp. 1947 § 6312-15; 1929 c 99 § 5; RRS § 6324.]

Rules of court: *Monetary penalty schedule—IRLJ 6.2.*

Effective date—2005 c 350: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately [May 9, 2005]." [2005 c 350 § 2.]

Declaration and intent—2005 c 323: "When a person establishes residency in this state, unless otherwise exempt by statute, the person must register any vehicles to be operated on public highways, and pay all required licensing fees and taxes. Washington residents must renew vehicle registrations annually as well. The intent of this act is to increase the monetary penalties associated with failure to properly register vehicles in the state of Washington." [2005 c 323 § 1.]

Effective date—2005 c 323: "This act takes effect August 1, 2005." [2005 c 323 § 4.]

Application—2005 c 323: "This act applies to registrations due or to become due on or after January 1, 2006." [2005 c 323 § 5.]

Findings—Construction—Effective date—2005 c 213: See notes following RCW 46.09.010.

Effective date—2003 c 353: See note following RCW 46.04.320.

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

Effective date—2000 c 229: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately [March 30, 2000]." [2000 c 229 § 9.]

Effective date—1996 c 184 §§ 1-6: "Sections 1 through 6 of this act take effect January 1, 1997." [1996 c 184 § 8.]

Legislative intent—1989 c 192: "The legislature recognizes that there are residents of this state who intentionally register motor vehicles in other states to evade payment of taxes and fees required by the laws of this state. This results in a substantial loss of revenue to the state. It is the intent of the legislature to impose a stronger criminal penalty upon those residents who defraud the state, thereby enhancing compliance with the registration laws of this state and further enhancing enforcement and collection efforts.

In order to encourage voluntary compliance with the registration laws of this state, administrative penalties associated with failing to register a motor vehicle are waived until September 1, 1989. It is not the intent of the legislature to waive traffic infraction or criminal traffic violations imposed prior to July 23, 1989." [1989 c 192 § 1.]

Effective date—1989 c 192 § 2: "Section 2 of this act shall take effect September 1, 1989." [1989 c 192 § 3.]

46.16.045 Temporary permits—Authority—Fees.

(1) The department in its discretion may grant a temporary permit to operate a vehicle for which application for registration has been made, where such application is accompanied by the proper fee pending action upon said application by the department.

(2) The department may authorize vehicle dealers properly licensed pursuant to chapter 46.70 RCW to issue temporary permits to operate vehicles under such rules and regulations as the department deems appropriate.

(3) The fee for each temporary permit application distributed to an authorized vehicle dealer shall be fifteen dollars, five dollars of which shall be credited to the payment of

registration fees at the time application for registration is made. The remainder shall be deposited to the state patrol highway account.

(4) The payment of the registration fees to an authorized dealer is considered payment to the state of Washington. [2007 c 155 § 1; 1990 c 198 § 1; 1973 1st ex.s. c 132 § 23; 1961 c 12 § 46.16.045. Prior: 1959 c 66 § 1.]

Effective date—2007 c 155: "This act takes effect August 1, 2007." [2007 c 155 § 3.]

Severability—1973 1st ex.s. c 132: See RCW 46.16.900, 46.70.920.

46.16.076 Voluntary donation—State parks renewal and stewardship account. (1) The department shall provide an opportunity for owners of vehicles registered under RCW 46.16.0621 and vehicles licensed under RCW 46.16.070 with a declared gross weight of ten thousand pounds or less, to make a voluntary donation of five dollars at the time of initial or renewal registration. The donation must be deposited in the state parks renewal and stewardship account established in RCW 79A.05.215 to be used for the operation and maintenance of state parks.

(2) This section applies to registrations due or to become due on or after January 1, 2008. [2007 c 340 § 1.]

46.16.160 Vehicle trip permits—Restrictions and requirements—Fees and taxes—Penalty—Rules. (1) The owner of a vehicle which under reciprocal relations with another jurisdiction would be required to obtain a license registration in this state or an unlicensed vehicle which would be required to obtain a license registration for operation on public highways of this state may, as an alternative to such license registration, secure and operate such vehicle under authority of a trip permit issued by this state in lieu of a Washington certificate of license registration, and licensed gross weight if applicable. The licensed gross weight may not exceed eighty thousand pounds for a combination of vehicles nor forty thousand pounds for a single unit vehicle with three or more axles. Trip permits are required for movement of mobile homes or park model trailers and may only be issued if property taxes are paid in full. For the purpose of this section, a vehicle is considered unlicensed if the licensed gross weight currently in effect for the vehicle or combination of vehicles is not adequate for the load being carried. Vehicles registered under RCW 46.16.135 shall not be operated under authority of trip permits in lieu of further registration within the same registration year.

(2) Each trip permit shall authorize the operation of a single vehicle at the maximum legal weight limit for such vehicle for a period of three consecutive days commencing with the day of first use. No more than three such permits may be used for any one vehicle in any period of thirty consecutive days, except that in the case of a recreational vehicle as defined in RCW 43.22.335, no more than two trip permits may be used for any one vehicle in a one-year period. Every permit shall identify, as the department may require, the vehicle for which it is issued and shall be completed in its entirety and signed by the operator before operation of the vehicle on the public highways of this state. Correction of data on the permit such as dates, license number, or vehicle identification number invalidates the permit. The trip permit shall be dis-

played on the vehicle to which it is issued as prescribed by the department.

(3) Vehicles operating under authority of trip permits are subject to all laws, rules, and regulations affecting the operation of like vehicles in this state.

(4) Prorate operators operating commercial vehicles on trip permits in Washington shall retain the customer copy of such permit for four years.

(5) Trip permits may be obtained from field offices of the department of transportation, department of licensing, or other agents appointed by the department. The fee for each trip permit is twenty dollars. Five dollars from every twenty-dollar trip permit fee shall be deposited into the state patrol highway account and must be used for commercial motor vehicle inspections. For each permit issued, the fee includes a filing fee as provided by RCW 46.01.140 and an excise tax of one dollar. The remaining portion of the trip permit fee must be deposited to the credit of the motor vehicle fund as an administrative fee. If the filing fee amount of three dollars as prescribed in RCW 46.01.140 is increased or decreased after July 1, 2002, the administrative fee must be increased or decreased by the same amount so that the total trip permit would be adjusted equally to compensate. These fees and taxes are in lieu of all other vehicle license fees and taxes. No exchange, credits, or refunds may be given for trip permits after they have been purchased.

(6) The department may appoint county auditors or businesses as agents for the purpose of selling trip permits to the public. County auditors or businesses so appointed may retain the filing fee collected for each trip permit to defray expenses incurred in handling and selling the permits.

(7) Commercial motor vehicles that are owned by a motor carrier subject to RCW 46.32.080, must not be operated on trip permits authorized by RCW 46.16.160 or 46.16.162 if the motor carrier's department of transportation number has been placed out of service by the Washington state patrol. A violation of or a failure to comply with this subsection is a gross misdemeanor, subject to a minimum monetary penalty of two thousand five hundred dollars for the first violation and five thousand dollars for each subsequent violation.

(8) Except as provided in subsection (7) of this section, a violation of or a failure to comply with any provision of this section is a gross misdemeanor.

(9) The department of licensing may adopt rules as it deems necessary to administer this section.

(10) A surcharge of five dollars is imposed on the issuance of trip permits. The portion of the surcharge paid by motor carriers must be deposited in the motor vehicle fund for the purpose of supporting vehicle weigh stations, weigh-in-motion programs, and the commercial vehicle information systems and networks program. The remaining portion of the surcharge must be deposited in the motor vehicle fund for the purpose of supporting congestion relief programs. All other administrative fees and excise taxes collected under the provisions of this chapter shall be forwarded by the department with proper identifying detailed report to the state treasurer who shall deposit the administrative fees to the credit of the motor vehicle fund and the excise taxes to the credit of the general fund. Filing fees will be forwarded and reported to the state treasurer by the department as prescribed in RCW

46.01.140. [2007 c 419 § 6. Prior: 2002 c 352 § 8; 2002 c 168 § 5; 1999 c 270 § 1; 1996 c 184 § 2; 1993 c 102 § 2; 1987 c 244 § 6; 1981 c 318 § 1; 1977 ex.s. c 22 § 5; 1975-'76 2nd ex.s. c 64 § 6; 1969 ex.s. c 170 § 8; 1961 c 306 § 1; 1961 c 12 § 46.16.160; prior: 1957 c 273 § 3; 1955 c 384 § 17; 1949 c 174 § 1; 1947 c 176 § 1; 1937 c 188 § 24; Rem. Supp. 1949 § 6312-24.]

Findings—Short title—Application—2007 c 419: See notes following RCW 46.16.004.

Effective dates—2002 c 352: See note following RCW 46.09.070.

Effective date—1996 c 184: See note following RCW 46.16.010.

Effective date of 1993 c 102 and c 123—1993 sp.s. c 23: See note following RCW 46.16.070.

Severability—1977 ex.s. c 22: See note following RCW 46.04.302.

Effective dates—Severability—1975-'76 2nd ex.s. c 64: See notes following RCW 46.16.070.

46.16.381 Special parking for persons with disabilities—Penalties—Enforcement—Definition. (1) The director shall grant special parking privileges to any person who has a disability that limits or impairs the ability to walk or involves acute sensitivity to light and meets one of the following criteria, as determined by a licensed physician, an advanced registered nurse practitioner licensed under chapter 18.79 RCW, or a physician assistant licensed under chapter 18.71A or 18.57A RCW:

(a) Cannot walk two hundred feet without stopping to rest;

(b) Is severely limited in ability to walk due to arthritic, neurological, or orthopedic condition;

(c) Has such a severe disability, that the person cannot walk without the use of or assistance from a brace, cane, another person, prosthetic device, wheelchair, or other assistive device;

(d) Uses portable oxygen;

(e) Is restricted by lung disease to such an extent that forced expiratory respiratory volume, when measured by spirometry is less than one liter per second or the arterial oxygen tension is less than sixty mm/hg on room air at rest;

(f) Impairment by cardiovascular disease or cardiac condition to the extent that the person's functional limitations are classified as class III or IV under standards accepted by the American Heart Association;

(g) Has a disability resulting from an acute sensitivity to automobile emissions which limits or impairs the ability to walk. The personal physician, advanced registered nurse practitioner, or physician assistant of the applicant shall document that the disability is comparable in severity to the others listed in this subsection;

(h) Is legally blind and has limited mobility; or

(i) Is restricted by a form of porphyria to the extent that the applicant would significantly benefit from a decrease in exposure to light.

(2) The applications for parking permits for persons with disabilities and parking permits for persons with temporary disabilities are official state documents. Knowingly providing false information in conjunction with the application is a gross misdemeanor punishable under chapter 9A.20 RCW. The following statement must appear on each application form immediately below the physician's, advanced registered nurse practitioner's, or physician assistant's signature and

immediately below the applicant's signature: "A parking permit for a person with disabilities may be issued only for a medical necessity that severely affects mobility or involves acute sensitivity to light (RCW 46.16.381). Knowingly providing false information on this application is a gross misdemeanor. The penalty is up to one year in jail and a fine of up to \$5,000 or both."

(3) Persons who qualify for special parking privileges are entitled to receive from the department of licensing a removable windshield placard bearing the international symbol of access and an individual serial number, along with a special identification card bearing the name and date of birth of the person to whom the placard is issued, and the placard's serial number. The special identification card shall be issued to all persons who are issued parking placards, including those issued for temporary disabilities, and special parking license plates for persons with disabilities. The department shall design the placard to be displayed when the vehicle is parked by suspending it from the rearview mirror, or in the absence of a rearview mirror the card may be displayed on the dashboard of any vehicle used to transport the person with disabilities. Instead of regular motor vehicle license plates, persons with disabilities are entitled to receive special license plates under this section or RCW 46.16.385 bearing the international symbol of access for one vehicle registered in the name of the person with disabilities. Persons with disabilities who are not issued the special license plates are entitled to receive a second special placard upon submitting a written request to the department. Persons who have been issued the parking privileges and who are using a vehicle or are riding in a vehicle displaying the placard or special license plates issued under this section or RCW 46.16.385 may park in places reserved for persons with physical disabilities. The director shall adopt rules providing for the issuance of special placards and license plates to public transportation authorities, nursing homes licensed under chapter 18.51 RCW, boarding homes licensed under chapter 18.20 RCW, senior citizen centers, private nonprofit agencies as defined in chapter 24.03 RCW, and vehicles registered with the department as cabulances that regularly transport persons with disabilities who have been determined eligible for special parking privileges provided under this section. The director may issue special license plates for a vehicle registered in the name of the public transportation authority, nursing home, boarding home, senior citizen center, private nonprofit agency, or cabulance service if the vehicle is primarily used to transport persons with disabilities described in this section. Public transportation authorities, nursing homes, boarding homes, senior citizen centers, private nonprofit agencies, and cabulance services are responsible for insuring that the special placards and license plates are not used improperly and are responsible for all fines and penalties for improper use.

(4) Whenever the person with disabilities transfers or assigns his or her interest in the vehicle, the special license plates shall be removed from the motor vehicle. If another vehicle is acquired by the person with disabilities and the vehicle owner qualifies for a special plate, the plate shall be attached to the vehicle, and the director shall be immediately notified of the transfer of the plate. If another vehicle is not acquired by the person with disabilities, the removed plate shall be immediately surrendered to the director.

(5) The special license plate shall be renewed in the same manner and at the time required for the renewal of regular motor vehicle license plates under this chapter. No special license plate may be issued to a person who is temporarily disabled. A person who has a condition expected to improve within six months may be issued a temporary placard for a period not to exceed six months. If the condition exists after six months a new temporary placard shall be issued upon receipt of a new certification from the person's physician. The permanent parking placard and identification card of a person with disabilities shall be renewed at least every five years, as required by the director, by satisfactory proof of the right to continued use of the privileges. In the event of the permit holder's death, the parking placard and identification card must be immediately surrendered to the department. The department shall match and purge its data base of parking permits issued to persons with disabilities with available death record information at least every twelve months.

(6) Additional fees shall not be charged for the issuance of the special placards or the identification cards. No additional fee may be charged for the issuance of the special license plates except the regular motor vehicle registration fee and any other fees and taxes required to be paid upon registration of a motor vehicle.

(7) Any unauthorized use of the special placard, special license plate issued under this section or RCW 46.16.385, or identification card is a traffic infraction with a monetary penalty of two hundred fifty dollars.

(8) It is a parking infraction, with a monetary penalty of two hundred fifty dollars for a person to make inaccessible the access aisle located next to a space reserved for persons with physical disabilities. The clerk of the court shall report all violations related to this subsection to the department.

(9) It is a parking infraction, with a monetary penalty of two hundred fifty dollars for any person to park a vehicle in a parking place provided on private property without charge or on public property reserved for persons with physical disabilities without a placard or special license plate issued under this section or RCW 46.16.385. If a person is charged with a violation, the person shall not be determined to have committed an infraction if the person produces in court or before the court appearance the placard or special license plate issued under this section or RCW 46.16.385 required under this section. A local jurisdiction providing nonmetered, on-street parking places reserved for persons with physical disabilities may impose by ordinance time restrictions of no less than four hours on the use of these parking places. A local jurisdiction may impose by ordinance time restrictions of no less than four hours on the use of nonreserved, on-street parking spaces by vehicles displaying the special parking placards or special license plates issued under this section or RCW 46.16.385. All time restrictions must be clearly posted.

(10) The penalties imposed under subsections (8) and (9) of this section shall be used by that local jurisdiction exclusively for law enforcement. The court may also impose an additional penalty sufficient to reimburse the local jurisdiction for any costs it may have incurred in removal and storage of the improperly parked vehicle.

(11) Except as provided by subsection (2) of this section, it is a traffic infraction with a monetary penalty of two hundred fifty dollars for any person willfully to obtain a special

license plate issued under this section or RCW 46.16.385, placard, or identification card in a manner other than that established under this section.

(12)(a) A law enforcement agency authorized to enforce parking laws may appoint volunteers, with a limited commission, to issue notices of infractions for violations of this section or RCW 46.61.581. Volunteers must be at least twenty-one years of age. The law enforcement agency appointing volunteers may establish any other qualifications the agency deems desirable.

(b) An agency appointing volunteers under this section must provide training to the volunteers before authorizing them to issue notices of infractions.

(c) A notice of infraction issued by a volunteer appointed under this subsection has the same force and effect as a notice of infraction issued by a police officer for the same offense.

(d) A police officer or a volunteer may request a person to show the person's identification card or special parking placard when investigating the possibility of a violation of this section. If the request is refused, the person in charge of the vehicle may be issued a notice of infraction for a violation of this section.

(13) For second or subsequent violations of this section, in addition to a monetary fine, the violator must complete a minimum of forty hours of:

(a) Community restitution for a nonprofit organization that serves persons having disabilities or disabling diseases; or

(b) Any other community restitution that may sensitize the violator to the needs and obstacles faced by persons who have disabilities.

(14) The court may not suspend more than one-half of any fine imposed under subsection (7), (8), (9), or (11) of this section.

(15) For the purposes of this section, "legally blind" means a person who: (a) Has no vision or whose vision with corrective lenses is so limited that the individual requires alternative methods or skills to do efficiently those things that are ordinarily done with sight by individuals with normal vision; or (b) has an eye condition of a progressive nature which may lead to blindness. [2007 c 262 § 1; 2007 c 44 § 1; 2006 c 357 § 2; 2005 c 390 § 2; 2004 c 222 § 2; 2003 c 371 § 1; 2002 c 175 § 33; 2001 c 67 § 1; 1999 c 136 § 1; 1998 c 294 § 1; 1995 c 384 § 1; 1994 c 194 § 6; 1993 c 106 § 1; 1992 c 148 § 1; 1991 c 339 § 21; 1990 c 24 § 1; 1986 c 96 § 1; 1984 c 154 § 2.]

Reviser's note: This section was amended by 2007 c 44 § 1 and by 2007 c 262 § 1, each without reference to the other. Both amendments are incorporated in the publication of this section under RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

Findings—2006 c 357: "The legislature reaffirms its recognition that legal blindness does not affect the physical ability to walk, nor does it limit the ability to participate and contribute in employment and all aspects of life as an equal and productive citizen. Furthermore, for a legally blind individual with appropriate training in travel skills, any limitations on that individual's mobility are not resolved by the granting of special parking privileges. However, for some individuals, including the newly blind and those in transition, the availability of special parking privileges could prove to be an appropriate benefit if those individuals choose to avail themselves of the opportunity." [2006 c 357 § 1.]

Effective date—2004 c 222 §§ 1 and 2: See note following RCW 46.16.385.

Effective date—2002 c 175: See note following RCW 7.80.130.

Intent—1984 c 154: "The legislature intends to extend special parking privileges to persons with disabilities that substantially impair mobility." [1984 c 154 § 1.]

Application—1984 c 154: "This act applies to special license plates, cards, or decals issued after June 7, 1984. Nothing in this act invalidates special license plates, cards, or decals issued before June 7, 1984." [1984 c 154 § 9.]

Severability—1984 c 154: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1984 c 154 § 10.]

Accessible parking spaces required: RCW 70.92.140.

Free parking by individuals with disabilities: RCW 46.61.582.

46.16.606 Personalized license plates—Additional fee. In addition to the fees imposed in RCW 46.16.585 for application and renewal of personalized license plates an additional fee of twelve dollars shall be charged. Ten dollars from the additional fee shall be deposited in the state wildlife account and used for the management of resources associated with the nonconsumptive use of wildlife. Two dollars from the additional fee shall be deposited into the wildlife rehabilitation account created under RCW 77.12.471. [2007 c 246 § 2; 1991 sp.s. c 7 § 13.]

Application—2007 c 246 § 2: "Section 2 of this act is effective for registrations due or to become due on or after January 1, 2008." [2007 c 246 § 6.]

Finding—2007 c 246: See note following RCW 77.12.467.

Effective date—1991 sp.s. c 7: See note following RCW 77.65.450.

46.16.615 Commercial motor vehicle registration.

(1) The department shall refuse to register a commercial motor vehicle that is owned by a motor carrier subject to RCW 46.32.080, 46.87.294, and 46.87.296 upon notification to the department by the Washington state patrol or the federal motor carrier safety administration that an out-of-service order has been placed on the department of transportation number issued to the motor carrier.

(2) The department shall revoke the vehicle registration of all commercial motor vehicles that are owned by a motor carrier subject to RCW 46.32.080, upon notification to the department by the Washington state patrol or the federal motor carrier safety administration that an out-of-service order has been placed on the department of transportation number issued to the motor carrier. The revocation must remain in effect until the department has been notified by the Washington state patrol that the out-of-service order has been rescinded.

(3) By June 30, 2009, any original or renewal application for registration of a commercial motor vehicle that is owned by a motor carrier subject to RCW 46.32.080 that is submitted to the department must be accompanied by:

(a) The department of transportation number issued to the motor carrier; and

(b) The federal taxpayer identification number of the motor carrier.

(4) Beginning on June 30, 2012, the requirements of subsection (3) of this section apply to any original or renewal application that is submitted to the department for registration of a commercial motor vehicle that is owned by a motor carrier subject to RCW 46.32.080, and that has a gross vehi-

cle weight rating of 7,258 kilograms (16,001 pounds) or more. [2007 c 419 § 5.]

Findings—Short title—Application—2007 c 419: See notes following RCW 46.16.004.

46.16.685 License plate technology account. The license plate technology account is created in the state treasury. All receipts collected under RCW 46.01.140(4)(e)(ii) must be deposited into this account. Expenditures from this account must support current and future license plate technology and systems integration upgrades for both the department and correctional industries. Moneys in the account may be spent only after appropriation. Additionally, the moneys in this account may be used to reimburse the motor vehicle account for any appropriation made to implement the digital license plate system. During the 2007-2009 fiscal biennium, the legislature may transfer from the license plate technology account to the multimodal transportation account such amounts as reflect the excess fund balance of the license plate technology account. [2007 c 518 § 704; 2003 c 370 § 4.]

Severability—Effective date—2007 c 518: See notes following RCW 46.68.170.

46.16.725 Board—Powers and duties—Moratorium on issuance of special plates. (1) The creation of the board does not in any way preclude the authority of the legislature to independently propose and enact special license plate legislation.

(2) The board must review and either approve or reject special license plate applications submitted by sponsoring organizations.

(3) Duties of the board include but are not limited to the following:

(a) Review and approve the annual financial reports submitted by sponsoring organizations with active special license plate series and present those annual financial reports to the senate and house transportation committees;

(b) Report annually to the senate and house transportation committees on the special license plate applications that were considered by the board;

(c) Issue approval and rejection notification letters to sponsoring organizations, the department, the chairs of the senate and house of representatives transportation committees, and the legislative sponsors identified in each application. The letters must be issued within seven days of making a determination on the status of an application;

(d) Review annually the number of plates sold for each special license plate series created after January 1, 2003. The board may submit a recommendation to discontinue a special plate series to the chairs of the senate and house of representatives transportation committees;

(e) Provide policy guidance and directions to the department concerning the adoption of rules necessary to limit the number of special license plates that an organization or a governmental entity may apply for.

(4) In order to assess the effects and impact of the proliferation of special license plates, the legislature declares a temporary moratorium on the issuance of any additional plates until July 1, 2009. During this period of time, the special license plate review board created in RCW 46.16.705 and the department of licensing are prohibited from accept-

ing, reviewing, processing, or approving any applications. Additionally, no special license plate may be enacted by the legislature during the moratorium, unless the proposed license plate has been approved by the board before February 15, 2005. [2007 c 518 § 711. Prior: 2005 c 319 § 119; 2005 c 210 § 7; 2003 c 196 § 103.]

Severability—Effective date—2007 c 518: See notes following RCW 46.68.170.

Findings—Intent—Part headings—Effective dates—2005 c 319: See notes following RCW 43.17.020.

Part headings not law—2003 c 196: See note following RCW 46.16.700.

Chapter 46.20 RCW

DRIVERS' LICENSES—IDENTICARDS

Sections

46.20.191	Compliance with federal REAL ID Act of 2005 requirements.
46.20.1911	Costs and burdens of compliance with federal REAL ID Act of 2005 requirements—Legal challenge.
46.20.202	Enhanced drivers' licenses and identicards for Canadian border crossing—Border-crossing initiative.
46.20.2021	Statewide education campaign for border-crossing initiative.
46.20.291	Authority to suspend—Grounds.
46.20.293	Minor's record to juvenile court, parents, or guardians.
46.20.505	Special endorsement fees.

46.20.191 Compliance with federal REAL ID Act of 2005 requirements. Before issuing a driver's license or identicard that complies with the requirements of the REAL ID Act of 2005, P.L. 109-13, and before storing or including data about Washington state residents in any database, records facility, or computer system for purposes of meeting the requirements of the REAL ID Act of 2005, the department of licensing shall certify that the driver's license, identicard, database, records facility, computer system, and the department's personnel screening and training procedures: (1) Include all reasonable security measures to protect the privacy of Washington state residents; (2) include all reasonable safeguards to protect against unauthorized disclosure of data; and (3) do not place unreasonable costs or recordkeeping burdens on a driver's license or identicard applicant. [2007 c 85 § 2.]

46.20.1911 Costs and burdens of compliance with federal REAL ID Act of 2005 requirements—Legal challenge. (1) The department of licensing and the office of financial management may analyze the costs and burdens to the state of Washington, and to applicants of drivers' licenses or identicards, of complying with the requirements of the REAL ID Act of 2005, P.L. 109-13, and any related federal regulations.

(2) The attorney general may, with approval of the governor, challenge the legality or constitutionality of the REAL ID Act of 2005. [2007 c 85 § 3.]

46.20.202 Enhanced drivers' licenses and identicards for Canadian border crossing—Border-crossing initiative. (1) The department may enter into a memorandum of understanding with any federal agency for the purposes of facilitating the crossing of the border between the state of Washington and the Canadian province of British Columbia.

(2) The department may enter into an agreement with the Canadian province of British Columbia for the purposes of implementing a border-crossing initiative.

(3)(a) The department may issue an enhanced driver's license or identicard for the purposes of crossing the border between the state of Washington and the Canadian province of British Columbia to an applicant who provides the department with proof of: United States citizenship, identity, and state residency. The department shall continue to offer a standard driver's license and identicard. If the department chooses to issue an enhanced driver's license, the department must allow each applicant to choose between a standard driver's license or identicard, or an enhanced driver's license or identicard.

(b) The department shall implement a one-to-many biometric matching system for the enhanced driver's license or identicard. An applicant for an enhanced driver's license or identicard shall submit a biometric identifier as designated by the department. The biometric identifier must be used solely for the purpose of verifying the identity of the holders and for any purpose set out in RCW 46.20.037. Applicants are required to sign a declaration acknowledging their understanding of the one-to-many biometric match.

(c) The enhanced driver's license or identicard must include reasonable security measures to protect the privacy of Washington state residents, including reasonable safeguards to protect against unauthorized disclosure of data about Washington state residents. If the enhanced driver's license or identicard includes a radio frequency identification chip, or similar technology, the department shall ensure that the technology is encrypted or otherwise secure from unauthorized data access.

(d) The requirements of this subsection are in addition to the requirements otherwise imposed on applicants for a driver's license or identicard. The department shall adopt such rules as necessary to meet the requirements of this subsection. From time to time the department shall review technological innovations related to the security of identity cards and amend the rules related to enhanced driver's licenses and identicards as the director deems consistent with this section and appropriate to protect the privacy of Washington state residents.

(e) Notwithstanding RCW 46.20.118, the department may make images associated with enhanced drivers' licenses or identicards from the negative file available to United States customs and border agents for the purposes of verifying identity.

(4) The department may set a fee for the issuance of enhanced drivers' licenses and identicards under this section. [2007 c 7 § 1.]

Effective date—2007 c 7: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately [March 23, 2007]." [2007 c 7 § 4.]

46.20.2021 Statewide education campaign for border-crossing initiative. The department shall develop and implement a statewide education campaign to educate Washington citizens about the border-crossing initiative authorized by chapter 7, Laws of 2007. The educational campaign must include information on the forms of travel for which the

existing and enhanced driver's license can be used. The campaign must include information on the time frames for implementation of laws that impact identification requirements at the border with Canada. [2007 c 7 § 2.]

Effective date—2007 c 7: See note following RCW 46.20.202.

46.20.291 Authority to suspend—Grounds. The department is authorized to suspend the license of a driver upon a showing by its records or other sufficient evidence that the licensee:

(1) Has committed an offense for which mandatory revocation or suspension of license is provided by law;

(2) Has, by reckless or unlawful operation of a motor vehicle, caused or contributed to an accident resulting in death or injury to any person or serious property damage;

(3) Has been convicted of offenses against traffic regulations governing the movement of vehicles, or found to have committed traffic infractions, with such frequency as to indicate a disrespect for traffic laws or a disregard for the safety of other persons on the highways;

(4) Is incompetent to drive a motor vehicle under RCW 46.20.031(3);

(5) Has failed to respond to a notice of traffic infraction, failed to appear at a requested hearing, violated a written promise to appear in court, or has failed to comply with the terms of a notice of traffic infraction or citation, as provided in RCW 46.20.289;

(6) Is subject to suspension under RCW 46.20.305 or 9A.56.078;

(7) Has committed one of the prohibited practices relating to drivers' licenses defined in RCW 46.20.0921; or

(8) Has been certified by the department of social and health services as a person who is not in compliance with a child support order or a residential or visitation order as provided in RCW 74.20A.320. [2007 c 393 § 2; 1998 c 165 § 12; 1997 c 58 § 806; 1993 c 501 § 4; 1991 c 293 § 5; 1980 c 128 § 12; 1965 ex.s. c 121 § 25.]

Effective date—1998 c 165 §§ 8-14: See note following RCW 46.52.070.

Short title—1998 c 165: See note following RCW 43.59.010.

Short title—Part headings, captions, table of contents not law—Exemptions and waivers from federal law—Conflict with federal requirements—Severability—1997 c 58: See RCW 74.08A.900 through 74.08A.904.

Effective dates—Intent—1997 c 58: See notes following RCW 74.20A.320.

Effective date—Severability—1980 c 128: See notes following RCW 46.63.060.

Reckless driving, suspension of license: RCW 46.61.500.

Vehicular assault

drug and alcohol evaluation and treatment: RCW 46.61.524.
penalty: RCW 46.61.522.

Vehicular homicide

drug and alcohol evaluation and treatment: RCW 46.61.524.
penalty: RCW 46.61.520.

46.20.293 Minor's record to juvenile court, parents, or guardians. The department is authorized to provide juvenile courts with the department's record of traffic charges compiled under RCW 46.52.101 and 13.50.200, against any minor upon the request of any state juvenile court or duly authorized officer of any juvenile court of this state. Further,

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the department is authorized to provide any juvenile court with any requested service which the department can reasonably perform which is not inconsistent with its legal authority which substantially aids juvenile courts in handling traffic cases and which promotes highway safety.

The department is authorized to furnish to the parent, parents, or guardian of any person under eighteen years of age who is not emancipated from such parent, parents, or guardian, the department records of traffic charges compiled against the person and shall collect for the copy a fee of ten dollars fifty percent of which must be deposited in the highway safety fund and fifty percent of which must be deposited according to RCW 46.68.038. [2007 c 424 § 1; 2002 c 352 § 15; 1999 c 86 § 3; 1990 c 250 § 44; 1979 c 61 § 9; 1977 ex.s. c 3 § 2; 1971 ex.s. c 292 § 45; 1969 ex.s. c 170 § 14; 1967 c 167 § 10.]

Effective date—2007 c 424: "This act takes effect August 1, 2007." [2007 c 424 § 5.]

Effective dates—2002 c 352: See note following RCW 46.09.070.

Severability—1990 c 250: See note following RCW 46.16.301.

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

46.20.505 Special endorsement fees. Every person applying for a special endorsement of a driver's license authorizing such person to drive a two or three-wheeled motorcycle or a motor-driven cycle shall pay a fee of five dollars, which is not refundable. In addition, the endorsement fee for the initial motorcycle endorsement shall not exceed ten dollars, and the subsequent renewal endorsement fee shall not exceed twenty-five dollars, unless the endorsement is renewed or extended for a period other than five years, in which case the subsequent renewal endorsement fee shall not exceed five dollars for each year that the endorsement is renewed or extended. Fees collected under this section shall be deposited in the motorcycle safety education account of the highway safety fund. [2007 c 97 § 1; 2003 c 41 § 2; 2002 c 352 § 16; 2001 c 104 § 1. Prior: 1999 c 308 § 5; 1999 c 274 § 9; 1993 c 115 § 1; 1989 c 203 § 2; 1988 c 227 § 5; 1987 c 454 § 2; 1985 ex.s. c 1 § 8; 1982 c 77 § 2; 1979 c 158 § 153; 1967 ex.s. c 145 § 50.]

Short title—Effective date—2003 c 41: See notes following RCW 46.20.500.

Effective dates—2002 c 352: See note following RCW 46.09.070.

Effective date—1999 c 308: See note following RCW 46.20.120.

Severability—1988 c 227: See RCW 46.81A.900.

Effective date—1985 ex.s. c 1: See note following RCW 46.20.070.

Severability—1982 c 77: See note following RCW 46.20.500.

Severability—1967 ex.s. c 145: See RCW 47.98.043.

Motorcycle safety education account: RCW 46.68.065.

Chapter 46.25 RCW

UNIFORM COMMERCIAL DRIVER'S LICENSE ACT

Sections

46.25.060 Knowledge and skills test—Instruction permit. (*Effective January 15, 2008.*)

46.25.060 Knowledge and skills test—Instruction permit. (*Effective January 15, 2008.*) (1)(a) No person may be issued a commercial driver's license unless that person is

a resident of this state, has successfully completed a course of instruction in the operation of a commercial motor vehicle that has been approved by the director or has been certified by an employer as having the skills and training necessary to operate a commercial motor vehicle safely, and has passed a knowledge and skills test for driving a commercial motor vehicle that complies with minimum federal standards established by federal regulation enumerated in 49 C.F.R. part 383, subparts G and H, and has satisfied all other requirements of the CMVSA in addition to other requirements imposed by state law or federal regulation. The tests must be prescribed and conducted by the department. In addition to the fee charged for issuance or renewal of any license, the applicant shall pay a fee of no more than ten dollars for each classified knowledge examination, classified endorsement knowledge examination, or any combination of classified license and endorsement knowledge examinations. The applicant shall pay a fee of no more than one hundred dollars for each classified skill examination or combination of classified skill examinations conducted by the department.

(b) The department may authorize a person, including an agency of this or another state, an employer, a private driver training facility, or other private institution, or a department, agency, or instrumentality of local government, to administer the skills test specified by this section under the following conditions:

(i) The test is the same which would otherwise be administered by the state;

(ii) The third party has entered into an agreement with the state that complies with the requirements of 49 C.F.R. part 383.75; and

(iii) The director has adopted rules as to the third party testing program and the development and justification for fees charged by any third party.

(c) If the applicant's primary use of a commercial driver's license is for any of the following, then the applicant shall pay a fee of no more than seventy-five dollars for each classified skill examination or combination of classified skill examinations whether conducted by the department or a third-party tester:

(i) Public benefit not-for-profit corporations that are federally supported head start programs; or

(ii) Public benefit not-for-profit corporations that support early childhood education and assistance programs as described in RCW 43.215.405(4).

(2) The department shall work with the office of the superintendent of public instruction to develop modified P1 and P2 skill examinations that also include the skill examination components required to obtain an "S" endorsement. In no event may a new applicant for an "S" endorsement be required to take two separate examinations to obtain an "S" endorsement and either a P1 or P2 endorsement, unless that applicant is upgrading his or her existing commercial driver's license to include an "S" endorsement. The combined P1/S or P2/S skill examination must be offered to the applicant at the same cost as a regular P1 or P2 skill examination.

(3) The department may waive the skills test and the requirement for completion of a course of instruction in the operation of a commercial motor vehicle specified in this section for a commercial driver's license applicant who meets the requirements of 49 C.F.R. part 383.77.

(4) A commercial driver's license or commercial driver's instruction permit may not be issued to a person while the person is subject to a disqualification from driving a commercial motor vehicle, or while the person's driver's license is suspended, revoked, or canceled in any state, nor may a commercial driver's license be issued to a person who has a commercial driver's license issued by any other state unless the person first surrenders all such licenses, which must be returned to the issuing state for cancellation.

(5)(a) The department may issue a commercial driver's instruction permit to an applicant who is at least eighteen years of age and holds a valid Washington state driver's license and who has submitted a proper application, passed the general knowledge examination required for issuance of a commercial driver's license under subsection (1) of this section, and paid the appropriate fee for the knowledge examination and an application fee of ten dollars.

(b) A commercial driver's instruction permit may not be issued for a period to exceed six months. Only one renewal or reissuance may be granted within a two-year period.

(c) The holder of a commercial driver's instruction permit may drive a commercial motor vehicle on a highway only when accompanied by the holder of a commercial driver's license valid for the type of vehicle driven who occupies a seat beside the individual for the purpose of giving instruction in driving the commercial motor vehicle. The holder of a commercial driver's instruction permit is not authorized to operate a commercial motor vehicle transporting hazardous materials.

(d) The department shall transmit the fees collected for commercial driver's instruction permits to the state treasurer. [2007 c 418 § 1; 2004 c 187 § 3; 2002 c 352 § 18; 1989 c 178 § 8.]

Effective date—2007 c 418: "This act takes effect January 15, 2008." [2007 c 418 § 2.]

Effective dates—2002 c 352: See note following RCW 46.09.070.

Chapter 46.29 RCW

FINANCIAL RESPONSIBILITY

Sections

46.29.050 Furnishing driving record and evidence of ability to respond in damages—Fees.

46.29.050 Furnishing driving record and evidence of ability to respond in damages—Fees. (1) The department shall upon request furnish any person or his attorney a certified abstract of his driving record, which abstract shall include enumeration of any motor vehicle accidents in which such person has been involved. Such abstract shall (a) indicate the total number of vehicles involved, whether the vehicles were legally parked or moving, and whether the vehicles were occupied at the time of the accident; and (b) contain reference to any convictions of the person for violation of the motor vehicle laws as reported to the department, reference to any findings that the person has committed a traffic infraction which have been reported to the department, and a record of any vehicles registered in the name of the person. The department shall collect for each abstract the sum of ten dollars, fifty percent of which shall be deposited in the highway

safety fund and fifty percent of which must be deposited according to RCW 46.68.038.

(2) The department shall upon request furnish any person who may have been injured in person or property by any motor vehicle, with an abstract of all information of record in the department pertaining to the evidence of the ability of any driver or owner of any motor vehicle to respond in damages. The department shall collect for each abstract the sum of ten dollars, fifty percent of which shall be deposited in the highway safety fund and fifty percent of which must be deposited according to RCW 46.68.038. [2007 c 424 § 2; 2002 c 352 § 19; 1987 1st ex.s. c 9 § 1; 1985 ex.s. c 1 § 10; 1979 ex.s. c 136 § 63; 1969 ex.s. c 40 § 1; 1967 c 174 § 1; 1963 c 169 § 5.]

Effective date—2007 c 424: See note following RCW 46.20.293.

Effective dates—2002 c 352: See note following RCW 46.09.070.

Severability—1987 1st ex.s. c 9: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1987 1st ex.s. c 9 § 11.]

Effective date—1987 1st ex.s. c 9: "This act is necessary for the immediate preservation of the public peace, health, and safety, the support of the state government and its existing public institutions, and shall take effect July 1, 1987." [1987 1st ex.s. c 9 § 12.]

Effective date—1985 ex.s. c 1: See note following RCW 46.20.070.

Effective date—Severability—1979 ex.s. c 136: See notes following RCW 46.63.010.

Effective date—1967 c 174: "Sections 1, 2, 3 and 4 of this amendatory act shall become effective July 1, 1967." [1967 c 174 § 7.]

Abstract of driving record furnished to insurance company: RCW 46.52.130.

**Chapter 46.32 RCW
VEHICLE INSPECTION**

Sections

- 46.32.010 Types of inspection authorized—Duties of state patrol—Penalties.
- 46.32.020 Rules—Supplies—Assistants—Prioritization of higher risk motor carriers.
- 46.32.040 Frequency of inspection—High-risk carrier compliance review fee.
- 46.32.080 Commercial motor vehicle safety enforcement—Application for department of transportation number.
- 46.32.085 Rules to regulate commercial motor vehicle safety requirements.
- 46.32.090 Fees.
- 46.32.100 Violations—Penalties—Out-of-service orders.

46.32.010 Types of inspection authorized—Duties of state patrol—Penalties. (1) The chief of the Washington state patrol may operate, maintain, or designate, throughout the state of Washington, stations for the inspection of commercial motor vehicles, school buses, and private carrier buses, with respect to vehicle equipment, drivers' qualifications, and hours of service and to set reasonable times when inspection of vehicles shall be performed.

(2) The state patrol may inspect a commercial motor vehicle while the vehicle is operating on the public highways of this state with respect to vehicle equipment, hours of service, and driver qualifications.

(3) It is unlawful for any vehicle required to be inspected to be operated over the public highways of this state unless and until it has been approved periodically as to equipment.

(4) Inspections shall be performed by a responsible employee of the chief of the Washington state patrol, who shall be duly authorized and who shall have authority to secure and withhold, with written notice to the director of licensing, the certificate of license registration and license plates of any vehicle found to be defective in equipment so as to be unsafe or unfit to be operated upon the highways of this state, and it shall be unlawful for any person to operate a vehicle placed out of service by an officer unless and until it has been placed in a condition satisfactory to pass a subsequent equipment inspection. The officer in charge of such vehicle equipment inspection shall grant to the operator of such defective vehicle the privilege to move such vehicle to a place for repair under such restrictions as may be reasonably necessary.

(5) In the event any insignia, sticker, or other marker is adopted to be displayed upon vehicles in connection with the inspection of vehicle equipment, it shall be displayed as required by the rules of the chief of the Washington state patrol, and it is a traffic infraction for any person to mutilate, destroy, remove, or otherwise interfere with the display thereof.

(6) It is a traffic infraction for any person to refuse to have his motor vehicle examined as required by the chief of the Washington state patrol, or, after having had it examined, to refuse to place an insignia, sticker, or other marker, if issued, upon the vehicle, or fraudulently to obtain any such insignia, sticker, or other marker, or to refuse to place his motor vehicle in proper condition after having had it examined, or in any manner, to fail to conform to the provisions of this chapter.

(7) It is a traffic infraction for any person to perform false or improvised repairs, or repairs in any manner not in accordance with acceptable and customary repair practices, upon a motor vehicle. [2007 c 419 § 7; 1993 c 403 § 2; 1986 c 123 § 1; 1979 ex.s. c 136 § 67; 1979 c 158 § 156; 1967 c 32 § 48; 1961 c 12 § 46.32.010. Prior: 1947 c 267 § 1; 1945 c 44 § 1; 1937 c 189 § 7; Rem. Supp. 1947 § 6360-7.]

Findings—Short title—Application—2007 c 419: See notes following RCW 46.16.004.

Effective date—Severability—1979 ex.s. c 136: See notes following RCW 46.63.010.

46.32.020 Rules—Supplies—Assistants—Prioritization of higher risk motor carriers. (1)(a) The chief of the Washington state patrol may adopt reasonable rules regarding types of vehicles to be inspected, inspection criteria, times for the inspection of vehicle equipment, drivers' qualifications, hours of service, and all other matters with respect to the conduct of vehicle equipment and driver inspections.

(b) The chief of the Washington state patrol shall prepare and furnish such stickers, tags, record and report forms, stationery, and other supplies as shall be deemed necessary. The chief of the Washington state patrol is empowered to appoint and employ such assistants as he may consider necessary and to fix hours of employment and compensation.

(2) The chief of the Washington state patrol shall use data-driven analysis to prioritize for inspections and compliance reviews those motor carriers whose relative safety fitness identify them as higher risk motor carriers. [2007 c 419 § 8; 1993 c 403 § 3; 1986 c 123 § 2; 1961 c 12 § 46.32.020.]

Prior: 1945 c 44 § 2; 1937 c 189 § 8; Rem. Supp. 1945 § 6360-8.]

Findings—Short title—Application—2007 c 419: See notes following RCW 46.16.004.

46.32.040 Frequency of inspection—High-risk carrier compliance review fee. (1) Except as provided in subsection (2) of this section, vehicle equipment inspection shall be at such intervals as required by the chief of the Washington state patrol and shall be made without charge.

(2) When a motor carrier is identified as a high-risk carrier through a data-driven analysis due to formerly or recently identified deficiencies or violations, the fee for each motor carrier compliance review follow-up to ensure those deficiencies or violations have been corrected is two hundred fifty dollars. The fee shall be collected by the Washington state patrol and shall be deposited into the state patrol highway account. This fee applies to motor carriers already identified as a high-risk carrier or a motor carrier that has been reclassified as a high-risk carrier due to recently identified deficiencies or violations. [2007 c 419 § 9; 1986 c 123 § 3; 1961 c 12 § 46.32.040. Prior: 1945 c 44 § 4; 1937 c 189 § 10; Rem. Supp. 1945 § 6360-10.]

Findings—Short title—Application—2007 c 419: See notes following RCW 46.16.004.

46.32.080 Commercial motor vehicle safety enforcement—Application for department of transportation number. (1) The Washington state patrol is responsible for enforcement of safety requirements for commercial motor vehicles including, but not limited to, safety audits and compliance reviews. Those motor carriers that have operations in this state are subject to the patrol's safety audits and compliance review programs. Compliance reviews may result in the initiation of an enforcement action, which may include monetary penalties.

(2) Motor vehicles owned and operated by farmers in the transportation of their own farm, orchard, or dairy products, including livestock and plant or animal wastes, from point of production to market or disposal, or supplies or commodities to be used on the farm, orchard, or dairy, must have a department of transportation number, as defined in RCW 46.16.004, but are exempt from safety audits and compliance reviews.

(3) All records and documents required of motor carriers with operations in this state must be available for review and inspection during normal business hours. Duly authorized agents of the state patrol conducting safety audits and compliance reviews may enter the motor carrier's place of business, or any location where records or equipment are located, at reasonable times and without advanced notice. Motor carriers who do not permit duly authorized agents to enter their place of business, or any location where records or equipment are located, for safety audits and compliance reviews are subject to enforcement action, including a monetary penalty.

(4)(a) All motor carriers with a commercial motor vehicle, as defined in RCW 46.16.004, that operate in this state must apply for a department of transportation number, as defined in RCW 46.16.004, by January 1, 2008.

(b) All motor carriers operating in this state who (i) have not applied under (a) of this subsection for a department of

transportation number, as defined in RCW 46.16.004, and (ii) have a commercial motor vehicle that has a gross vehicle weight rating of 7,258 kilograms (16,001 pounds) or more, must apply for a department of transportation number by January 1, 2011.

(c) The state patrol may deny an application if the motor carrier does not meet the requirements and standards under this chapter. The state patrol shall not issue a department of transportation number to a motor carrier who at the time of application has been placed out of service by the federal motor carrier safety administration. Commercial motor vehicles must be marked as prescribed by the state patrol. Those motor carriers with a current United States department of transportation number are exempt from applying for a department of transportation number.

(d) The state patrol may (i) place a motor carrier out of service or (ii) refuse to issue or recognize as valid a department of transportation number to a motor carrier who: (A) Formerly held a department of transportation number that was placed out of service for cause, and where cause has not been removed; (B) is a subterfuge for the real party in interest whose department of transportation number was placed out of service for cause, and where cause has not been removed; (C) as an individual licensee, or officer, director, owner, or managing employee of a nonindividual licensee, had a department of transportation number and was placed out of service for cause, and where cause has not been removed; or (D) has an unsatisfied debt to the state assessed under this chapter.

(e) Upon a finding by the chief of the state patrol or the chief's designee that a motor carrier is an imminent hazard or danger to the public health, safety, or welfare, the state patrol shall notify the department, and the department shall revoke the registrations for all commercial motor vehicles that are owned by the motor carrier subject to RCW 46.32.080. In determining whether a motor carrier is an imminent hazard or danger to the public health, safety, or welfare, the chief or the chief's designee shall consider safety factors. [2007 c 419 § 10; 1995 c 272 § 1.]

Effective date—2007 c 419 § 10: "Section 10 of this act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately [May 11, 2007]." [2007 c 419 § 19.]

Findings—Short title—Application—2007 c 419: See notes following RCW 46.16.004.

Transfer of powers, duties, and functions: "(1) All powers, duties, and functions of the utilities and transportation commission pertaining to safety inspections of commercial vehicles, including but not limited to terminal safety audits, except for those carriers subject to the economic regulation of the commission, are transferred to the Washington state patrol.

(2)(a) All reports, documents, surveys, books, records, files, papers, or written material in the possession of the utilities and transportation commission pertaining to the powers, functions, and duties transferred shall be delivered to the custody of the Washington state patrol. All cabinets, furniture, office equipment, motor vehicles, and other tangible property employed by the utilities and transportation commission in carrying out the powers, functions, and duties transferred shall be made available to the Washington state patrol. All funds, credits, or other assets held in connection with the powers, functions, and duties transferred shall be assigned to the Washington state patrol.

(b) Any appropriations made to the utilities and transportation commission for carrying out the powers, functions, and duties transferred shall, on January 1, 1996, be transferred and credited to the Washington state patrol.

(c) Whenever any question arises as to the transfer of any personnel, funds, books, documents, records, papers, files, equipment, or other tangible

property used or held in the exercise of the powers and the performance of the duties and functions transferred, the director of financial management shall make a determination as to the proper allocation and certify the same to the state agencies concerned.

(3) All employees of the utilities and transportation commission engaged in performing the powers, functions, and duties transferred are transferred to the jurisdiction of the Washington state patrol. All employees classified under chapter 41.06 RCW, the state civil service law, are assigned to the Washington state patrol to perform their usual duties upon the same terms as formerly, without any loss of rights, subject to any action that may be appropriate thereafter in accordance with the laws and rules governing state civil service. These employees will only be transferred upon successful completion of the Washington state patrol background investigation.

(4) All rules and all pending business before the utilities and transportation commission pertaining to the powers, functions, and duties transferred shall be continued and acted upon by the Washington state patrol. All existing contracts and obligations remain in full force and shall be performed by the Washington state patrol.

(5) The transfer of the powers, duties, functions, and personnel of the utilities and transportation commission does not affect the validity of any act performed before January 1, 1996.

(6) If apportionments of budgeted funds are required because of the transfers directed by this section, the director of financial management shall certify the apportionments to the agencies affected, the state auditor, and the state treasurer. Each of these shall make the appropriate transfer and adjustments in funds and appropriation accounts and equipment records in accordance with the certification.

(7) Nothing contained in this section alters an existing collective bargaining unit or the provisions of an existing collective bargaining agreement until the agreement has expired or until the bargaining unit has been modified by action of the personnel board as provided by law." [1995 c 272 § 4.]

Effective dates—1995 c 272: See note following RCW 46.32.090.

46.32.085 Rules to regulate commercial motor vehicle safety requirements. The Washington state patrol, in consultation with the department of licensing, shall adopt rules consistent with this chapter to regulate vehicle safety requirements for motor carriers who own, control, manage, or operate a commercial motor vehicle within this state. Except as otherwise provided in this chapter, the rules adopted by the state patrol under this section must be as rigorous as federal regulations governing certain interstate motor carriers at 49 C.F.R. Parts 40 and 380 through 397, which cover the areas of commercial motor carrier driver training, controlled substance and alcohol use and testing, compliance with the federal driver's license requirements and penalties, vehicle equipment and safety standards, hazardous material practices, financial responsibility, driver qualifications, hours of service, vehicle inspection and corrective actions, and assessed penalties for noncompliance. The state patrol shall amend these rules periodically to maintain, to the extent permissible under this chapter, standards as rigorous as the federal regulations governing certain interstate motor carriers. The state patrol shall submit a report to the legislature by December 31st of each year that outlines new rules or rule changes and explains how the state rules compare to the federal regulations. [2007 c 419 § 14.]

Findings—Short title—Application—2007 c 419: See notes following RCW 46.16.004.

46.32.090 Fees. The department shall collect a fee of sixteen dollars, in addition to all other fees and taxes, for each motor vehicle base plated in the state of Washington that is subject to highway inspections and compliance reviews under RCW 46.32.080, at the time of registration and renewal of registration under chapter 46.16 or 46.87 RCW, or the international registration plan if base plated in a foreign juris-

isdiction. The fee must be apportioned for those vehicles operating interstate and registered under the international registration plan. This fee does not apply to nonmotor-powered vehicles, including trailers. Refunds will not be provided for fees paid under this section when the vehicle is no longer subject to RCW 46.32.080. The department may deduct an amount equal to the cost of administering the program. All remaining fees shall be deposited with the state treasurer and credited to the state patrol highway account of the motor vehicle fund. [2007 c 419 § 11; 1996 c 86 § 1; 1995 c 272 § 2.]

Findings—Short title—Application—2007 c 419: See notes following RCW 46.16.004.

Effective date—1996 c 86: "Section 1 of this act becomes effective with motor vehicle registration fees due or to become due January 1, 1997." [1996 c 86 § 2.]

Effective dates—1995 c 272: "Section 2 of this act becomes effective with motor vehicle registration fees due or to become due January 1, 1996. Sections 1 and 3 through 6 of this act take effect January 1, 1996." [1995 c 272 § 7.]

46.32.100 Violations—Penalties—Out-of-service orders. (1)(a) In addition to all other penalties provided by law, a commercial motor vehicle that is subject to compliance reviews under this chapter and an officer, agent, or employee of a company operating a commercial motor vehicle who violates or who procures, aids, or abets in the violation of this title or any order or rule of the state patrol is liable for a penalty of one hundred dollars for each violation, except for each violation of 49 C.F.R. Pt. 382, controlled substances and alcohol use and testing, 49 C.F.R. Sec. 391.15, disqualification of drivers, and 49 C.F.R. Sec. 396.9(c)(2), moving a vehicle placed out of service before the out of service defects have been satisfactorily repaired, for which the person is liable for a penalty of five hundred dollars. The driver of a commercial motor vehicle who violates an out-of-service order is liable for a penalty of at least one thousand one hundred dollars but not more than two thousand seven hundred fifty dollars. An employer who allows a driver to operate a commercial motor vehicle when there is an out-of-service order is liable for a penalty of at least two thousand seven hundred fifty dollars but not more than eleven thousand dollars. Each violation is a separate and distinct offense, and in case of a continuing violation every day's continuance is a separate and distinct violation.

(b) In addition to all other penalties provided by law, any motor carrier, company, or any officer or agent of a motor carrier or company operating a commercial motor vehicle subject to compliance reviews under this chapter who refuses entry or to make the required records, documents, and vehicles available to a duly authorized agent of the state patrol is liable for a penalty of at least five thousand dollars as well as an out-of-service order being placed on the department of transportation number, as defined in RCW 46.16.004, and vehicle registration to operate. Each violation is a separate and distinct offense, and in case of a continuing violation every day's continuance is a separate and distinct violation.

(c) A motor carrier operating a commercial motor vehicle after receiving a final unsatisfactory rating or being placed out of service is liable for a penalty of not more than eleven thousand dollars. Each violation is a separate and dis-

tinct offense, and in case of a continuing violation every day's continuance is a separate and distinct violation.

(2) The Washington state patrol may place an out-of-service order on a department of transportation number, as defined in RCW 46.16.004, for violations of this chapter or for nonpayment of any monetary penalties assessed by the state patrol or the utilities and transportation commission, as a result of compliance reviews, or for violations of cease and desist orders issued by the utilities and transportation commission. The state patrol shall notify the department of licensing when an out-of-service order has been placed on a motor carrier's department of transportation number. The state patrol shall notify the motor carrier when there has been an out-of-service order placed on the motor carrier's department of transportation number and the vehicle registrations have been revoked by sending a notice by first-class mail using the last known address for the registered or legal owner or owners, and recording the transmittal on an affidavit of first-class mail. Notices under this section fulfill the requirements of RCW 46.12.160. Motor carriers may not be eligible for a new department of transportation number, vehicle registration, or temporary permits to operate unless the violations that resulted in the out-of-service order have been corrected.

(3) Any penalty provided in this section is due and payable when the person incurring it receives a notice in writing from the state patrol describing the violation and advising the person that the penalty is due. If the amount of the penalty is not paid to the state patrol within twenty days after the later of (a) receipt of the notice imposing the penalty, or (b) disposition of an adjudicative proceeding regarding the penalty, the state patrol may commence an adjudicative proceeding under chapter 34.05 RCW in the name of the state of Washington to confirm the violation and recover the penalty. In all such proceedings the procedure and rules of evidence are as specified in chapter 34.05 RCW except as otherwise provided in this chapter. All penalties recovered under this section shall be paid into the state treasury and credited to the state patrol highway account of the motor vehicle fund. [2007 c 419 § 12; 2005 c 444 § 1; 1998 c 172 § 1; 1995 c 272 § 3.]

Findings—Short title—Application—2007 c 419: See notes following RCW 46.16.004.

Effective dates—1995 c 272: See note following RCW 46.32.090.

Chapter 46.37 RCW

VEHICLE LIGHTING AND OTHER EQUIPMENT

Sections

46.37.185	Green light on firefighters' private cars.
46.37.420	Tires—Restrictions.
46.37.4215	Lightweight and retractable studs—Certification by sellers.
46.37.4216	Lightweight and retractable studs—Sale of tires containing.
46.37.430	Safety glazing—Sunscreening or coloring.

46.37.185 Green light on firefighters' private cars. Firefighters, when approved by the chief of their respective service, shall be authorized to use a green light on the front of their private cars when on emergency duty only. Such green light shall be visible for a distance of two hundred feet under normal atmospheric conditions and shall be of a type and mounting approved by the Washington state patrol. The use of the green light shall only be for the purpose of identifica-

tion and the operator of a vehicle so equipped shall not be entitled to any of the privileges provided in RCW 46.61.035 for the operators of authorized emergency vehicles. [2007 c 218 § 73; 1987 c 330 § 709; 1971 ex.s. c 92 § 3; 1961 c 12 § 46.37.185. Prior: 1953 c 161 § 2. Formerly RCW 46.40.230.]

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

Construction—Application of rules—Severability—1987 c 330: See notes following RCW 28B.12.050.

46.37.420 Tires—Restrictions. (1) It is unlawful to operate a vehicle upon the public highways of this state unless it is completely equipped with pneumatic rubber tires except vehicles equipped with temporary-use spare tires that meet federal standards that are installed and used in accordance with the manufacturer's instructions.

(2) No tire on a vehicle moved on a highway may have on its periphery any block, flange, cleat, or spike or any other protuberance of any material other than rubber which projects beyond the tread of the traction surface of the tire, except that it is permissible to use farm machinery equipped with pneumatic tires or solid rubber tracks having protuberances that will not injure the highway, and except also that it is permissible to use tire chains or metal studs imbedded within the tire of reasonable proportions and of a type conforming to rules adopted by the state patrol, upon any vehicle when required for safety because of snow, ice, or other conditions tending to cause a vehicle to skid. It is unlawful to use metal studs imbedded within the tire between April 1st and November 1st, except that a vehicle may be equipped year-round with tires that have retractable studs if: (a) The studs retract pneumatically or mechanically to below the wear bar of the tire when not in use; and (b) the retractable studs are engaged only between November 1st and April 1st. Retractable studs may be made of metal or other material and are not subject to the lightweight stud weight requirements under RCW 46.04.272. The state department of transportation may, from time to time, determine additional periods in which the use of tires with metal studs imbedded therein is lawful.

(3) The state department of transportation and local authorities in their respective jurisdictions may issue special permits authorizing the operation upon a highway of traction engines or tractors having movable tracks with transverse corrugations upon the periphery of the movable tracks or farm tractors or other farm machinery, the operation of which upon a highway would otherwise be prohibited under this section.

(4) Tires with metal studs imbedded therein may be used between November 1st and April 1st upon school buses and fire department vehicles, any law or regulation to the contrary notwithstanding. [2007 c 140 § 2; 1999 c 208 § 1; 1990 c 105 § 1; 1987 c 330 § 721; 1986 c 113 § 4; 1984 c 7 § 50; 1971 ex.s. c 32 § 1; 1969 ex.s. c 7 § 1; 1961 c 12 § 46.37.420. Prior: 1955 c 269 § 42; prior: (i) 1937 c 189 § 41; RRS § 6360-41; RCW 46.36.100. (ii) 1937 c 189 § 42; RRS § 6360-42; RCW 46.36.120; 1929 c 180 § 7; 1927 c 309 § 46; RRS § 6362-46.]

Construction—Application of rules—Severability—1987 c 330: See notes following RCW 28B.12.050.

Severability—1984 c 7: See note following RCW 47.01.141.

Dangerous road conditions requiring special tires, chains, metal studs:
RCW 47.36.250.

Motorcycles and motor-driven cycles—Additional requirements and limitations: RCW 46.37.539.

46.37.4215 Lightweight and retractable studs—Certification by sellers. Beginning January 1, 2000, a person offering to sell to a tire dealer conducting business in the state of Washington, a metal flange or cleat intended for installation as a stud in a vehicle tire shall certify that the studs are: (1) Lightweight studs as defined in RCW 46.04.272; or (2) retractable studs that are exempt from the requirements of RCW 46.04.272. Certification must be accomplished by clearly marking the boxes or containers used to ship and store studs with the designation "lightweight." This section does not apply to tires or studs in a wholesaler's existing inventory as of January 1, 2000. [2007 c 140 § 3; 1999 c 219 § 2.]

46.37.4216 Lightweight and retractable studs—Sale of tires containing. Beginning July 1, 2001, a person may not sell a studded tire or sell a stud for installation in a tire unless the stud qualifies as a: (1) Lightweight stud under RCW 46.04.272; or (2) retractable stud that is exempt from the requirements of RCW 46.04.272. [2007 c 140 § 4; 1999 c 219 § 3.]

46.37.430 Safety glazing—Sunscreening or coloring. (1) No person may sell any new motor vehicle as specified in this title, nor may any new motor vehicle as specified in this title be registered unless such vehicle is equipped with safety glazing material of a type that meets or exceeds federal standards, or if there are none, standards approved by the Washington state patrol. The foregoing provisions apply to all passenger-type motor vehicles, including passenger buses and school buses, but in respect to trucks, including truck tractors, the requirements as to safety glazing material apply to all glazing material used in doors, windows, and windshields in the drivers' compartments of such vehicles except as provided by subsection (4) of this section.

(2) The term "safety glazing materials" means glazing materials so constructed, treated, or combined with other materials as to reduce substantially, in comparison with ordinary sheet glass or plate glass, the likelihood of injury to persons by objects from exterior sources or by these safety glazing materials when they may be cracked or broken.

(3) The director of licensing shall not register any motor vehicle which is subject to the provisions of this section unless it is equipped with an approved type of safety glazing material, and he or she shall suspend the registration of any motor vehicle so subject to this section which the director finds is not so equipped until it is made to conform to the requirements of this section.

(4) No person may sell or offer for sale, nor may any person operate a motor vehicle registered in this state which is equipped with, any camper manufactured after May 23, 1969, unless such camper is equipped with safety glazing material of a type conforming to rules adopted by the state patrol wherever glazing materials are used in outside windows and doors.

(5) No film sunscreening or coloring material that reduces light transmittance to any degree may be applied to

the surface of the safety glazing material in a motor vehicle unless it meets the following standards for such material:

(a) The maximum level of film sunscreening material to be applied to any window, except the windshield, shall have a total reflectance of thirty-five percent or less, plus or minus three percent, and a light transmission of thirty-five percent or more, plus or minus three percent, when measured against clear glass resulting in a minimum of twenty-four percent light transmission on AS-2 glazing where the vehicle is equipped with outside rearview mirrors on both the right and left. Installation of more than a single sheet of film sunscreening material to any window is prohibited. The same maximum levels of film sunscreen material may be applied to windows to the immediate right and left of the driver on limousines and passenger buses used to transport persons for compensation and vehicles identified by the manufacturer as multi-use, multipurpose, or other similar designation. All windows to the rear of the driver on such vehicles may have film sunscreening material applied that has less than thirty-five percent light transmittance, if the light reflectance is thirty-five percent or less and the vehicle is equipped with outside rearview mirrors on both the right and left. A person or business tinting windows for profit who tints windows within restricted areas of the glazing system shall supply a sticker to be affixed to the driver's door post, in the area adjacent to the manufacturer's identification tag. Installation of this sticker certifies that the glazing application meets this chapter's standards for light transmission, reflectance, and placement requirements. Stickers must be no smaller than three-quarters of an inch by one and one-half inches, and no larger than two inches by two and one-half inches. The stickers must be of sufficient quality to endure exposure to harsh climate conditions. The business name and state tax identification number of the installer must be clearly visible on the sticker.

(b) A greater degree of light reduction is permitted on all windows and the top six inches of windshields of a vehicle operated by or carrying as a passenger a person who possesses a written verification from a licensed physician that the operator or passenger must be protected from exposure to sunlight for physical or medical reasons.

(c) Windshield application. A greater degree of light reduction is permitted on the top six-inch area of a vehicle's windshield. Clear film sunscreening material that reduces or eliminates ultraviolet light may be applied to windshields.

(d) When film sunscreening material is applied to any window except the windshield, outside mirrors on both the left and right sides shall be located so as to reflect to the driver a view of the roadway, through each mirror, a distance of at least two hundred feet to the rear of the vehicle.

(e) The following types of film sunscreening material are not permitted:

- (i) Mirror finish products;
- (ii) Red, gold, yellow, or black material; or
- (iii) Film sunscreening material that is in liquid preapplication form and brushed or sprayed on.

Nothing in this section prohibits the use of shaded or heat-absorbing safety glazing material in which the shading or heat-absorbing characteristics have been applied at the time of manufacture of the safety glazing material and which

meet federal standards and the standards of the state patrol for such safety glazing materials.

(6) It is a traffic infraction for any person to operate a vehicle for use on the public highways of this state, if the vehicle is equipped with film sunscreening or coloring material in violation of this section.

(7) Owners of vehicles with film sunscreening material applied to windows to the rear of the driver, prior to June 7, 1990, must comply with the requirements of this section and RCW 46.37.435 by July 1, 1993.

(8) The side and rear windows of law enforcement vehicles are exempt from the requirements of subsection (5) of this section. However, when law enforcement vehicles are sold to private individuals the film sunscreening or coloring material must comply with the requirements of subsection (5) of this section or documentation must be provided to the buyer stating that the vehicle windows must comply with the requirements of subsection (5) of this section before operation of the vehicle. [2007 c 168 § 1; 1993 c 384 § 1; 1990 c 95 § 1; 1989 c 210 § 1; 1987 c 330 § 723; 1986 c 113 § 5; 1985 c 304 § 1; 1979 c 158 § 157; 1969 ex.s. c 281 § 47; 1961 c 12 § 46.37.430. Prior: 1955 c 269 § 43; prior: 1947 c 220 § 1; 1937 c 189 § 40; Rem. Supp. 1947 § 6360-40; RCW 46.36.090.]

Construction—Application of rules—Severability—1987 c 330: See notes following RCW 28B.12.050.

Chapter 46.44 RCW SIZE, WEIGHT, LOAD

Sections

46.44.105 Enforcement procedures—Penalties—Rules.

46.44.105 Enforcement procedures—Penalties—Rules. (1) Violation of any of the provisions of this chapter is a traffic infraction, and upon the first finding thereof shall be assessed a basic penalty of not less than fifty dollars; and upon a second finding thereof shall be assessed a basic penalty of not less than seventy-five dollars; and upon a third or subsequent finding shall be assessed a basic penalty of not less than one hundred dollars.

(2) In addition to the penalties imposed in subsection (1) of this section, any person violating RCW 46.44.041, 46.44.042, 46.44.047, 46.44.090, 46.44.091, or 46.44.095 shall be assessed a penalty for each pound overweight, as follows:

(a) One pound through four thousand pounds overweight is three cents for each pound;

(b) Four thousand one pounds through ten thousand pounds overweight is one hundred twenty dollars plus twelve cents per pound for each additional pound over four thousand pounds overweight;

(c) Ten thousand one pounds through fifteen thousand pounds overweight is eight hundred forty dollars plus sixteen cents per pound for each additional pound over ten thousand pounds overweight;

(d) Fifteen thousand one pounds through twenty thousand pounds overweight is one thousand six hundred forty dollars plus twenty cents per pound for each additional pound over fifteen thousand pounds overweight;

(e) Twenty thousand one pounds and more is two thousand six hundred forty dollars plus thirty cents per pound for each additional pound over twenty thousand pounds overweight.

Upon a first violation in any calendar year, the court may suspend the penalty for five hundred pounds of excess weight for each axle on any vehicle or combination of vehicles, not to exceed a two thousand pound suspension. In no case may the basic penalty assessed in subsection (1) of this section or the additional penalty assessed in subsection (2) of this section, except as provided for the first violation, be suspended.

(3) Any person found to have violated any posted limitations of a highway or section of highway shall be assessed a monetary penalty of not less than one hundred and fifty dollars, and the court shall in addition thereto upon second violation within a twelve-month period involving the same power unit, suspend the certificate of license registration for not less than thirty days.

(4) It is unlawful for the driver of a vehicle to fail or refuse to stop and submit the vehicle and load to a weighing, or to fail or refuse, when directed by an officer upon a weighing of the vehicle to stop the vehicle and otherwise comply with the provisions of this section. It is unlawful for a driver of a commercial motor vehicle as defined in RCW 46.32.005, other than the driver of a bus as defined in RCW 46.32.005(3) or a vehicle with a gross vehicle weight rating or gross combination weight rating of 7,257 kilograms or less (16,000 pounds or less) and not transporting hazardous materials in accordance with RCW 46.32.005(4), to fail or refuse to stop at a weighing station when proper traffic control signs indicate scales are open. However, unladen tow trucks regardless of weight and farm vehicles carrying farm produce with a gross vehicle weight rating or gross combination weight rating of 11,794 kilograms or less (26,000 pounds or less) may fail or refuse to stop at a weighing station when proper traffic control signs indicate scales are open.

Any police officer is authorized to require the driver of any vehicle or combination of vehicles to stop and submit to a weighing either by means of a portable or stationary scale and may require that the vehicle be driven to the nearest public scale. Whenever a police officer, upon weighing a vehicle and load, determines that the weight is unlawful, the officer may require the driver to stop the vehicle in a suitable location and remain standing until such portion of the load is removed as may be necessary to reduce the gross weight of the vehicle to the limit permitted by law. If the vehicle is loaded with grain or other perishable commodities, the driver shall be permitted to proceed without removing any of the load, unless the gross weight of the vehicle and load exceeds by more than ten percent the limit permitted by this chapter. The owner or operator of the vehicle shall care for all materials unloaded at the risk of the owner or operator.

Any vehicle whose driver or owner represents that the vehicle is disabled or otherwise unable to proceed to a weighing location shall have its load sealed or otherwise marked by any police officer. The owner or driver shall be directed that upon completion of repairs, the vehicle shall submit to weighing with the load and markings and/or seal intact and undisturbed. Failure to report for weighing, appearing for weighing with the seal broken or the markings disturbed, or removal of any cargo prior to weighing is unlawful. Any per-

son so convicted shall be fined one thousand dollars, and in addition the certificate of license registration shall be suspended for not less than thirty days.

(5) Any other provision of law to the contrary notwithstanding, district courts having venue have concurrent jurisdiction with the superior courts for the imposition of any penalties authorized under this section.

(6) For the purpose of determining additional penalties as provided by subsection (2) of this section, "overweight" means the poundage in excess of the maximum allowable gross weight or axle/axle grouping weight prescribed by RCW 46.44.041, 46.44.042, 46.44.047, 46.44.091, and 46.44.095.

(7) The penalties provided in subsections (1) and (2) of this section shall be remitted as provided in chapter 3.62 RCW or RCW 10.82.070. For the purpose of computing the basic penalties and additional penalties to be imposed under subsections (1) and (2) of this section, the convictions shall be on the same vehicle or combination of vehicles within a twelve-month period under the same ownership.

(8) Any state patrol officer or any weight control officer who finds any person operating a vehicle or a combination of vehicles in violation of the conditions of a permit issued under RCW 46.44.047, 46.44.090, and 46.44.095 may confiscate the permit and forward it to the state department of transportation which may return it to the permittee or revoke, cancel, or suspend it without refund. The department of transportation shall keep a record of all action taken upon permits so confiscated, and if a permit is returned to the permittee the action taken by the department of transportation shall be endorsed thereon. Any permittee whose permit is suspended or revoked may upon request receive a hearing before the department of transportation or person designated by that department. After the hearing the department of transportation may reinstate any permit or revise its previous action.

Every permit issued as provided for in this chapter shall be carried in the vehicle or combination of vehicles to which it refers and shall be open to inspection by any law enforcement officer or authorized agent of any authority granting such a permit.

Upon the third finding within a calendar year of a violation of the requirements and conditions of a permit issued under RCW 46.44.095, the permit shall be canceled, and the canceled permit shall be immediately transmitted by the court or the arresting officer to the department of transportation. The vehicle covered by the canceled permit is not eligible for a new permit for a period of thirty days.

(9) For the purposes of determining gross weights the actual scale weight taken by the arresting officer is prima facie evidence of the total gross weight.

(10) It is a traffic infraction to direct the loading of a vehicle with knowledge that it violates the requirements in RCW 46.44.041, 46.44.042, 46.44.047, 46.44.090, 46.44.091, or 46.44.095 and that it is to be operated on the public highways of this state.

(11) The chief of the state patrol, with the advice of the department, may adopt reasonable rules to aid in the enforcement of this section. [2007 c 419 § 13. Prior: 2006 c 297 § 1; 2006 c 50 § 4; 2002 c 254 § 1; 1999 c 23 § 1; 1996 c 92 § 2; 1993 c 403 § 4; 1990 c 217 § 1; 1985 c 351 § 6; 1984 c 258

§ 327; 1984 c 7 § 58; 1979 ex.s. c 136 § 75; 1975-'76 2nd ex.s. c 64 § 23.]

Rules of court: *Monetary penalty schedule—IRLJ 6.2.*

Findings—Short title—Application—2007 c 419: See notes following RCW 46.16.004.

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

Intent—1984 c 258: See note following RCW 3.46.120.

Severability—1984 c 7: See note following RCW 47.01.141.

Effective date—Severability—1979 ex.s. c 136: See notes following RCW 46.63.010.

Effective dates—Severability—1975-'76 2nd ex.s. c 64: See notes following RCW 46.16.070.

Chapter 46.52 RCW ACCIDENTS—REPORTS— ABANDONED VEHICLES

Sections

46.52.130 Abstract of driving record—Access—Fees—Penalty.

46.52.130 Abstract of driving record—Access—Fees—Penalty. (1) A certified abstract of the driving record shall be furnished only to:

- (a) The individual named in the abstract;
- (b) An employer or prospective employer or an agent acting on behalf of an employer or prospective employer, or a volunteer organization for which the named individual has submitted an application for a position that could require the transportation of children under eighteen years of age, adults over sixty-five years of age, or persons with mental or physical disabilities;

(c) An employee or agent of a transit authority checking prospective volunteer vanpool drivers for insurance and risk management needs;

(d) The insurance carrier that has insurance in effect covering the employer or a prospective employer;

(e) The insurance carrier that has motor vehicle or life insurance in effect covering the named individual;

(f) The insurance carrier to which the named individual has applied;

(g) An alcohol/drug assessment or treatment agency approved by the department of social and health services, to which the named individual has applied or been assigned for evaluation or treatment; or

(h) City and county prosecuting attorneys.

(2) City attorneys and county prosecuting attorneys may provide the driving record to alcohol/drug assessment or treatment agencies approved by the department of social and health services to which the named individual has applied or been assigned for evaluation or treatment.

(3)(a) The director, upon proper request, shall furnish a certified abstract covering the period of not more than the last three years to insurance companies.

(b) The director may enter into a contractual agreement with an insurance company or its agent for the limited purpose of reviewing the driving records of existing policyholders for changes to the record during specified periods of time. The department shall establish a fee for this service, which must be deposited in the highway safety fund. The fee for this service must be set at a level that will not result in a net

revenue loss to the state. Any information provided under this subsection must be treated in the same manner and subject to the same restrictions as certified abstracts.

(4) Upon proper request, the director shall furnish a certified abstract covering a period of not more than the last five years to state approved alcohol/drug assessment or treatment agencies, except that the certified abstract shall also include records of alcohol-related offenses as defined in RCW 46.01.260(2) covering a period of not more than the last ten years.

(5) Upon proper request, a certified abstract of the full driving record maintained by the department shall be furnished to a city or county prosecuting attorney, to the individual named in the abstract, to an employer or prospective employer or an agent acting on behalf of an employer or prospective employer of the named individual, or to a volunteer organization for which the named individual has submitted an application for a position that could require the transportation of children under eighteen years of age, adults over sixty-five years of age, or persons with physical or mental disabilities, or to an employee or agent of a transit authority checking prospective volunteer vanpool drivers for insurance and risk management needs.

(6) The abstract, whenever possible, shall include:

(a) An enumeration of motor vehicle accidents in which the person was driving;

(b) The total number of vehicles involved;

(c) Whether the vehicles were legally parked or moving;

(d) Whether the vehicles were occupied at the time of the accident;

(e) Whether the accident resulted in any fatality;

(f) Any reported convictions, forfeitures of bail, or findings that an infraction was committed based upon a violation of any motor vehicle law;

(g) The status of the person's driving privilege in this state; and

(h) Any reports of failure to appear in response to a traffic citation or failure to respond to a notice of infraction served upon the named individual by an arresting officer.

(7) Certified abstracts furnished to prosecutors and alcohol/drug assessment or treatment agencies shall also indicate whether a recorded violation is an alcohol-related offense as defined in RCW 46.01.260(2) that was originally charged as one of the alcohol-related offenses designated in RCW 46.01.260(2)(b)(i).

(8) The abstract provided to the insurance company shall exclude any information, except that related to the commission of misdemeanors or felonies by the individual, pertaining to law enforcement officers or fire fighters as defined in RCW 41.26.030, or any officer of the Washington state patrol, while driving official vehicles in the performance of occupational duty. The abstract provided to the insurance company shall include convictions for RCW 46.61.5249 and 46.61.525 except that the abstract shall report them only as negligent driving without reference to whether they are for first or second degree negligent driving. The abstract provided to the insurance company shall exclude any deferred prosecution under RCW 10.05.060, except that if a person is removed from a deferred prosecution under RCW 10.05.090, the abstract shall show the deferred prosecution as well as the removal.

(9) The director shall collect for each abstract the sum of ten dollars, fifty percent of which shall be deposited in the highway safety fund and fifty percent of which must be deposited according to RCW 46.68.038.

(10) Any insurance company or its agent receiving the certified abstract shall use it exclusively for its own underwriting purposes and shall not divulge any of the information contained in it to a third party. No policy of insurance may be canceled, nonrenewed, denied, or have the rate increased on the basis of such information unless the policyholder was determined to be at fault. No insurance company or its agent for underwriting purposes relating to the operation of commercial motor vehicles may use any information contained in the abstract relative to any person's operation of motor vehicles while not engaged in such employment, nor may any insurance company or its agent for underwriting purposes relating to the operation of noncommercial motor vehicles use any information contained in the abstract relative to any person's operation of commercial motor vehicles.

(11) Any employer or prospective employer or an agent acting on behalf of an employer or prospective employer, or a volunteer organization for which the named individual has submitted an application for a position that could require the transportation of children under eighteen years of age, adults over sixty-five years of age, or persons with physical or mental disabilities, receiving the certified abstract shall use it exclusively for his or her own purpose to determine whether the licensee should be permitted to operate a commercial vehicle or school bus, or operate a vehicle for a volunteer organization for purposes of transporting children under eighteen years of age, adults over sixty-five years of age, or persons with physical or mental disabilities, upon the public highways of this state and shall not divulge any information contained in it to a third party.

(12) Any employee or agent of a transit authority receiving a certified abstract for its vanpool program shall use it exclusively for determining whether the volunteer licensee meets those insurance and risk management requirements necessary to drive a vanpool vehicle. The transit authority may not divulge any information contained in the abstract to a third party.

(13) Any alcohol/drug assessment or treatment agency approved by the department of social and health services receiving the certified abstract shall use it exclusively for the purpose of assisting its employees in making a determination as to what level of treatment, if any, is appropriate. The agency, or any of its employees, shall not divulge any information contained in the abstract to a third party.

(14) Release of a certified abstract of the driving record of an employee, prospective employee, or prospective volunteer requires a statement signed by: (a) The employee, prospective employee, or prospective volunteer that authorizes the release of the record, and (b) the employer or volunteer organization attesting that the information is necessary to determine whether the licensee should be employed to operate a commercial vehicle or school bus, or operate a vehicle for a volunteer organization for purposes of transporting children under eighteen years of age, adults over sixty-five years of age, or persons with physical or mental disabilities, upon the public highways of this state. If the employer or prospec-

tive employer authorizes an agent to obtain this information on their behalf, this must be noted in the statement.

(15) Any negligent violation of this section is a gross misdemeanor.

(16) Any intentional violation of this section is a class C felony. [2007 c 424 § 3; 2004 c 49 § 1; 2003 c 367 § 1. Prior: 2002 c 352 § 20; 2002 c 221 § 1; 2001 c 309 § 1; 1998 c 165 § 11; 1997 c 66 § 12; prior: 1996 c 307 § 4; 1996 c 183 § 2; 1994 c 275 § 16; 1991 c 243 § 1; 1989 c 178 § 24; prior: 1987 1st ex.s. c 9 § 2; 1987 c 397 § 2; 1987 c 181 § 1; 1986 c 74 § 1; 1985 ex.s. c 1 § 11; 1979 ex.s. c 136 § 84; 1977 ex.s. c 356 § 2; 1977 ex.s. c 140 § 1; 1973 1st ex.s. c 37 § 1; 1969 ex.s. c 40 § 3; 1967 c 174 § 2; 1967 c 32 § 63; 1963 c 169 § 65; 1961 ex.s. c 21 § 27.]

Rules of court: *Bail in criminal traffic offense cases—Mandatory appearance—CrRLJ 3.2.*

Effective date—2007 c 424: See note following RCW 46.20.293.

Effective dates—2002 c 352: See note following RCW 46.09.070.

Effective date—1998 c 165 §§ 8-14: See note following RCW 46.52.070.

Short title—1998 c 165: See note following RCW 43.59.010.

Effective date—1996 c 183: See note following RCW 46.52.030.

Short title—Effective date—1994 c 275: See notes following RCW 46.04.015.

Severability—Effective dates—1989 c 178: See RCW 46.25.900 and 46.25.901.

Severability—Effective date—1987 1st ex.s. c 9: See notes following RCW 46.29.050.

Intent—1987 c 397: See note following RCW 46.61.410.

Effective date—1985 ex.s. c 1: See note following RCW 46.20.070.

Effective date—Severability—1979 ex.s. c 136: See notes following RCW 46.63.010.

Effective date—1967 c 174: See note following RCW 46.29.050.

Severability—1963 c 169: See RCW 46.29.910.

Abstract of driving record to be furnished: RCW 46.29.050.

Use of highway safety fund to defray cost of furnishing and maintaining driving records: RCW 46.68.060.

Chapter 46.55 RCW

TOWING AND IMPOUNDMENT

Sections

46.55.113 Removal by police officer.

46.55.113 Removal by police officer. (1) Whenever the driver of a vehicle is arrested for a violation of RCW 46.61.502, 46.61.504, 46.20.342, or 46.20.345, the vehicle is subject to summary impoundment, pursuant to the terms and conditions of an applicable local ordinance or state agency rule at the direction of a law enforcement officer.

(2) In addition, a police officer may take custody of a vehicle, at his or her discretion, and provide for its prompt removal to a place of safety under any of the following circumstances:

(a) Whenever a police officer finds a vehicle standing upon the roadway in violation of any of the provisions of RCW 46.61.560, the officer may provide for the removal of the vehicle or require the driver or other person in charge of the vehicle to move the vehicle to a position off the roadway;

(b) Whenever a police officer finds a vehicle unattended upon a highway where the vehicle constitutes an obstruction to traffic or jeopardizes public safety;

(c) Whenever a police officer finds an unattended vehicle at the scene of an accident or when the driver of a vehicle involved in an accident is physically or mentally incapable of deciding upon steps to be taken to protect his or her property;

(d) Whenever the driver of a vehicle is arrested and taken into custody by a police officer;

(e) Whenever a police officer discovers a vehicle that the officer determines to be a stolen vehicle;

(f) Whenever a vehicle without a special license plate, placard, or decal indicating that the vehicle is being used to transport a person with disabilities under RCW 46.16.381 is parked in a stall or space clearly and conspicuously marked under RCW 46.61.581 which space is provided on private property without charge or on public property;

(g) Upon determining that a person is operating a motor vehicle without a valid and, if required, a specially endorsed driver's license or with a license that has been expired for ninety days or more;

(h) When a vehicle is illegally occupying a truck, commercial loading zone, restricted parking zone, bus, loading, hooded-meter, taxi, street construction or maintenance, or other similar zone where, by order of the director of transportation or chiefs of police or fire or their designees, parking is limited to designated classes of vehicles or is prohibited during certain hours, on designated days or at all times, if the zone has been established with signage for at least twenty-four hours and where the vehicle is interfering with the proper and intended use of the zone. Signage must give notice to the public that a vehicle will be removed if illegally parked in the zone;

(i) When a vehicle with an expired registration of more than forty-five days is parked on a public street.

(3) When an arrest is made for a violation of RCW 46.20.342, if the vehicle is a commercial vehicle and the driver of the vehicle is not the owner of the vehicle, before the summary impoundment directed under subsection (1) of this section, the police officer shall attempt in a reasonable and timely manner to contact the owner of the vehicle and may release the vehicle to the owner if the owner is reasonably available, as long as the owner was not in the vehicle at the time of the stop and arrest and the owner has not received a prior release under this subsection or RCW 46.55.120(1)(a)(ii).

(4) Nothing in this section may derogate from the powers of police officers under the common law. For the purposes of this section, a place of safety may include the business location of a registered tow truck operator. [2007 c 242 § 1; 2007 c 86 § 1; 2005 c 390 § 5. Prior: 2003 c 178 § 1; 2003 c 177 § 1; 1998 c 203 § 4; 1997 c 66 § 7; 1996 c 89 § 1; 1994 c 275 § 32; 1987 c 311 § 10. Formerly RCW 46.61.565.]

Reviser's note: This section was amended by 2007 c 86 § 1 and by 2007 c 242 § 1, each without reference to the other. Both amendments are incorporated in the publication of this section under RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

Finding—1998 c 203: See note following RCW 46.55.105.

Short title—Effective date—1994 c 275: See notes following RCW 46.04.015.

Chapter 46.61 RCW
RULES OF THE ROAD

Sections

46.61.100	Keep right except when passing, etc.
46.61.120	Limitations on overtaking on the left.
46.61.212	Approaching stationary emergency vehicles, tow trucks, and police vehicles.
46.61.5055	Alcohol violators—Penalty schedule.
46.61.667	Using a wireless communications device while driving. (Effective July 1, 2008.)
46.61.668	Sending, reading, or writing a text message while driving. (Effective January 1, 2008.)
46.61.687	Child passenger restraint required—Conditions—Exceptions—Penalty for violation—Dismissal—Noncompliance not negligence—Immunity.
46.61.688	Safety belts, use required—Penalties—Exemptions.
46.61.723	Medium-speed electric vehicles.
46.61.735	Ferry queues—Violations—Exemptions.

46.61.100 Keep right except when passing, etc. (1) Upon all roadways of sufficient width a vehicle shall be driven upon the right half of the roadway, except as follows:

(a) When overtaking and passing another vehicle proceeding in the same direction under the rules governing such movement;

(b) When an obstruction exists making it necessary to drive to the left of the center of the highway; provided, any person so doing shall yield the right-of-way to all vehicles traveling in the proper direction upon the unobstructed portion of the highway within such distance as to constitute an immediate hazard;

(c) Upon a roadway divided into three marked lanes and providing for two-way movement traffic under the rules applicable thereon;

(d) Upon a street or highway restricted to one-way traffic; or

(e) Upon a highway having three lanes or less, when approaching a stationary authorized emergency vehicle, tow truck or other vehicle providing roadside assistance while operating warning lights with three hundred sixty degree visibility, or police vehicle as described under RCW 46.61.212(2).

(2) Upon all roadways having two or more lanes for traffic moving in the same direction, all vehicles shall be driven in the right-hand lane then available for traffic, except (a) when overtaking and passing another vehicle proceeding in the same direction, (b) when traveling at a speed greater than the traffic flow, (c) when moving left to allow traffic to merge, or (d) when preparing for a left turn at an intersection, exit, or into a private road or driveway when such left turn is legally permitted. On any such roadway, a vehicle or combination over ten thousand pounds shall be driven only in the right-hand lane except under the conditions enumerated in (a) through (d) of this subsection.

(3) No vehicle towing a trailer or no vehicle or combination over ten thousand pounds may be driven in the left-hand lane of a limited access roadway having three or more lanes for traffic moving in one direction except when preparing for a left turn at an intersection, exit, or into a private road or driveway when a left turn is legally permitted. This subsection does not apply to a vehicle using a high-occupancy vehicle lane. A high-occupancy vehicle lane is not considered the left-hand lane of a roadway. The department of transportation, in consultation with the Washington state patrol, shall

adopt rules specifying (a) those circumstances where it is permissible for other vehicles to use the left lane in case of emergency or to facilitate the orderly flow of traffic, and (b) those segments of limited access roadway to be exempt from this subsection due to the operational characteristics of the roadway.

(4) It is a traffic infraction to drive continuously in the left lane of a multilane roadway when it impedes the flow of other traffic.

(5) Upon any roadway having four or more lanes for moving traffic and providing for two-way movement of traffic, a vehicle shall not be driven to the left of the center line of the roadway except when authorized by official traffic control devices designating certain lanes to the left side of the center of the roadway for use by traffic not otherwise permitted to use such lanes, or except as permitted under subsection (1)(b) of this section. However, this subsection shall not be construed as prohibiting the crossing of the center line in making a left turn into or from an alley, private road or driveway. [2007 c 83 § 2; 1997 c 253 § 1; 1986 c 93 § 2; 1972 ex.s. c 33 § 1; 1969 ex.s. c 281 § 46; 1967 ex.s. c 145 § 58; 1965 ex.s. c 155 § 15.]

Rules of court: *Monetary penalty schedule—IRLJ 6.2.*

Legislative intent—1986 c 93: "It is the intent of the legislature, in this 1985 [1986] amendment of RCW 46.61.100, that the left-hand lane on any state highway with two or more lanes in the same direction be used primarily as a passing lane." [1986 c 93 § 1.]

Information on proper use of left-hand lane: RCW 28A.220.050, 46.20.095, 46.82.430, 47.36.260.

46.61.120 Limitations on overtaking on the left. No vehicle shall be driven to the left side of the center of the roadway in overtaking and passing other traffic proceeding in the same direction unless authorized by the provisions of RCW 46.61.100 through 46.61.160 and 46.61.212 and unless such left side is clearly visible and is free of oncoming traffic for a sufficient distance ahead to permit such overtaking and passing to be completely made without interfering with the operation of any traffic approaching from the opposite direction or any traffic overtaken. In every event the overtaking vehicle must return to an authorized lane of travel as soon as practicable and in the event the passing movement involves the use of a lane authorized for vehicles approaching from the opposite direction, before coming within two hundred feet of any approaching traffic. [2007 c 83 § 3; 2005 c 396 § 2; 1965 ex.s. c 155 § 19.]

Rules of court: *Monetary penalty schedule—IRLJ 6.2.*

46.61.212 Approaching stationary emergency vehicles, tow trucks, and police vehicles. The driver of any motor vehicle, upon approaching a stationary authorized emergency vehicle that is making use of audible and/or visual signals meeting the requirements of RCW 46.37.190, a tow truck that is making use of visual red lights meeting the requirements of RCW 46.37.196, other vehicles providing roadside assistance that are making use of warning lights with three hundred sixty degree visibility, or a police vehicle properly and lawfully displaying a flashing, blinking, or alternating emergency light or lights, shall:

(1) On a highway having four or more lanes, at least two of which are intended for traffic proceeding in the same

direction as the approaching vehicle, proceed with caution and, if reasonable, with due regard for safety and traffic conditions, yield the right-of-way by making a lane change or moving away from the lane or shoulder occupied by the stationary authorized emergency vehicle or police vehicle;

(2) On a highway having less than four lanes, proceed with caution, reduce the speed of the vehicle, and, if reasonable, with due regard for safety and traffic conditions, and under the rules of this chapter, yield the right-of-way by passing to the left at a safe distance and simultaneously yield the right-of-way to all vehicles traveling in the proper direction upon the highway; or

(3) If changing lanes or moving away would be unreasonable or unsafe, proceed with due caution and reduce the speed of the vehicle. [2007 c 83 § 1; 2005 c 413 § 1.]

46.61.5055 Alcohol violators—Penalty schedule. (1) Except as provided in RCW 46.61.502(6) or 46.61.504(6), a person who is convicted of a violation of RCW 46.61.502 or 46.61.504 and who has no prior offense within seven years shall be punished as follows:

(a) In the case of a person whose alcohol concentration was less than 0.15, or for whom for reasons other than the person's refusal to take a test offered pursuant to RCW 46.20.308 there is no test result indicating the person's alcohol concentration:

(i) By imprisonment for not less than one day nor more than one year. Twenty-four consecutive hours of the imprisonment may not be suspended or deferred unless the court finds that the imposition of this mandatory minimum sentence would impose a substantial risk to the offender's physical or mental well-being. Whenever the mandatory minimum sentence is suspended or deferred, the court shall state in writing the reason for granting the suspension or deferral and the facts upon which the suspension or deferral is based. In lieu of the mandatory minimum term of imprisonment required under this subsection (1)(a)(i), the court may order not less than fifteen days of electronic home monitoring. The offender shall pay the cost of electronic home monitoring. The county or municipality in which the penalty is being imposed shall determine the cost. The court may also require the offender's electronic home monitoring device to include an alcohol detection breathalyzer, and the court may restrict the amount of alcohol the offender may consume during the time the offender is on electronic home monitoring; and

(ii) By a fine of not less than three hundred fifty dollars nor more than five thousand dollars. Three hundred fifty dollars of the fine may not be suspended or deferred unless the court finds the offender to be indigent; or

(b) In the case of a person whose alcohol concentration was at least 0.15, or for whom by reason of the person's refusal to take a test offered pursuant to RCW 46.20.308 there is no test result indicating the person's alcohol concentration:

(i) By imprisonment for not less than two days nor more than one year. Two consecutive days of the imprisonment may not be suspended or deferred unless the court finds that the imposition of this mandatory minimum sentence would impose a substantial risk to the offender's physical or mental well-being. Whenever the mandatory minimum sentence is suspended or deferred, the court shall state in writing the rea-

son for granting the suspension or deferral and the facts upon which the suspension or deferral is based. In lieu of the mandatory minimum term of imprisonment required under this subsection (1)(b)(i), the court may order not less than thirty days of electronic home monitoring. The offender shall pay the cost of electronic home monitoring. The county or municipality in which the penalty is being imposed shall determine the cost. The court may also require the offender's electronic home monitoring device to include an alcohol detection breathalyzer, and the court may restrict the amount of alcohol the offender may consume during the time the offender is on electronic home monitoring; and

(ii) By a fine of not less than five hundred dollars nor more than five thousand dollars. Five hundred dollars of the fine may not be suspended or deferred unless the court finds the offender to be indigent.

(2) Except as provided in RCW 46.61.502(6) or 46.61.504(6), a person who is convicted of a violation of RCW 46.61.502 or 46.61.504 and who has one prior offense within seven years shall be punished as follows:

(a) In the case of a person whose alcohol concentration was less than 0.15, or for whom for reasons other than the person's refusal to take a test offered pursuant to RCW 46.20.308 there is no test result indicating the person's alcohol concentration:

(i) By imprisonment for not less than thirty days nor more than one year and sixty days of electronic home monitoring. The offender shall pay for the cost of the electronic monitoring. The county or municipality where the penalty is being imposed shall determine the cost. The court may also require the offender's electronic home monitoring device include an alcohol detection breathalyzer, and may restrict the amount of alcohol the offender may consume during the time the offender is on electronic home monitoring. Thirty days of imprisonment and sixty days of electronic home monitoring may not be suspended or deferred unless the court finds that the imposition of this mandatory minimum sentence would impose a substantial risk to the offender's physical or mental well-being. Whenever the mandatory minimum sentence is suspended or deferred, the court shall state in writing the reason for granting the suspension or deferral and the facts upon which the suspension or deferral is based; and

(ii) By a fine of not less than five hundred dollars nor more than five thousand dollars. Five hundred dollars of the fine may not be suspended or deferred unless the court finds the offender to be indigent; or

(b) In the case of a person whose alcohol concentration was at least 0.15, or for whom by reason of the person's refusal to take a test offered pursuant to RCW 46.20.308 there is no test result indicating the person's alcohol concentration:

(i) By imprisonment for not less than forty-five days nor more than one year and ninety days of electronic home monitoring. The offender shall pay for the cost of the electronic monitoring. The county or municipality where the penalty is being imposed shall determine the cost. The court may also require the offender's electronic home monitoring device include an alcohol detection breathalyzer, and may restrict the amount of alcohol the offender may consume during the time the offender is on electronic home monitoring. Forty-

five days of imprisonment and ninety days of electronic home monitoring may not be suspended or deferred unless the court finds that the imposition of this mandatory minimum sentence would impose a substantial risk to the offender's physical or mental well-being. Whenever the mandatory minimum sentence is suspended or deferred, the court shall state in writing the reason for granting the suspension or deferral and the facts upon which the suspension or deferral is based; and

(ii) By a fine of not less than seven hundred fifty dollars nor more than five thousand dollars. Seven hundred fifty dollars of the fine may not be suspended or deferred unless the court finds the offender to be indigent.

(3) Except as provided in RCW 46.61.502(6) or 46.61.504(6), a person who is convicted of a violation of RCW 46.61.502 or 46.61.504 and who has two or three prior offenses within seven years shall be punished as follows:

(a) In the case of a person whose alcohol concentration was less than 0.15, or for whom for reasons other than the person's refusal to take a test offered pursuant to RCW 46.20.308 there is no test result indicating the person's alcohol concentration:

(i) By imprisonment for not less than ninety days nor more than one year and one hundred twenty days of electronic home monitoring. The offender shall pay for the cost of the electronic monitoring. The county or municipality where the penalty is being imposed shall determine the cost. The court may also require the offender's electronic home monitoring device include an alcohol detection breathalyzer, and may restrict the amount of alcohol the offender may consume during the time the offender is on electronic home monitoring. Ninety days of imprisonment and one hundred twenty days of electronic home monitoring may not be suspended or deferred unless the court finds that the imposition of this mandatory minimum sentence would impose a substantial risk to the offender's physical or mental well-being. Whenever the mandatory minimum sentence is suspended or deferred, the court shall state in writing the reason for granting the suspension or deferral and the facts upon which the suspension or deferral is based; and

(ii) By a fine of not less than one thousand dollars nor more than five thousand dollars. One thousand dollars of the fine may not be suspended or deferred unless the court finds the offender to be indigent; or

(b) In the case of a person whose alcohol concentration was at least 0.15, or for whom by reason of the person's refusal to take a test offered pursuant to RCW 46.20.308 there is no test result indicating the person's alcohol concentration:

(i) By imprisonment for not less than one hundred twenty days nor more than one year and one hundred fifty days of electronic home monitoring. The offender shall pay for the cost of the electronic monitoring. The county or municipality where the penalty is being imposed shall determine the cost. The court may also require the offender's electronic home monitoring device include an alcohol detection breathalyzer, and may restrict the amount of alcohol the offender may consume during the time the offender is on electronic home monitoring. One hundred twenty days of imprisonment and one hundred fifty days of electronic home monitoring may not be suspended or deferred unless the court

finds that the imposition of this mandatory minimum sentence would impose a substantial risk to the offender's physical or mental well-being. Whenever the mandatory minimum sentence is suspended or deferred, the court shall state in writing the reason for granting the suspension or deferral and the facts upon which the suspension or deferral is based; and

(ii) By a fine of not less than one thousand five hundred dollars nor more than five thousand dollars. One thousand five hundred dollars of the fine may not be suspended or deferred unless the court finds the offender to be indigent.

(4) A person who is convicted of a violation of RCW 46.61.502 or 46.61.504 and who has four or more prior offenses within ten years, or who has ever previously been convicted of a violation of RCW 46.61.520 committed while under the influence of intoxicating liquor or any drug or RCW 46.61.522 committed while under the influence of intoxicating liquor or any drug, shall be punished in accordance with chapter 9.94A RCW.

(5) If a person who is convicted of a violation of RCW 46.61.502 or 46.61.504 committed the offense while a passenger under the age of sixteen was in the vehicle, the court shall:

(a) In any case in which the installation and use of an interlock or other device is not mandatory under RCW 46.20.720 or other law, order the use of such a device for not less than sixty days following the restoration of the person's license, permit, or nonresident driving privileges; and

(b) In any case in which the installation and use of such a device is otherwise mandatory, order the use of such a device for an additional sixty days.

(6) In exercising its discretion in setting penalties within the limits allowed by this section, the court shall particularly consider the following:

(a) Whether the person's driving at the time of the offense was responsible for injury or damage to another or another's property; and

(b) Whether at the time of the offense the person was driving or in physical control of a vehicle with one or more passengers.

(7) An offender punishable under this section is subject to the alcohol assessment and treatment provisions of RCW 46.61.5056.

(8) The license, permit, or nonresident privilege of a person convicted of driving or being in physical control of a motor vehicle while under the influence of intoxicating liquor or drugs must:

(a) If the person's alcohol concentration was less than 0.15, or if for reasons other than the person's refusal to take a test offered under RCW 46.20.308 there is no test result indicating the person's alcohol concentration:

(i) Where there has been no prior offense within seven years, be suspended or denied by the department for ninety days;

(ii) Where there has been one prior offense within seven years, be revoked or denied by the department for two years; or

(iii) Where there have been two or more prior offenses within seven years, be revoked or denied by the department for three years;

(b) If the person's alcohol concentration was at least 0.15:

(i) Where there has been no prior offense within seven years, be revoked or denied by the department for one year;

(ii) Where there has been one prior offense within seven years, be revoked or denied by the department for nine hundred days; or

(iii) Where there have been two or more prior offenses within seven years, be revoked or denied by the department for four years; or

(c) If by reason of the person's refusal to take a test offered under RCW 46.20.308, there is no test result indicating the person's alcohol concentration:

(i) Where there have been no prior offenses within seven years, be revoked or denied by the department for two years;

(ii) Where there has been one prior offense within seven years, be revoked or denied by the department for three years; or

(iii) Where there have been two or more previous offenses within seven years, be revoked or denied by the department for four years.

The department shall grant credit on a day-for-day basis for any portion of a suspension, revocation, or denial already served under this subsection for a suspension, revocation, or denial imposed under RCW 46.20.3101 arising out of the same incident.

For purposes of this subsection (8), the department shall refer to the driver's record maintained under RCW 46.52.120 when determining the existence of prior offenses.

(9) After expiration of any period of suspension, revocation, or denial of the offender's license, permit, or privilege to drive required by this section, the department shall place the offender's driving privilege in probationary status pursuant to RCW 46.20.355.

(10)(a) In addition to any nonsuspendable and nondeferable jail sentence required by this section, whenever the court imposes less than one year in jail, the court shall also suspend but shall not defer a period of confinement for a period not exceeding five years. The court shall impose conditions of probation that include: (i) Not driving a motor vehicle within this state without a valid license to drive and proof of financial responsibility for the future; (ii) not driving a motor vehicle within this state while having an alcohol concentration of 0.08 or more within two hours after driving; and (iii) not refusing to submit to a test of his or her breath or blood to determine alcohol concentration upon request of a law enforcement officer who has reasonable grounds to believe the person was driving or was in actual physical control of a motor vehicle within this state while under the influence of intoxicating liquor. The court may impose conditions of probation that include nonrepetition, installation of an ignition interlock device on the probationer's motor vehicle, alcohol or drug treatment, supervised probation, or other conditions that may be appropriate. The sentence may be imposed in whole or in part upon violation of a condition of probation during the suspension period.

(b) For each violation of mandatory conditions of probation under (a)(i), (ii), or (iii) of this subsection, the court shall order the convicted person to be confined for thirty days, which shall not be suspended or deferred.

(c) For each incident involving a violation of a mandatory condition of probation imposed under this subsection, the license, permit, or privilege to drive of the person shall be suspended by the court for thirty days or, if such license, permit, or privilege to drive already is suspended, revoked, or denied at the time the finding of probation violation is made, the suspension, revocation, or denial then in effect shall be extended by thirty days. The court shall notify the department of any suspension, revocation, or denial or any extension of a suspension, revocation, or denial imposed under this subsection.

(11) A court may waive the electronic home monitoring requirements of this chapter when:

(a) The offender does not have a dwelling, telephone service, or any other necessity to operate an electronic home monitoring system;

(b) The offender does not reside in the state of Washington; or

(c) The court determines that there is reason to believe that the offender would violate the conditions of the electronic home monitoring penalty.

Whenever the mandatory minimum term of electronic home monitoring is waived, the court shall state in writing the reason for granting the waiver and the facts upon which the waiver is based, and shall impose an alternative sentence with similar punitive consequences. The alternative sentence may include, but is not limited to, additional jail time, work crew, or work camp.

Whenever the combination of jail time and electronic home monitoring or alternative sentence would exceed three hundred sixty-five days, the offender shall serve the jail portion of the sentence first, and the electronic home monitoring or alternative portion of the sentence shall be reduced so that the combination does not exceed three hundred sixty-five days.

(12) An offender serving a sentence under this section, whether or not a mandatory minimum term has expired, may be granted an extraordinary medical placement by the jail administrator subject to the standards and limitations set forth in RCW 9.94A.728(4).

(13) For purposes of this section and RCW 46.61.502 and 46.61.504:

(a) A "prior offense" means any of the following:

(i) A conviction for a violation of RCW 46.61.502 or an equivalent local ordinance;

(ii) A conviction for a violation of RCW 46.61.504 or an equivalent local ordinance;

(iii) A conviction for a violation of RCW 46.61.520 committed while under the influence of intoxicating liquor or any drug;

(iv) A conviction for a violation of RCW 46.61.522 committed while under the influence of intoxicating liquor or any drug;

(v) A conviction for a violation of RCW 46.61.5249, 46.61.500, or 9A.36.050 or an equivalent local ordinance, if the conviction is the result of a charge that was originally filed as a violation of RCW 46.61.502 or 46.61.504, or an equivalent local ordinance, or of RCW 46.61.520 or 46.61.522;

(vi) An out-of-state conviction for a violation that would have been a violation of (a)(i), (ii), (iii), (iv), or (v) of this subsection if committed in this state;

(vii) A deferred prosecution under chapter 10.05 RCW granted in a prosecution for a violation of RCW 46.61.502, 46.61.504, or an equivalent local ordinance; or

(viii) A deferred prosecution under chapter 10.05 RCW granted in a prosecution for a violation of RCW 46.61.5249, or an equivalent local ordinance, if the charge under which the deferred prosecution was granted was originally filed as a violation of RCW 46.61.502 or 46.61.504, or an equivalent local ordinance, or of RCW 46.61.520 or 46.61.522;

(b) "Within seven years" means that the arrest for a prior offense occurred within seven years of the arrest for the current offense; and

(c) "Within ten years" means that the arrest for a prior offense occurred within ten years of the arrest for the current offense. [2007 c 474 § 1; 2006 c 73 § 3; 2004 c 95 § 13; 2003 c 103 § 1. Prior: 1999 c 324 § 5; 1999 c 274 § 6; 1999 c 5 § 1; prior: 1998 c 215 § 1; 1998 c 214 § 1; 1998 c 211 § 1; 1998 c 210 § 4; 1998 c 207 § 1; 1998 c 206 § 1; prior: 1997 c 229 § 11; 1997 c 66 § 14; 1996 c 307 § 3; 1995 1st sp.s. c 17 § 2; 1995 c 332 § 5.]

Effective date—2007 c 474: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect July 1, 2007." [2007 c 474 § 2.]

Effective date—2006 c 73: See note following RCW 46.61.502.

Severability—1999 c 5: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1999 c 5 § 2.]

Effective date—1999 c 5: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately [March 16, 1999]." [1999 c 5 § 3.]

Effective date—1998 c 214: "This act takes effect January 1, 1999." [1998 c 214 § 6.]

Effective date—1998 c 211: "This act takes effect January 1, 1999." [1998 c 211 § 7.]

Short title—Finding—Intent—Effective date—1998 c 210: See notes following RCW 46.20.720.

Effective date—1998 c 207: "This act takes effect January 1, 1999." [1998 c 207 § 12.]

Effective date—1997 c 229: See note following RCW 10.05.090.

Effective date—1995 1st sp.s. c 17: See note following RCW 46.20.355.

Severability—Effective dates—1995 c 332: See notes following RCW 46.20.308.

46.61.667 Using a wireless communications device while driving. (Effective July 1, 2008.) (1) Except as provided in subsection (2) of this section, a person operating a moving motor vehicle while holding a wireless communications device to his or her ear is guilty of a traffic infraction.

(2) Subsection (1) of this section does not apply to a person operating:

(a) An authorized emergency vehicle, or a tow truck responding to a disabled vehicle;

(b) A moving motor vehicle using a wireless communications device in hands-free mode;

(c) A moving motor vehicle using a hand-held wireless communications device to:

(i) Report illegal activity;

(ii) Summon medical or other emergency help;

(iii) Prevent injury to a person or property;

(d) A moving motor vehicle while using a hearing aid.

(3) Subsection (1) of this section does not restrict the operation of an amateur radio station by a person who holds a valid amateur radio operator license issued by the federal communications commission.

(4) For purposes of this section, "hands-free mode" means the use of a wireless communications device with a speaker phone, headset, or earpiece.

(5) The state preempts the field of regulating the use of wireless communications devices in motor vehicles, and this section supersedes any local laws, ordinances, orders, rules, or regulations enacted by a political subdivision or municipality to regulate the use of wireless communications devices by the operator of a motor vehicle.

(6) Enforcement of this section by law enforcement officers may be accomplished only as a secondary action when a driver of a motor vehicle has been detained for a suspected violation of this title or an equivalent local ordinance or some other offense.

(7) Infractions that result from the use of a wireless communications device while operating a motor vehicle under this section shall not become part of the driver's record under RCW 46.52.101 and 46.52.120. Additionally, a finding that a person has committed a traffic infraction under this section shall not be made available to insurance companies or employers. [2007 c 417 § 2.]

Intent—2007 c 417: "The use of wireless communications devices by motorists has increased in recent years. While wireless communications devices have assisted with quick reporting of road emergencies, their use has also contributed to accidents and other mishaps on Washington state roadways. When motorists hold a wireless communications device in one hand and drive with the other, their chances of becoming involved in a traffic mishap increase. It is the legislature's intent to phase out the use of hand-held wireless communications devices by motorists while operating a vehicle." [2007 c 417 § 1.]

Effective date—2007 c 417: "This act takes effect July 1, 2008." [2007 c 417 § 3.]

46.61.668 Sending, reading, or writing a text message while driving. (Effective January 1, 2008.) (1) Except as provided in subsection (2) of this section, a person operating a moving motor vehicle who, by means of an electronic wireless communications device, other than a voice-activated global positioning or navigation system that is permanently affixed to the vehicle, sends, reads, or writes a text message, is guilty of a traffic infraction. A person does not send, read, or write a text message when he or she reads, selects, or enters a phone number or name in a wireless communications device for the purpose of making a phone call.

(2) Subsection (1) of this section does not apply to a person operating:

(a) An authorized emergency vehicle; or

(b) A moving motor vehicle while using an electronic wireless communications device to:

(i) Report illegal activity;

(ii) Summon medical or other emergency help;

(iii) Prevent injury to a person or property; or

(iv) Relay information between a transit or for-hire operator and that operator's dispatcher, in which the device is permanently affixed to the vehicle.

(3) Enforcement of this section by law enforcement officers may be accomplished only as a secondary action when a driver of a motor vehicle has been detained for a suspected violation of this title or an equivalent local ordinance or some other offense.

(4) Infractions under this section shall not become part of the driver's record under RCW 46.52.101 and 46.52.120. Additionally, a finding that a person has committed a traffic infraction under this section shall not be made available to insurance companies or employers. [2007 c 416 § 1.]

Effective date—2007 c 416: "This act takes effect January 1, 2008." [2007 c 416 § 2.]

46.61.687 Child passenger restraint required—Conditions—Exceptions—Penalty for violation—Dismissal—Noncompliance not negligence—Immunity. (1) Whenever a child who is less than sixteen years of age is being transported in a motor vehicle that is in operation and that is required by RCW 46.37.510 to be equipped with a safety belt system in a passenger seating position, or is being transported in a neighborhood electric vehicle or medium-speed electric vehicle that is in operation, the driver of the vehicle shall keep the child properly restrained as follows:

(a) A child must be restrained in a child restraint system, if the passenger seating position equipped with a safety belt system allows sufficient space for installation, until the child is eight years old, unless the child is four feet nine inches or taller. The child restraint system must comply with standards of the United States department of transportation and must be secured in the vehicle in accordance with instructions of the vehicle manufacturer and the child restraint system manufacturer.

(b) A child who is eight years of age or older or four feet nine inches or taller shall be properly restrained with the motor vehicle's safety belt properly adjusted and fastened around the child's body or an appropriately fitting child restraint system.

(c) The driver of a vehicle transporting a child who is under thirteen years old shall transport the child in the back seat positions in the vehicle where it is practical to do so.

(2) Enforcement of subsection (1) of this section is subject to a visual inspection by law enforcement to determine if the child restraint system in use is appropriate for the child's individual height, weight, and age. The visual inspection for usage of a child restraint system must ensure that the child restraint system is being used in accordance with the instruction of the vehicle and the child restraint system manufacturers. The driver of a vehicle transporting a child who is under thirteen years old shall transport the child in the back seat positions in the vehicle where it is practical to do so.

(3) A person violating subsection (1) of this section may be issued a notice of traffic infraction under chapter 46.63 RCW. If the person to whom the notice was issued presents proof of acquisition of an approved child passenger restraint system or a child booster seat, as appropriate, within seven days to the jurisdiction issuing the notice and the person has not previously had a violation of this section dismissed, the jurisdiction shall dismiss the notice of traffic infraction.

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(4) Failure to comply with the requirements of this section shall not constitute negligence by a parent or legal guardian. Failure to use a child restraint system shall not be admissible as evidence of negligence in any civil action.

(5) This section does not apply to: (a) For hire vehicles, (b) vehicles designed to transport sixteen or less passengers, including the driver, operated by auto transportation companies, as defined in RCW 81.68.010, (c) vehicles providing customer shuttle service between parking, convention, and hotel facilities, and airport terminals, and (d) school buses.

(6) As used in this section, "child restraint system" means a child passenger restraint system that meets the Federal Motor Vehicle Safety Standards set forth in 49 C.F.R. 571.213.

(7) The requirements of subsection (1) of this section do not apply in any seating position where there is only a lap belt available and the child weighs more than forty pounds.

(8)(a) Except as provided in (b) of this subsection, a person who has a current national certification as a child passenger safety technician and who in good faith provides inspection, adjustment, or educational services regarding child passenger restraint systems is not liable for civil damages resulting from any act or omission in providing the services, other than acts or omissions constituting gross negligence or willful or wanton misconduct.

(b) The immunity provided in this subsection does not apply to a certified child passenger safety technician who is employed by a retailer of child passenger restraint systems and who, during his or her hours of employment and while being compensated, provides inspection, adjustment, or educational services regarding child passenger restraint systems. [2007 c 510 § 4. Prior: 2005 c 415 § 1; 2005 c 132 § 1; 2003 c 353 § 5; 2000 c 190 § 2; 1994 c 100 § 1; 1993 c 274 § 1; 1987 c 330 § 745; 1983 c 215 § 2.]

Effective date—2007 c 510: See note following RCW 46.04.320.

Effective date—2005 c 132 § 1: "Section 1 of this act takes effect June 1, 2007." [2005 c 132 § 3.]

Effective date—2003 c 353: See note following RCW 46.04.320.

Intent—2000 c 190: "The legislature recognizes that fewer than five percent of all drivers use child booster seats for children over the age of four years. The legislature also recognizes that seventy-one percent of deaths resulting from car accidents could be eliminated if every child under the age of sixteen used an appropriate child safety seat, booster seat, or seat belt. The legislature further recognizes the National Transportation Safety Board's recommendations that promote the use of booster seats to increase the safety of children under eight years of age. Therefore, it is the legislature's intent to decrease deaths and injuries to children by promoting safety education and injury prevention measures, as well as increasing public awareness on ways to maximize the protection of children in vehicles." [2000 c 190 § 1.]

Short title—2000 c 190: "This act may be known and cited as the Anton Skeen Act." [2000 c 190 § 5.]

Effective date—2000 c 190: "This act takes effect July 1, 2002." [2000 c 190 § 6.]

Construction—Application of rules—Severability—1987 c 330: See notes following RCW 28B.12.050.

Severability—1983 c 215: See note following RCW 46.37.505.

Standards for child passenger restraint systems: RCW 46.37.505.

46.61.688 Safety belts, use required—Penalties—Exemptions. (1) For the purposes of this section, the term "motor vehicle" includes:

(a) "Buses," meaning motor vehicles with motive power, except trailers, designed to carry more than ten passengers;

(b) "Multipurpose passenger vehicles," meaning motor vehicles with motive power, except trailers, designed to carry ten persons or less that are constructed either on a truck chassis or with special features for occasional off-road operation;

(c) "Neighborhood electric vehicle," meaning a self-propelled, electrically powered four-wheeled motor vehicle whose speed attainable in one mile is more than twenty miles per hour and not more than twenty-five miles per hour and conforms to federal regulations under 49 C.F.R. Sec. 571.500;

(d) "Medium-speed electric vehicle" meaning a self-propelled, electrically powered four-wheeled motor vehicle, equipped with a roll cage or crush-proof body design, whose speed attainable in one mile is more than thirty miles per hour but not more than thirty-five miles per hour and otherwise meets or exceeds the federal regulations set forth in 49 C.F.R. Sec. 571.500;

(e) "Passenger cars," meaning motor vehicles with motive power, except multipurpose passenger vehicles, motorcycles, or trailers, designed for carrying ten passengers or less; and

(f) "Trucks," meaning motor vehicles with motive power, except trailers, designed primarily for the transportation of property.

(2) This section only applies to motor vehicles that meet the manual seat belt safety standards as set forth in federal motor vehicle safety standard 208 and to neighborhood electric vehicles and medium-speed electric vehicles. This section does not apply to a vehicle occupant for whom no safety belt is available when all designated seating positions as required by federal motor vehicle safety standard 208 are occupied.

(3) Every person sixteen years of age or older operating or riding in a motor vehicle shall wear the safety belt assembly in a properly adjusted and securely fastened manner.

(4) No person may operate a motor vehicle unless all child passengers under the age of sixteen years are either: (a) Wearing a safety belt assembly or (b) are securely fastened into an approved child restraint device.

(5) A person violating this section shall be issued a notice of traffic infraction under chapter 46.63 RCW. A finding that a person has committed a traffic infraction under this section shall be contained in the driver's abstract but shall not be available to insurance companies or employers.

(6) Failure to comply with the requirements of this section does not constitute negligence, nor may failure to wear a safety belt assembly be admissible as evidence of negligence in any civil action.

(7) This section does not apply to an operator or passenger who possesses written verification from a licensed physician that the operator or passenger is unable to wear a safety belt for physical or medical reasons.

(8) The state patrol may adopt rules exempting operators or occupants of farm vehicles, construction equipment, and vehicles that are required to make frequent stops from the requirement of wearing safety belts. [2007 c 510 § 5; 2003 c 353 § 4; 2002 c 328 § 2; (2002 c 328 § 1 expired July 1, 2002); 2000 c 190 § 3; 1990 c 250 § 58; 1986 c 152 § 1.]

Effective date—2007 c 510: See note following RCW 46.04.320.

Effective date—2003 c 353: See note following RCW 46.04.320.

Expiration date—2002 c 328 § 1: "Section 1 of this act expires July 1, 2002." [2002 c 328 § 3.]

Effective date—2002 c 328 § 2: "Section 2 of this act takes effect July 1, 2002." [2002 c 328 § 4.]

Intent—Short title—Effective date—2000 c 190: See notes following RCW 46.61.687.

Severability—1990 c 250: See note following RCW 46.16.301.

Study of effectiveness—1986 c 152: "The traffic safety commission shall undertake a study of the effectiveness of section 1 of this act and shall report its finding to the legislative transportation committee by January 1, 1989." [1986 c 152 § 3.]

Physicians—Immunity from liability regarding safety belts: RCW 4.24.235. Seat belts and shoulder harnesses, required equipment: RCW 46.37.510.

46.61.723 Medium-speed electric vehicles. (1) Except as provided in subsection (3) of this section, a person may operate a medium-speed electric vehicle upon a highway of this state having a speed limit of thirty-five miles per hour or less if:

(a) The person does not operate a medium-speed electric vehicle upon state highways that are listed in chapter 47.17 RCW;

(b) The person does not operate a medium-speed electric vehicle upon a highway of this state without first having obtained and having in full force and effect a current and proper vehicle license and display vehicle license number plates in compliance with chapter 46.16 RCW;

(c) The person does not operate a medium-speed electric vehicle upon a highway of this state without first obtaining a valid driver's license issued to Washington residents in compliance with chapter 46.20 RCW;

(d) The person does not operate a medium-speed electric vehicle subject to registration under chapter 46.16 RCW on a highway of this state unless the person is insured under a motor vehicle liability policy in compliance with chapter 46.30 RCW; and

(e) The person operating a medium-speed electric vehicle does not cross a roadway with a speed limit in excess of thirty-five miles per hour, unless the crossing begins and ends on a roadway with a speed limit of thirty-five miles per hour or less and occurs at an intersection of approximately ninety degrees, except that the operator of a medium-speed electric vehicle must not cross an uncontrolled intersection of streets and highways that are part of the state highway system subject to Title 47 RCW unless that intersection has been authorized by local authorities under subsection (3) of this section.

(2) Any person who violates this section commits a traffic infraction.

(3) This section does not prevent local authorities, with respect to streets and highways under their jurisdiction and within the reasonable exercise of their police power, from regulating the operation of medium-speed electric vehicles on streets and highways under their jurisdiction by resolution or ordinance of the governing body, if the regulation is consistent with this title, except that:

(a) Local authorities may not authorize the operation of medium-speed electric vehicles on streets and highways that are part of the state highway system subject to Title 47 RCW;

(b) Local authorities may not prohibit the operation of medium-speed electric vehicles upon highways of this state having a speed limit of thirty-five miles per hour or less; and

(c) Local authorities may not establish requirements for the registration and licensing of medium-speed electric vehicles. [2007 c 510 § 3.]

Effective date—2007 c 510: See note following RCW 46.04.320.

46.61.735 Ferry queues—Violations—Exemptions.

(1) It is a traffic infraction for a driver of a motor vehicle intending to board a Washington state ferry, to: (a) Block a residential driveway while waiting to board the ferry; or (b) move in front of another vehicle in a queue already waiting to board the ferry, without the authorization of a state ferry system employee. Vehicles qualifying for preferential loading privileges under rules adopted by the department of transportation are exempt from this section. In addition to any other penalty imposed for a violation of this section, the driver will be directed to immediately move the motor vehicle to the end of the queue of vehicles waiting to board the ferry. Violations of this section are not part of the vehicle driver's driving record under RCW 46.52.101 and 46.52.120.

(2) Subsection (1) of this section does not apply to a driver of a motor vehicle intending to board the Keller Ferry on state route No. 21. [2007 c 423 § 1.]

Chapter 46.63 RCW

DISPOSITION OF TRAFFIC INFRACTIONS

Sections

46.63.030	Notice of traffic infraction—Issuance—Abandoned vehicles.
46.63.073	Rental vehicles.
46.63.105	City attorney, county prosecutor, or other prosecuting authority—Filing an infraction—Contribution, donation, payment.
46.63.110	Monetary penalties.
46.63.160	Toll collection systems—Photo enforcement systems.
46.63.170	Automated traffic safety cameras—Definition.

46.63.030 Notice of traffic infraction—Issuance—Abandoned vehicles. (1) A law enforcement officer has the authority to issue a notice of traffic infraction:

(a) When the infraction is committed in the officer's presence;

(b) When the officer is acting upon the request of a law enforcement officer in whose presence the traffic infraction was committed;

(c) If an officer investigating at the scene of a motor vehicle accident has reasonable cause to believe that the driver of a motor vehicle involved in the accident has committed a traffic infraction;

(d) When the infraction is detected through the use of a photo enforcement system under RCW 46.63.160; or

(e) When the infraction is detected through the use of an automated traffic safety camera under RCW 46.63.170.

(2) A court may issue a notice of traffic infraction upon receipt of a written statement of the officer that there is reasonable cause to believe that an infraction was committed.

(3) If any motor vehicle without a driver is found parked, standing, or stopped in violation of this title or an equivalent administrative regulation or local law, ordinance, regulation, or resolution, the officer finding the vehicle shall take its registration number and may take any other information displayed on the vehicle which may identify its user, and shall conspicuously affix to the vehicle a notice of traffic infraction.

(4) In the case of failure to redeem an abandoned vehicle under RCW 46.55.120, upon receiving a complaint by a registered tow truck operator that has incurred costs in removing, storing, and disposing of an abandoned vehicle, an officer of the law enforcement agency responsible for directing the removal of the vehicle shall send a notice of infraction by certified mail to the last known address of the person responsible under RCW 46.55.105. The notice must be entitled "Littering—Abandoned Vehicle" and give notice of the monetary penalty. The officer shall append to the notice of infraction, on a form prescribed by the department of licensing, a notice indicating the amount of costs incurred as a result of removing, storing, and disposing of the abandoned vehicle, less any amount realized at auction, and a statement that monetary penalties for the infraction will not be considered as having been paid until the monetary penalty payable under this chapter has been paid and the court is satisfied that the person has made restitution in the amount of the deficiency remaining after disposal of the vehicle. [2007 c 101 § 1; 2005 c 167 § 2; 2004 c 231 § 2; 2002 c 279 § 14; 1995 c 219 § 5; 1994 c 176 § 3; 1987 c 66 § 2; 1980 c 128 § 10; 1979 ex.s. c 136 § 3.]

Effective date—Severability—1980 c 128: See notes following RCW 46.63.060.

Effective date—Severability—1979 ex.s. c 136: See notes following RCW 46.63.010.

46.63.073 Rental vehicles. (1) In the event a traffic infraction is based on a vehicle's identification, and the registered owner of the vehicle is a rental car business, the law enforcement agency shall, before a notice of infraction may be issued, provide a written notice to the rental car business that a notice of infraction may be issued to the rental car business if the rental car business does not, within thirty days of receiving the written notice, provide to the issuing agency by return mail:

(a) A statement under oath stating the name and known mailing address of the individual driving or renting the vehicle when the infraction occurred; or

(b) A statement under oath that the business is unable to determine who was driving or renting the vehicle at the time the infraction occurred because the vehicle was stolen at the time of the infraction. A statement provided under this subsection must be accompanied by a copy of a filed police report regarding the vehicle theft.

Timely mailing of this statement to the issuing law enforcement agency relieves a rental car business of any liability under this chapter for the notice of infraction. In lieu of identifying the vehicle operator, the rental car business may pay the applicable penalty. For the purpose of this subsection, a "traffic infraction based on a vehicle's identification" includes, but is not limited to, parking infractions, high-occupancy toll lane violations, and violations recorded by automated traffic safety cameras.

(2) In the event a parking infraction is issued by a private parking facility and is based on a vehicle's identification, and the registered owner of the vehicle is a rental car business, the parking facility shall, before a notice of infraction may be issued, provide a written notice to the rental car business that a notice of infraction may be issued to the rental car business if the rental car business does not, within thirty days of

receiving the written notice, provide to the parking facility by return mail:

(a) A statement under oath stating the name and known mailing address of the individual driving or renting the vehicle when the infraction occurred; or

(b) A statement under oath that the business is unable to determine who was driving or renting the vehicle at the time the infraction occurred because the vehicle was stolen at the time of the infraction. A statement provided under this subsection must be accompanied by a copy of a filed police report regarding the vehicle theft.

Timely mailing of this statement to the parking facility relieves a rental car business of any liability under this chapter for the notice of infraction. In lieu of identifying the vehicle operator, the rental car business may pay the applicable penalty. For the purpose of this subsection, a "parking infraction based on a vehicle's identification" is limited to parking infractions occurring on a private parking facility's premises. [2007 c 372 § 1; 2005 c 331 § 2.]

46.63.105 City attorney, county prosecutor, or other prosecuting authority—Filing an infraction—Contribution, donation, payment. A city attorney, county prosecutor, or other prosecuting authority may not dismiss, amend, or agree not to file an infraction in exchange for a contribution, donation, or payment to any person, corporation, or organization. This does not prohibit:

(1) Contribution, donation, or payment to any specific fund authorized by state statute;

(2) The collection of costs associated with actual supervision, treatment, or collection of restitution under agreements to defer or divert; or

(3) Dismissal following payment that is authorized by any other statute. [2007 c 367 § 2.]

46.63.110 Monetary penalties. (1) A person found to have committed a traffic infraction shall be assessed a monetary penalty. No penalty may exceed two hundred and fifty dollars for each offense unless authorized by this chapter or title.

(2) The monetary penalty for a violation of (a) RCW 46.55.105(2) is two hundred fifty dollars for each offense; (b) RCW 46.61.210(1) is five hundred dollars for each offense. No penalty assessed under this subsection (2) may be reduced.

(3) The supreme court shall prescribe by rule a schedule of monetary penalties for designated traffic infractions. This rule shall also specify the conditions under which local courts may exercise discretion in assessing fines and penalties for traffic infractions. The legislature respectfully requests the supreme court to adjust this schedule every two years for inflation.

(4) There shall be a penalty of twenty-five dollars for failure to respond to a notice of traffic infraction except where the infraction relates to parking as defined by local law, ordinance, regulation, or resolution or failure to pay a monetary penalty imposed pursuant to this chapter. A local legislative body may set a monetary penalty not to exceed twenty-five dollars for failure to respond to a notice of traffic infraction relating to parking as defined by local law, ordi-

nance, regulation, or resolution. The local court, whether a municipal, police, or district court, shall impose the monetary penalty set by the local legislative body.

(5) Monetary penalties provided for in chapter 46.70 RCW which are civil in nature and penalties which may be assessed for violations of chapter 46.44 RCW relating to size, weight, and load of motor vehicles are not subject to the limitation on the amount of monetary penalties which may be imposed pursuant to this chapter.

(6) Whenever a monetary penalty, fee, cost, assessment, or other monetary obligation is imposed by a court under this chapter it is immediately payable. If the court determines, in its discretion, that a person is not able to pay a monetary obligation in full, and not more than one year has passed since the later of July 1, 2005, or the date the monetary obligation initially became due and payable, the court shall enter into a payment plan with the person, unless the person has previously been granted a payment plan with respect to the same monetary obligation, or unless the person is in noncompliance of any existing or prior payment plan, in which case the court may, at its discretion, implement a payment plan. If the court has notified the department that the person has failed to pay or comply and the person has subsequently entered into a payment plan and made an initial payment, the court shall notify the department that the infraction has been adjudicated, and the department shall rescind any suspension of the person's driver's license or driver's privilege based on failure to respond to that infraction. "Payment plan," as used in this section, means a plan that requires reasonable payments based on the financial ability of the person to pay. The person may voluntarily pay an amount at any time in addition to the payments required under the payment plan.

(a) If a payment required to be made under the payment plan is delinquent or the person fails to complete a community restitution program on or before the time established under the payment plan, unless the court determines good cause therefor and adjusts the payment plan or the community restitution plan accordingly, the court shall notify the department of the person's failure to meet the conditions of the plan, and the department shall suspend the person's driver's license or driving privilege until all monetary obligations, including those imposed under subsections (3) and (4) of this section, have been paid, and court authorized community restitution has been completed, or until the department has been notified that the court has entered into a new time payment or community restitution agreement with the person.

(b) If a person has not entered into a payment plan with the court and has not paid the monetary obligation in full on or before the time established for payment, the court shall notify the department of the delinquency. The department shall suspend the person's driver's license or driving privilege until all monetary obligations have been paid, including those imposed under subsections (3) and (4) of this section, or until the person has entered into a payment plan under this section.

(c) If the payment plan is to be administered by the court, the court may assess the person a reasonable administrative fee to be wholly retained by the city or county with jurisdiction. The administrative fee shall not exceed ten dollars per

infraction or twenty-five dollars per payment plan, whichever is less.

(d) Nothing in this section precludes a court from contracting with outside entities to administer its payment plan system. When outside entities are used for the administration of a payment plan, the court may assess the person a reasonable fee for such administrative services, which fee may be calculated on a periodic, percentage, or other basis.

(e) If a court authorized community restitution program for offenders is available in the jurisdiction, the court may allow conversion of all or part of the monetary obligations due under this section to court authorized community restitution in lieu of time payments if the person is unable to make reasonable time payments.

(7) In addition to any other penalties imposed under this section and not subject to the limitation of subsection (1) of this section, a person found to have committed a traffic infraction shall be assessed:

(a) A fee of five dollars per infraction. Under no circumstances shall this fee be reduced or waived. Revenue from this fee shall be forwarded to the state treasurer for deposit in the emergency medical services and trauma care system trust account under RCW 70.168.040;

(b) A fee of ten dollars per infraction. Under no circumstances shall this fee be reduced or waived. Revenue from this fee shall be forwarded to the state treasurer for deposit in the Washington auto theft prevention authority account; and

(c) A fee of two dollars per infraction. Revenue from this fee shall be forwarded to the state treasurer for deposit in the traumatic brain injury account established in RCW 74.31.060.

(8)(a) In addition to any other penalties imposed under this section and not subject to the limitation of subsection (1) of this section, a person found to have committed a traffic infraction other than of RCW 46.61.527 shall be assessed an additional penalty of twenty dollars. The court may not reduce, waive, or suspend the additional penalty unless the court finds the offender to be indigent. If a court authorized community restitution program for offenders is available in the jurisdiction, the court shall allow offenders to offset all or a part of the penalty due under this subsection (8) by participation in the court authorized community restitution program.

(b) Eight dollars and fifty cents of the additional penalty under (a) of this subsection shall be remitted to the state treasurer. The remaining revenue from the additional penalty must be remitted under chapters 2.08, 3.46, 3.50, 3.62, 10.82, and 35.20 RCW. Money remitted under this subsection to the state treasurer must be deposited as provided in RCW 43.08.250. The balance of the revenue received by the county or city treasurer under this subsection must be deposited into the county or city current expense fund. Moneys retained by the city or county under this subsection shall constitute reimbursement for any liabilities under RCW 43.135.060.

(9) If a legal proceeding, such as garnishment, has commenced to collect any delinquent amount owed by the person for any penalty imposed by the court under this section, the court may, at its discretion, enter into a payment plan.

(10) The monetary penalty for violating RCW 46.37.395 is: (a) Two hundred fifty dollars for the first violation; (b)

five hundred dollars for the second violation; and (c) seven hundred fifty dollars for each violation thereafter. [2007 c 356 § 8; 2007 c 199 § 28. Prior: 2005 c 413 § 2; 2005 c 320 § 2; 2005 c 288 § 8; 2003 c 380 § 2. Prior: 2002 c 279 § 15; 2002 c 175 § 36; 2001 c 289 § 2; 1997 c 331 § 3; 1993 c 501 § 11; 1986 c 213 § 2; 1984 c 258 § 330; prior: 1982 1st ex.s. c 14 § 4; 1982 1st ex.s. c 12 § 1; 1982 c 10 § 13; prior: 1981 c 330 § 7; 1981 c 19 § 6; 1980 c 128 § 4; 1979 ex.s. c 136 § 13.]

Rules of court: *Monetary penalty schedule—IRLJ 6.2.*

Reviser's note: This section was amended by 2007 c 199 § 28 and by 2007 c 356 § 8, each without reference to the other. Both amendments are incorporated in the publication of this section under RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

Short title—2007 c 356: See note following RCW 74.31.005.

Findings—Intent—Short title—2007 c 199: See notes following RCW 9A.56.065.

Effective date—2005 c 288: See note following RCW 46.20.245.

Effective date—2002 c 175: See note following RCW 7.80.130.

Effective date—1997 c 331: See note following RCW 70.168.135.

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

Intent—1984 c 258: See note following RCW 3.46.120.

Effective date—Severability—1982 1st ex.s. c 14: See notes following RCW 46.63.060.

Severability—1982 c 10: See note following RCW 6.13.080.

Severability—1981 c 330: See note following RCW 3.62.060.

Severability—1981 c 19: See note following RCW 46.63.020.

Effective date—Severability—1980 c 128: See notes following RCW 46.63.060.

Effective date—Severability—1979 ex.s. c 136: See notes following RCW 46.63.010.

Additional statutory assessments: RCW 3.62.090, 46.64.055.

46.63.160 Toll collection systems—Photo enforcement systems. (1) This section applies only to infractions issued under RCW 46.61.690 for toll collection evasion.

(2) Nothing in this section prohibits a law enforcement officer from issuing a notice of traffic infraction to a person in control of a vehicle at the time a violation occurs under RCW 46.63.030(1) (a), (b), or (c).

(3) Toll collection systems include manual cash collection, electronic toll collection, and photo enforcement systems.

(4) "Electronic toll collection system" means a system of collecting tolls or charges that is capable of charging the account of the toll patron the appropriate toll or charge by electronic transmission from the motor vehicle to the toll collection system, which information is used to charge the appropriate toll or charge to the patron's account.

(5) "Photo enforcement system" means a vehicle sensor installed to work in conjunction with an electronic toll collection system that automatically produces one or more photographs, one or more microphotographs, a videotape, or other recorded images of a vehicle operated in violation of an infraction under this chapter.

(6) The use of a toll collection system is subject to the following requirements:

(a) The department of transportation shall adopt rules that allow an open standard for automatic vehicle identification transponders used for electronic toll collection to be

compatible with other electronic payment devices or transponders from the Washington state ferry system, other public transportation systems, or other toll collection systems to the extent that technology permits. The rules must also allow for multiple vendors providing electronic payment devices or transponders as technology permits.

(b) The department of transportation may not sell, distribute, or make available in any way, the names and addresses of electronic toll collection system account holders.

(7) The use of a photo enforcement system for issuance of notices of infraction is subject to the following requirements:

(a) Photo enforcement systems may take photographs, digital photographs, microphotographs, videotapes, or other recorded images of the vehicle and vehicle license plate only.

(b) A notice of infraction must be mailed to the registered owner of the vehicle or to the renter of a vehicle within sixty days of the violation. The law enforcement officer issuing the notice of infraction shall include with it a certificate or facsimile thereof, based upon inspection of photographs, microphotographs, videotape, or other recorded images produced by a photo enforcement system, stating the facts supporting the notice of infraction. This certificate or facsimile is prima facie evidence of the facts contained in it and is admissible in a proceeding charging a violation under this chapter. The photographs, digital photographs, microphotographs, videotape, or other recorded images evidencing the violation must be available for inspection and admission into evidence in a proceeding to adjudicate the liability for the infraction.

(c) Notwithstanding any other provision of law, all photographs, digital photographs, microphotographs, videotape, or other recorded images prepared under this chapter are for the exclusive use of the tolling agency and law enforcement in the discharge of duties under this section and are not open to the public and may not be used in a court in a pending action or proceeding unless the action or proceeding relates to a violation under this chapter. No photograph, digital photograph, microphotograph, videotape, or other recorded image may be used for any purpose other than enforcement of violations under this chapter nor retained longer than necessary to enforce this chapter or verify that tolls are paid.

(d) All locations where a photo enforcement system is used must be clearly marked by placing signs in locations that clearly indicate to a driver that he or she is entering a zone where traffic laws are enforced by a photo enforcement system.

(8) Infractions detected through the use of photo enforcement systems are not part of the registered owner's driving record under RCW 46.52.101 and 46.52.120. Additionally, infractions generated by the use of photo enforcement systems under this section shall be processed in the same manner as parking infractions, including for the purposes of RCW 3.46.120, 3.50.100, 35.20.220, 46.16.216, and 46.20.270(3).

(9) The penalty for an infraction detected through the use of a photo enforcement system shall be forty dollars plus an additional toll penalty. The toll penalty is equal to three times the cash toll for a standard passenger car during peak hours. Any reduction in the total penalty imposed shall be made proportionally between the forty-dollar penalty and the toll pen-

alty. The court shall remit the toll penalty to the department of transportation or a private entity under contract with the department of transportation for deposit in the statewide account in which tolls are deposited for the tolling facility at which the violation occurred.

(10) If the registered owner of the vehicle is a rental car business the department of transportation or a law enforcement agency shall, before a notice of infraction being issued under this section, provide a written notice to the rental car business that a notice of infraction may be issued to the rental car business if the rental car business does not, within eighteen days of the mailing of the written notice, provide to the issuing agency by return mail:

(a) A statement under oath stating the name and known mailing address of the individual driving or renting the vehicle when the infraction occurred; or

(b) A statement under oath that the business is unable to determine who was driving or renting the vehicle at the time the infraction occurred because the vehicle was stolen at the time of the infraction. A statement provided under this subsection must be accompanied by a copy of a filed police report regarding the vehicle theft; or

(c) In lieu of identifying the vehicle operator, the rental car business may pay the applicable toll and fee.

Timely mailing of this statement to the issuing law enforcement agency relieves a rental car business of any liability under this chapter for the notice of infraction. [2007 c 372 § 2; 2007 c 101 § 2; 2004 c 231 § 6.]

Reviser's note: This section was amended by 2007 c 101 § 2 and by 2007 c 372 § 2, each without reference to the other. Both amendments are incorporated in the publication of this section under RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

46.63.170 Automated traffic safety cameras—Definition. (1) The use of automated traffic safety cameras for issuance of notices of infraction is subject to the following requirements:

(a) The appropriate local legislative authority must first enact an ordinance allowing for their use to detect one or more of the following: Stoplight, railroad crossing, or school speed zone violations. At a minimum, the local ordinance must contain the restrictions described in this section and provisions for public notice and signage. Cities and counties using automated traffic safety cameras before July 24, 2005, are subject to the restrictions described in this section, but are not required to enact an authorizing ordinance.

(b) Use of automated traffic safety cameras is restricted to two-arterial intersections, railroad crossings, and school speed zones only.

(c) Automated traffic safety cameras may only take pictures of the vehicle and vehicle license plate and only while an infraction is occurring. The picture must not reveal the face of the driver or of passengers in the vehicle.

(d) A notice of infraction must be mailed to the registered owner of the vehicle within fourteen days of the violation, or to the renter of a vehicle within fourteen days of establishing the renter's name and address under subsection (3)(a) of this section. The law enforcement officer issuing the notice of infraction shall include with it a certificate or facsimile thereof, based upon inspection of photographs, microphotographs, or electronic images produced by an auto-

mated traffic safety camera, stating the facts supporting the notice of infraction. This certificate or facsimile is prima facie evidence of the facts contained in it and is admissible in a proceeding charging a violation under this chapter. The photographs, microphotographs, or electronic images evidencing the violation must be available for inspection and admission into evidence in a proceeding to adjudicate the liability for the infraction. A person receiving a notice of infraction based on evidence detected by an automated traffic safety camera may respond to the notice by mail.

(e) The registered owner of a vehicle is responsible for an infraction under RCW 46.63.030(1)(e) unless the registered owner overcomes the presumption in RCW 46.63.075, or, in the case of a rental car business, satisfies the conditions under subsection (3) of this section. If appropriate under the circumstances, a renter identified under subsection (3)(a) of this section is responsible for an infraction.

(f) Notwithstanding any other provision of law, all photographs, microphotographs, or electronic images prepared under this section are for the exclusive use of law enforcement in the discharge of duties under this section and are not open to the public and may not be used in a court in a pending action or proceeding unless the action or proceeding relates to a violation under this section. No photograph, microphotograph, or electronic image may be used for any purpose other than enforcement of violations under this section nor retained longer than necessary to enforce this section.

(g) All locations where an automated traffic safety camera is used must be clearly marked by placing signs in locations that clearly indicate to a driver that he or she is entering a zone where traffic laws are enforced by an automated traffic safety camera.

(h) If a county or city has established an authorized automated traffic safety camera program under this section, the compensation paid to the manufacturer or vendor of the equipment used must be based only upon the value of the equipment and services provided or rendered in support of the system, and may not be based upon a portion of the fine or civil penalty imposed or the revenue generated by the equipment.

(2) Infractions detected through the use of automated traffic safety cameras are not part of the registered owner's driving record under RCW 46.52.101 and 46.52.120. Additionally, infractions generated by the use of automated traffic safety cameras under this section shall be processed in the same manner as parking infractions, including for the purposes of RCW 3.46.120, 3.50.100, 35.20.220, 46.16.216, and 46.20.270(3). However, the amount of the fine issued for an infraction generated through the use of an automated traffic safety camera shall not exceed the amount of a fine issued for other parking infractions within the jurisdiction.

(3) If the registered owner of the vehicle is a rental car business, the law enforcement agency shall, before a notice of infraction being issued under this section, provide a written notice to the rental car business that a notice of infraction may be issued to the rental car business if the rental car business does not, within eighteen days of receiving the written notice, provide to the issuing agency by return mail:

(a) A statement under oath stating the name and known mailing address of the individual driving or renting the vehicle when the infraction occurred; or

(b) A statement under oath that the business is unable to determine who was driving or renting the vehicle at the time the infraction occurred because the vehicle was stolen at the time of the infraction. A statement provided under this subsection must be accompanied by a copy of a filed police report regarding the vehicle theft; or

(c) In lieu of identifying the vehicle operator, the rental car business may pay the applicable penalty.

Timely mailing of this statement to the issuing law enforcement agency relieves a rental car business of any liability under this chapter for the notice of infraction.

(4) Nothing in this section prohibits a law enforcement officer from issuing a notice of traffic infraction to a person in control of a vehicle at the time a violation occurs under RCW 46.63.030(1) (a), (b), or (c).

(5) For the purposes of this section, "automated traffic safety camera" means a device that uses a vehicle sensor installed to work in conjunction with an intersection traffic control system, a railroad grade crossing control system, or a speed measuring device, and a camera synchronized to automatically record one or more sequenced photographs, microphotographs, or electronic images of the rear of a motor vehicle at the time the vehicle fails to stop when facing a steady red traffic control signal or an activated railroad grade crossing control signal, or exceeds a speed limit in a school speed zone as detected by a speed measuring device. [2007 c 372 § 3; 2005 c 167 § 1.]

Chapter 46.66 RCW WASHINGTON AUTO THEFT PREVENTION AUTHORITY

Sections

46.66.010	Authority established—Members.
46.66.020	Meetings—Officers—Terms.
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46.66.010 Authority established—Members. (1) The Washington auto theft prevention authority is established. The authority shall consist of the following members, appointed by the governor:

(a) The executive director of the Washington association of sheriffs and police chiefs, or the executive director's designee;

(b) The chief of the Washington state patrol, or the chief's designee;

(c) Two police chiefs;

(d) Two sheriffs;

(e) One prosecuting attorney;

(f) A representative from the insurance industry who is responsible for writing property and casualty liability insurance in the state of Washington;

(g) A representative from the automobile industry; and

(h) One member of the general public.

(2) In addition, the authority may, where feasible, consult with other governmental entities or individuals from the

public and private sector in carrying out its duties under this section. [2007 c 199 § 20.]

46.66.020 Meetings—Officers—Terms. (1) The Washington auto theft prevention authority shall initially convene at the call of the executive director of the Washington association of sheriffs and police chiefs, or the executive director's designee, no later than the third Monday in January 2008. Subsequent meetings of the authority shall be at the call of the chair or seven members.

(2) The authority shall annually elect a chairperson and other such officers as it deems appropriate from its membership.

(3) Members of the authority shall serve terms of four years each on a staggered schedule to be established by the first authority. For purposes of initiating a staggered schedule of terms, some members of the first authority may initially serve two years and some members may initially serve four years. [2007 c 199 § 21.]

46.66.030 Powers, duties. (1) The Washington auto theft prevention authority may obtain or contract for staff services, including an executive director, and any facilities and equipment as the authority requires to carry out its duties.

(2) The director may enter into contracts with any public or private organization to carry out the purposes of this section and RCW 46.66.010, 46.66.020, and 46.66.040 through 46.66.080.

(3) The authority shall review and make recommendations to the legislature and the governor regarding motor vehicle theft in Washington state. In preparing the recommendations, the authority shall, at a minimum, review the following issues:

(a) Determine the scope of the problem of motor vehicle theft, including:

(i) Particular areas of the state where the problem is the greatest;

(ii) Annual data reported by local law enforcement regarding the number of reported thefts, investigations, recovered vehicles, arrests, and convictions; and

(iii) An assessment of estimated funds needed to hire sufficient investigators to respond to all reported thefts.

(b) Analyze the various methods of combating the problem of motor vehicle theft;

(c) Develop and implement a plan of operation; and

(d) Develop and implement a financial plan.

(4) The authority is not a law enforcement agency and may not gather, collect, or disseminate intelligence information for the purpose of investigating specific crimes or pursuing or capturing specific perpetrators. Members of the authority may not exercise general authority peace officer powers while acting in their capacity as members of the authority, unless the exercise of peace officer powers is necessary to prevent an imminent threat to persons or property.

(5) The authority shall annually report its activities, findings, and recommendations during the preceding year to the legislature by December 31st. [2007 c 199 § 22.]

46.66.040 Gifts, grants, conveyances. The Washington auto theft prevention authority may solicit and accept

gifts, grants, bequests, devises, or other funds from public and private sources to support its activities. [2007 c 199 § 23.]

46.66.050 Removal of member—Grounds—Replacement. The governor may remove any member of the Washington auto theft prevention authority for cause including but not limited to neglect of duty, misconduct, malfeasance or misfeasance in office, or upon written request of two-thirds of the members of the authority under this chapter. Upon the death, resignation, or removal of a member, the governor shall appoint a replacement to fill the remainder of the unexpired term. [2007 c 199 § 24.]

46.66.060 Members—Compensation and travel expenses. Members of the Washington auto theft prevention authority who are not public employees shall be compensated in accordance with RCW 43.03.250 and shall be reimbursed for travel expenses incurred in carrying out the duties of the authority in accordance with RCW 43.03.050 and 43.03.060. [2007 c 199 § 25.]

46.66.070 Members—Immunity. Any member serving in their official capacity on the Washington auto theft prevention authority, or either their employer or employers, or other entity that selected the members to serve, are immune from a civil action based upon an act performed in good faith. [2007 c 199 § 26.]

46.66.080 Washington auto theft prevention authority account. (1) The Washington auto theft prevention authority account is created in the state treasury, subject to appropriation. All revenues from the traffic infraction surcharge in RCW 46.63.110(7)(b) and all receipts from gifts, grants, bequests, devises, or other funds from public and private sources to support the activities of the auto theft prevention authority must be deposited into the account. Expenditures from the account may be used only for activities relating to motor vehicle theft, including education, prevention, law enforcement, investigation, prosecution, and confinement.

(2) The authority shall allocate moneys appropriated from the account to public agencies for the purpose of establishing, maintaining, and supporting programs that are designed to prevent motor vehicle theft, including:

(a) Financial support to prosecution agencies to increase the effectiveness of motor vehicle theft prosecution;

(b) Financial support to a unit of local government or a team consisting of units of local governments to increase the effectiveness of motor vehicle theft enforcement;

(c) Financial support for the procurement of equipment and technologies for use by law enforcement agencies for the purpose of enforcing motor vehicle theft laws; and

(d) Financial support for programs that are designed to educate and assist the public in the prevention of motor vehicle theft.

(3) The costs of administration shall not exceed ten percent of the moneys in the account in any one year so that the greatest possible portion of the moneys available to the authority is expended on combating motor vehicle theft.

(4) Prior to awarding any moneys from the Washington auto theft prevention authority account for motor vehicle theft enforcement, the auto theft prevention authority must verify that the financial award includes sufficient funding to cover proposed activities, which include, but are not limited to: (a) State, municipal, and county offender and juvenile confinement costs; (b) administration costs; (c) law enforcement costs; (d) prosecutor costs; and (e) court costs, with a priority being given to ensuring that sufficient funding is available to cover state, municipal, and county offender and juvenile confinement costs.

(5) Moneys expended from the Washington auto theft prevention authority account under subsection (2) of this section shall be used to supplement, not supplant, other moneys that are available for motor vehicle theft prevention.

(6) Grants provided under subsection (2) of this section constitute reimbursement for purposes of RCW 43.135.060(1). [2007 c 199 § 27.]

46.66.900 Findings—Intent—Short title—2007 c 199. See notes following RCW 9A.56.065.

Chapter 46.68 RCW DISPOSITION OF REVENUE

Sections

46.68.038	Disposition of driving record abstract fees.
46.68.060	Highway safety fund.
46.68.110	Distribution of amount allocated to cities and towns.
46.68.170	RV account.
46.68.330	Freight congestion relief account.

46.68.038 Disposition of driving record abstract fees.

The funding allocated under RCW 46.20.293, 46.29.050, and 46.52.130 shall be deposited into the state patrol highway account created in RCW 46.68.030, for the purposes enumerated therein, which may include the provision of enhanced resources to address locations with higher than average collision rates. [2007 c 424 § 4.]

Effective date—2007 c 424: See note following RCW 46.20.293.

46.68.060 Highway safety fund. There is hereby created in the state treasury a fund to be known as the highway safety fund to the credit of which shall be deposited all moneys directed by law to be deposited therein. This fund shall be used for carrying out the provisions of law relating to driver licensing, driver improvement, financial responsibility, cost of furnishing abstracts of driving records and maintaining such case records, and to carry out the purposes set forth in RCW 43.59.010. During the 2005-2007 and 2007-2009 fiscal biennia, the legislature may transfer from the highway safety fund to the motor vehicle fund and the multimodal transportation account such amounts as reflect the excess fund balance of the highway safety fund. [2007 c 518 § 714; 1969 c 99 § 11; 1967 c 174 § 4; 1965 c 25 § 3; 1961 c 12 § 46.68.060. Prior: 1957 c 104 § 1; 1937 c 188 § 81; RRS § 6312-81; 1921 c 108 § 13; RRS § 6375.]

Severability—Effective date—2007 c 518: See notes following RCW 46.68.170.

Effective date—1969 c 99: See note following RCW 79A.05.070.

Effective date—1969 c 25: See note following RCW 46.16.060.

Effective date—1967 c 174: See note following RCW 46.29.050.

Effective date—1965 c 25: See note following RCW 46.68.030.

Deposits into account: RCW 46.20.505, 46.20.510, 46.81A.030.

46.68.110 Distribution of amount allocated to cities and towns. Funds credited to the incorporated cities and towns of the state as set forth in RCW 46.68.090 shall be subject to deduction and distribution as follows:

(1) One and one-half percent of such sums distributed under RCW 46.68.090 shall be deducted monthly as such sums are credited and set aside for the use of the department of transportation for the supervision of work and expenditures of such incorporated cities and towns on the city and town streets thereof, including the supervision and administration of federal-aid programs for which the department of transportation has responsibility: PROVIDED, That any moneys so retained and not expended shall be credited in the succeeding biennium to the incorporated cities and towns in proportion to deductions herein made;

(2) Thirty-three one-hundredths of one percent of such funds distributed under RCW 46.68.090 shall be deducted monthly, as such funds accrue, and set aside for the use of the department of transportation for the purpose of funding the cities' share of the costs of highway jurisdiction studies and other studies. Any funds so retained and not expended shall be credited in the succeeding biennium to the cities in proportion to the deductions made;

(3) One percent of such funds distributed under RCW 46.68.090 shall be deducted monthly, as such funds accrue, to be deposited in the small city pavement and sidewalk account, to implement the city hardship assistance program, as provided in RCW 47.26.164. However, any moneys so retained and not required to carry out the program under this subsection as of July 1st of each odd-numbered year thereafter, shall be retained in the account and used for maintenance, repair, and resurfacing of city and town streets for cities and towns with a population of less than five thousand. [2007 c 148 § 1. Prior: 2005 c 314 § 106; 2005 c 89 § 1; 2003 c 361 § 404; prior: 1999 c 269 § 3; 1999 c 94 § 9; 1996 c 94 § 1; prior: 1991 sp.s. c 15 § 46; 1991 c 342 § 59; 1989 1st ex.s. c 6 § 41; 1987 1st ex.s. c 10 § 37; 1985 c 460 § 32; 1979 c 151 § 161; 1975 1st ex.s. c 100 § 1; 1961 ex.s. c 7 § 7; 1961 c 12 § 46.68.110; prior: 1957 c 175 § 11; 1949 c 143 § 1; 1943 c 83 § 2; 1941 c 232 § 1; 1939 c 181 § 4; Rem. Supp. 1949 § 6600-3a; 1937 c 208 §§ 2, part, 3, part.]

Effective date—2005 c 314 §§ 101-107, 109, 303-309, and 401: See note following RCW 46.68.290.

Part headings not law—2005 c 314: See note following RCW 46.17.010.

Findings—Part headings not law—Severability—2003 c 361: See notes following RCW 82.36.025.

Effective dates—2003 c 361: See note following RCW 82.08.020.

Effective date—1999 c 269: See note following RCW 36.78.070.

Legislative finding—Effective dates—1999 c 94: See notes following RCW 43.84.092.

Construction—Severability—1991 sp.s. c 15: "The appropriations of moneys and the designation of funds and accounts by this and other acts of the 1991 legislature shall be construed in a manner consistent with legislation enacted by the 1985, 1987, and 1989 legislatures to conform state funds and accounts with generally accepted accounting principles. If any provision of this act or its application to any person or circumstance is held invalid, the

remainder of the act or the application of the provision to other persons or circumstances is not affected." [1991 sp.s. c 15 § 69.]

Effective dates—1991 c 342: See note following RCW 47.26.167.

Severability—1989 1st ex.s. c 6: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1989 1st ex.s. c 6 § 75.]

Severability—1987 1st ex.s. c 10: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1987 1st ex.s. c 10 § 60.]

Severability—1985 c 460: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1985 c 460 § 42.]

Expense of cost-audit examination of city and town street records payable from funds withheld under RCW 46.68.110(1): RCW 35.76.050.

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

46.68.170 RV account. There is hereby created in the motor vehicle fund the RV account. All moneys hereafter deposited in said account shall be used by the department of transportation for the construction, maintenance, and operation of recreational vehicle sanitary disposal systems at safety rest areas in accordance with the department's highway system plan as prescribed in chapter 47.06 RCW. During the 2005-2007 and 2007-2009 fiscal biennia, the legislature may transfer from the RV account to the motor vehicle fund such amounts as reflect the excess fund balance of the RV account. [2007 c 518 § 701; 1996 c 237 § 2; 1980 c 60 § 3.]

Severability—2007 c 518: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [2007 c 518 § 1101.]

Effective date—2007 c 518: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately [May 15, 2007]." [2007 c 518 § 1102.]

Effective date—1980 c 60: See note following RCW 47.38.050.

Additional license fees for recreational vehicles: RCW 46.16.063.

46.68.330 Freight congestion relief account. The freight congestion relief account is created in the state treasury. Moneys in the account may be spent only after appropriation. Expenditures from the account may only be used to provide congestion relief through the improvement of freight rail systems and state highways that function as freight corridors. [2007 c 514 § 2.]

Chapter 46.70 RCW

DEALERS AND MANUFACTURERS

Sections

46.70.136 Recodified as RCW 43.22A.210.
46.70.180 Unlawful acts and practices.

46.70.136 Recodified as RCW 43.22A.210. See Supplementary Table of Disposition of Former RCW Sections, this volume.

46.70.180 Unlawful acts and practices. Each of the following acts or practices is unlawful:

(1) To cause or permit to be advertised, printed, displayed, published, distributed, broadcasted, televised, or disseminated in any manner whatsoever, any statement or representation with regard to the sale, lease, or financing of a vehicle which is false, deceptive, or misleading, including but not limited to the following:

(a) That no down payment is required in connection with the sale of a vehicle when a down payment is in fact required, or that a vehicle may be purchased for a smaller down payment than is actually required;

(b) That a certain percentage of the sale price of a vehicle may be financed when such financing is not offered in a single document evidencing the entire security transaction;

(c) That a certain percentage is the amount of the service charge to be charged for financing, without stating whether this percentage charge is a monthly amount or an amount to be charged per year;

(d) That a new vehicle will be sold for a certain amount above or below cost without computing cost as the exact amount of the factory invoice on the specific vehicle to be sold;

(e) That a vehicle will be sold upon a monthly payment of a certain amount, without including in the statement the number of payments of that same amount which are required to liquidate the unpaid purchase price.

(2)(a) To incorporate within the terms of any purchase and sale or lease agreement any statement or representation with regard to the sale, lease, or financing of a vehicle which is false, deceptive, or misleading, including but not limited to terms that include as an added cost to the selling price or capitalized cost of a vehicle an amount for licensing or transfer of title of that vehicle which is not actually due to the state, unless such amount has in fact been paid by the dealer prior to such sale. However, an amount not to exceed fifty dollars per vehicle sale or lease may be charged by a dealer to recover administrative costs for collecting motor vehicle excise taxes, licensing and registration fees and other agency fees, verifying and clearing titles, transferring titles, perfecting, releasing, or satisfying liens or other security interests, and other administrative and documentary services rendered by a dealer in connection with the sale or lease of a vehicle and in carrying out the requirements of this chapter or any other provisions of state law.

(b) A dealer may charge the documentary service fee in (a) of this subsection under the following conditions:

(i) The documentary service fee is disclosed in writing to a prospective purchaser or lessee before the execution of a purchase and sale or lease agreement;

(ii) The documentary service fee is not represented to the purchaser or lessee as a fee or charge required by the state to be paid by either the dealer or prospective purchaser or lessee;

(iii) The documentary service fee is separately designated from the selling price or capitalized cost of the vehicle and from any other taxes, fees, or charges; and

(iv) Dealers disclose in any advertisement that a documentary service fee in an amount up to fifty dollars may be added to the sale price or the capitalized cost.

For the purposes of this subsection (2), the term "documentary service fee" means the optional amount charged by a

dealer to provide the services specified in (a) of this subsection.

(3) To set up, promote, or aid in the promotion of a plan by which vehicles are to be sold or leased to a person for a consideration and upon further consideration that the purchaser or lessee agrees to secure one or more persons to participate in the plan by respectively making a similar purchase and in turn agreeing to secure one or more persons likewise to join in said plan, each purchaser or lessee being given the right to secure money, credits, goods, or something of value, depending upon the number of persons joining the plan.

(4) To commit, allow, or ratify any act of "bushing" which is defined as follows: Entering into a written contract, written purchase order or agreement, retail installment sales agreement, note and security agreement, or written lease agreement, hereinafter collectively referred to as contract or lease, signed by the prospective buyer or lessee of a vehicle, which:

(a) Is subject to any conditions or the dealer's or his or her authorized representative's future acceptance, and the dealer fails or refuses within four calendar days, exclusive of Saturday, Sunday, or legal holiday, and prior to any further negotiations with said buyer or lessee to inform the buyer or lessee either: (i) That the dealer unconditionally accepts the contract or lease, having satisfied, removed, or waived all conditions to acceptance or performance, including, but not limited to, financing, assignment, or lease approval; or (ii) that the dealer rejects the contract or lease, thereby automatically voiding the contract or lease, as long as such voiding does not negate commercially reasonable contract or lease provisions pertaining to the return of the subject vehicle and any physical damage, excessive mileage after the demand for return of the vehicle, and attorneys' fees authorized by law, and tenders the refund of any initial payment or security made or given by the buyer or lessee, including, but not limited to, any down payment, and tenders return of the trade-in vehicle, key, other trade-in, or certificate of title to a trade-in. Tender may be conditioned on return of the subject vehicle if previously delivered to the buyer or lessee.

The provisions of this subsection (4)(a) do not impair, prejudice, or abrogate the rights of a dealer to assert a claim against the buyer or lessee for misrepresentation or breach of contract and to exercise all remedies available at law or in equity, including those under chapter 62A.9A RCW, if the dealer, bank, or other lender or leasing company discovers that approval of the contract or financing or approval of the lease was based upon material misrepresentations made by the buyer or lessee, including, but not limited to, misrepresentations regarding income, employment, or debt of the buyer or lessee, as long as the dealer, or his or her staff, has not, with knowledge of the material misrepresentation, aided, assisted, encouraged, or participated, directly or indirectly, in the misrepresentation. A dealer shall not be in violation of this subsection (4)(a) if the buyer or lessee made a material misrepresentation to the dealer, as long as the dealer, or his or her staff, has not, with knowledge of the material misrepresentation, aided, assisted, encouraged, or participated, directly or indirectly, in the misrepresentation.

When a dealer informs a buyer or lessee under this subsection (4)(a) regarding the unconditional acceptance or rejection of the contract, lease, or financing by an electronic

mail message, the dealer must also transmit the communication by any additional means;

(b) Permits the dealer to renegotiate a dollar amount specified as trade-in allowance on a vehicle delivered or to be delivered by the buyer or lessee as part of the purchase price or lease, for any reason except:

(i) Failure to disclose that the vehicle's certificate of ownership has been branded for any reason, including, but not limited to, status as a rebuilt vehicle as provided in RCW 46.12.050 and 46.12.075; or

(ii) Substantial physical damage or latent mechanical defect occurring before the dealer took possession of the vehicle and which could not have been reasonably discoverable at the time of the taking of the order, offer, or contract; or

(iii) Excessive additional miles or a discrepancy in the mileage. "Excessive additional miles" means the addition of five hundred miles or more, as reflected on the vehicle's odometer, between the time the vehicle was first valued by the dealer for purposes of determining its trade-in value and the time of actual delivery of the vehicle to the dealer. "A discrepancy in the mileage" means (A) a discrepancy between the mileage reflected on the vehicle's odometer and the stated mileage on the signed odometer statement; or (B) a discrepancy between the mileage stated on the signed odometer statement and the actual mileage on the vehicle; or

(c) Fails to comply with the obligation of any written warranty or guarantee given by the dealer requiring the furnishing of services or repairs within a reasonable time.

(5) To commit any offense relating to odometers, as such offenses are defined in RCW 46.37.540, 46.37.550, 46.37.560, and 46.37.570. A violation of this subsection is a class C felony punishable under chapter 9A.20 RCW.

(6) For any vehicle dealer or vehicle salesperson to refuse to furnish, upon request of a prospective purchaser or lessee, for vehicles previously registered to a business or governmental entity, the name and address of the business or governmental entity.

(7) To commit any other offense under RCW 46.37.423, 46.37.424, or 46.37.425.

(8) To commit any offense relating to a dealer's temporary license permit, including but not limited to failure to properly complete each such permit, or the issuance of more than one such permit on any one vehicle. However, a dealer may issue a second temporary permit on a vehicle if the following conditions are met:

(a) The lienholder fails to deliver the vehicle title to the dealer within the required time period;

(b) The dealer has satisfied the lien; and

(c) The dealer has proof that payment of the lien was made within two calendar days, exclusive of Saturday, Sunday, or a legal holiday, after the sales contract has been executed by all parties and all conditions and contingencies in the sales contract have been met or otherwise satisfied.

(9) For a dealer, salesperson, or mobile home manufacturer, having taken an instrument or cash "on deposit" from a purchaser or lessee prior to the delivery of the bargained-for vehicle, to commingle the "on deposit" funds with assets of the dealer, salesperson, or mobile home manufacturer instead of holding the "on deposit" funds as trustee in a separate trust account until the purchaser or lessee has taken delivery of the bargained-for vehicle. Delivery of a manufactured home

shall be deemed to occur in accordance with RCW 46.70.135(5). Failure, immediately upon receipt, to endorse "on deposit" instruments to such a trust account, or to set aside "on deposit" cash for deposit in such trust account, and failure to deposit such instruments or cash in such trust account by the close of banking hours on the day following receipt thereof, shall be evidence of intent to commit this unlawful practice: PROVIDED, HOWEVER, That a motor vehicle dealer may keep a separate trust account which equals his or her customary total customer deposits for vehicles for future delivery. For purposes of this section, "on deposit" funds received from a purchaser of a manufactured home means those funds that a seller requires a purchaser to advance before ordering the manufactured home, but does not include any loan proceeds or moneys that might have been paid on an installment contract.

(10) For a dealer or manufacturer to fail to comply with the obligations of any written warranty or guarantee given by the dealer or manufacturer requiring the furnishing of goods and services or repairs within a reasonable period of time, or to fail to furnish to a purchaser or lessee, all parts which attach to the manufactured unit including but not limited to the undercarriage, and all items specified in the terms of a sales or lease agreement signed by the seller and buyer or lessee.

(11) For a vehicle dealer to pay to or receive from any person, firm, partnership, association, or corporation acting, either directly or through a subsidiary, as a buyer's agent for consumers, any compensation, fee, purchase moneys or funds that have been deposited into or withdrawn out of any account controlled or used by any buyer's agent, gratuity, or reward in connection with the purchase, sale, or lease of a new motor vehicle.

(12) For a buyer's agent, acting directly or through a subsidiary, to pay to or to receive from any motor vehicle dealer any compensation, fee, gratuity, or reward in connection with the purchase, sale, or lease of a new motor vehicle. In addition, it is unlawful for any buyer's agent to engage in any of the following acts on behalf of or in the name of the consumer:

(a) Receiving or paying any purchase moneys or funds into or out of any account controlled or used by any buyer's agent;

(b) Signing any vehicle purchase orders, sales contracts, leases, odometer statements, or title documents, or having the name of the buyer's agent appear on the vehicle purchase order, sales contract, lease, or title; or

(c) Signing any other documentation relating to the purchase, sale, lease, or transfer of any new motor vehicle.

It is unlawful for a buyer's agent to use a power of attorney obtained from the consumer to accomplish or effect the purchase, sale, lease, or transfer of ownership documents of any new motor vehicle by any means which would otherwise be prohibited under (a) through (c) of this subsection. However, the buyer's agent may use a power of attorney for physical delivery of motor vehicle license plates to the consumer.

Further, it is unlawful for a buyer's agent to engage in any false, deceptive, or misleading advertising, disseminated in any manner whatsoever, including but not limited to making any claim or statement that the buyer's agent offers,

obtains, or guarantees the lowest price on any motor vehicle or words to similar effect.

(13) For a buyer's agent to arrange for or to negotiate the purchase, or both, of a new motor vehicle through an out-of-state dealer without disclosing in writing to the customer that the new vehicle would not be subject to chapter 19.118 RCW. This subsection also applies to leased vehicles. In addition, it is unlawful for any buyer's agent to fail to have a written agreement with the customer that: (a) Sets forth the terms of the parties' agreement; (b) discloses to the customer the total amount of any fees or other compensation being paid by the customer to the buyer's agent for the agent's services; and (c) further discloses whether the fee or any portion of the fee is refundable.

(14) Being a manufacturer, other than a motorcycle manufacturer governed by chapter 46.93 RCW, to:

(a) Coerce or attempt to coerce any vehicle dealer to order or accept delivery of any vehicle or vehicles, parts or accessories, or any other commodities which have not been voluntarily ordered by the vehicle dealer: PROVIDED, That recommendation, endorsement, exposition, persuasion, urging, or argument are not deemed to constitute coercion;

(b) Cancel or fail to renew the franchise or selling agreement of any vehicle dealer doing business in this state without fairly compensating the dealer at a fair going business value for his or her capital investment which shall include but not be limited to tools, equipment, and parts inventory possessed by the dealer on the day he or she is notified of such cancellation or termination and which are still within the dealer's possession on the day the cancellation or termination is effective, if: (i) The capital investment has been entered into with reasonable and prudent business judgment for the purpose of fulfilling the franchise; and (ii) the cancellation or nonrenewal was not done in good faith. Good faith is defined as the duty of each party to any franchise to act in a fair and equitable manner towards each other, so as to guarantee one party freedom from coercion, intimidation, or threats of coercion or intimidation from the other party: PROVIDED, That recommendation, endorsement, exposition, persuasion, urging, or argument are not deemed to constitute a lack of good faith;

(c) Encourage, aid, abet, or teach a vehicle dealer to sell or lease vehicles through any false, deceptive, or misleading sales or financing practices including but not limited to those practices declared unlawful in this section;

(d) Coerce or attempt to coerce a vehicle dealer to engage in any practice forbidden in this section by either threats of actual cancellation or failure to renew the dealer's franchise agreement;

(e) Refuse to deliver any vehicle publicly advertised for immediate delivery to any duly licensed vehicle dealer having a franchise or contractual agreement for the retail sale or lease of new and unused vehicles sold or distributed by such manufacturer within sixty days after such dealer's order has been received in writing unless caused by inability to deliver because of shortage or curtailment of material, labor, transportation, or utility services, or by any labor or production difficulty, or by any cause beyond the reasonable control of the manufacturer;

(f) To provide under the terms of any warranty that a purchaser or lessee of any new or unused vehicle that has been

sold or leased, distributed for sale or lease, or transferred into this state for resale or lease by the vehicle manufacturer may only make any warranty claim on any item included as an integral part of the vehicle against the manufacturer of that item.

Nothing in this section may be construed to impair the obligations of a contract or to prevent a manufacturer, distributor, representative, or any other person, whether or not licensed under this chapter, from requiring performance of a written contract entered into with any licensee hereunder, nor does the requirement of such performance constitute a violation of any of the provisions of this section if any such contract or the terms thereof requiring performance, have been freely entered into and executed between the contracting parties. This paragraph and subsection (14)(b) of this section do not apply to new motor vehicle manufacturers governed by chapter 46.96 RCW.

(15) Unlawful transfer of an ownership interest in a motor vehicle as defined in RCW 19.116.050.

(16) To knowingly and intentionally engage in collusion with a registered owner of a vehicle to repossess and return or resell the vehicle to the registered owner in an attempt to avoid a suspended license impound under chapter 46.55 RCW. However, compliance with chapter 62A.9A RCW in repossessing, selling, leasing, or otherwise disposing of the vehicle, including providing redemption rights to the debtor, is not a violation of this section. [2007 c 155 § 2; 2006 c 289 § 1; 2003 c 368 § 1. Prior: 2001 c 272 § 10; 2001 c 64 § 9; 1999 c 398 § 10; 1997 c 153 § 1; 1996 c 194 § 3; 1995 c 256 § 26; 1994 c 284 § 13; 1993 c 175 § 3; 1990 c 44 § 14; 1989 c 415 § 20; 1986 c 241 § 18; 1985 c 472 § 13; 1981 c 152 § 6; 1977 ex.s. c 125 § 4; 1973 1st ex.s. c 132 § 18; 1969 c 112 § 1; 1967 ex.s. c 74 § 16.]

Effective date—2007 c 155: See note following RCW 46.16.045.

Prospective application—2006 c 289: "This act applies prospectively only and not retroactively. It applies only to causes of action that arise (if change is substantive) or that are commenced (if change is procedural) on or after June 7, 2006." [2006 c 289 § 2.]

Severability—Effective date—1994 c 284: See RCW 43.63B.900 and 43.63B.901.

Severability—1990 c 44: See RCW 19.116.900.

Severability—1989 c 415: See RCW 46.96.900.

Certificate of ownership—Failure to transfer within specified time: RCW 46.12.101.

Glass—Limited windows—Vehicle sale requirements: RCW 46.37.430.

Odometers—Disconnecting, resetting, turning back, replacing without notifying purchaser: RCW 46.37.540 through 46.37.570.

Tires—Vehicle sale requirements: RCW 46.37.425.

Chapter 46.81A RCW

MOTORCYCLE SKILLS EDUCATION PROGRAM

Sections

46.81A.020 Powers and duties of director, department.

46.81A.020 Powers and duties of director, department. (1) The director shall administer and enforce the law pertaining to the motorcycle skills education program as set forth in this chapter.

(2) The director may adopt and enforce reasonable rules that are consistent with this chapter.

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(3) The director shall revise the Washington motorcycle safety program to:

(a) Institute separate novice and advanced motorcycle skills education courses for both two-wheeled and three-wheeled motorcycles that are each a minimum of eight hours and no more than sixteen hours at a cost of (i) no more than fifty dollars for Washington state residents under the age of eighteen, and (ii) no more than one hundred twenty-five dollars for Washington state residents who are eighteen years of age or older and military personnel of any age stationed in Washington state;

(b) Encourage the use of loaned or used motorcycles for use in the motorcycle skills education course if the instructor approves them;

(c) Require all instructors for two-wheeled motorcycles to conduct at least three classes in a one-year period, and all instructors for three-wheeled motorcycles to conduct at least one class in a one-year period, to maintain their teaching eligibility.

(4) The department may enter into agreements to review and certify that a private motorcycle skills education course meets educational standards equivalent to those required of courses conducted under the motorcycle skills education program. An agreement entered into under this subsection must provide that the department may conduct periodic audits to ensure that educational standards continue to meet those required for courses conducted under the motorcycle skills education program, and that the costs of the review, certification, and audit process will be borne by the party seeking certification.

(5) The department shall obtain and compile information from applicants for a motorcycle endorsement regarding whether they have completed a state approved or certified motorcycle skills education course. [2007 c 97 § 2; 2003 c 41 § 5; 2002 c 197 § 2; 1998 c 245 § 91; 1993 c 115 § 2; 1988 c 227 § 3.]

Short title—Effective date—2003 c 41: See notes following RCW 46.20.500.

Chapter 46.82 RCW

DRIVER TRAINING SCHOOLS

Sections

46.82.420 Basic minimum required curriculum—Revocation of license for failure to teach.

46.82.420 Basic minimum required curriculum—Revocation of license for failure to teach. (1) The advisory committee shall consult with the department in the development and maintenance of a basic minimum required curriculum and the department shall furnish to each qualifying applicant for an instructor's license or a driver training school license a copy of such curriculum.

(2) In addition to information on the safe, lawful, and responsible operation of motor vehicles on the state's highways, the basic minimum required curriculum shall include information on:

(a) Intermediate driver's license issuance, passenger and driving restrictions and sanctions for violating the restrictions, and the effect of traffic violations and collisions on the driving privileges;

(b) The effects of alcohol and drug use on motor vehicle operators, including information on drug and alcohol related traffic injury and mortality rates in the state of Washington and the current penalties for driving under the influence of drugs or alcohol; and

(c) Motorcycle awareness, approved by the director, to ensure new operators of motor vehicles have been instructed in the importance of safely sharing the road with motorcyclists.

(3) Should the director be presented with acceptable proof that any licensed instructor or driver training school is not showing proper diligence in teaching such basic minimum curriculum as required, the instructor or school shall be required to appear before the advisory committee and show cause why the license of the instructor or school should not be revoked for such negligence. If the committee does not accept such reasons as may be offered, the director may revoke the license of the instructor or school, or both. [2007 c 97 § 3; 2006 c 219 § 12; 2004 c 126 § 2; 1991 c 217 § 3; 1979 ex.s. c 51 § 15.]

Effective date—2006 c 219: See note following RCW 46.82.285.

Chapter 46.87 RCW

PROPORTIONAL REGISTRATION

Sections

- 46.87.294 Refusal under federal prohibition, placement of out-of-service order.
46.87.296 Suspension, revocation under federal prohibition—Placement of out-of-service order.

46.87.294 Refusal under federal prohibition, placement of out-of-service order. The department shall refuse to register a vehicle under this chapter if the registrant or motor carrier responsible for the safety of the vehicle has been prohibited under federal law from operating by the federal motor carrier safety administration. The department shall not register a vehicle if the Washington state patrol has placed an out-of-service order on the vehicle's department of transportation number, as defined in RCW 46.16.004. [2007 c 419 § 15; 2003 c 85 § 3.]

Findings—Short title—Application—2007 c 419: See notes following RCW 46.16.004.

46.87.296 Suspension, revocation under federal prohibition—Placement of out-of-service order. The department shall suspend or revoke the registration of a vehicle registered under this chapter if the registrant or motor carrier responsible for the safety of the vehicle has been prohibited under federal law from operating by the federal motor carrier safety administration. The department shall not register a vehicle if the Washington state patrol has placed an out-of-service order on the vehicle's department of transportation number, as defined in RCW 46.16.004. [2007 c 419 § 16; 2003 c 85 § 4.]

Findings—Short title—Application—2007 c 419: See notes following RCW 46.16.004.

Title 47

PUBLIC HIGHWAYS AND TRANSPORTATION

Chapters

- 47.01 Department of transportation.**
47.04 General provisions.
47.05 Priority programming for highway development.
47.06 Statewide transportation planning.
47.06B Coordinating special needs transportation.
47.10 Highway construction bonds.
47.12 Acquisition and disposition of state highway property.
47.17 State highway routes.
47.20 Miscellaneous projects.
47.24 City streets as part of state highways.
47.26 Development in urban areas—Urban arterials.
47.28 Construction and maintenance of highways.
47.29 Transportation innovative partnerships.
47.48 Closing highways and restricting traffic.
47.56 State toll bridges, tunnels, and ferries.
47.60 Puget Sound ferry and toll bridge system.
47.64 Marine employees—Public employment relations.
47.76 Rail freight service.
47.80 Regional transportation planning organizations.

Chapter 47.01 RCW

DEPARTMENT OF TRANSPORTATION

Sections

- 47.01.011 Legislative declaration.
47.01.012 Recodified as RCW 47.04.280.
47.01.071 Commission—Functions, powers, and duties.
47.01.075 Transportation policy development.
47.01.078 Transportation system policy goals—Duties.
47.01.350 Ferry grant program.
47.01.370 Repealed.
47.01.390 Alaskan Way viaduct, Seattle Seawall, and state route No. 520 improvements—Requirements—Exceptions.
47.01.405 State route No. 520 improvements—Project impact plan—Mediator, duties.
47.01.406 State route No. 520 improvements—Review of project design plans—Goals.
47.01.410 State route No. 520 improvements—Multimodal transportation plan.
47.01.415 State route No. 520 improvements—Finance plan.
47.01.420 Naming and renaming state transportation facilities.
47.01.430 Wounded combat veterans internship program.

47.01.011 Legislative declaration. The legislature hereby recognizes the following imperative needs within the state: To create a statewide transportation development plan which identifies present status and sets goals for the future; to coordinate transportation modes; to promote and protect land use programs required in local, state, and federal law; to coordinate transportation with the economic development of the state; to supply a broad framework in which regional, metropolitan, and local transportation needs can be related; to facilitate the supply of federal and state aid to those areas which will most benefit the state as a whole; to provide for public involvement in the transportation planning and development process; to administer programs within the jurisdiction of this title relating to the safety of the state's transportation system.

tems; and to coordinate and implement national transportation policy with the state transportation planning program.

The legislature finds and declares that placing all elements of transportation in a single department is fully consistent with and shall in no way impair the use of moneys in the motor vehicle fund exclusively for highway purposes.

Through this chapter, a unified department of transportation is created. To the jurisdiction of this department will be transferred the present powers, duties, and functions of the department of highways, the highway commission, the toll bridge authority, the aeronautics commission, and the canal commission, and the transportation related powers, duties, and functions of the *planning and community affairs agency. The powers, duties, and functions of the department of transportation must be performed in a manner consistent with the policy goals set forth in RCW 47.04.280. [2007 c 516 § 2; 1977 ex.s. c 151 § 1.]

***Reviser's note:** "Planning and community affairs agency" means "department of community, trade, and economic development," but the name is retained here for historical purposes.

Findings—Intent—2007 c 516: "The legislature finds and declares that the citizens of the state expect clear and concise goals, objectives, and responsibilities regarding the operation of the statewide transportation system. Furthermore, the state's citizens expect that the state periodically receive clear and streamlined information that measures whether the goals and objectives are being satisfied. Therefore, it is the intent of the legislature that this act serve to clarify existing goals, objectives, and responsibilities related to the operation of an efficient statewide transportation system." [2007 c 516 § 1.]

47.01.012 Recodified as RCW 47.04.280. See Supplementary Table of Disposition of Former RCW Sections, this volume.

47.01.071 Commission—Functions, powers, and duties. The transportation commission shall have the following functions, powers, and duties:

(1) To propose policies to be adopted by the governor and the legislature designed to assure the development and maintenance of a comprehensive and balanced statewide transportation system which will meet the needs of the people of this state for safe and efficient transportation services. Wherever appropriate, the policies shall provide for the use of integrated, intermodal transportation systems. The policies must be aligned with the goals established in RCW 47.04.280. To this end the commission shall:

(a) Develop transportation policies which are based on the policies, goals, and objectives expressed and inherent in existing state laws;

(b) Inventory the adopted policies, goals, and objectives of the local and area-wide governmental bodies of the state and define the role of the state, regional, and local governments in determining transportation policies, in transportation planning, and in implementing the state transportation plan;

(c) Establish a procedure for review and revision of the state transportation policy and for submission of proposed changes to the governor and the legislature; and

(d) Integrate the statewide transportation plan with the needs of the elderly and persons with disabilities, and coordinate federal and state programs directed at assisting local governments to answer such needs;

(2) To provide for the effective coordination of state transportation planning with national transportation policy, state and local land use policies, and local and regional transportation plans and programs;

(3) In conjunction with the provisions under RCW 47.01.075, to provide for public involvement in transportation designed to elicit the public's views both with respect to adequate transportation services and appropriate means of minimizing adverse social, economic, environmental, and energy impact of transportation programs;

(4) By December 2010, to prepare a comprehensive and balanced statewide transportation plan consistent with the state's growth management goals and based on the transportation policy goals provided under RCW 47.04.280 and applicable state and federal laws. The plan must reflect the priorities of government developed by the office of financial management and address regional needs, including multimodal transportation planning. The plan must, at a minimum: (a) Establish a vision for the development of the statewide transportation system; (b) identify significant statewide transportation policy issues; and (c) recommend statewide transportation policies and strategies to the legislature to fulfill the requirements of subsection (1) of this section. The plan must be the product of an ongoing process that involves representatives of significant transportation interests and the general public from across the state. Every four years, the plan shall be reviewed and revised, and submitted to the governor and the house of representatives and senate standing committees on transportation.

The plan shall take into account federal law and regulations relating to the planning, construction, and operation of transportation facilities;

(5) By December 2007, the office of financial management shall submit a baseline report on the progress toward attaining the policy goals under RCW 47.04.280 in the 2005-2007 fiscal biennium. By October 1, 2008, beginning with the development of the 2009-2011 biennial transportation budget, and by October 1st biennially thereafter, the office of financial management shall submit to the legislature and the governor a report on the progress toward the attainment by state transportation agencies of the state transportation policy goals and objectives prescribed by statute, appropriation, and governor directive. The report must, at a minimum, include the degree to which state transportation programs have progressed toward the attainment of the policy goals established under RCW 47.04.280, as measured by the objectives and performance measures established by the office of financial management under RCW 47.04.280;

(6) To propose to the governor and the legislature prior to the convening of each regular session held in an odd-numbered year a recommended budget for the operations of the commission as required by RCW 47.01.061;

(7) To adopt such rules as may be necessary to carry out reasonably and properly those functions expressly vested in the commission by statute;

(8) To contract with the office of financial management or other appropriate state agencies for administrative support, accounting services, computer services, and other support services necessary to carry out its other statutory duties;

(9) To conduct transportation-related studies and policy analysis to the extent directed by the legislature or governor

in the biennial transportation budget act, or as otherwise provided in law, and subject to the availability of amounts appropriated for this specific purpose; and

(10) To exercise such other specific powers and duties as may be vested in the transportation commission by this or any other provision of law. [2007 c 516 § 4; 2006 c 334 § 3; 2005 c 319 § 5; 1981 c 59 § 2; 1980 c 87 § 45; 1977 ex.s. c 151 § 7.]

Findings—Intent—2007 c 516: See note following RCW 47.01.011.

Effective date—2006 c 334: See note following RCW 47.01.051.

Findings—Intent—Part headings—Effective dates—2005 c 319: See notes following RCW 43.17.020.

47.01.075 Transportation policy development. (1)

The transportation commission shall provide a public forum for the development of transportation policy in Washington state to include coordination with regional transportation planning organizations, transportation stakeholders, counties, cities, and citizens. At least every five years, the commission shall convene regional forums to gather citizen input on transportation issues. The commission shall consider the input gathered at the forums as it establishes the statewide transportation plan under RCW 47.01.071(4).

(2) In fulfilling its responsibilities under this section, the commission may create ad hoc committees or other such committees of limited duration as necessary.

(3) In order to promote a better transportation system, the commission may offer policy guidance and make recommendations to the governor and the legislature in key issue areas, including but not limited to:

- (a) Transportation finance;
- (b) Preserving, maintaining, and operating the statewide transportation system;
- (c) Transportation infrastructure needs;
- (d) Promoting best practices for adoption and use by transportation-related agencies and programs;
- (e) Transportation efficiencies that will improve service delivery and/or coordination;
- (f) Improved planning and coordination among transportation agencies and providers; and
- (g) Use of intelligent transportation systems and other technology-based solutions. [2007 c 516 § 5; 2006 c 334 § 4; 2005 c 319 § 6.]

Findings—Intent—2007 c 516: See note following RCW 47.01.011.

Effective date—2006 c 334: See note following RCW 47.01.051.

Transfers—2005 c 319: "(1)(a) All reports, documents, surveys, books, records, files, papers, or written material relating to the conduct of performance reviews and audits in the possession of the legislative transportation committee must be delivered to the custody of the transportation commission. Any remaining documents, books, records, files, papers, and written materials must be delivered to the custody of the joint transportation committee. All funds, credits, or other assets held by the legislative transportation committee for the purposes of staffing the transportation performance audit board are assigned to the transportation commission. Any remaining funds, credits, or other assets held by the legislative transportation committee are assigned to the joint transportation committee.

(b) If any question arises as to the transfer of any funds, books, documents, records, papers, files, equipment, or other tangible property used or held in the exercise of the powers and the performance of the duties and functions transferred, the director of financial management shall make a determination as to the proper allocation and certify the same to the state agencies concerned.

(2) All employees of the legislative transportation committee are transferred to the jurisdiction of the transportation commission for the support of the transportation performance audit board. However, the commission may,

if staffing needs warrant, assign the employees to other commission functions." [2005 c 319 § 15.]

Findings—Intent—Part headings—Effective dates—2005 c 319: See notes following RCW 43.17.020.

47.01.078 Transportation system policy goals—Duties. To support achievement of the policy goals described in RCW 47.04.280, the department shall:

- (1) Maintain an inventory of the condition of structures and corridors in most urgent need of retrofit or rehabilitation;
- (2) Develop long-term financing tools that reliably provide ongoing maintenance and preservation of the transportation infrastructure;
- (3) Balance system safety and convenience through all phases of a project to accommodate all users of the transportation system to safely, reliably, and efficiently provide mobility to people and goods;
- (4) Develop strategies to gradually reduce the per capita vehicle miles traveled based on consideration of a range of reduction methods;
- (5) Consider efficiency tools, including high-occupancy vehicle and high-occupancy toll lanes, corridor-specific and systemwide pricing strategies, active traffic management, commute trip reduction, and other demand management tools;
- (6) Promote integrated multimodal planning; and
- (7) Consider engineers and architects to design environmentally sustainable, context-sensitive transportation systems. [2007 c 516 § 6.]

Findings—Intent—2007 c 516: See note following RCW 47.01.011.

47.01.350 Ferry grant program. (1) The department of transportation shall establish a ferry grant program subject to availability of amounts appropriated for this specific purpose. The purpose of the grant program is to provide operating or capital grants for ferry systems as provided in chapters 36.54 and 36.57A RCW to operate passenger-only ferry service.

(2) In providing grants under this section, the department may enter into multiple year contracts with the stipulation that future year allocations are subject to the availability of funding as provided by legislative appropriation. [2007 c 223 § 2; 2006 c 332 § 4.]

Effective date—2007 c 223: See note following RCW 36.57A.220.

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

47.01.390 Alaskan Way viaduct, Seattle Seawall, and state route No. 520 improvements—Requirements—Exceptions. (1) Prior to commencing construction on either project, the department of transportation must complete all of the following requirements for both the Alaskan Way viaduct and Seattle Seawall replacement project, and the state route number 520 bridge replacement and HOV project: (a) In accordance with the national environmental policy act, the department must designate the preferred alternative, prepare a substantial project mitigation plan, and complete a comprehensive cost estimate review using the department's cost estimate validation process, for each project; (b) in accordance with all applicable federal highway administration planning

and project management requirements, the department must prepare a project finance plan for each project that clearly identifies secured and anticipated fund sources, cash flow timing requirements, and project staging and phasing plans if applicable; and (c) the department must report these results for each project to the joint transportation committee.

(2) The requirements of this section shall not apply to (a) utility relocation work, and related activities, on the Alaskan Way viaduct and Seattle Seawall replacement project and (b) off-site pontoon construction supporting the state route number 520 bridge replacement and HOV project.

(3) The requirements of subsection (1) of this section shall not apply during the 2007-2009 fiscal biennium. [2007 c 518 § 705; 2006 c 311 § 27.]

Severability—Effective date—2007 c 518: See notes following RCW 46.68.170.

Findings—2006 c 311: See note following RCW 36.120.020.

47.01.405 State route No. 520 improvements—Project impact plan—Mediator, duties. (1) As soon as practicable after May 15, 2007, and after consulting with the city of Seattle, the office of financial management shall hire a mediator, and appropriate planning staff, including urban, transportation, and neighborhood planners, to develop a state route number 520 project impact plan for addressing the impacts of the state route number 520 bridge replacement and HOV project design on Seattle city neighborhoods, parks, including the Washington park arboretum, and institutions of higher education. The mediator must have significant professional experience in working with communities that surround major transportation construction projects, and mitigating the impacts of those transportation projects on those communities. The office of financial management shall hire the mediator and the planning staff within existing appropriations allocated for the state route number 520 bridge replacement and HOV project. The position of mediator under this section is not considered a certified or legally binding position.

(2) The mediator's responsibility to develop a project impact plan is highly time sensitive. As a result, competitive bidding is not cost-effective or appropriate for personal service contracts to hire the mediator. The director of the office of financial management shall, by the director's authority under RCW 39.29.011(5), exempt any such personal service contract from the competitive bidding requirements of chapter 39.29 RCW.

(3) In evaluating the project impacts, the mediator must consider the concerns of neighborhoods and institutions of higher education directly impacted by the proposed design, establish a process that incorporates interest-based negotiation, and work with the appropriate planning staff to develop mitigation recommendations related to the project design. The mediator shall work to ensure that the project impact plan provides a comprehensive approach to mitigating the impacts of the project, including incorporating construction mitigation plans.

(4) The ultimate goal of the mediation and planning process established in subsection (1) of this section is to develop a project impact plan agreed to by all appropriate parties including, but not limited to, those parties listed in subsection (6) of this section. The project impact plan must be consistent with RCW 47.01.380, and must support and be consistent

with the approved purpose and need statement for the project, which is: "The purpose of the project is to improve mobility for people and goods across Lake Washington within the SR 520 corridor from Seattle to Redmond in a manner that is safe, reliable, and cost-effective while avoiding, minimizing, and/or mitigating impacts on the affected neighborhoods and the environment." The mediator must strive to develop a consensus-based plan. In the event that the mediation process does not result in consensus, the mediator shall submit a project impact plan to the governor and the joint transportation committee that reflects the views of the majority of the mediation participants.

(5) The process established in subsection (1) of this section shall result in a project design that provides six total lanes, with four general purpose lanes and two lanes that are for high-occupancy vehicle travel that could also accommodate high capacity transportation. The bridge shall also be designed to accommodate light rail in the future and to support a bus rapid transit system. Additionally, the mediator shall strive to develop a project impact plan within the constraints of the range of estimated project costs as of May 1, 2007.

(6)(a) In performing the duties of this section, and consistent with the governor's findings and conclusions, dated December 15, 2006, the mediator shall work with interested parties directly affected by the state route number 520 bridge replacement and HOV project including, but not limited to, at least the following:

- (i) Representation from each neighborhood directly impacted by the project;
 - (ii) Representation from local governments on both ends of the bridge directly impacted by the project;
 - (iii) Representation from King county;
 - (iv) Representation from the Washington park arboretum;
 - (v) Representation from the University of Washington; and
 - (vi) Representation from sound transit.
- (b) The mediator shall also work with the department and others as necessary.

(c) Before the mediator may submit the project impact plan, it must be reviewed by the mayor of Seattle and the Seattle city council. The project impact plan must reflect whether the mayor and council concur or do not concur with the plan and include an explanation regarding their positions.

(7) Until December 1, 2008, the mediator must provide periodic reports to the joint transportation committee and the governor regarding the status of the project impact plan development process. The mediator must submit a progress report to the joint transportation committee and the governor by August 1, 2007. The mediator must submit a final project impact plan to the governor and legislature by December 1, 2008. [2007 c 517 § 2.]

Finding—2007 c 517: "The legislature finds that the replacement of the vulnerable state route number 520 corridor is a matter of urgency for the safety of Washington's traveling public and the needs of the transportation system in central Puget Sound. The state route number 520 floating bridge is susceptible to damage, closure, or even catastrophic failure from earthquakes, windstorms, and waves. Additionally, the bridge serves as a vital route for vehicles to cross Lake Washington, carrying over three times its design capacity in traffic, resulting in more than seven hours of congestion per day.

Therefore, it is the conclusion of the legislature that time is of the essence, and that Washington state cannot wait for a disaster to make it fully appreciate the urgency of the need to replace this vulnerable structure. The state must take the necessary steps to move forward with a state route number 520 bridge replacement project design that provides six total lanes, with four general purpose lanes and two lanes that are for high-occupancy vehicle travel that could also accommodate high capacity transportation, and the bridge shall also be designed to accommodate light rail in the future. High-occupancy vehicle lanes in the state route 520 corridor must also be able to support a bus rapid transit system." [2007 c 517 § 1.]

Severability—2007 c 517: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [2007 c 517 § 8.]

Effective date—2007 c 517: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately [May 15, 2007]." [2007 c 517 § 9.]

47.01.406 State route No. 520 improvements—Review of project design plans—Goals. In developing the state route number 520 project impact plan provided in RCW 47.01.405, the mediator and associated planning staff shall review the department's project design plans in the draft environmental impact statement for conformance with the following legislative goals regarding the final design for the state route number 520 bridge replacement and HOV project:

(1) Minimize the total footprint and width of the bridge, and seek appropriate federal design variances to safety and mobility standards, while complying with other federal laws;

(2) Minimize the project impact on surrounding neighborhoods, including incorporation of green lids and connectors, and minimize any increases in additional traffic volumes through the Washington park arboretum and other adjacent neighborhoods;

(3) Incorporate the recommendations of a health impact assessment to calculate the project's impact on air quality, carbon emissions, and other public health issues, conducted by the Puget Sound clean air agency and King county public health;

(4) Ensure that the ultimate project configuration effectively prioritizes maintaining travel time, speed, and reliability on the two high-occupancy vehicle lanes; and

(5) Clearly articulate in required environmental documents the alignment of the selected preferred alternative for the state route number 520 bridge replacement and HOV project and the footprint of the project and the affected areas. [2007 c 517 § 3.]

Finding—Severability—Effective date—2007 c 517: See notes following RCW 47.01.405.

47.01.410 State route No. 520 improvements—Multimodal transportation plan. As part of the state route number 520 bridge replacement and HOV project, the governor's office shall work with the department, sound transit, King county metro, and the University of Washington, to plan for high capacity transportation in the state route number 520 corridor. The parties shall jointly develop a multimodal transportation plan that ensures the effective and efficient coordination of bus services and light rail services throughout the state route number 520 corridor. The plan shall include alternatives for a multimodal transit station that serves the state route number 520 - Montlake interchange vicinity, and mitigation of impacts on affected parties. The high capacity

transportation planning work must be closely coordinated with the state route number 520 bridge replacement and HOV project's environmental planning process, and must be completed within the current funding for the project. A draft plan must be submitted to the governor and the joint transportation committee by October 1, 2007. A final plan must be submitted to the governor and the joint transportation committee by December 2008. [2007 c 517 § 6.]

Finding—Severability—Effective date—2007 c 517: See notes following RCW 47.01.405.

47.01.415 State route No. 520 improvements—Finance plan. The state route number 520 bridge replacement and HOV project finance plan must include state funding, federal funding, at least one billion dollars in regional contributions, and revenue from tolling. The department must provide a proposed finance plan to be tied to the estimated cost of the recommended project solutions, as provided under RCW 47.01.406, to the governor and the joint transportation committee by January 1, 2008. [2007 c 517 § 7.]

Finding—Severability—Effective date—2007 c 517: See notes following RCW 47.01.405.

47.01.420 Naming and renaming state transportation facilities. (1) The commission may name or rename state transportation facilities including, but not limited to: State highways; state highway bridges, structures, and facilities; state rest areas; and state roadside facilities, such as viewpoints. The commission must consult with the department before taking final action to name or rename a state transportation facility.

(2)(a) The department, state and local governmental entities, citizen organizations, and any person may initiate the process to name or rename a state transportation facility.

(b) For the commission to consider a naming or renaming proposal, the requesting entity or person must provide sufficient evidence, as determined by the commission, indicating community support and acceptance of the proposal. Evidence may include the following:

(i) Letters of support from state and federal legislators representing the impacted area encompassing the state transportation facility;

(ii) Resolutions passed by local, publicly elected bodies in the impacted area encompassing the state transportation facility;

(iii) Department support; or

(iv) Supportive actions by or letters from local organizations including, but not limited to, local chambers of commerce and service clubs.

(3) After the commission takes final action in naming or renaming a state transportation facility, the department shall design and install the appropriate signs in accordance with state and federal standards. [2007 c 33 § 1.]

47.01.430 Wounded combat veterans internship program. Subject to the availability of amounts appropriated for this specific purpose, the department shall establish an internship program for returning wounded combat veterans. The purpose of the program is to assist returning wounded combat veterans by matching them with jobs within the department

that require their military skill sets and would be of benefit to the department, or that would teach them new skills. The jobs may include, but are not limited to, the following classifications: Engineering; construction trades; logistics; and project planning. The emphasis of the program should be to assist veterans who served in southern or central Asia, Operation Enduring Freedom; and the Persian Gulf, Operation Iraqi Freedom. This program may assist with the placement of wounded combat veterans as apprentices under RCW 39.04.320. The department may adopt rules under chapter 34.05 RCW to implement the requirements of this section. For the purposes of this section, "veteran" has the same meaning as in RCW 41.04.005. [2007 c 92 § 1.]

Chapter 47.04 RCW GENERAL PROVISIONS

Sections

47.04.280 Transportation system policy goals.

47.04.280 Transportation system policy goals. (1) It is the intent of the legislature to establish policy goals for the planning, operation, performance of, and investment in, the state's transportation system. The policy goals established under this section are deemed consistent with the benchmark categories adopted by the state's blue ribbon commission on transportation on November 30, 2000. Public investments in transportation should support achievement of these policy goals:

(a) Preservation: To maintain, preserve, and extend the life and utility of prior investments in transportation systems and services;

(b) Safety: To provide for and improve the safety and security of transportation customers and the transportation system;

(c) Mobility: To improve the predictable movement of goods and people throughout Washington state;

(d) Environment: To enhance Washington's quality of life through transportation investments that promote energy conservation, enhance healthy communities, and protect the environment; and

(e) Stewardship: To continuously improve the quality, effectiveness, and efficiency of the transportation system.

(2) The powers, duties, and functions of state transportation agencies must be performed in a manner consistent with the policy goals set forth in subsection (1) of this section.

(3) These policy goals are intended to be the basis for establishing detailed and measurable objectives and related performance measures.

(4) It is the intent of the legislature that the office of financial management establish objectives and performance measures for the department of transportation and other state agencies with transportation-related responsibilities to ensure transportation system performance at local, regional, and state government levels progresses toward the attainment of the policy goals set forth in subsection (1) of this section. The office of financial management shall submit initial objectives and performance measures to the legislature for its review and shall provide copies of the same to the commission during the 2008 legislative session. The office of finan-

cial management shall submit objectives and performance measures to the legislature for its review and shall provide copies of the same to the commission during each regular session of the legislature during an even-numbered year thereafter.

(5) This section does not create a private right of action. [2007 c 516 § 3; 2002 c 5 § 101. Formerly RCW 47.01.012.]

Findings—Intent—2007 c 516: See note following RCW 47.01.011.

Effective date—2002 c 5 § 101: "Section 101 of this act takes effect July 1, 2002." [2002 c 5 § 102.]

Captions not law—2002 c 5: "Captions and part headings used in this act are not part of the law." [2002 c 5 § 419.]

Severability—2002 c 5: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [2002 c 5 § 420.]

Chapter 47.05 RCW PRIORITY PROGRAMMING FOR HIGHWAY DEVELOPMENT

Sections

47.05.030 Ten-year programs—Investments, improvements, preservation.
47.05.035 Demand modeling tools.
47.05.051 Repealed.

47.05.030 Ten-year programs—Investments, improvements, preservation. (1) The office of financial management shall propose a comprehensive ten-year investment program for the preservation and improvement programs defined in this section, consistent with the policy goals described under RCW 47.04.280. The proposed ten-year investment program must be forwarded as a recommendation by the office of financial management to the legislature, and must be based upon the needs identified in the statewide transportation plan established under RCW 47.01.071(4).

(2) The preservation program consists of those investments necessary to preserve the existing state highway system and to restore existing safety features, giving consideration to lowest life cycle costing.

(3) The improvement program consists of investments needed to address identified deficiencies on the state highway system to meet the goals established in RCW 47.04.280. [2007 c 516 § 7; 2006 c 334 § 45; 2005 c 319 § 9; 2002 c 5 § 402; 1998 c 171 § 6; 1993 c 490 § 3; 1987 c 179 § 2; 1979 ex.s. c 122 § 2; 1977 ex.s. c 151 § 44; 1975 1st ex.s. c 143 § 1; 1973 2nd ex.s. c 12 § 4; 1969 ex.s. c 39 § 3; 1965 ex.s. c 170 § 33; 1963 c 173 § 3.]

Findings—Intent—2007 c 516: See note following RCW 47.01.011.

Effective date—2006 c 334: See note following RCW 47.01.051.

Findings—Intent—Part headings—Effective dates—2005 c 319: See notes following RCW 43.17.020.

Effective date—2002 c 5 §§ 401-404: See note following RCW 47.05.010.

Captions not law—Severability—2002 c 5: See notes following RCW 47.01.012.

Severability—1979 ex.s. c 122: See note following RCW 47.05.021.

47.05.035 Demand modeling tools. (1) The department shall use the transportation demand modeling tools developed under subsection (2) of this section to evaluate

investments based on the best mode or improvement, or mix of modes and improvements, to meet current and future long-term demand within a corridor or system for the lowest cost. The end result of these demand modeling tools is to provide a cost-benefit analysis by which the department can determine the relative mobility improvement and congestion relief each mode or improvement under consideration will provide and the relative investment each mode or improvement under consideration will need to achieve that relief.

(2) The department will participate in the refinement, enhancement, and application of existing transportation demand modeling tools to be used to evaluate investments. This participation and use of transportation demand modeling tools will be phased in. [2007 c 516 § 8; 2006 c 334 § 46; 2005 c 319 § 10; 2002 c 5 § 403; 1993 c 490 § 4; 1987 c 179 § 3; 1979 ex.s. c 122 § 3; 1975 1st ex.s. c 143 § 2.]

Findings—Intent—2007 c 516: See note following RCW 47.01.011.

Effective date—2006 c 334: See note following RCW 47.01.051.

Findings—Intent—Part headings—Effective dates—2005 c 319: See notes following RCW 43.17.020.

Effective date—2002 c 5 §§ 401-404: See note following RCW 47.05.010.

Captions not law—Severability—2002 c 5: See notes following RCW 47.01.012.

Severability—1979 ex.s. c 122: See note following RCW 47.05.021.

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

Chapter 47.06 RCW

STATEWIDE TRANSPORTATION PLANNING

Sections

47.06.020	Role of department.
47.06.030	Repealed.
47.06.050	State-owned facilities component.
47.06.140	Transportation facilities and services of statewide significance—Level of service standards.

47.06.020 Role of department. The specific role of the department in transportation planning must be, consistent with the policy goals described under RCW 47.04.280: (1) Ongoing coordination and development of statewide transportation policies that guide all Washington transportation providers; (2) ongoing development of a statewide multimodal transportation plan that includes both state-owned and state-interest facilities and services; (3) coordinating the state high-capacity transportation planning and regional transportation planning programs; (4) conducting special transportation planning studies that impact state transportation facilities or relate to transportation facilities and services of statewide significance; and (5) assisting the transportation commission in the development of the statewide transportation plan required under RCW 47.01.071(4). Specific requirements for each of these state transportation planning components are described in this chapter. [2007 c 516 § 9; 1993 c 446 § 2.]

Findings—Intent—2007 c 516: See note following RCW 47.01.011.

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

47.06.050 State-owned facilities component. The state-owned facilities component of the statewide multimodal transportation plan shall consist of:

(1) The state highway system plan, which identifies program and financing needs and recommends specific and financially realistic improvements to preserve the structural integrity of the state highway system, ensure acceptable operating conditions, and provide for enhanced access to scenic, recreational, and cultural resources. The state highway system plan shall contain the following elements:

(a) A system preservation element, which shall establish structural preservation objectives for the state highway system including bridges, identify current and future structural deficiencies based upon analysis of current conditions and projected future deterioration, and recommend program funding levels and specific actions necessary to preserve the structural integrity of the state highway system consistent with adopted objectives. Lowest life cycle cost methodologies must be used in developing a pavement management system. This element shall serve as the basis for the preservation component of the six-year highway program and the two-year biennial budget request to the legislature;

(b) A highway maintenance element, establishing service levels for highway maintenance on state-owned highways. The highway maintenance element must include an estimate of costs for achieving those service levels over twenty years. This element will serve as the basis for the maintenance component of the six-year highway program and the two-year biennial budget request to the legislature;

(c) A capacity and operational improvement element, which shall establish operational objectives, including safety considerations, for moving people and goods on the state highway system, identify current and future capacity, operational, and safety deficiencies, and recommend program funding levels and specific improvements and strategies necessary to achieve the operational objectives. In developing capacity and operational improvement plans the department shall first assess strategies to enhance the operational efficiency of the existing system before recommending system expansion. Strategies to enhance the operational efficiencies include but are not limited to access management, transportation system management, demand management, and high-occupancy vehicle facilities. The capacity and operational improvement element must conform to the state implementation plan for air quality and be consistent with regional transportation plans adopted under chapter 47.80 RCW, and shall serve as the basis for the capacity and operational improvement portions of the six-year highway program and the two-year biennial budget request to the legislature;

(d) A scenic and recreational highways element, which shall identify and recommend designation of scenic and recreational highways, provide for enhanced access to scenic, recreational, and cultural resources associated with designated routes, and recommend a variety of management strategies to protect, preserve, and enhance these resources. The department, affected counties, cities, and towns, regional transportation planning organizations, and other state or federal agencies shall jointly develop this element;

(e) A paths and trails element, which shall identify the needs of nonmotorized transportation modes on the state transportation systems and provide the basis for the invest-

ment of state transportation funds in paths and trails, including funding provided under chapter 47.30 RCW.

(2) The state ferry system plan, which shall guide capital and operating investments in the state ferry system. The plan shall establish service objectives for state ferry routes, forecast travel demand for the various markets served in the system, develop strategies for ferry system investment that consider regional and statewide vehicle and passenger needs, support local land use plans, and assure that ferry services are fully integrated with other transportation services. The plan must provide for maintenance of capital assets. The plan must also provide for preservation of capital assets based on lowest life cycle cost methodologies. The plan shall assess the role of private ferries operating under the authority of the utilities and transportation commission and shall coordinate ferry system capital and operational plans with these private operations. The ferry system plan must be consistent with the regional transportation plans for areas served by the state ferry system, and shall be developed in conjunction with the ferry advisory committees. [2007 c 516 § 10; 2002 c 5 § 413; 1993 c 446 § 5.]

Findings—Intent—2007 c 516: See note following RCW 47.01.011.

Finding—Intent—2002 c 5: "The legislature finds that roads, streets, bridges, and highways in the state represent public assets worth over one hundred billion dollars. These investments require regular maintenance and preservation, or rehabilitation, to provide cost-effective transportation services. Many of these facilities are in poor condition. Given the magnitude of public investment and the importance of safe, reliable roadways to the motoring public, the legislature intends to create stronger accountability to ensure that cost-effective maintenance and preservation is provided for these transportation facilities." [2002 c 5 § 408.]

Captions not law—Severability—2002 c 5: See notes following RCW 47.01.012.

47.06.140 Transportation facilities and services of statewide significance—Level of service standards. (1) The legislature declares the following transportation facilities and services to be of statewide significance: Highways of statewide significance as designated by the legislature under chapter 47.05 RCW, the interstate highway system, interregional state principal arterials including ferry connections that serve statewide travel, intercity passenger rail services, intercity high-speed ground transportation, major passenger intermodal terminals excluding all airport facilities and services, the freight railroad system, the Columbia/Snake navigable river system, marine port facilities and services that are related solely to marine activities affecting international and interstate trade, and high-capacity transportation systems serving regions as defined in RCW 81.104.015. The department, in cooperation with regional transportation planning organizations, counties, cities, transit agencies, public ports, private railroad operators, and private transportation providers, as appropriate, shall plan for improvements to transportation facilities and services of statewide significance in the statewide multimodal transportation plan. Improvements to facilities and services of statewide significance identified in the statewide multimodal transportation plan, or to highways of statewide significance designated by the legislature under chapter 47.05 RCW, are essential state public facilities under RCW 36.70A.200.

(2) The department of transportation, in consultation with local governments, shall set level of service standards

for state highways and state ferry routes of statewide significance. Although the department shall consult with local governments when setting level of service standards, the department retains authority to make final decisions regarding level of service standards for state highways and state ferry routes of statewide significance. In establishing level of service standards for state highways and state ferry routes of statewide significance, the department shall consider the necessary balance between providing for the free interjurisdictional movement of people and goods and the needs of local communities using these facilities. When setting the level of service standards under this section for state ferry routes, the department may allow for a standard that is adjustable for seasonality. [2007 c 516 § 11; 2007 c 512 § 2; 1998 c 171 § 7.]

Reviser's note: This section was amended by 2007 c 512 § 2 and by 2007 c 516 § 11, each without reference to the other. Both amendments are incorporated in the publication of this section under RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

Findings—Intent—2007 c 516: See note following RCW 47.01.011.

Finding—Intent—2007 c 512: "The legislature finds from the 2006 Washington state ferries financing study that the state has limited information on state ferry users and markets. Accurate user and market information is vital in order to find ways to maximize the ferry systems' current capacity and to make the most efficient use of citizens' tax dollars. Therefore, it is the intent of the legislature that Washington state ferries be given the tools necessary to maximize the utilization of existing capacity and to make the most efficient use of existing assets and tax dollars. Furthermore, it is the intent of the legislature that the department of transportation adopt adaptive management practices in its operating and capital programs so as to keep the costs of the Washington state ferries system as low as possible while continuously improving the quality and timeliness of service." [2007 c 512 § 1.]

Highways of statewide significance: RCW 47.05.022.

Chapter 47.06B RCW

COORDINATING SPECIAL NEEDS TRANSPORTATION

Sections

- 47.06B.010 Finding—Intent. (*Effective until June 30, 2011.*)
- 47.06B.015 Repealed.
- 47.06B.020 Agency council on coordinated transportation—Creation, membership, staff, meetings. (*Effective until June 30, 2011.*)
- 47.06B.030 Council—Duties. (*Effective until June 30, 2011.*)
- 47.06B.040 Council—Certification of regional transportation planning organization local plans. (*Effective until June 30, 2011.*)
- 47.06B.050 Council—Progress report. (*Effective until June 30, 2011.*)
- 47.06B.900 Council—Termination.
- 47.06B.901 Repealer.

47.06B.010 Finding—Intent. (*Effective until June 30, 2011.*) The legislature finds that transportation systems for persons with special needs are not operated as efficiently as possible. In too many cases, programs established by the legislature to assist persons with special needs can not be accessed due to these inefficiencies and coordination barriers.

It is the intent of the legislature that public transportation agencies, pupil transportation programs, private nonprofit transportation providers, and other public agencies sponsoring programs that require transportation services coordinate those transportation services. Through coordination of transportation services, programs will achieve increased efficiencies and will be able to provide more rides to a greater num-

ber of persons with special needs. [2007 c 421 § 1; 1999 c 385 § 1; 1998 c 173 § 1.]

47.06B.015 Repealed. See Supplementary Table of Disposition of Former RCW Sections, this volume.

47.06B.020 Agency council on coordinated transportation—Creation, membership, staff, meetings. (Effective until June 30, 2011.) (1) The agency council on coordinated transportation is created. The council is composed of ten voting members and four nonvoting, legislative members.

(2) The ten voting members are the superintendent of public instruction or a designee, the secretary of transportation or a designee, the secretary of the department of social and health services or a designee, and seven members appointed by the governor as follows:

(a) One representative from the office of the governor;

(b) Three persons who are consumers of special needs transportation services, which must include:

(i) One person designated by the executive director of the governor's committee on disability issues and employment; and

(ii) One person who is designated by the executive director of the developmental disabilities council;

(c) One representative from the Washington association of pupil transportation;

(d) One representative from the Washington state transit association; and

(e) One of the following:

(i) A representative from the community transportation association of the Northwest; or

(ii) A representative from the community action council association.

(3) The four nonvoting members are legislators as follows:

(a) Two members from the house of representatives, one from each of the two largest caucuses, appointed by the speaker of the house of representatives, including at least one member from the house transportation policy and budget committee or the house appropriations committee; and

(b) Two members from the senate, one from each of the two largest caucuses, appointed by the president of the senate, including at least one member from the senate transportation committee or the senate ways and means committee.

(4) Gubernatorial appointees of the council will serve two-year terms. Members may not receive compensation for their service on the council, but will be reimbursed for actual and necessary expenses incurred in performing their duties as members as set forth in RCW 43.03.220.

(5) The secretary of transportation or a designee shall serve as the chair.

(6) The department of transportation shall provide necessary staff support for the council.

(7) The council may receive gifts, grants, or endowments from public or private sources that are made from time to time, in trust or otherwise, for the use and benefit of the purposes of the council and spend gifts, grants, or endowments or income from the public or private sources according to their terms, unless the receipt of the gifts, grants, or endowments violates RCW 42.17.710.

(8) The meetings of the council must be open to the public, with the agenda published in advance, and minutes kept and made available to the public. The public notice of the meetings must indicate that accommodations for persons with disabilities will be made available upon request.

(9) All meetings of the council must be held in locations that are readily accessible to public transportation, and must be scheduled for times when public transportation is available.

(10) The council shall make an effort to include presentations by and work sessions including persons with special transportation needs. [2007 c 421 § 2; 1998 c 173 § 2.]

47.06B.030 Council—Duties. (Effective until June 30, 2011.) (1) To assure implementation of an effective system of coordinated transportation that meets the needs of persons with special transportation needs, the agency council on coordinated transportation shall adopt a biennial work plan that must, at a minimum:

(a) Focus on projects that identify and address barriers in laws, policies, and procedures;

(b) Focus on results; and

(c) Identify and advocate for transportation system improvements for persons with special transportation needs.

(2) The council shall, as necessary, convene work groups at the state, regional, or local level to develop and implement coordinated approaches to special needs transportation.

(3) To improve the service experienced by persons with special transportation needs, the council shall develop statewide guidelines for customer complaint processes so that information about policies regarding the complaint processes is available consistently and consumers are appropriately educated about available options. To be eligible for funding on or after January 1, 2008, organizations applying for state paratransit/special needs grants as described in section 226(1), chapter 370, Laws of 2006 must implement a process following the guidelines established by the council.

(4) The council shall represent the needs and interests of persons with special transportation needs in statewide efforts for emergency and disaster preparedness planning by advising the emergency management council on how to address transportation needs for high-risk individuals during and after disasters. [2007 c 421 § 3. Prior: 1999 c 385 § 5; (1999 c 372 § 13 repealed by 2007 c 421 § 10); 1998 c 173 § 3.]

47.06B.040 Council—Certification of regional transportation planning organization local plans. (Effective until June 30, 2011.) The agency council on coordinated transportation shall review and recommend certification of local plans developed by regional transportation planning organizations based on meeting federal requirements. Each regional transportation planning organization must submit to the council an updated plan that includes the elements, consistent with federal planning requirements, identified by the council beginning on July 1, 2007, and every four years thereafter.

Each regional transportation planning organization must submit to the council every two years a prioritized regional human service and transportation project list. [2007 c 421 § 4; 1999 c 385 § 6.]

47.06B.050 Council—Progress report. (*Effective until June 30, 2011.*) The agency council on coordinated transportation shall submit a progress report on council activities to the legislature by December 1, 2009, and every other year thereafter. The report must describe the council's progress in attaining the applicable goals identified in the council's biennial work plan and highlight any problems encountered in achieving these goals. The information will be reported in a form established by the council. [2007 c 421 § 6.]

47.06B.900 Council—Termination. The agency council on coordinated transportation is terminated on June 30, 2010, as provided in RCW 47.06B.901. [2007 c 421 § 8; 1999 c 385 § 7; 1998 c 173 § 6.]

47.06B.901 Repealer. The following acts or parts of acts, as now existing or hereafter amended, are each repealed, effective June 30, 2011:

- (1) RCW 47.06B.010 and 2007 c 421 § 1, 1999 c 385 § 1, & 1998 c 173 § 1;
- (2) RCW 47.06B.012 and 1999 c 385 § 2;
- (3) RCW 47.06B.020 and 2007 c 421 § 2 & 1998 c 173 § 2;
- (4) RCW 47.06B.030 and 2007 c 421 § 3, 1999 c 385 § 5, & 1998 c 173 § 3;
- (5) RCW 47.06B.040 and 2007 c 421 § 4 & 1999 c 385 § 6; and
- (6) RCW 47.06B.050 and 2007 c 421 § 6. [2007 c 421 § 9; 1999 c 385 § 8; 1998 c 173 § 7.]

Chapter 47.10 RCW

HIGHWAY CONSTRUCTION BONDS

Sections

47.10.812	Issuance and sale of general obligation bonds.
47.10.813	Administration and amount of sale.
47.10.861	Bond issue authorized.
47.10.873	Bond issue authorized.
47.10.877	Repayment procedure—Bond retirement fund.

47.10.812 Issuance and sale of general obligation bonds. In order to provide funds necessary for the location, design, right of way, and construction of state highway improvements that are identified as special category C improvements, there shall be issued and sold upon the request of the Washington state secretary of transportation a total of six hundred million dollars of general obligation bonds of the state of Washington. [2007 c 519 § 1; 1999 sp.s. c 2 § 1; 1993 c 431 § 1.]

47.10.813 Administration and amount of sale. Upon the request of the secretary of transportation, the state finance committee shall supervise and provide for the issuance, sale, and retirement of the bonds authorized by RCW 47.10.812 through 47.10.817 in accordance with chapter 39.42 RCW. Bonds authorized by RCW 47.10.812 through 47.10.817 shall be sold in such manner, at such time or times, in such amounts, and at such price as the state finance committee shall determine. No such bonds may be offered for sale with-

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out prior legislative appropriation of the net proceeds of the sale of the bonds.

The state finance committee shall consider the issuance of short-term obligations in lieu of long-term obligations for the purposes of more favorable interest rates, lower total interest costs, and increased marketability and for the purpose of retiring the bonds during the life of the project for which they were issued. [2007 c 519 § 2; 1993 c 431 § 2.]

47.10.861 Bond issue authorized. In order to provide funds necessary for the location, design, right-of-way, and construction of selected projects or improvements that are identified as transportation 2003 projects or improvements in the omnibus transportation budget, there shall be issued and sold upon the request of the secretary of the department of transportation a total of three billion two hundred million dollars of general obligation bonds of the state of Washington. [2007 c 519 § 3; 2006 c 334 § 31; 2003 c 147 § 1.]

Effective date—2006 c 334: See note following RCW 47.01.051.

Effective date—2003 c 147: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect July 1, 2003." [2003 c 147 § 16.]

47.10.873 Bond issue authorized. In order to provide funds necessary for the location, design, right-of-way, and construction of selected projects or improvements that are identified as 2005 transportation partnership projects or improvements in the omnibus transportation budget chapter 313, Laws of 2005, there shall be issued and sold upon the request of the department of transportation a total of five billion three hundred million dollars of general obligation bonds of the state of Washington. [2007 c 519 § 4; 2005 c 315 § 1.]

Effective date—2005 c 315: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect July 1, 2005." [2005 c 315 § 8.]

47.10.877 Repayment procedure—Bond retirement fund. Both principal and interest on the bonds issued for the purposes of RCW 47.10.873 through 47.10.878 shall be payable from the highway bond retirement fund. The state finance committee may provide that a special account be created in the fund to facilitate payment of the principal and interest. The state finance committee shall, on or before June 30th of each year, certify to the state treasurer the amount required for principal and interest on the bonds in accordance with the bond proceedings. The state treasurer shall withdraw revenues from the transportation partnership account in the motor vehicle fund and deposit in the highway bond retirement fund, or a special account in the fund, such amounts, and at such times, as are required by the bond proceedings.

Any funds required for bond retirement or interest on the bonds authorized by RCW 47.10.873 through 47.10.878 shall be taken from that portion of the motor vehicle fund that results from the imposition of excise taxes on motor vehicle and special fuels and that is distributed to the transportation partnership account in the motor vehicle fund. Funds required shall never constitute a charge against any other allocations of motor vehicle fuel and special fuel tax reve-

nues to the state, counties, cities, and towns unless the amount arising from excise taxes on motor vehicle and special fuels distributed to the transportation partnership account proves insufficient to meet the requirements for bond retirement or interest on any such bonds.

Any payments for bond retirement or interest on the bonds taken from other revenues from the motor vehicle fuel or special fuel taxes that are distributable to the state, counties, cities, and towns shall be repaid from the first revenues from the motor vehicle fuel or special fuel taxes distributed to the transportation partnership account not required for bond retirement or interest on the bonds. [2007 c 519 § 5; 2005 c 315 § 5.]

Effective date—2005 c 315: See note following RCW 47.10.873.

Chapter 47.12 RCW

ACQUISITION AND DISPOSITION OF STATE HIGHWAY PROPERTY

Sections

- 47.12.055 Notification requirements.
47.12.244 Advance right-of-way revolving fund.

47.12.055 Notification requirements. Actions under this chapter are subject to the notification requirements of RCW 43.17.400. [2007 c 62 § 9.]

Finding—Intent—Severability—2007 c 62: See notes following RCW 43.17.400.

47.12.244 Advance right-of-way revolving fund. There is created the "advance right-of-way revolving fund" in the custody of the treasurer, into which the department is authorized to deposit directly and expend without appropriation:

(1) An initial deposit of ten million dollars from the motor vehicle fund included in the department of transportation's 1991-93 budget;

(2) All moneys received by the department as rental income from real properties that are not subject to federal aid reimbursement, except moneys received from rental of capital facilities properties as defined in *chapter 47.13 RCW; and

(3) Any federal moneys available for acquisition of right-of-way for future construction under the provisions of section 108 of Title 23, United States Code.

(4) During the 2007-09 fiscal biennium, the legislature may transfer from the advance right-of-way revolving fund to the motor vehicle account amounts as reflect the excess fund balance of the advance right-of-way revolving fund. [2007 c 518 § 707; 1991 c 291 § 2; 1984 c 7 § 125; 1969 ex.s. c 197 § 7.]

***Reviser's note:** Chapter 47.13 RCW was repealed by 1999 c 94 § 33, effective July 1, 1999.

Severability—Effective date—2007 c 518: See notes following RCW 46.68.170.

Severability—1984 c 7: See note following RCW 47.01.141.

Chapter 47.17 RCW

STATE HIGHWAY ROUTES

Sections

- 47.17.020 State route No. 5—Washington green highway.
47.17.135 State route No. 82—Washington green highway.
47.17.140 State route No. 90—American Veterans Memorial Highway—Washington green highway.

47.17.020 State route No. 5—Washington green highway. A state highway to be known as state route number 5, and designated as a Washington green highway, is established as follows:

Beginning at the Washington-Oregon boundary line on the interstate bridge over the Columbia river at Vancouver, thence northerly by way of Kelso, Chehalis, Centralia, Olympia, Tacoma, Seattle, Everett and Mt. Vernon, thence northwesterly to the east of Lake Samish, thence northeasterly and northerly by way of Bellingham to the international boundary line in the vicinity of Blaine in Whatcom county. [2007 c 348 § 405; 1970 ex.s. c 51 § 5.]

Findings—Part headings not law—2007 c 348: See RCW 43.325.005 and 43.325.903.

47.17.135 State route No. 82—Washington green highway. A state highway to be known as state route number 82, and designated as a Washington green highway, is established as follows:

Beginning at a junction with state route number 90 in the vicinity of Ellensburg, thence southerly and easterly by way of Yakima, Union Gap, Sunnyside, Prosser, Kiona, and Goose Gap west of Richland, thence southeasterly near Kennewick and southwesterly by way of the vicinity of Plymouth to a crossing of the Columbia river at the Washington-Oregon boundary line. [2007 c 348 § 406; 1979 ex.s. c 33 § 3; 1970 ex.s. c 51 § 28.]

Findings—Part headings not law—2007 c 348: See RCW 43.325.005 and 43.325.903.

47.17.140 State route No. 90—American Veterans Memorial Highway—Washington green highway. A state highway to be known as state route number 90, and designated as the American Veterans Memorial Highway as well as a Washington green highway, is established as follows:

Beginning at a junction with state route number 5, thence, via the west approach to the Lake Washington bridge in Seattle, in an easterly direction by way of Mercer Island, North Bend, Snoqualmie pass, Ellensburg, Vantage, Moses Lake, Ritzville, Sprague and Spokane to the Washington-Idaho boundary line. [2007 c 348 § 407; 1991 c 56 § 2; 1971 ex.s. c 73 § 2; 1970 ex.s. c 51 § 29.]

Findings—Part headings not law—2007 c 348: See RCW 43.325.005 and 43.325.903.

Purpose—1991 c 56: "In order to create a great memorial and tribute to American veterans, it is proposed that the Washington state portion of Interstate 90 be renamed in their honor, to become the westernmost portion of a memorial highway reaching across the United States." [1991 c 56 § 1.]

Chapter 47.20 RCW

MISCELLANEOUS PROJECTS

Sections

47.20.780 Design-build—Competitive bidding.

47.20.780 Design-build—Competitive bidding. The department of transportation shall develop a process for awarding competitively bid highway construction contracts for projects over ten million dollars that may be constructed using a design-build procedure. As used in this section and RCW 47.20.785, "design-build procedure" means a method of contracting under which the department of transportation contracts with another party for the party to both design and build the structures, facilities, and other items specified in the contract.

The process developed by the department must, at a minimum, include the scope of services required under the design-build procedure, contractor prequalification requirements, criteria for evaluating technical information and project costs, contractor selection criteria, and issue resolution procedures. [2007 c 152 § 1; 2001 c 226 § 2.]

Findings—Purpose—2001 c 226: "The legislature finds and declares that a contracting procedure that facilitates construction of transportation facilities in a more timely manner may occasionally be necessary to ensure that construction can proceed simultaneously with the design of the facility. The legislature further finds that the design-build process and other alternative project delivery concepts achieve the goals of time savings and avoidance of costly change orders.

The legislature finds and declares that a 2001 audit, conducted by Talbot, Korvola & Warwick, examining the Washington state ferries' capital program resulted in a recommendation for improvements and changes in auto ferry procurement processes. The auditors recommended that auto ferries be procured through use of a modified request for proposals process whereby the prevailing shipbuilder and Washington state ferries engage in a design and build partnership. This process promotes ownership of the design by the shipbuilder while using the department of transportation's expertise in ferry design and operations. Alternative processes like design-build partnerships can promote innovation and create competitive incentives that increase the likelihood of finishing projects on time and within the budget.

The purpose of this act is to authorize the department's use of a modified request for proposals process for procurement of auto ferries, and to prescribe appropriate requirements and criteria to ensure that contracting procedures for this procurement process serve the public interest." [2001 c 226 § 1.]

Chapter 47.24 RCW

CITY STREETS AS PART OF STATE HIGHWAYS

Sections

47.24.020 Jurisdiction, control.

47.24.020 Jurisdiction, control. The jurisdiction, control, and duty of the state and city or town with respect to such streets is as follows:

(1) The department has no authority to change or establish any grade of any such street without approval of the governing body of such city or town, except with respect to limited access facilities established by the commission;

(2) The city or town shall exercise full responsibility for and control over any such street beyond the curbs and if no curb is installed, beyond that portion of the highway used for highway purposes. However, within incorporated cities and towns the title to a state limited access highway vests in the state, and, notwithstanding any other provision of this sec-

tion, the department shall exercise full jurisdiction, responsibility, and control to and over such facility as provided in chapter 47.52 RCW;

(3) The department has authority to prohibit the suspension of signs, banners, or decorations above the portion of such street between the curbs or portion used for highway purposes up to a vertical height of twenty feet above the surface of the roadway;

(4) The city or town shall at its own expense maintain all underground facilities in such streets, and has the right to construct such additional underground facilities as may be necessary in such streets. However, pavement trenching and restoration performed as part of installation of such facilities must meet or exceed requirements established by the department;

(5) The city or town has the right to grant the privilege to open the surface of any such street, but all damage occasioned thereby shall promptly be repaired either by the city or town itself or at its direction. Pavement trenching and restoration performed under a privilege granted by the city under this subsection must meet or exceed requirements established by the department;

(6) The city or town at its own expense shall provide street illumination and shall clean all such streets, including storm sewer inlets and catch basins, and remove all snow, except that the state shall when necessary plow the snow on the roadway. In cities and towns having a population of twenty-five thousand or less according to the latest determination of population by the office of financial management, the state, when necessary for public safety, shall assume, at its expense, responsibility for the stability of the slopes of cuts and fills and the embankments within the right-of-way to protect the roadway itself. When the population of a city or town first exceeds twenty-five thousand according to the determination of population by the office of financial management, the city or town shall have three years from the date of the determination to plan for additional staffing, budgetary, and equipment requirements before being required to assume the responsibilities under this subsection. The state shall install, maintain, and operate all illuminating facilities on any limited access facility, together with its interchanges, located within the corporate limits of any city or town, and shall assume and pay the costs of all such installation, maintenance, and operation incurred after November 1, 1954;

(7) The department has the right to use all storm sewers on such highways without cost; and if new storm sewer facilities are necessary in construction of new streets by the department, the cost of the facilities shall be borne by the state and/or city as may be mutually agreed upon between the department and the governing body of the city or town;

(8) Cities and towns have exclusive right to grant franchises not in conflict with state laws and rules, over, beneath, and upon such streets, but the department is authorized to enforce in an action brought in the name of the state any condition of any franchise which a city or town has granted on such street. No franchise for transportation of passengers in motor vehicles may be granted on such streets without the approval of the department, but the department shall not refuse to approve such franchise unless another street conveniently located and of strength of construction to sustain travel of such vehicles is accessible;

(9) Every franchise or permit granted any person by a city or town for use of any portion of such street by a public utility must require the grantee or permittee to restore, repair, and replace any portion of the street damaged or injured by it to conditions that meet or exceed requirements established by the department;

(10) The city or town has the right to issue overload or overwidth permits for vehicles to operate on such streets or roads subject to regulations printed and distributed to the cities and towns by the department;

(11) Cities and towns shall regulate and enforce all traffic and parking restrictions on such streets, but all regulations adopted by a city or town relating to speed, parking, and traffic control devices on such streets not identical to state law relating thereto are subject to the approval of the department before becoming effective. All regulations pertaining to speed, parking, and traffic control devices relating to such streets heretofore adopted by a city or town not identical with state laws shall become null and void unless approved by the department heretofore or within one year after March 21, 1963;

(12) The department shall erect, control, and maintain at state expense all route markers and directional signs, except street signs, on such streets;

(13) The department shall install, operate, maintain, and control at state expense all traffic control signals, signs, and traffic control devices for the purpose of regulating both pedestrian and motor vehicular traffic on, entering upon, or leaving state highways in cities and towns having a population of twenty-five thousand or less according to the latest determination of population by the office of financial management. Such cities and towns may submit to the department a plan for traffic control signals, signs, and traffic control devices desired by them, indicating the location, nature of installation, or type thereof, or a proposed amendment to such an existing plan or installation, and the department shall consult with the cities or towns concerning the plan before installing such signals, signs, or devices. Cities and towns having a population in excess of twenty-five thousand according to the latest determination of population by the office of financial management shall install, maintain, operate, and control such signals, signs, and devices at their own expense, subject to approval of the department for the installation and type only. When the population of a city or town first exceeds twenty-five thousand according to the determination of population by the office of financial management, the city or town shall have three years from the date of the determination to plan for additional staffing, budgetary, and equipment requirements before being required to assume the responsibilities under this subsection. For the purpose of this subsection, striping, lane marking, and channelization are considered traffic control devices;

(14) All revenue from parking meters placed on such streets belongs to the city or town;

(15) Rights-of-way for such streets shall be acquired by either the city or town or by the state as shall be mutually agreed upon. Costs of acquiring rights-of-way may be at the sole expense of the state or at the expense of the city or town or at the expense of the state and the city or town as may be mutually agreed upon. Title to all such rights-of-way so acquired shall vest in the city or town: PROVIDED, That no

vacation, sale, rental, or any other nontransportation use of any unused portion of any such street may be made by the city or town without the prior written approval of the department; and all revenue derived from sale, vacation, rental, or any nontransportation use of such rights-of-way shall be shared by the city or town and the state in the same proportion as the purchase costs were shared;

(16) If any city or town fails to perform any of its obligations as set forth in this section or in any cooperative agreement entered into with the department for the maintenance of a city or town street forming part of the route of a state highway, the department may notify the mayor of the city or town to perform the necessary maintenance within thirty days. If the city or town within the thirty days fails to perform the maintenance or fails to authorize the department to perform the maintenance as provided by RCW 47.24.050, the department may perform the maintenance, the cost of which is to be deducted from any sums in the motor vehicle fund credited or to be credited to the city or town. [2007 c 84 § 1; 2001 c 201 § 8; 1993 c 126 § 1; 1991 c 342 § 52; 1987 c 68 § 1; 1984 c 7 § 150; 1977 ex.s. c 78 § 7; 1967 c 115 § 1; 1963 c 150 § 1; 1961 c 13 § 47.24.020. Prior: 1957 c 83 § 3; 1955 c 179 § 3; 1953 c 193 § 1; 1949 c 220 § 5, part; 1945 c 250 § 1, part; 1943 c 82 § 10, part; 1937 c 187 § 61, part; Rem. Supp. 1949 § 6450-61, part.]

Effective dates—1991 c 342: See note following RCW 47.26.167.

Severability—1984 c 7: See note following RCW 47.01.141.

Chapter 47.26 RCW DEVELOPMENT IN URBAN AREAS— URBAN ARTERIALS

Sections

47.26.080	Urban arterial trust account—Withholding of funds for non-compliance.
47.26.164	City hardship assistance program—Implementation.
47.26.340	Small city pavement and sidewalk account.
47.26.420	Issuance and sale of general obligation bonds—Authorized—Amount—Declaration of purpose.
47.26.425	Bonds—Designation of funds to repay bonds and interest.

47.26.080 Urban arterial trust account—Withholding of funds for noncompliance. There is hereby created in the motor vehicle fund the urban arterial trust account. The intent of the urban arterial trust account program is to improve the arterial street system of the state by improving mobility and safety while supporting an environment essential to the quality of life of the citizens of the state of Washington. The small city program, as provided for in RCW 47.26.115, is implemented within the urban arterial trust account.

The board shall not allocate funds, nor make payments of the funds under RCW 47.26.260, to any county, city, or town identified by the governor under RCW 36.70A.340. [2007 c 148 § 2; 1999 c 94 § 16; 1994 c 179 § 8; 1991 sp.s. c 32 § 32; 1988 c 167 § 13; 1981 c 315 § 2; 1979 c 5 § 1; 1977 ex.s. c 317 § 22; 1967 ex.s. c 83 § 14.]

Legislative finding—Effective dates—1999 c 94: See notes following RCW 43.84.092.

Section headings not law—1991 sp.s. c 32: See RCW 36.70A.902.

Savings—Severability—1988 c 167: See notes following RCW 47.26.121.

Effective date—1981 c 315: "This act is necessary for the immediate preservation of the public peace, health, and safety, the support of the state government and its existing public institutions, and shall take effect July 1, 1981." [1981 c 315 § 14.]

Effective dates—Severability—1977 ex.s. c 317: See notes following RCW 82.36.010.

47.26.164 City hardship assistance program—Implementation. The board shall adopt reasonable rules necessary to implement the city hardship assistance program as recommended by the road jurisdiction study.

The following criteria shall be used to implement the program:

(1) Cities with a population of twenty thousand or less and a net gain in cost responsibility due to jurisdictional transfers in chapter 342, Laws of 1991, and thereafter under RCW 47.26.167, are eligible to receive money from the small city pavement and sidewalk account created in RCW 47.26.340;

(2) The board shall develop criteria and procedures under which eligible cities may receive funding for rehabilitation projects on transferred city streets; and

(3) The amount spent for the city hardship assistance program shall not exceed the amount deposited under RCW 46.68.110(3). [2007 c 148 § 3; 1999 c 94 § 20; 1991 c 342 § 60.]

Legislative finding—Effective dates—1999 c 94: See notes following RCW 43.84.092.

Effective dates—1991 c 342: See note following RCW 47.26.167.

47.26.340 Small city pavement and sidewalk account. The small city pavement and sidewalk account is created in the state treasury. All state money allocated to the small city pavement and sidewalk account for the ongoing support of cities and towns must be deposited into the account. Money in the account may be spent only after appropriation. Expenditures from the account must be used for small city pavement and sidewalk projects or improvements selected by the board in accordance with RCW 47.26.164 or 47.26.345, to pay principal and interest on bonds authorized for these projects or improvements, to make grants or loans in accordance with this chapter, or to pay for engineering feasibility studies selected by the board. [2007 c 148 § 4; 2005 c 83 § 2.]

Findings—2005 c 83: "The state legislature finds that it is in the state's interest to support the economic vitality of all cities and towns and recognizes that those cities and towns with a population of less than five thousand are unable to fully maintain and preserve their street system. Therefore, the legislature finds it is necessary to create a small city pavement and sidewalk account." [2005 c 83 § 1.]

Effective dates—2005 c 83: "Except for section 5 of this act which takes effect July 1, 2006, this act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect July 1, 2005." [2005 c 83 § 6.]

47.26.420 Issuance and sale of general obligation bonds—Authorized—Amount—Declaration of purpose. In order to provide funds necessary to meet the urgent construction needs on county and city arterials within urban areas, there are hereby authorized for issuance general obligation bonds of the state of Washington, the first authorization of which shall be in the sum of two hundred fifty million dollars, and the second authorization of which, to be known

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as series II bonds, shall be in the sum of sixty million dollars, and the third authorization of which, to be known as series III bonds, shall be in the sum of one hundred million dollars, which shall be issued and sold in such amounts and at such times as determined to be necessary by the transportation improvement board. The amount of such bonds issued and sold under the provisions of RCW 47.26.420 through 47.26.427 in any biennium shall not exceed the amount of a specific appropriation therefor, from the proceeds of such bonds, for the construction of county and city arterials in urban areas. The issuance, sale, and retirement of said bonds shall be under the supervision and control of the state finance committee which, upon request being made by the transportation improvement board, shall provide for the issuance, sale, and retirement of coupon or registered bonds to be dated, issued, and sold from time to time in such amounts as shall be requested by the transportation improvement board. [2007 c 519 § 6; 1981 c 315 § 5; 1979 c 5 § 3. Prior: 1977 ex.s. c 317 § 18; 1973 1st ex.s. c 169 § 4; 1967 ex.s. c 83 § 45.]

Effective date—1981 c 315: See note following RCW 47.26.080.

Appropriation—Expenditure limited to bond sale proceeds—1981 c 315: "There is appropriated from the urban arterial trust account in the motor vehicle fund to the urban arterial board for the biennium ending June 30, 1983, the sum of thirty-five million dollars, or so much thereof as may be necessary, to carry out section 5 of this act: PROVIDED, That the money available for expenditure under this appropriation may not exceed the amount of money derived from the sale of bonds authorized by section 5 of this act and deposited to the credit of the urban arterial trust account in the motor vehicle fund." [1981 c 315 § 13.]

Construction—1979 c 5: "Nothing in this 1979 act shall be construed to impair the obligations of any first authorization bonds issued or to be issued under RCW 47.26.420 through 47.26.427, or to enlarge the original authorization thereof over two hundred million dollars, and the retirement of and issuance of the remainder of the authorized amount of such bonds shall proceed in accordance with law under the supervision of the state finance committee." [1979 c 5 § 12.]

Effective dates—Severability—1977 ex.s. c 317: See notes following RCW 82.36.010.

47.26.425 Bonds—Designation of funds to repay bonds and interest. Any funds required to repay the first authorization of two hundred fifty million dollars of bonds authorized by RCW 47.26.420, as amended by section 18, chapter 317, Laws of 1977 ex. sess. or the interest thereon when due, shall be taken from that portion of the motor vehicle fund which results from the imposition of excise taxes on motor vehicle and special fuels and which is distributed to the urban arterial trust account in the motor vehicle fund pursuant to RCW 46.68.090(2)(e), and shall never constitute a charge against any allocations of any other such funds in the motor vehicle fund to the state, counties, cities, and towns unless and until the amount of the motor vehicle fund arising from the excise tax on motor vehicle and special fuels and distributed to the urban arterial trust account proves insufficient to meet the requirements for bond retirement or interest on any such bonds. [2007 c 519 § 7; 1999 sp.s. c 1 § 609. Prior: 1999 c 269 § 6; 1999 c 94 § 21; 1994 c 179 § 22; 1977 ex.s. c 317 § 20; 1967 ex.s. c 83 § 50.]

Severability—Effective date—1999 sp.s. c 1: See notes following RCW 43.19.1906.

Effective date—1999 c 269: See note following RCW 36.78.070.

Legislative finding—Effective dates—1999 c 94: See notes following RCW 43.84.092.

Effective dates—Severability—1977 ex.s. c 317: See notes following RCW 82.36.010.

Chapter 47.28 RCW

CONSTRUCTION AND MAINTENANCE OF HIGHWAYS

Sections

47.28.030 Contracts—State forces—Monetary limits—Small businesses, minority, and women contractors—Rules.

47.28.030 Contracts—State forces—Monetary limits—Small businesses, minority, and women contractors—Rules. A state highway shall be constructed, altered, repaired, or improved, and improvements located on property acquired for right of way purposes may be repaired or renovated pending the use of such right of way for highway purposes, by contract or state forces. The work or portions thereof may be done by state forces when the estimated costs thereof are less than fifty thousand dollars and effective July 1, 2005, sixty thousand dollars: PROVIDED, That when delay of performance of such work would jeopardize a state highway or constitute a danger to the traveling public, the work may be done by state forces when the estimated cost thereof is less than eighty thousand dollars and effective July 1, 2005, one hundred thousand dollars. When the department of transportation determines to do the work by state forces, it shall enter a statement upon its records to that effect, stating the reasons therefor. To enable a larger number of small businesses, and minority, and women contractors to effectively compete for department of transportation contracts, the department may adopt rules providing for bids and award of contracts for the performance of work, or furnishing equipment, materials, supplies, or operating services whenever any work is to be performed and the engineer's estimate indicates the cost of the work would not exceed eighty thousand dollars and effective July 1, 2005, one hundred thousand dollars. The rules adopted under this section:

(1) Shall provide for competitive bids to the extent that competitive sources are available except when delay of performance would jeopardize life or property or inconvenience the traveling public; and

(2) Need not require the furnishing of a bid deposit nor a performance bond, but if a performance bond is not required then progress payments to the contractor may be required to be made based on submittal of paid invoices to substantiate proof that disbursements have been made to laborers, material suppliers, mechanics, and subcontractors from the previous partial payment; and

(3) May establish prequalification standards and procedures as an alternative to those set forth in RCW 47.28.070, but the prequalification standards and procedures under RCW 47.28.070 shall always be sufficient.

The department of transportation shall comply with such goals and rules as may be adopted by the office of minority and women's business enterprises to implement chapter 39.19 RCW with respect to contracts entered into under this chapter. The department may adopt such rules as may be necessary to comply with the rules adopted by the office of

minority and women's business enterprises under chapter 39.19 RCW. [2007 c 218 § 90; 1999 c 15 § 1; 1984 c 194 § 1; 1983 c 120 § 15; 1977 ex.s. c 225 § 3; 1973 c 116 § 1; 1971 ex.s. c 78 § 1; 1969 ex.s. c 180 § 2; 1967 ex.s. c 145 § 40; 1961 c 233 § 1; 1961 c 13 § 47.28.030. Prior: 1953 c 29 § 1; 1949 c 70 § 1, part; 1943 c 132 § 1, part; 1937 c 53 § 41, part; Rem. Supp. 1949 § 6400-41, part.]

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

Effective date—Applicability—Severability—Conflict with federal requirements—1983 c 120: See RCW 39.19.910 and 39.19.920.

Office of minority and women's business enterprises: Chapter 39.19 RCW.

Chapter 47.29 RCW

TRANSPORTATION INNOVATIVE PARTNERSHIPS

Sections

47.29.170 Unsolicited proposals.

47.29.170 Unsolicited proposals. Before accepting any unsolicited project proposals, the commission must adopt rules to facilitate the acceptance, review, evaluation, and selection of unsolicited project proposals. These rules must include the following:

(1) Provisions that specify unsolicited proposals must meet predetermined criteria;

(2) Provisions governing procedures for the cessation of negotiations and consideration;

(3) Provisions outlining that unsolicited proposals are subject to a two-step process that begins with concept proposals and would only advance to the second step, which are fully detailed proposals, if the commission so directed;

(4) Provisions that require concept proposals to include at least the following information: Proposers' qualifications and experience; description of the proposed project and impact; proposed project financing; and known public benefits and opposition; and

(5) Provisions that specify the process to be followed if the commission is interested in the concept proposal, which must include provisions:

(a) Requiring that information regarding the potential project would be published for a period of not less than thirty days, during which time entities could express interest in submitting a proposal;

(b) Specifying that if letters of interest were received during the thirty days, then an additional sixty days for submission of the fully detailed proposal would be allowed; and

(c) Procedures for what will happen if there are insufficient proposals submitted or if there are no letters of interest submitted in the appropriate time frame.

The commission may adopt other rules as necessary to avoid conflicts with existing laws, statutes, or contractual obligations of the state.

The commission may not accept or consider any unsolicited proposals before July 1, 2009. [2007 c 518 § 702; 2006 c 370 § 604; 2005 c 317 § 17.]

Severability—Effective date—2007 c 518: See notes following RCW 46.68.170.

Severability—2006 c 370: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [2006 c 370 § 701.]

Effective date—2006 c 370: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately [March 31, 2006]." [2006 c 370 § 702.]

Chapter 47.48 RCW

CLOSING HIGHWAYS AND RESTRICTING TRAFFIC

Sections

- 47.48.040 Penalty.
47.48.060 Registry of persons allowed access to property to conduct fire prevention despite closures—Liability.

47.48.040 Penalty. Except as provided under RCW 47.48.060, when any state highway, county road, or city street or portion thereof shall have been closed, or when the maximum speed limit thereon shall have been reduced, for all vehicles or any class of vehicles, as by law provided, any person, firm, or corporation disregarding such closing or reduced speed limit shall be guilty of a misdemeanor, and shall in addition to any penalty for violation of the provisions of this section, be liable in any civil action instituted in the name of the state of Washington or the county or city or town having jurisdiction for any damages occasioned to such state highway, county road, or city street, as the case may be, as the result of disregarding such closing or reduced speed limit. [2007 c 252 § 3; 1977 ex.s. c 216 § 3; 1961 c 13 § 47.48.040. Prior: 1937 c 53 § 67; RRS § 6400-67; prior: 1921 c 21 § 3; RRS § 6841.]

47.48.060 Registry of persons allowed access to property to conduct fire prevention despite closures—Liability. (1) Each county sheriff may, until a model policy pursuant to RCW 36.28A.140 is developed and implemented in the sheriff's county, establish and maintain a registry of persons authorized to access their land during a forest [fire] or wild-fire. Upon request, the sheriff must include in the registry persons who demonstrate ownership of agriculture land or forest land within the county and who possess equipment that may be used for fire prevention or suppression activities. Persons included in the registry must be allowed to access their property to conduct fire prevention or suppression activities despite the closure of any state highway, county road, or city street under this chapter.

(2)(a) Residents, landowners, and others in lawful possession and control of land in the state are not liable for unintentional injuries or loss suffered by persons entering upon, or passing through, their land pursuant to this section.

(b) Federal, state, and local agencies, and their employees, are not liable for any action, or failure to act, when facilitating the access described in this section. [2007 c 252 § 2.]

Chapter 47.56 RCW

STATE TOLL BRIDGES, TUNNELS, AND FERRIES

Sections

- 47.56.258 Notification requirements.

[2007 RCW Supp—page 630]

47.56.258 Notification requirements. Actions under this chapter are subject to the notification requirements of RCW 43.17.400. [2007 c 62 § 10.]

Finding—Intent—Severability—2007 c 62: See notes following RCW 43.17.400.

Chapter 47.60 RCW

PUGET SOUND FERRY AND TOLL BRIDGE SYSTEM

Sections

- 47.60.005 Definitions.
47.60.150 Repealed.
47.60.286 Ferry user data survey.
47.60.290 State ferries—Review of fares and pricing policies—Proposals.
47.60.315 Fares and pricing policies—Adoption schedule—Revenues.
47.60.326 Repealed.
47.60.327 Operational strategies for asset utilization.
47.60.330 Public participation—Legislative approval.
47.60.335 Appropriation limitations—Capital program cost allocation.
47.60.345 Life-cycle cost model on capital assets.
47.60.355 Preservation funding requests—Predesign study.
47.60.365 Terminal design standards.
47.60.375 Capital plan.
47.60.385 Terminal improvement project funding requests—Predesign study.
47.60.395 Evaluation of cost allocation methodology and preservation and improvement costs. (*Expires December 31, 2010.*)
47.60.658 Passenger--only ferry service between Vashon and Seattle.
47.60.662 Ferry system collaboration with passenger--only ferry service providers.
47.60.824 Design-build ferries—Single best-qualified proposer—Incentives—Proposal negotiations—Compensation.
47.60.8241 Findings—Single proposal process for new ferry vessel construction.

47.60.005 Definitions. The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

(1) "Adaptive management" means a systematic process for continually improving management policies and practices by learning from the outcomes of operational programs.

(2) "Capital plan" means the state ferry system plan developed by the department as described in RCW 47.06.050(2) and adopted by the commission.

(3) "Capital project" has the same meaning as used in budget instructions developed by the office of financial management.

(4) "Commission" means the transportation commission created in RCW 47.01.051.

(5) "Improvement project" has the same meaning as in the budget instructions developed by the office of financial management. If the budget instructions do not define improvement project, then it has the same meaning as "program project" in the budget instructions. If a project meets both the improvement project and preservation project definitions in this section it must be defined as an improvement project. New vessel acquisitions must be defined as improvement projects.

(6) "Life-cycle cost model" means that portion of a capital asset inventory system which, among other things, is used to estimate future preservation needs.

(7) "Maintenance cost" has the same meaning as used in budget instructions developed by the office of financial management.

(8) "Preservation project" has the same meaning as used in budget instructions developed by the office of financial management.

(9) "Route" means all ferry sailings from one location to another, such as the Seattle to Bainbridge route or the Port Townsend to Keystone route.

(10) "Sailing" means an individual ferry sailing for a specific route, such as the 5:00 p.m. sailing from Seattle to Bremerton.

(11) "Travel shed" means one or more ferry routes with distinct characteristics as determined by the department. [2007 c 512 § 3.]

Finding—Intent—2007 c 512: See note following RCW 47.06.140.

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

47.60.286 Ferry user data survey. (1) The commission shall, with the involvement of the department, conduct a survey to gather data on ferry users to help inform level of service, operational, pricing, planning, and investment decisions. The survey must include, but is not limited to:

- (a) Recreational use;
- (b) Walk-on customer use;
- (c) Vehicle customer use;
- (d) Freight and goods movement demand; and
- (e) Reactions to potential operational strategies and pricing policies described under RCW 47.60.327 and 47.60.290.

(2) The commission shall develop the survey after providing an opportunity for ferry advisory committees to offer input.

(3) The survey must be updated at least every two years and maintained to support the development and implementation of adaptive management of ferry services. [2007 c 512 § 4.]

Finding—Intent—2007 c 512: See note following RCW 47.06.140.

47.60.290 State ferries—Review of fares and pricing policies—Proposals. (1) The department shall annually review fares and pricing policies applicable to the operation of the Washington state ferries.

(2) Beginning in 2008, the department shall develop fare and pricing policy proposals that must:

(a) Recognize that each travel shed is unique, and might not have the same farebox recovery rate and the same pricing policies;

(b) Use data from the current survey conducted under RCW 47.60.286;

(c) Be developed with input from affected ferry users by public hearing and by review with the affected ferry advisory committees, in addition to the data gathered from the survey conducted in RCW 47.60.286;

(d) Generate the amount of revenue required by the biennial transportation budget;

(e) Consider the impacts on users, capacity, and local communities; and

(f) Keep fare schedules as simple as possible.

(3) While developing fare and pricing policy proposals, the department must consider the following:

(a) Options for using pricing to level vehicle peak demand; and

(b) Options for using pricing to increase off-peak ridership. [2007 c 512 § 5; 1983 c 3 § 136; 1972 ex.s. c 24 § 6; 1961 c 13 § 47.60.290. Prior: 1959 c 199 § 1.]

Finding—Intent—2007 c 512: See note following RCW 47.06.140.

47.60.315 Fares and pricing policies—Adoption schedule—Revenues. (1) The commission shall adopt fares and pricing policies by rule, under chapter 34.05 RCW, according to the following schedule:

(a) Each year the department shall provide the commission a report of its review of fares and pricing policies, with recommendations for the revision of fares and pricing policies for the ensuing year;

(b) By September 1st of each year, beginning in 2008, the commission shall adopt by rule fares and pricing policies for the ensuing year.

(2) The commission may adopt by rule fares that are effective for more or less than one year for the purposes of transitioning to the fare schedule in subsection (1) of this section.

(3) The commission may increase ferry fares included in the schedule of charges adopted under this section by a percentage that exceeds the fiscal growth factor.

(4) The chief executive officer of the ferry system may authorize the use of promotional, discounted, and special event fares to the general public and commercial enterprises for the purpose of maximizing capacity use and the revenues collected by the ferry system. The department shall report to the commission a summary of the promotional, discounted, and special event fares offered during each fiscal year and the financial results from these activities.

(5) Fare revenues and other revenues deposited in the Puget Sound ferry operations account created in RCW 47.60.530 may not be used to support the Puget Sound capital construction account created in RCW 47.60.505, unless the support for capital is separately identified in the fare.

(6) The commission may not raise fares until the fare rules contain pricing policies developed under RCW 47.60.290, or September 1, 2009, whichever is later. [2007 c 512 § 6.]

Finding—Intent—2007 c 512: See note following RCW 47.06.140.

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

47.60.327 Operational strategies for asset utilization. (1) The department shall develop, and the commission shall review, operational strategies to ensure that existing assets are fully utilized and to guide future investment decisions. These operational strategies must, at a minimum:

(a) Recognize that each travel shed is unique and might not have the same operational strategies;

(b) Use data from the current survey conducted under RCW 47.60.286;

(c) Be consistent with vehicle level of service standards;

(d) Choose the most efficient balance of capital and operating investments by using a life-cycle cost analysis; and

(e) Use methods of collecting fares that maximize efficiency and achieve revenue management control.

(2) After the commission reviews recommendations by the department, the commission and department shall make joint recommendations to the legislature for the improvement of operational strategies.

(3) In developing operational strategies, the following, at a minimum, must be considered:

(a) The feasibility of using reservation systems;

(b) Methods of shifting vehicular traffic to other modes of transportation;

(c) Methods of improving on-dock operations to maximize efficiency and minimize operating and capital costs;

(d) A cost-benefit analysis of remote holding versus over-water holding;

(e) Methods of reorganizing holding areas and minimizing on-dock employee parking to maximize the dock size available for customer vehicles;

(f) Schedule modifications;

(g) Efficiencies in exit queuing and metering;

(h) Interoperability with other transportation services;

(i) Options for leveling vehicle peak demand; and

(j) Options for increasing off-peak ridership.

(4) Operational strategies must be reevaluated periodically and, at a minimum, before developing a new capital plan. [2007 c 512 § 7.]

Finding—Intent—2007 c 512: See note following RCW 47.06.140.

47.60.330 Public participation—Legislative approval. (1) Before a substantial change to the service levels provided to ferry users, the department shall consult with affected ferry users by public hearing and by review with the affected ferry advisory committees.

(2) Before adding or eliminating a ferry route, the department shall consult with affected ferry users and receive legislative approval. [2007 c 512 § 8; 2003 c 374 § 5; 1983 c 15 § 26.]

Finding—Intent—2007 c 512: See note following RCW 47.06.140.

Severability—1983 c 15: See RCW 47.64.910.

47.60.335 Appropriation limitations—Capital program cost allocation. (1) Appropriations made for the Washington state ferries capital program may not be used for maintenance costs.

(2) Appropriations made for preservation projects shall be spent only on preservation and only when warranted by asset condition, and shall not be spent on master plans, right-of-way acquisition, or other nonpreservation items.

(3) Systemwide and administrative capital program costs shall be allocated to specific capital projects using a cost allocation plan developed by the department. Systemwide and administrative capital program costs shall be identifiable. [2007 c 512 § 9.]

Finding—Intent—2007 c 512: See note following RCW 47.06.140.

47.60.345 Life-cycle cost model on capital assets. (1) The department shall maintain a life-cycle cost model on capital assets such that:

(a) Available industry standards are used for estimating the life of an asset, and department-adopted standard life

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cycles derived from the experience of similar public and private entities are used when industry standards are not available;

(b) Standard estimated life is adjusted for asset condition when inspections are made;

(c) It does not include utilities or other systems that are not replaced on a standard life cycle; and

(d) It does not include assets not yet built.

(2) All assets in the life-cycle cost model must be inspected and updated in the life-cycle cost model for asset condition at least every three years.

(3) The life-cycle cost model shall be used when estimating future system preservation needs. [2007 c 512 § 10.]

Finding—Intent—2007 c 512: See note following RCW 47.06.140.

47.60.355 Preservation funding requests—Predesign study. (1) Preservation funding requests shall only be for assets in the life-cycle cost model.

(2) Preservation funding requests that exceed five million dollars per project must be accompanied by a predesign study. The predesign study must include all elements required by the office of financial management. [2007 c 512 § 11.]

Finding—Intent—2007 c 512: See note following RCW 47.06.140.

47.60.365 Terminal design standards. The department shall develop terminal design standards that:

(1) Adhere to vehicle level of service standards as described in RCW 47.06.140;

(2) Adhere to operational strategies as described in RCW 47.60.327; and

(3) Choose the most efficient balance between capital and operating investments by using a life-cycle cost analysis. [2007 c 512 § 12.]

Finding—Intent—2007 c 512: See note following RCW 47.06.140.

47.60.375 Capital plan. The capital plan must adhere to the following:

(1) A current ridership demand forecast;

(2) Vehicle level of service standards as described in RCW 47.06.140;

(3) Operational strategies as described in RCW 47.60.327; and

(4) Terminal design standards as described in RCW 47.60.365. [2007 c 512 § 13.]

Finding—Intent—2007 c 512: See note following RCW 47.06.140.

47.60.385 Terminal improvement project funding requests—Predesign study. (1) Terminal improvement project funding requests must adhere to the capital plan.

(2) Requests for terminal improvement design and construction funding must be submitted with a predesign study that:

(a) Includes all elements required by the office of financial management;

(b) Separately identifies basic terminal elements essential for operation and their costs;

(c) Separately identifies additional elements to provide ancillary revenue and customer comfort and their costs;

(d) Includes construction phasing options that are consistent with forecasted ridership increases;

(e) Separately identifies additional elements requested by local governments and the cost and proposed funding source of those elements;

(f) Separately identifies multimodal elements and the cost and proposed funding source of those elements; and

(g) Identifies all contingency amounts. [2007 c 512 § 14.]

Finding—Intent—2007 c 512: See note following RCW 47.06.140.

47.60.395 Evaluation of cost allocation methodology and preservation and improvement costs. (Expires December 31, 2010.) (1) The joint legislative audit and review committee shall assess and report as follows:

(a) Audit the implementation of the cost allocation methodology evaluated under [section 205,] chapter 518, Laws of 2007, as it exists on July 22, 2007, assessing whether actual costs are allocated consistently with the methodology, whether there are sufficient internal controls to ensure proper allocation, and the adequacy of staff training; and

(b) Review the assignment of preservation costs and improvement costs for fiscal year 2009 to determine whether:

(i) The costs are capital costs;

(ii) The costs meet the statutory requirements for preservation activities and for improvement activities; and

(iii) Improvement costs are within the scope of legislative appropriations.

(2) The report on the evaluations in this section is due by January 31, 2010.

(3) This section expires December 31, 2010. [2007 c 512 § 15.]

Finding—Intent—2007 c 512: See note following RCW 47.06.140.

47.60.658 Passenger--only ferry service between Vashon and Seattle. The department shall maintain the level of service existing on January 1, 2006, for the Vashon to Seattle passenger-only ferry route until such time as the route is assumed by another entity, providing a level of service at or exceeding the state level. [2007 c 223 § 8; 2006 c 332 § 3.]

Effective date—2007 c 223: See note following RCW 36.57A.220.

47.60.662 Ferry system collaboration with passenger--only ferry service providers. The Washington state ferry system shall collaborate with new and potential passenger-only ferry service providers, as described in chapters 36.54 and 36.57A RCW, for terminal operations at its existing terminal facilities. [2007 c 223 § 3; 2006 c 332 § 5.]

Effective date—2007 c 223: See note following RCW 36.57A.220.

47.60.824 Design-build ferries—Single best-qualified proposer—Incentives—Proposal negotiations—Compensation. If at any point there is only a single best-qualified proposer participating in the competitive design-build procurement process prior to the submission of bids in phase three, or if there is only a single responsive and responsible bid submitted in phase three, or if the current best-qualified proposers elect to jointly submit a single proposal, the department may negotiate a fair-value contract with the proposer or joint proposers. The negotiations may consider the scope of

work as well as contract price. The contract price must be established between the department and the proposer through negotiation based on detailed cost and price information provided by the proposer, the department, and other relevant sources in a format as determined by the department. To achieve efficiencies, the department may negotiate incentives and economic cost sharing between the state and the proposer. In addition to the cost incentives, other incentives may be considered, as determined by the department, to be in the best interests of the state. Such incentives may include, but are not limited to, key schedule milestones, technological innovations, performance efficiencies, constructability, and operational value or life-cycle cost. The department may issue guidelines, requirements, and procedures for all negotiations.

If the department conducts negotiations with a single remaining proposer or joint proposers prior to the submission of bids in phase three, all negotiations must be completed within forty-five days of the department's approval of the final technical proposal. If the department conducts negotiations with a single responsive and responsible phase three bidder, all negotiations must be completed within thirty days of submission of the phase three bids.

If the department reaches an agreement with the proposer or joint proposers, the department shall submit a copy of the contract, the final negotiated price, and supporting information to the office of financial management at least ten days prior to execution of the contract. If the final negotiated price is greater than the legislature's adopted expenditure plan for vessel construction, the department may not execute the contract until the legislature reviews the final proposals and adjusts the expenditure plan accordingly.

If the department is unable within the designated time period to reach an agreement with the proposer or joint proposers that is fair, reasonable, and in the department's budget, or if the proposers initially provide notice of their intent to jointly submit a single proposal but fail to do so, or if any one of the proposers withdraws from a jointly submitted single proposal before entering into a contract with the department, or if both of the current best-qualified proposers withdraw or otherwise fail to proceed with the request for proposals process, the department may issue a new request for proposals or cancel the request for proposals process, to serve the best interests of the state.

The department may pay an honorarium in a specified amount determined by the department to a proposer or joint proposers who has [have] submitted a final, approved technical proposal and with whom the department has engaged in unsuccessful negotiations. The proposer or joint proposers shall not receive any other compensation for attempting to negotiate a contract, except to the extent allowed by the department in a final contract awarded pursuant to the request for proposal. [2007 c 481 § 2.]

Effective date—2007 c 481: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately [May 14, 2007]." [2007 c 481 § 3.]

47.60.8241 Findings—Single proposal process for new ferry vessel construction. The legislature finds that the Washington state ferry system has an excellent safety record

and has commenced a long-term vessel procurement plan to ensure the replacement of older and outdated ferry vessels. The legislature further finds that the current vessel procurement process must move forward with all due speed, balancing the interests of both the taxpayers and shipyards. The commencement of construction of new vessels is important not only for safety reasons, but also to keep skilled marine construction jobs in the Puget Sound region and to sustain the capacity of the region to meet the ongoing preservation needs of the ferry system fleet of vessels.

The legislature further finds that the balancing of interests described in this section may necessitate the department of transportation to consider in the department's current new 144—auto ferries request for proposals a single proposal submitted jointly by the current best-qualified proposers. The department may, therefore, consider and accept or reject in the department's discretion such a single proposal, and the current best-qualified proposers may meet and confer to discuss matters that are reasonably necessary to determine whether to submit such a single proposal and to implement a single final contract if the proposal is accepted by the department. Discussions may address the terms of any agreement that may be entered into between the best-qualified proposers for purposes of submitting a single proposal, as well as any agreement that may be entered into with the department. Discussions may also address cost and price information and division of work under the request for proposals. The current best-qualified proposers shall each expressly declare in writing to the department, their intent, if any, to jointly submit a single proposal within thirty days of May 14, 2007, and shall further provide within the thirty-day period information that may be required by the department including, but not limited to, information regarding the proposed shipyard organizational structure and responsibilities of each participant. If at the end of the thirty-day period the proposers have not declared such an intent and provided the information required by the department, or if the department, in its discretion, determines that the joint venture, other legal entity, or organizational structure, or division of responsibilities intended by the joint proposers are unacceptable and not in the best interests of the state, the proposers will be deemed as proposing separately to the request for proposals, and further discussions related to the request for proposals shall not be allowed between the proposers.

To further facilitate the balancing of interests described in this section, the department of transportation may, in its discretion, make revisions to the request for proposals that the department deems necessary or appropriate to balance such interests. [2007 c 481 § 1.]

Effective date—2007 c 481: See note following RCW 47.60.824.

Chapter 47.64 RCW

MARINE EMPLOYEES—PUBLIC EMPLOYMENT RELATIONS

Sections

47.64.170	Collective bargaining procedures.
47.64.210	Mediation.
47.64.230	Waiver of mediation.
47.64.300	Interest arbitration—Procedures.

47.64.170 Collective bargaining procedures. (1) Any ferry employee organization certified as the bargaining representative shall be the exclusive representative of all ferry employees in the bargaining unit and shall represent all such employees fairly.

(2) A ferry employee organization or organizations and the governor may each designate any individual as its representative to engage in collective bargaining negotiations.

(3) Negotiating sessions, including strategy meetings of the employer or employee organizations, mediation, and the deliberative process of arbitrators are exempt from the provisions of chapter 42.30 RCW. Hearings conducted by arbitrators may be open to the public by mutual consent of the parties.

(4) Terms of any collective bargaining agreement may be enforced by civil action in Thurston county superior court upon the initiative of either party.

(5) Ferry system employees or any employee organization shall not negotiate or attempt to negotiate directly with anyone other than the person who has been appointed or authorized a bargaining representative for the purpose of bargaining with the ferry employees or their representative.

(6)(a) Within ten working days after the first Monday in September of every odd-numbered year, the parties shall attempt to agree on an interest arbitrator to be used if the parties are not successful in negotiating a comprehensive collective bargaining agreement. If the parties cannot agree on an arbitrator within the ten-day period, either party may request a list of seven arbitrators from the federal mediation and conciliation service. The parties shall select an interest arbitrator using the coin toss/alternate strike method within thirty calendar days of receipt of the list. Immediately upon selecting an interest arbitrator, the parties shall cooperate to reserve dates with the arbitrator for potential arbitration between August 1st and September 15th of the following even-numbered year. The parties shall also prepare a schedule of at least five negotiation dates for the following year, absent an agreement to the contrary. The parties shall execute a written agreement before November 1st of each odd-numbered year setting forth the name of the arbitrator and the dates reserved for bargaining and arbitration. This subsection (6)(a) imposes minimum obligations only and is not intended to define or limit a party's full, good faith bargaining obligation under other sections of this chapter.

(b) The negotiation of a proposed collective bargaining agreement by representatives of the employer and a ferry employee organization shall commence on or about February 1st of every even-numbered year.

(c) For negotiations covering the 2009-2011 biennium and subsequent biennia, the time periods specified in this section, and in RCW 47.64.210 and 47.64.300 through 47.64.320, must ensure conclusion of all agreements on or before October 1st of the even-numbered year next preceding the biennial budget period during which the agreement should take effect. These time periods may only be altered by mutual agreement of the parties in writing. Any such agreement and any impasse procedures agreed to by the parties under RCW 47.64.200 must include an agreement regarding the new time periods that will allow final resolution by negotiations or arbitration by October 1st of each even-numbered year.

(7) Until a new collective bargaining agreement is in effect, the terms and conditions of the previous collective bargaining agreement shall remain in force. It is the intent of this section that the collective bargaining agreement or arbitrator's award shall commence on July 1st of each odd-numbered year and shall terminate on June 30th of the next odd-numbered year to coincide with the ensuing biennial budget year, as defined by RCW 43.88.020(7), to the extent practical. It is further the intent of this section that all collective bargaining agreements be concluded by October 1st of the even-numbered year before the commencement of the biennial budget year during which the agreements are to be in effect.

(8)(a) The governor shall submit a request either for funds necessary to implement the collective bargaining agreements including, but not limited to, the compensation and fringe benefit provisions or for legislation necessary to implement the agreement, or both. Requests for funds necessary to implement the collective bargaining agreements shall not be submitted to the legislature by the governor unless such requests:

(i) Have been submitted to the director of the office of financial management by October 1st before the legislative session at which the requests are to be considered; and

(ii) Have been certified by the director of the office of financial management as being feasible financially for the state.

(b) The governor shall submit a request either for funds necessary to implement the arbitration awards or for legislation necessary to implement the arbitration awards, or both. Requests for funds necessary to implement the arbitration awards shall not be submitted to the legislature by the governor unless such requests have been submitted to the director of the office of financial management by October 1st before the legislative session at which the requests are to be considered.

(c) The legislature shall approve or reject the submission of the request for funds necessary to implement the collective bargaining agreements or arbitration awards as a whole for each agreement or award. The legislature shall not consider a request for funds to implement a collective bargaining agreement or arbitration award unless the request is transmitted to the legislature as part of the governor's budget document submitted under RCW 43.88.030 and 43.88.060. If the legislature rejects or fails to act on the submission, either party may reopen all or part of the agreement and award or the exclusive bargaining representative may seek to implement the procedures provided for in RCW 47.64.210 and 47.64.300.

(9) If, after the compensation and fringe benefit provisions of an agreement are approved by the legislature, a significant revenue shortfall occurs resulting in reduced appropriations, as declared by proclamation of the governor or by resolution of the legislature, both parties shall immediately enter into collective bargaining for a mutually agreed upon modification of the agreement. [2007 c 160 § 1; 2006 c 164 § 6; 1983 c 15 § 8.]

Prospective application—Savings—Effective dates—2006 c 164:
See notes following RCW 47.64.011.

47.64.210 Mediation. In the absence of an impasse agreement between the parties or the failure of either party to utilize its procedures by August 1st in the even-numbered year preceding the biennium, either party may request the commission to appoint an impartial and disinterested person to act as mediator. It is the function of the mediator to bring the parties together to effectuate a settlement of the dispute, but the mediator shall not compel the parties to agree. [2007 c 160 § 2; 2006 c 164 § 8; 1983 c 15 § 12.]

Prospective application—Savings—Effective dates—2006 c 164:
See notes following RCW 47.64.011.

47.64.230 Waiver of mediation. By mutual agreement, the parties may waive mediation and proceed with binding arbitration as provided for in the impasse procedures agreed to under RCW 47.64.200 or in 47.64.300 through 47.64.320, as applicable. The waiver shall be in writing and be signed by the representatives of the parties. Regardless of the status of mediation, the parties must comply with the interest arbitration agreement under RCW 47.64.170(6)(a), absent any subsequent agreement to the contrary. [2007 c 160 § 3; 2006 c 164 § 11; 1983 c 15 § 14.]

Prospective application—Savings—Effective dates—2006 c 164:
See notes following RCW 47.64.011.

47.64.300 Interest arbitration—Procedures. (1) If an agreement has not been reached following a reasonable period of negotiations and, when applicable, mediation, upon the recommendation of the assigned mediator that the parties remain at impasse or, with respect to biennial bargaining, in compliance with the interest arbitration agreement under RCW 47.64.170(6)(a), all impasse items shall be submitted to arbitration under this section. The issues for arbitration shall be limited to the issues certified by the commission.

(2) The parties may agree to submit the dispute to a single arbitrator, whose authority and duties shall be the same as those of an arbitration panel. If the parties cannot agree on the arbitrator within five working days, the selection shall be made under subsection (3) of this section, except with respect to biennial bargaining described under RCW 47.64.170(6). The full costs of arbitration under this section shall be shared equally by the parties to the dispute.

(3) Within seven days following the issuance of the determination of the commission, each party shall, absent an agreement to the contrary, name one person to serve as its arbitrator on the arbitration panel. Except with respect to biennial bargaining described under RCW 47.64.170(6), the two members so appointed shall meet within seven days following the appointment of the later appointed member to attempt to choose a third member to act as the neutral chair of the arbitration panel. Upon the failure of the arbitrators to select a neutral chair within seven days, either party may apply to the federal mediation and conciliation service, or, with the consent of the parties, the American arbitration association to provide a list of five qualified arbitrators from which the neutral chair shall be chosen. Each party shall pay the fees and expenses of its arbitrator, and the fees and expenses of the neutral chair shall be shared equally between the parties.

(4) In consultation with the parties, the arbitrator or arbitration panel shall promptly establish a date, time, and place

for a hearing and shall provide reasonable notice thereof to the parties to the dispute. The parties shall exchange final positions in writing, with copies to the arbitrator or arbitration panel, with respect to every issue to be arbitrated, on a date mutually agreed upon, but in no event later than ten working days before the date set for hearing. A hearing, which shall be informal, shall be held, and each party shall have the opportunity to present evidence and make argument. No member of the arbitration panel may present the case for a party to the proceedings. The rules of evidence prevailing in judicial proceedings may be considered, but are not binding, and any oral testimony or documentary evidence or other data deemed relevant by the chair of the arbitration panel may be received in evidence. A recording of the proceedings shall be taken. The arbitration panel has the power to administer oaths, require the attendance of witnesses, and require the production of such books, papers, contracts, agreements, and documents as may be deemed by the panel to be material to a just determination of the issues in dispute. If any person refuses to obey a subpoena issued by the arbitration panel, or refuses to be sworn or to make an affirmation to testify, or any witness, party, or attorney for a party is guilty of any contempt while in attendance at any hearing held hereunder, the arbitration panel may invoke the jurisdiction of the superior court in the county where the labor dispute exists, and the court has jurisdiction to issue an appropriate order. Any failure to obey the order may be punished by the court as a contempt thereof.

(5) The neutral chair shall consult with the other members of the arbitration panel, if a panel has been created. Within thirty days following the conclusion of the hearing, or sooner as the October 1st deadline set forth in RCW 47.64.170 (6)(c) and (7) necessitates, the neutral chair shall make written findings of fact and a written determination of the issues in dispute, based on the evidence presented. A copy thereof shall be served on each of the other members of the arbitration panel, and on each of the parties to the dispute. That determination is final and binding upon both parties, subject to review by the superior court upon the application of either party solely upon the question of whether the decision of the panel was arbitrary or capricious. [2007 c 160 § 4; 2006 c 164 § 12.]

Prospective application—Savings—Effective dates—2006 c 164: See notes following RCW 47.64.011.

Chapter 47.76 RCW RAIL FREIGHT SERVICE

Sections

47.76.230 Freight rail planning—Railroad safety.
47.76.240 Rail preservation program.

47.76.230 Freight rail planning—Railroad safety. (1) The department of transportation shall continue its responsibility for the development and implementation of the state rail plan and programs, and the utilities and transportation commission shall continue its responsibility for railroad safety issues.

(2) The department of transportation shall maintain an enhanced data file on the rail system. Proprietary annual station traffic data from each railroad and the modal use of

major shippers must be obtained to the extent that such information is available.

(3) The department of transportation shall provide technical assistance, upon request, to state agencies and local interests. Technical assistance includes, but is not limited to, the following:

(a) Rail project cost-benefit analyses conducted in accordance with methodologies recommended by the federal railroad administration;

(b) Assistance in the formation of county rail districts and port districts; and

(c) Feasibility studies for rail service continuation or rail service assistance, or both.

(4) With funding authorized by the legislature, the department of transportation, in collaboration with the department of community, trade, and economic development, and local economic development agencies, and other interested public and private organizations, shall develop a cooperative process to conduct community and business information programs and to regularly disseminate information on rail matters. [2007 c 234 § 94; 1995 c 380 § 4; 1990 c 43 § 3. Formerly RCW 47.76.120.]

Construction—Severability—Headings—1990 c 43: See notes following RCW 81.100.010.

47.76.240 Rail preservation program. The state, counties, local communities, ports, railroads, labor, and shippers all benefit from continuation of rail service and should participate in its preservation. Lines that provide benefits to the state and local jurisdictions, such as avoided roadway costs, reduced traffic congestion, economic development potential, environmental protection, and safety, should be assisted through the joint efforts of the state, local jurisdictions, and the private sector.

State funding for rail service, rail preservation, and corridor preservation projects must benefit the state's interests. The state's interest is served by reducing public roadway maintenance and repair costs, increasing economic development opportunities, increasing domestic and international trade, preserving jobs, and enhancing safety. State funding for projects is contingent upon appropriate local jurisdiction and private sector participation and cooperation. Before spending state moneys on projects, the department shall seek federal, local, and private funding and participation to the greatest extent possible.

(1) The department of transportation shall continue to monitor the status of the state's mainline and branchline common carrier railroads and preserved rail corridors through the state rail plan and various analyses, and shall seek alternatives to abandonment prior to interstate commerce commission proceedings, where feasible.

(2) The utilities and transportation commission shall intervene in proceedings of the surface transportation board, or its successor agency, on abandonments, when necessary, to protect the state's interest.

(3) The department of transportation, in consultation with the Washington state freight rail policy advisory committee, shall establish criteria for evaluating rail projects and corridors of significance to the state.

(4) Local jurisdictions may implement rail service preservation projects in the absence of state participation.

(5) The department of transportation shall continue to monitor projects for which it provides assistance. [2007 c 234 § 95; 1995 c 380 § 5; 1993 c 224 § 3; 1990 c 43 § 4. Formerly RCW 47.76.130.]

Construction—Severability—Headings—1990 c 43: See notes following RCW 81.100.010.

Chapter 47.80 RCW

REGIONAL TRANSPORTATION PLANNING ORGANIZATIONS

Sections

47.80.023	Duties.
47.80.060	Executive board membership.

47.80.023 Duties. Each regional transportation planning organization shall have the following duties:

(1) Prepare and periodically update a transportation strategy for the region. The strategy shall address alternative transportation modes and transportation demand management measures in regional corridors and shall recommend preferred transportation policies to implement adopted growth strategies. The strategy shall serve as a guide in preparation of the regional transportation plan.

(2) Prepare a regional transportation plan as set forth in RCW 47.80.030 that is consistent with county-wide planning policies if such have been adopted pursuant to chapter 36.70A RCW, with county, city, and town comprehensive plans, and state transportation plans.

(3) Certify by December 31, 1996, that the transportation elements of comprehensive plans adopted by counties, cities, and towns within the region reflect the guidelines and principles developed pursuant to RCW 47.80.026, are consistent with the adopted regional transportation plan, and, where appropriate, conform with the requirements of RCW 36.70A.070.

(4) Where appropriate, certify that county-wide planning policies adopted under RCW 36.70A.210 and the adopted regional transportation plan are consistent.

(5) Develop, in cooperation with the department of transportation, operators of public transportation services and local governments within the region, a six-year regional transportation improvement program which proposes regionally significant transportation projects and programs and transportation demand management measures. The regional transportation improvement program shall be based on the programs, projects, and transportation demand management measures of regional significance as identified by transit agencies, cities, and counties pursuant to RCW 35.58.2795, 35.77.010, and 36.81.121, respectively. The program shall include a priority list of projects and programs, project segments and programs, transportation demand management measures, and a specific financial plan that demonstrates how the transportation improvement program can be funded. The program shall be updated at least every two years for the ensuing six-year period.

(6) Designate a lead planning agency to coordinate preparation of the regional transportation plan and carry out the other responsibilities of the organization. The lead planning agency may be a regional organization, a component county,

city, or town agency, or the appropriate Washington state department of transportation district office.

(7) Review level of service methodologies used by cities and counties planning under chapter 36.70A RCW to promote a consistent regional evaluation of transportation facilities and corridors.

(8) Work with cities, counties, transit agencies, the department of transportation, and others to develop level of service standards or alternative transportation performance measures.

(9) Submit to the agency council on coordinated transportation, as provided in chapter 47.06B RCW, beginning on July 1, 2007, and every four years thereafter, an updated plan that includes the elements identified by the council. Each regional transportation planning organization must submit to the council every two years a prioritized regional human service and transportation project list. [2007 c 421 § 5; 1998 c 171 § 8; 1994 c 158 § 2.]

47.80.060 Executive board membership. In order to qualify for state planning funds available to regional transportation planning organizations, the regional transportation planning organizations containing any county with a population in excess of one million shall provide voting membership on its executive board to the state transportation commission, the state department of transportation, the four largest public port districts within the region as determined by gross operating revenues, any incorporated principal city of a metropolitan statistical area within the region, as designated by the United States census bureau, and any incorporated city within the region with a population in excess of eighty thousand. It shall further assure that at least fifty percent of the county and city local elected officials who serve on the executive board also serve on transit agency boards or on a regional transit authority. [2007 c 511 § 1; 2005 c 334 § 1; 1992 c 101 § 31.]

Section headings not part of law—Severability—Effective date—1992 c 101: See RCW 81.112.900 through 81.112.902.

Title 48

INSURANCE

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Chapter 48.02 RCW

INSURANCE COMMISSIONER

Sections

- 48.02.065 Confidentiality of documents, materials, or other information—Public disclosure.
- 48.02.190 Operating costs of office—Insurance commissioner's regulatory account—Regulatory surcharge (*as amended by 2007 c 153*).
- 48.02.190 Operating costs of office—Insurance commissioner's regulatory account—Contributions by insurance organizations, fees (*as amended by 2007 c 468*).

48.02.065 Confidentiality of documents, materials, or other information—Public disclosure. (1) Documents, materials, or other information as described in either subsection (5) or (6), or both, of this section are confidential by law and privileged, are not subject to public disclosure under chapter 42.56 RCW, and are not subject to subpoena directed to the commissioner or any person who received documents, materials, or other information while acting under the authority of the commissioner. The commissioner is authorized to use such documents, materials, or other information in the furtherance of any regulatory or legal action brought as a part of the commissioner's official duties. The confidentiality and privilege created by this section and *RCW 42.56.400(9) applies only to the commissioner, any person acting under the authority of the commissioner, the national association of insurance commissioners and its affiliates and subsidiaries, regulatory and law enforcement officials of other states and nations, the federal government, and international authorities.

(2) Neither the commissioner nor any person who received documents, materials, or other information while acting under the authority of the commissioner is permitted or required to testify in any private civil action concerning any confidential and privileged documents, materials, or information subject to subsection (1) of this section.

(3) The commissioner:

(a) May share documents, materials, or other information, including the confidential and privileged documents, materials, or information subject to subsection (1) of this section, with (i) the national association of insurance commissioners and its affiliates and subsidiaries, and (ii) regulatory and law enforcement officials of other states and nations, the federal government, and international authorities, if the recipient agrees to maintain the confidentiality and privileged status of the document, material, or other information;

(b) May receive documents, materials, or information, including otherwise either confidential or privileged, or both, documents, materials, or information, from (i) the national association of insurance commissioners and its affiliates and

subsidiaries, and (ii) regulatory and law enforcement officials of other states and nations, the federal government, and international authorities and shall maintain as confidential and privileged any document, material, or information received that is either confidential or privileged, or both, under the laws of the jurisdiction that is the source of the document, material, or information; and

(c) May enter into agreements governing the sharing and use of information consistent with this subsection.

(4) No waiver of an existing privilege or claim of confidentiality in the documents, materials, or information may occur as a result of disclosure to the commissioner under this section or as a result of sharing as authorized in subsection (3) of this section.

(5) Documents, materials, or information, which is either confidential or privileged, or both, which has been provided to the commissioner by (a) the national association of insurance commissioners and its affiliates and subsidiaries, (b) regulatory or law enforcement officials of other states and nations, the federal government, or international authorities, or (c) agencies of this state, is confidential and privileged only if the documents, materials, or information is protected from disclosure by the applicable laws of the jurisdiction that is the source of the document, material, or information.

(6) Working papers, documents, materials, or information produced by, obtained by, or disclosed to the commissioner or any other person in the course of a financial or market conduct examination, or in the course of financial analysis or market conduct desk audit, are not required to be disclosed by the commissioner unless cited by the commissioner in connection with an agency action as defined in RCW 34.05.010(3). The commissioner shall notify a party that produced the documents, materials, or information five business days before disclosure in connection with an agency action. The notified party may seek injunctive relief in any Washington state superior court to prevent disclosure of any documents, materials, or information it believes is confidential or privileged. In civil actions between private parties or in criminal actions, disclosure to the commissioner under this section does not create any privilege or claim of confidentiality or waive any existing privilege or claim of confidentiality.

(7)(a) After receipt of a public disclosure request, the commissioner shall disclose the documents, materials, or information under subsection (6) of this section that relate to a financial or market conduct examination undertaken as a result of a proposed change of control of a nonprofit or mutual health insurer governed in whole or in part by chapter 48.31B or 48.31C RCW.

(b) The commissioner is not required to disclose the documents, materials, or information in (a) of this subsection if:

(i) The documents, materials, or information are otherwise privileged or exempted from public disclosure; or

(ii) The commissioner finds that the public interest in disclosure of the documents, materials, or information is outweighed by the public interest in nondisclosure in that particular instance.

(8) Any person may petition a Washington state superior court to allow inspection of information exempt from public disclosure under subsection (6) of this section when the information is connected to allegations of negligence or malfeasance by the commissioner related to a financial or market

conduct examination. The court shall conduct an in-camera review after notifying the commissioner and every party that produced the information. The court may order the commissioner to allow the petitioner to have access to the information provided the petitioner maintains the confidentiality of the information. The petitioner must not disclose the information to any other person, except upon further order of the court. After conducting a regular hearing, the court may order that the information can be disclosed publicly if the court finds that there is a public interest in the disclosure of the information and the exemption of the information from public disclosure is clearly unnecessary to protect any individual's right of privacy or any vital governmental function. [2007 c 126 § 1. Prior: 2005 c 274 § 309; 2005 c 126 § 1; 2001 c 57 § 1.]

*Reviser's note: RCW 42.56.400 was amended by 2007 c 197 § 7, changing subsection (9) to subsection (8).

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

48.02.190 Operating costs of office—Insurance commissioner's regulatory account—Regulatory surcharge (as amended by 2007 c 153).

(1) As used in this section:

(a) "Organization" means every insurer, as defined in RCW 48.01.050, having a certificate of authority to do business in this state and every health care service contractor or ~~((self-funded))~~ self-funded multiple employer welfare arrangement registered to do business in this state. "Class one" organizations shall consist of all insurers as defined in RCW 48.01.050. "Class two" organizations shall consist of all organizations registered under provisions of chapter 48.44 RCW. "Class three" organizations shall consist of self-funded multiple employer welfare arrangements as defined in RCW 48.125.010.

(b)(i) "Receipts" means (A) net direct premiums consisting of direct gross premiums, as defined in RCW 48.18.170, paid for insurance written or renewed upon risks or property resident, situated, or to be performed in this state, less return premiums and premiums on policies not taken, dividends paid or credited to policyholders on direct business, and premiums received from policies or contracts issued in connection with qualified plans as defined in RCW 48.14.021, and (B) prepayments to health care service contractors as set forth in RCW 48.44.010(3) or participant contributions to self-funded multiple employer welfare arrangements as defined in RCW 48.125.010 less experience rating credits, dividends, prepayments returned to subscribers, and payments for contracts not taken.

(ii) Participant contributions, under chapter 48.125 RCW, used to determine the receipts in this state under this section shall be determined in the same manner as premiums taxable in this state are determined under RCW 48.14.090.

(c) "Regulatory surcharge" means the fees imposed by this section.

(2) The annual cost of operating the office of insurance commissioner shall be determined by legislative appropriation. A pro rata share of the cost shall be charged to all organizations as a regulatory surcharge. Each class of organization shall contribute a sufficient ~~((in fees))~~ amount to the insurance commissioner's regulatory account to pay the reasonable costs, including overhead, of regulating that class of organization.

(3) ~~((Fees charged))~~ The regulatory surcharge shall be calculated separately for each class of organization. ~~((fee charged))~~ regulatory surcharge collected from each organization shall be that portion of the cost of operating the insurance commissioner's office, for that class of organization, for the ensuing fiscal year that is represented by the organization's portion of the receipts collected or received by all organizations within that class on business in this state during the previous calendar year ~~((= PROVIDED, That)).~~ However, the ~~((fee shall))~~ regulatory surcharge must not exceed one-eighth of one percent of receipts ~~((= PROVIDED FURTHER, That))~~ and the minimum ~~((fee))~~ regulatory surcharge shall be one thousand dollars.

(4) The commissioner shall annually, on or before June 1, calculate and bill each organization for the amount of ~~((its fee))~~ the regulatory surcharge. ~~((Fees))~~ The regulatory surcharge shall be due and payable no later than June 15 of each year ~~((= PROVIDED, That)).~~ However, if the necessary financial records are not available or if the amount of the legislative appropriation is not determined in time to carry out such calculations and bill such ~~((fees))~~ regulatory surcharge within the time specified, the commissioner may use

the ~~((fee))~~ regulatory surcharge factors for the prior year as the basis for the ~~((fees))~~ regulatory surcharge and, if necessary, the commissioner may impose supplemental fees to fully and properly charge the organizations. The penalties for failure to pay fees and regulatory surcharges when due shall be the same as the penalties for failure to pay taxes pursuant to RCW 48.14.060. The ~~((fees))~~ regulatory surcharge required by this section ~~((are))~~ is in addition to all other taxes and fees now imposed or that may be subsequently imposed.

(5) All moneys collected shall be deposited in the insurance commissioner's regulatory account in the state treasury which is hereby created.

(6) Unexpended funds in the insurance commissioner's regulatory account at the close of a fiscal year shall be carried forward in the insurance commissioner's regulatory account to the succeeding fiscal year and shall be used to reduce future ~~((fees))~~ regulatory surcharges. During the 2003-2005 fiscal biennium, the legislature may transfer from the insurance commissioner's regulatory account to the state general fund such amounts as reflect excess fund balance in the account.

(7)(a) Each insurer may annually collect regulatory surcharges remitted in preceding years by means of a policyholder surcharge on premiums charged for all kinds of insurance. The recoupment shall be at a uniform rate reasonably calculated to collect the regulatory surcharge remitted by the insurer.

(b) If an insurer fails to collect the entire amount of the recoupment in the first year under this section, it may repeat the recoupment procedure provided for in this subsection (7) in succeeding years until the regulatory surcharge is fully collected or a de minimis amount remains uncollected. Any such de minimis amount may be collected as provided in (d) of this subsection.

(c) The amount and nature of any recoupment shall be separately stated on either a billing or policy declaration sent to an insured. The amount of the recoupment must not be considered a premium for any purpose, including the premium tax or agents' commissions.

(d) An insurer may elect not to collect the regulatory surcharge from its insured. In such a case, the insurer may recoup the regulatory surcharge through its rates, if the following requirements are met:

(i) The insurer remits the amount of surcharge not collected by election under this subsection; and

(ii) The surcharge is not considered a premium for any purpose, including the premium tax or agents' commission. [2007 c 153 § 3; 2004 c 260 § 22; 2003 1st sp.s. c 25 § 923; 2002 c 371 § 913; 1987 c 505 § 54; 1986 c 296 § 7.]

48.02.190 Operating costs of office—Insurance commissioner's regulatory account—Contributions by insurance organizations, fees (as amended by 2007 c 468). (1) As used in this section:

(a) "Organization" means every insurer, as defined in RCW 48.01.050, having a certificate of authority to do business in this state ~~((and)),~~ every health care service contractor, as defined in RCW 48.44.010, every health maintenance organization, as defined in RCW 48.46.020, or ~~((self-funded))~~ a self-funded multiple employer welfare arrangement, as defined in RCW 48.125.010, registered to do business in this state. "Class one" organizations shall consist of all insurers as defined in RCW 48.01.050. "Class two" organizations shall consist of all organizations registered under provisions of chapters 48.44 and 48.46 RCW. "Class three" organizations shall consist of self-funded multiple employer welfare arrangements as defined in RCW 48.125.010.

(b)(i) "Receipts" means (A) net direct premiums consisting of direct gross premiums, as defined in RCW 48.18.170, paid for insurance written or renewed upon risks or property resident, situated, or to be performed in this state, less return premiums and premiums on policies not taken, dividends paid or credited to policyholders on direct business, and premiums received from policies or contracts issued in connection with qualified plans as defined in RCW 48.14.021, and (B) prepayments to health care service contractors, as ~~((set forth))~~ defined in RCW 48.44.010 ~~((=)),~~ health maintenance organizations, as defined in RCW 48.46.020, or participant contributions to self-funded multiple employer welfare arrangements, as defined in RCW 48.125.010, less experience rating credits, dividends, prepayments returned to subscribers, and payments for contracts not taken.

(ii) Participant contributions, under chapter 48.125 RCW, used to determine the receipts in this state under this section shall be determined in the same manner as premiums taxable in this state are determined under RCW 48.14.090.

(2) The annual cost of operating the office of insurance commissioner shall be determined by legislative appropriation. A pro rata share of the cost shall be charged to all organizations. Each class of organization shall con-

tribute sufficient in fees to the insurance commissioner's regulatory account to pay the reasonable costs, including overhead, of regulating that class of organization.

(3) Fees charged shall be calculated separately for each class of organization. The fee charged each organization shall be that portion of the cost of operating the insurance commissioner's office, for that class of organization, for the ensuing fiscal year that is represented by the organization's portion of the receipts collected or received by all organizations within that class on business in this state during the previous calendar year: PROVIDED, That the fee shall not exceed one-eighth of one percent of receipts: PROVIDED FURTHER, That the minimum fee shall be one thousand dollars.

(4) The commissioner shall annually, on or before June 1st, calculate and bill each organization for the amount of its fee. Fees shall be due and payable no later than June 15th of each year: PROVIDED, That if the necessary financial records are not available or if the amount of the legislative appropriation is not determined in time to carry out such calculations and bill such fees within the time specified, the commissioner may use the fee factors for the prior year as the basis for the fees and, if necessary, the commissioner may impose supplemental fees to fully and properly charge the organizations. ((The penalties for failure to pay fees when due shall be the same as the penalties for failure to pay taxes pursuant to)) Any organization failing to pay the fees by June 30th shall pay the same penalties as the penalties for failure to pay taxes when due under RCW 48.14.060. The fees required by this section are in addition to all other taxes and fees now imposed or that may be subsequently imposed.

(5) All moneys collected shall be deposited in the insurance commissioner's regulatory account in the state treasury which is hereby created.

(6) Unexpended funds in the insurance commissioner's regulatory account at the close of a fiscal year shall be carried forward in the insurance commissioner's regulatory account to the succeeding fiscal year and shall be used to reduce future fees. ((During the 2003-2005 fiscal biennium, the legislature may transfer from the insurance commissioner's regulatory account to the state general fund such amounts as reflect excess fund balance in the account.)) [2007 c 468 § 1; 2004 c 260 § 22; 2003 1st sp.s. c 25 § 923; 2002 c 371 § 913; 1987 c 505 § 54; 1986 c 296 § 7.]

Reviser's note: RCW 48.02.190 was amended twice during the 2007 legislative session, each without reference to the other. For rule of construction concerning sections amended more than once during the same legislative session, see RCW 1.12.025.

Severability—Effective date—2004 c 260: See RCW 48.125.900 and 48.125.901.

Severability—Effective date—2003 1st sp.s. c 25: See notes following RCW 19.28.351.

Severability—Effective date—2002 c 371: See notes following RCW 9.46.100.

Severability—Effective date—1986 c 296: See notes following RCW 48.14.020.

Chapter 48.03 RCW EXAMINATIONS

Sections

48.03.005 Application.

48.03.005 Application. This chapter applies to the financial analysis and examination of insurers and other regulated entities. [2007 c 82 § 1.]

Chapter 48.05 RCW INSURERS—GENERAL REQUIREMENTS

Sections

48.05.310 Repealed. (Effective July 1, 2009.)
48.05.340 Capital and surplus requirements.

48.05.310 Repealed. (Effective July 1, 2009.) See Supplementary Table of Disposition of Former RCW Sections, this volume.

48.05.340 Capital and surplus requirements. (1) Subject to RCW 48.05.350 to qualify for authority to transact any one kind of insurance as defined in chapter 48.11 RCW or combination of kinds of insurance as set forth in this subsection, a foreign or alien insurer, whether stock or mutual, or a domestic insurer must possess unimpaired paid-in capital stock, if a stock insurer, or unimpaired surplus if a mutual insurer, and additional funds in surplus, as follows, and must thereafter maintain unimpaired a combined total of: (a) The paid-in capital stock if a stock insurer or surplus if a mutual insurer, plus (b) additional funds in surplus equal to the total of the following initial requirements:

Table with 3 columns: Kind or kinds of insurance, Paid-in capital stock or basic surplus, and Additional surplus. Rows include Life, Disability, Life and disability, Property, Marine & transportation, General casualty, Vehicle, Surety, Ocean marine and foreign trade, Multiple lines (all insurances except life and title insurance), and Title.

(2) Capital and surplus requirements are based upon all the kinds of insurance transacted by the insurer wherever it operates or proposes to operate, whether or not only a portion of the kinds are to be transacted in this state.

(3) Until December 31, 1996, a foreign or alien insurer holding a certificate of authority to transact insurance in this state immediately prior to June 9, 1994, may continue to be authorized to transact the same kinds of insurance as long as it is otherwise qualified for that authority. A domestic insurer, except a title insurer, holding a certificate of authority to transact insurance in this state immediately prior to June 9, 1994, may continue to be authorized to transact the same kinds of insurance as long as it is otherwise qualified for such an authority and thereafter maintains unimpaired the amount of paid-in capital stock, if a stock insurer, or basic surplus, if a mutual or reciprocal insurer, and special or additional surplus as required of it under laws in force immediately prior to June 9, 1994. A domestic insurer that is acquired or merged must, immediately after completion of an acquisition or merger, meet the capital and surplus require-

ments of subsection (1) of this section. A domestic insurer, upon attaining the capital and surplus requirements of subsection (1) of this section, may not return to the capital and surplus requirements existing before June 9, 1994. [2007 c 127 § 1; 2005 c 223 § 2; 1995 c 83 § 14; 1994 c 171 § 1; 1993 c 462 § 50; 1991 sp.s. c 5 § 1; 1982 c 181 § 3; 1980 c 135 § 1; 1967 c 150 § 5; 1963 c 195 § 7.]

Severability—Implementation—1993 c 462: See RCW 48.31B.901 and 48.31B.902.

Effective date—1991 sp.s. c 5: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and shall take effect July 1, 1991." [1991 sp.s. c 5 § 3.]

Severability—1982 c 181: See note following RCW 48.03.010.

Chapter 48.11 RCW INSURING POWERS

Sections

48.11.105 "Ocean marine and foreign trade insurances" defined.

48.11.105 "Ocean marine and foreign trade insurances" defined. For the purposes of this code other than as to chapter 48.19 RCW "ocean marine and foreign trade insurances" shall include only:

- (1) Insurances upon vessels, crafts, hulls, and of interests therein or with relation thereto;
- (2) Insurance of marine builders' risks, marine war risks, and contracts of marine protection and indemnity insurance;
- (3) Insurance of freights and disbursements pertaining to a subject of insurance coming within this definition;
- (4) Insurance of personal property and interests therein, in course of exportation from or importation into any country, or in course of transportation coastwise, including transportation by land, water, or air from point of origin to final destination, in respect to, appertaining to, or in connection with, any and all risks or perils of navigation, transit, or transportation, and while being prepared for and while awaiting shipment, and during any delays, storage, transshipment, or reshipment incident thereto. [2007 c 80 § 5.]

Chapter 48.12 RCW ASSETS AND LIABILITIES

Sections

48.12.010 "Assets" defined.
48.12.120 Repealed.
48.12.130 Repealed.

48.12.010 "Assets" defined. In any determination of the financial condition of any insurer there shall be allowed as assets only such assets as belong wholly and exclusively to the insurer, which are registered, recorded, or held under the insurer's name, and which consist of:

- (1) Cash in the possession of the insurer or in transit under its control, and the true balance of any deposit of the insurer in a solvent bank or trust company;
- (2) Investments, securities, properties, and loans acquired or held in accordance with this code, and in connection therewith the following items:

(a) Interest due or accrued on any bond or evidence of indebtedness which is not in default and which is not valued on a basis including accrued interest.

(b) Declared and unpaid dividends on stocks and shares unless such amount has otherwise been allowed as an asset.

(c) Interest due or accrued upon a collateral loan in an amount not to exceed one year's interest thereon.

(d) Interest due or accrued on deposits in solvent banks and trust companies, and interest due or accrued on other assets if such interest is in the judgment of the commissioner a collectible asset.

(e) Interest due or accrued on a mortgage loan, in amount not exceeding in any event the amount, if any, of the difference between the unpaid principal and the value of the property less delinquent taxes thereon; but if any interest on the loan is in default more than one hundred eighty days, or if any interest on the loan is in default and any taxes or any installment thereof on the property are and have been due and unpaid for more than one hundred eighty days, no allowance shall be made for any interest on the loan.

(f) Rent due or accrued on real property if such rent is not in arrears for more than three months.

(3) Premium notes, policy loans, and other policy assets and liens on policies of life insurance, in amount not exceeding the legal reserve and other policy liabilities carried on each individual policy;

(4) The net amount of uncollected and deferred premiums in the case of a life insurer which carries the full annual mean tabular reserve liability;

(5) Premiums in the course of collection, other than for life insurance, not more than ninety days past due, less commissions payable thereon. The foregoing limitation shall not apply to premiums payable directly or indirectly by the United States government or any of its instrumentalities;

(6) Installment premiums other than life insurance premiums, in accordance with regulations prescribed by the commissioner consistent with practice formulated or adopted by the National Association of Insurance Commissioners;

(7) Notes and like written obligations not past due, taken for premiums other than life insurance premiums, on policies permitted to be issued on such basis, to the extent of the unearned premium reserves carried thereon and unless otherwise required by regulation prescribed by the commissioner;

(8) Reinsurance recoverable subject to RCW 48.12.160;

(9) Amounts receivable by an assuming insurer representing funds withheld by a solvent ceding insurer under a reinsurance treaty;

(10) Deposits or equities recoverable from underwriting associations, syndicates and reinsurance funds, or from any suspended banking institution, to the extent deemed by the commissioner available for the payment of losses and claims and at values to be determined by him;

(11) Electronic and mechanical machines constituting a data processing and accounting system if the cost of such system is at least twenty-five thousand dollars, which cost shall be amortized in full over a period not to exceed three calendar years; and

(12) Other assets, not inconsistent with the foregoing provisions, deemed by the commissioner available for the payment of losses and claims, at values to be determined by

him. [2007 c 80 § 2; 1977 ex.s. c 180 § 2; 1963 c 195 § 11; 1947 c 79 § .12.01; Rem. Supp. 1947 § 45.12.01.]

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

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

**Chapter 48.13 RCW
INVESTMENTS**

Sections

- 48.13.120 Investments limited by property value.
- 48.13.265 Investments secured by real estate—Amount restricted.
- 48.13.275 Obligations rated by the securities valuation office.

48.13.120 Investments limited by property value. (1) An investment made pursuant to the provisions of RCW 48.13.110 shall not exceed seventy-five percent of the fair value of the particular property at the time of investment. However, if the loan is secured by a first mortgage or other first lien upon real property improved with a single-family residential building, the terms of such loan provide for monthly payments of principal and interest sufficient to effect full repayment of the loan within the remaining useful life of the building as estimated in the appraisal for the loan, or thirty years and two months, whichever is less, the principal so loaned or the entire note or bond issue so secured, plus the amount of the liens of any public bond, assessment, or tax assessed upon the property, shall not exceed eighty percent of the market value of the real property, or of the real property together with the improvements which are taken as security. This restriction shall not apply to purchase money mortgages or like securities received by an insurer upon the sale or exchange of real property acquired pursuant to RCW 48.13.160.

(2) The extent to which a mortgage loan made under RCW 48.13.110 (3) or (4) is guaranteed or insured by the Federal Housing Administration or guaranteed by the Administrator of Veterans' Affairs may be deducted before application of the limitations contained in subsection (1) of this section. [2007 c 80 § 6; 1993 c 92 § 7; 1969 ex.s. c 241 § 5; 1967 c 150 § 11; 1955 c 303 § 1; 1949 c 190 § 16; 1947 c 79 § .13.12; Rem. Supp. 1949 § 45.13.12.]

48.13.265 Investments secured by real estate—Amount restricted. An insurer shall not invest or have invested at any one time more than sixty-five percent of its assets in investments in real estate, real estate contracts, and notes, bonds and other evidences of debt secured by mortgage on real estate, as described in RCW 48.13.110 and 48.13.160. Any insurer which, on June 13, 1957, has in excess of sixty-five percent of its assets so invested shall not make any further such investments while such excess exists. All investments in mortgage-backed securities qualifying under the secondary mortgage market enhancement act of 1984 (98 Stat. 1691; 15 U.S.C. Sec. 77r-l et seq.) are included in determining if an insurer has exceeded the sixty-five percent limit. [2007 c 80 § 7; 1957 c 193 § 8.]

48.13.275 Obligations rated by the securities valuation office. An insurer may invest its funds in obligations rated by the securities valuation office. Investments in obligations that are rated one or two by the securities valuation office shall be subject to the limitations contained in RCW 48.13.030. [2007 c 80 § 8; 1993 c 92 § 6.]

**Chapter 48.14 RCW
FEES AND TAXES**

Sections

- 48.14.010 Fee schedule. (*Effective July 1, 2009.*)
- 48.14.040 Retaliatory provision.
- 48.14.050 Repealed.

48.14.010 Fee schedule. (*Effective July 1, 2009.*) (1) The commissioner shall collect in advance the following fees:

- (a) **For filing charter documents:**
 - (i) Original charter documents, bylaws or record of organization of insurers, or certified copies thereof, required to be filed \$250.00
 - (ii) Amended charter documents, or certified copy thereof, other than amendments of bylaws. \$ 10.00
 - (iii) No additional charge or fee shall be required for filing any of such documents in the office of the secretary of state.
- (b) **Certificate of authority:**
 - (i) Issuance \$ 25.00
 - (ii) Renewal \$ 25.00
- (c) **Annual statement of insurer, filing. \$ 20.00**
- (d) **Organization or financing of domestic insurers and affiliated corporations:**
 - (i) Application for solicitation permit, filing. \$100.00
 - (ii) Issuance of solicitation permit \$ 25.00
- (e) **Insurance producer licenses:**
 - (i) License application \$ 55.00
 - (ii) License renewal, every two years \$ 55.00
 - (iii) Initial appointment and renewal of appointment of each insurance producer, every two years \$ 20.00
 - (iv) Limited insurance producer license application and renewal, every two years \$ 20.00
- (f) **Reinsurance intermediary licenses:**
 - (i) Reinsurance intermediary-broker, each year \$ 50.00
 - (ii) Reinsurance intermediary-manager, each year. \$100.00
- (g) **Surplus line broker license application and renewal, every two years \$200.00**
- (h) **Adjusters' licenses:**
 - (i) Independent adjuster, every two years \$ 50.00

(ii)	Public adjuster, every two years	\$ 50.00
(i)	Managing general agent appointment, every two years	\$200.00
(j)	Examination for license, each examination: All examinations, except examinations administered by an independent testing service, the fees for which are to be approved by the commissioner and collected directly by and retained by such independent testing service	\$ 20.00
(k)	Miscellaneous services:	
(i)	Filing other documents	\$ 5.00
(ii)	Commissioner’s certificate under seal	\$ 5.00
(iii)	Copy of documents filed in the commissioner’s office, reasonable charge therefor as determined by the commissioner.	

(2) All fees so collected shall be remitted by the commissioner to the state treasurer not later than the first business day following, and shall be placed to the credit of the general fund.

(a) Fees for examinations administered by an independent testing service that are approved by the commissioner under subsection (1)(j) of this section shall be collected directly by the independent testing service and retained by it.

(b) Fees for copies of documents filed in the commissioner’s office shall be remitted by the commissioner to the state treasurer not later than the first business day following, and shall be placed to the credit of the insurance commissioner’s regulatory account. [2007 c 117 § 37; 2005 c 223 § 5; 1994 c 131 § 2; 1993 c 462 § 57; 1988 c 248 § 7; 1981 c 111 § 1; 1979 ex.s. c 269 § 1; 1977 ex.s. c 182 § 1; 1969 ex.s. c 241 § 8; 1967 c 150 § 12; 1955 c 303 § 4; 1947 c 79 § .14.01; Rem. Supp. 1947 § 45.14.01.]

Severability—Effective date—2007 c 117: See RCW 48.17.900 and 48.17.901.

Severability—Implementation—1993 c 462: See RCW 48.31B.901 and 48.31B.902.

Effective date, implementation—1979 ex.s. c 269: "This act shall take effect on April 1, 1980. The insurance commissioner is authorized to immediately take such steps as are necessary to insure that this 1979 act is implemented on its effective date." [1979 ex.s. c 269 § 10.]

48.14.040 Retaliatory provision. (1) If pursuant to the laws of any other state or country, any taxes, licenses, fees, deposits, or other obligations or prohibitions, in the aggregate, or additional to or at a net rate in excess of any such taxes, licenses, fees, deposits or other obligations or prohibitions imposed by the laws of this state upon like foreign or alien insurers and their agents and solicitors, are imposed on insurers of this state and their agents doing business in such other state or country, a like rate, obligation or prohibition may be imposed by the commissioner, as to any item or combination of items involved, upon all insurers of such other state or country and their agents doing business in this state, so long as such laws remain in force or are so applied.

(2) For the purposes of this section, an alien insurer may be deemed to be domiciled in the state wherein it has estab-

lished its principal office or agency in the United States. If no such office or agency has been established, the domicile of the alien insurer shall be deemed to be the country under the laws of which it is formed.

(3) For the purposes of this section, the regulatory surcharge imposed by RCW 48.02.190 shall not be included in the calculation of any retaliatory taxes, licenses, fees, deposits, or other obligations or prohibitions imposed under this section. [2007 c 153 § 4; 1988 c 248 § 8; 1949 c 190 § 21, part; 1947 c 79 § .14.04; Rem. Supp. 1949 § 45.14.04.]

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

Chapter 48.17 RCW
AGENTS, BROKERS, SOLICITORS, AND
ADJUSTERS [INSURANCE PRODUCERS, TITLE
INSURANCE AGENTS, AND ADJUSTERS,
EFFECTIVE JULY 1, 2009]

Sections

48.17.005	Rule making. <i>(Effective July 1, 2009.)</i>
48.17.010	Definitions. <i>(Effective July 1, 2009.)</i>
48.17.020	Repealed. <i>(Effective July 1, 2009.)</i>
48.17.030	Repealed. <i>(Effective July 1, 2009.)</i>
48.17.040	Repealed. <i>(Effective July 1, 2009.)</i>
48.17.050	Repealed. <i>(Effective July 1, 2009.)</i>
48.17.055	Repealed. <i>(Effective July 1, 2009.)</i>
48.17.060	License required. <i>(Effective July 1, 2009.)</i>
48.17.062	Insurance producer license not required under chapter 117, Laws of 2007. <i>(Effective July 1, 2009.)</i>
48.17.063	Unlicensed activities—Acts committed in this state—Sanctions. <i>(Effective July 1, 2009.)</i>
48.17.065	Application of chapter to insurance producers appointed by health care service contractors, health maintenance organizations, or both. <i>(Effective July 1, 2009.)</i>
48.17.067	Determining whether authorization exists—Burden on insurance producer or title insurance agent. <i>(Effective July 1, 2009.)</i>
48.17.070	Repealed. <i>(Effective July 1, 2009.)</i>
48.17.090	Application for license—Commissioner’s findings. <i>(Effective July 1, 2009.)</i>
48.17.100	Repealed. <i>(Effective July 1, 2009.)</i>
48.17.110	Examination of applicants—Exemptions. <i>(Effective July 1, 2009.)</i>
48.17.120	Repealed. <i>(Effective July 1, 2009.)</i>
48.17.125	Examination questions—Confidentiality—Penalties. <i>(Effective July 1, 2009.)</i>
48.17.130	Repealed. <i>(Effective July 1, 2009.)</i>
48.17.150	Continuing education courses and requirements. <i>(Effective July 1, 2009.)</i>
48.17.160	Appointment of agents—Approval—Termination—Fees. <i>(Effective July 1, 2009.)</i>
48.17.170	Insurance producers’, title insurance agents’, and adjusters’ licenses—Authorized lines of authority—Definitions—Form and content of licenses. <i>(Effective July 1, 2009.)</i>
48.17.173	Nonresident license request—Conditions for approval—Service of legal process. <i>(Effective July 1, 2009.)</i>
48.17.175	In-state applicant has license in another state. <i>(Effective July 1, 2009.)</i>
48.17.180	Doing business under any name other than legal name. <i>(Effective July 1, 2009.)</i>
48.17.190	Repealed. <i>(Effective July 1, 2009.)</i>
48.17.200	Repealed. <i>(Effective July 1, 2009.)</i>
48.17.210	Repealed. <i>(Effective July 1, 2009.)</i>
48.17.230	Repealed. <i>(Effective July 1, 2009.)</i>
48.17.240	Repealed. <i>(Effective July 1, 2009.)</i>
48.17.250	Insurance producer’s bond. <i>(Effective July 1, 2009.)</i>
48.17.260	Repealed. <i>(Effective July 1, 2009.)</i>
48.17.270	Insurance producer as insurer’s agent—Compensation—Disclosure. <i>(Effective July 1, 2009.)</i>
48.17.280	Repealed. <i>(Effective July 1, 2009.)</i>
48.17.290	Repealed. <i>(Effective July 1, 2009.)</i>
48.17.300	Repealed. <i>(Effective July 1, 2009.)</i>
48.17.310	Repealed. <i>(Effective July 1, 2009.)</i>

- 48.17.320 Repealed. (Effective July 1, 2009.)
 48.17.330 Repealed. (Effective July 1, 2009.)
 48.17.340 Repealed. (Effective July 1, 2009.)
 48.17.380 Adjusters—Qualifications for license—Bond. (Effective July 1, 2009.)
 48.17.390 Adjusters—Separate licenses. (Effective July 1, 2009.)
 48.17.410 Authority of adjuster. (Effective July 1, 2009.)
 48.17.420 Appointed agent may adjust—Nonresident adjusters. (Effective July 1, 2009.)
 48.17.450 Place of business. (Effective July 1, 2009.)
 48.17.460 Display of license. (Effective July 1, 2009.)
 48.17.470 Records of insurance producers, title insurance agents, adjusters. (Effective July 1, 2009.)
 48.17.475 Licensee to reply promptly to inquiry by commissioner. (Effective July 1, 2009.)
 48.17.480 Reporting and accounting for premiums. (Effective July 1, 2009.)
 48.17.490 Must be licensed to receive a commission, service fee, or other valuable consideration. (Effective July 1, 2009.)
 48.17.500 Repealed. (Effective July 1, 2009.)
 48.17.510 Temporary licenses—Restrictions—Commissioner's discretion. (Effective July 1, 2009.)
 48.17.520 Repealed. (Effective July 1, 2009.)
 48.17.530 Commissioner may place on probation, suspend, revoke, or refuse to issue or renew a license. (Effective July 1, 2009.)
 48.17.565 Insurance education providers—Violations—Costs awarded. (Effective July 1, 2009.)
 48.17.591 Termination of agency contract—Effect on insured—Definition—Application of section. (Effective July 1, 2009.)
 48.17.595 Termination of business relationship with an insurance producer or title insurance agent—Notice—Confidentiality of information—Immunity from civil liability. (Effective July 1, 2009.)
 48.17.597 Administrative action taken against a licensee in another jurisdiction or governmental agency—Report to commissioner. (Effective July 1, 2009.)
 48.17.600 Separation of premium funds. (Effective July 1, 2009.)
 48.17.900 Severability—2007 c 117.
 48.17.901 Effective date—2007 c 117.

48.17.005 Rule making. (Effective July 1, 2009.) The commissioner may adopt rules to implement and administer this chapter. [2007 c 117 § 35.]

48.17.010 Definitions. (Effective July 1, 2009.) The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

(1) "Adjuster" means any person who, for compensation as an independent contractor or as an employee of an independent contractor, or for fee or commission, investigates or reports to the adjuster's principal relative to claims arising under insurance contracts, on behalf solely of either the insurer or the insured. An attorney-at-law who adjusts insurance losses from time to time incidental to the practice of his or her profession, or an adjuster of marine losses, or a salaried employee of an insurer or of a managing general agent, is not deemed to be an "adjuster" for the purpose of this chapter.

(a) "Independent adjuster" means an adjuster representing the interests of the insurer.

(b) "Public adjuster" means an adjuster employed by and representing solely the financial interests of the insured named in the policy.

(2) "Business entity" means a corporation, association, partnership, limited liability company, limited liability partnership, or other legal entity.

(3) "Home state" means the District of Columbia and any state or territory of the United States or province of Canada in which an insurance producer maintains the insurance producer's principal place of residence or principal place of business, and is licensed to act as an insurance producer.

(4) "Insurance education provider" means any insurer, health care service contractor, health maintenance organization, professional association, educational institution created by Washington statutes, or vocational school licensed under Title 28C RCW, or independent contractor to which the commissioner has granted authority to conduct and certify completion of a course satisfying the insurance education requirements of RCW 48.17.150.

(5) "Insurance producer" means a person required to be licensed under the laws of this state to sell, solicit, or negotiate insurance. "Insurance producer" does not include title insurance agent as defined in subsection (15) of this section.

(6) "Insurer" has the same meaning as in RCW 48.01.050, and includes a health care service contractor as defined in RCW 48.44.010 and a health maintenance organization as defined in RCW 48.46.020.

(7) "License" means a document issued by the commissioner authorizing a person to act as an insurance producer or title insurance agent for the lines of authority specified in the document. The license itself does not create any authority, actual, apparent, or inherent, in the holder to represent or commit to an insurer.

(8) "Limited line credit insurance" includes credit life, credit disability, credit property, credit unemployment, involuntary unemployment, mortgage life, mortgage guaranty, mortgage disability, automobile dealer gap insurance, and any other form of insurance offered in connection with an extension of credit that is limited to partially or wholly extinguishing the credit obligation that the commissioner determines should be designated a form of limited line credit insurance.

(9) "NAIC" means national association of insurance commissioners.

(10) "Negotiate" means the act of conferring directly with, or offering advice directly to, a purchaser or prospective purchaser of a particular contract of insurance concerning any of the substantive benefits, terms, or conditions of the contract, provided that the person engaged in that act either sells insurance or obtains insurance from insurers for purchasers.

(11) "Person" means an individual or a business entity.

(12) "Sell" means to exchange a contract of insurance by any means, for money or its equivalent, on behalf of an insurer.

(13) "Solicit" means attempting to sell insurance or asking or urging a person to apply for a particular kind of insurance from a particular insurer.

(14) "Terminate" means the cancellation of the relationship between an insurance producer and the insurer or the termination of an insurance producer's authority to transact insurance.

(15) "Title insurance agent" means a business entity licensed under the laws of this state and appointed by an authorized title insurance company to sell, solicit, or negotiate insurance on behalf of the title insurance company.

(16) "Uniform business entity application" means the current version of the NAIC uniform application for business entity insurance license or registration for resident and nonresident business entities.

(17) "Uniform application" means the current version of the NAIC uniform application for individual insurance pro-

ducers for resident and nonresident insurance producer licensing. [2007 c 117 § 1; 1985 c 264 § 7; 1981 c 339 § 9; 1947 c 79 § .17.01; Rem. Supp. 1947 § 45.17.01.]

48.17.020 Repealed. (Effective July 1, 2009.) See Supplementary Table of Disposition of Former RCW Sections, this volume.

48.17.030 Repealed. (Effective July 1, 2009.) See Supplementary Table of Disposition of Former RCW Sections, this volume.

48.17.040 Repealed. (Effective July 1, 2009.) See Supplementary Table of Disposition of Former RCW Sections, this volume.

48.17.050 Repealed. (Effective July 1, 2009.) See Supplementary Table of Disposition of Former RCW Sections, this volume.

48.17.055 Repealed. (Effective July 1, 2009.) See Supplementary Table of Disposition of Former RCW Sections, this volume.

48.17.060 License required. (Effective July 1, 2009.) A person shall not sell, solicit, or negotiate insurance in this state for any line or lines of insurance unless the person is licensed for that line of authority in accordance with this chapter. [2007 c 117 § 2; 2003 c 250 § 4; 1995 c 214 § 1; 1975 1st ex.s. c 266 § 7; 1955 c 303 § 9; 1947 c 79 § .17.06; Rem. Supp. 1947 § 45.17.06.]

Severability—2003 c 250: See note following RCW 48.01.080.

Severability—1975 1st ex.s. c 266: See note following RCW 48.01.010.

48.17.062 Insurance producer license not required under chapter 117, Laws of 2007. (Effective July 1, 2009.)

(1) Nothing in chapter 117, Laws of 2007 shall be construed to require an insurer to obtain an insurance producer license. In this section, the term "insurer" does not include an insurer's officers, directors, employees, subsidiaries, or affiliates.

(2) A license as an insurance producer is not required of the following:

(a) An officer, director, or employee of an insurer or of an insurance producer, provided that the officer, director, or employee does not receive any commission on policies written or sold to insure risks residing, located, or to be performed in this state, and:

(i) The officer, director, or employee's activities are executive, administrative, managerial, clerical, or a combination of these, and are only indirectly related to the sale, solicitation, or negotiation of insurance; or

(ii) The officer, director, or employee's function relates to underwriting, loss control, inspection, or the processing, adjusting, investigating, or settling of a claim on a contract of insurance; or

(iii) The officer, director, or employee is acting in the capacity of a special agent or agency supervisor assisting insurance producers where the person's activities are limited

to providing technical advice and assistance to licensed insurance producers, and do not include the sale, solicitation, or negotiation of insurance;

(b) A person who secures and furnishes information for the purpose of group life insurance, group property and casualty insurance, group annuities, group or blanket accident and disability insurance; or for the purpose of enrolling individuals under plans; or issuing certificates under plans or otherwise assisting in administering plans; or performs administrative services related to mass marketed property and casualty insurance; where no commission is paid to the person for the service;

(c) An employer or association or its officers, directors, employees, or the trustees of an employee trust plan, to the extent that the employers, officers, employees, director, or trustees are engaged in the administration or operation of a program of employee benefits for the employer's or association's own employees or the employees of its subsidiaries or affiliates, which program involves the use of insurance issued by an insurer, as long as the employers, associations, officers, directors, employees, or trustees are not in any manner compensated, directly or indirectly, by the company issuing the contracts;

(d) Employees of insurers or organizations employed by insurers who are engaging in the inspection, rating, or classification of risks, or in the supervision of the training of insurance producers, and who are not individually engaged in the sale, solicitation, or negotiation of insurance;

(e) A person whose activities in this state are limited to advertising without the intent to solicit insurance in this state through communication in printed publications or other forms of electronic mass media whose distribution is not limited to residents of the state, provided that the person does not sell, solicit, or negotiate insurance that would insure risks residing, located, or to be performed in this state;

(f) A person who is not a resident of this state who sells, solicits, or negotiates a contract of insurance for commercial property and casualty risks to an insured with risks located in more than one state insured under that contract, provided that the person is otherwise licensed as an insurance producer to sell, solicit, or negotiate the insurance in the state where the insured maintains its principal place of business and the contract of insurance insures risks located in that state;

(g) A salaried full-time employee who counsels or advises his or her employer relative to the insurance interests of the employer or of the subsidiaries or business affiliates of the employer, provided that the employee does not sell or solicit insurance or receive a commission; or

(h) Any person securing and forwarding information required for the purposes of group credit life and credit disability insurance or credit casualty insurance against loss or damage resulting from failure of debtors to pay their obligations in connection with an extension of credit and such other credit life and disability insurance or credit casualty insurance against loss or damage resulting from failure of debtors to pay their obligations as the commissioner shall determine, and where no commission or other compensation is payable on account of the securing and forwarding of such information. However, the reimbursement of a creditor's actual expenses for securing and forwarding information required for the purposes of such group insurance will not be consid-

ered a commission or other compensation if such reimbursement does not exceed three dollars per certificate issued, or in the case of a monthly premium plan extending beyond twelve months, not to exceed three dollars per loan transaction revision per year. [2007 c 117 § 3.]

48.17.063 Unlicensed activities—Acts committed in this state—Sanctions. (Effective July 1, 2009.) (1) For the purpose of this section, an act is committed in this state if it is committed, in whole or in part, in the state of Washington, or affects persons or property within the state and relates to or involves an insurance contract, health care services contract, or health maintenance agreement.

(2) Any person who knowingly violates RCW 48.17.060 is guilty of a class B felony punishable under chapter 9A.20 RCW.

(3) Any criminal penalty imposed under this section is in addition to, and not in lieu of, any other civil or administrative penalty or sanction otherwise authorized under state law.

(4)(a) If the commissioner has cause to believe that any person has violated the provisions of RCW 48.17.060, the commissioner may:

(i) Issue and enforce a cease and desist order in accordance with the provisions of RCW 48.02.080;

(ii) Suspend or revoke a license; and/or

(iii) Assess a civil penalty of not more than twenty-five thousand dollars for each violation, after providing notice and an opportunity for a hearing in accordance with chapters 34.05 and 48.04 RCW.

(b) Upon failure to pay a civil penalty when due, the attorney general may bring a civil action on behalf of the commissioner to recover the unpaid penalty. Any amounts collected by the commissioner must be paid to the state treasurer for the account of the general fund. [2007 c 117 § 4; 2003 c 250 § 5.]

Severability—2003 c 250: See note following RCW 48.01.080.

48.17.065 Application of chapter to insurance producers appointed by health care service contractors, health maintenance organizations, or both. (Effective July 1, 2009.) The provisions of this chapter shall apply to insurance producers appointed by either health care service contractors or health maintenance organizations, or both. [2007 c 117 § 5; 1983 c 202 § 7.]

48.17.067 Determining whether authorization exists—Burden on insurance producer or title insurance agent. (Effective July 1, 2009.) Any insurance producer or title insurance agent soliciting, negotiating, or procuring an application for insurance or health care services in this state must make a good faith effort to determine whether the entity that is issuing the coverage is:

(1) Authorized to transact insurance or health coverage in this state; or

(2) Conducting business through a surplus line broker licensed under chapter 48.15 RCW. [2007 c 117 § 6; 2003 c 250 § 6.]

Severability—2003 c 250: See note following RCW 48.01.080.

48.17.070 Repealed. (Effective July 1, 2009.) See Supplementary Table of Disposition of Former RCW Sections, this volume.

48.17.090 Application for license—Commissioner's findings. (Effective July 1, 2009.) (1) A person applying for a resident insurance producer license shall make application to the commissioner on the uniform application and declare under penalty of refusal, suspension, or revocation of the license that the statements made in the application are true, correct, and complete to the best of the individual's knowledge and belief. As a part of or in connection with the application, the applicant shall furnish information concerning the applicant's identity, including fingerprints for submission to the Washington state patrol, the federal bureau of investigation, and any governmental agency or entity authorized to receive this information for a state and national criminal history background check. If, in the process of verifying fingerprints, business records, or other information, the commissioner's office incurs fees or charges from another governmental agency or from a business firm, the amount of the fees or charges shall be paid to the commissioner's office by the applicant.

(2) Before approving the application, the commissioner shall find that the individual:

(a) Is at least eighteen years of age;

(b) Has not committed any act that is a ground for denial, suspension, or revocation set forth in RCW 48.17.530;

(c) Has completed a preclicensing course of study for the lines of authority for which the person has applied;

(d) Has paid the fees set forth in RCW 48.14.010; and

(e) Has successfully passed the examinations for the lines of authority for which the person has applied.

(3) A business entity acting as an insurance producer is required to obtain an insurance producer license. Application shall be made using the uniform business entity application. Before approving the application, the commissioner shall find that:

(a) The business entity has paid the fees set forth in RCW 48.14.010; and

(b) The business entity has designated a licensed insurance producer responsible for the business entity's compliance with the insurance laws and rules of this state.

(4) A business entity acting as a title insurance agent is required to obtain a title insurance agent license. Application shall be made to the commissioner on the uniform business entity application, and the individual signing the application shall declare under penalty of refusal, suspension, or revocation of the license that the statements made in the application are true, correct, and complete to the best of the individual's knowledge and belief. Before approving the application, the commissioner shall find that the business entity:

(a) Has paid the fees set forth in RCW 48.14.010;

(b) Maintains a lawfully established place of business in this state or holds a corresponding license issued by the state of its principal place of business, and has complied with the laws of this state governing the admission of foreign corporations;

(c) Is empowered to be a title agent under a members' agreement, if a limited liability company, or by its articles of incorporation;

(d) Is appointed as an agent by one or more authorized title insurance companies; and

(e) Has complied with RCW 48.29.155 and 48.29.160.

(5) The commissioner may require any documents reasonably necessary to verify the information contained in an application and may, from time to time, require any licensed insurance producer, title insurance agent, or adjuster to produce the information called for in an application for license. [2007 c 117 § 7; 2002 c 227 § 2; 2001 c 56 § 1; 1982 c 181 § 6; 1981 c 339 § 10; 1967 c 150 § 15; 1947 c 79 § .17.09; Rem. Supp. 1947 § 45.17.09.]

Effective date—2002 c 227: See note following RCW 48.06.040.

Severability—1982 c 181: See note following RCW 48.03.010.

48.17.100 Repealed. (Effective July 1, 2009.) See Supplementary Table of Disposition of Former RCW Sections, this volume.

48.17.110 Examination of applicants—Exemptions. (Effective July 1, 2009.) (1) A resident individual applying for an insurance producer or adjuster license shall pass a written examination unless exempt under this section or RCW 48.17.175. The examination shall test the knowledge of the individual concerning the lines of authority for which application is made, the duties and responsibilities of an insurance producer or adjuster, and the insurance laws and rules of this state. Examinations required by this section shall be developed and conducted under the rules prescribed by the commissioner. The commissioner shall prepare, or approve, and make available a manual specifying in general terms the subjects which may be covered in any examination for a particular license.

(2) The following are exempt from the examination requirement:

(a) Applicants for licenses under RCW 48.17.170(1) (g), (h), and (i), at the discretion of the commissioner;

(b) Applicants who within the two-year period next preceding date of application have been licensed as a resident in this state under a license requiring qualifications similar to qualifications required by the license applied for, or who have successfully completed a course of study recognized as a mark of distinction by the insurance industry, and who are deemed by the commissioner to be fully qualified and competent;

(c) Applicants for an adjuster's license who for a period of one year, a portion of which was in the year next preceding the date of application, have been a full-time salaried employee of an insurer or of a managing general agent to adjust, investigate, or report claims arising under insurance contracts;

(d) Applicants deemed by the commissioner to be qualified by past experience to deal in ocean marine and related coverages.

(3) The commissioner may make arrangements, including contracting with an outside testing service, for administering examinations.

(4) The commissioner may, at any time, require any licensed insurance producer or adjuster to take and successfully pass an examination testing the licensee's competence and qualifications as a condition to the continuance or

renewal of a license, if the licensee has been guilty of violating this title, or has so conducted affairs under an insurance license as to cause the commissioner to reasonably desire further evidence of the licensee's qualifications. [2007 c 117 § 8; 1990 1st ex.s. c 3 § 2; 1977 ex.s. c 182 § 3; 1967 c 150 § 16; 1965 ex.s. c 70 § 19; 1963 c 195 § 17; 1955 c 303 § 10; 1949 c 190 § 23; 1947 c 79 § .17.11; Rem. Supp. 1949 § 45.17.11.]

48.17.120 Repealed. (Effective July 1, 2009.) See Supplementary Table of Disposition of Former RCW Sections, this volume.

48.17.125 Examination questions—Confidentiality—Penalties. (Effective July 1, 2009.) It is unlawful for any unauthorized person to remove, reproduce, duplicate, or distribute in any form, any question(s) used by the state of Washington to determine the qualifications and competence of insurance producers or adjusters required by Title 48 RCW to be licensed. This section shall not prohibit an insurance education provider from creating and using sample test questions in courses approved pursuant to RCW 48.17.150.

Any person violating this section shall be subject to penalties as provided by RCW 48.01.080, 48.17.530, and 48.17.560. [2007 c 117 § 9; 1989 c 323 § 1.]

Effective date—1989 c 323: See note following RCW 48.17.055.

48.17.130 Repealed. (Effective July 1, 2009.) See Supplementary Table of Disposition of Former RCW Sections, this volume.

48.17.150 Continuing education courses and requirements. (Effective July 1, 2009.) (1) The commissioner shall require that continuing education courses will be made available on a statewide basis in order to ensure that persons residing in all geographical areas of this state will have a reasonable opportunity to attend such courses.

(2) The continuing education requirements must be appropriate to the license for the lines of authority specified in RCW 48.17.170 or by rule.

(3) The continuing education requirements may be waived by the commissioner for good cause shown. [2007 c 117 § 10; 2005 c 223 § 7; 1994 c 131 § 4; 1988 c 248 § 9; 1979 ex.s. c 269 § 7; 1971 ex.s. c 292 § 47; 1967 c 150 § 19; 1961 c 194 § 4; 1947 c 79 § .17.15; Rem. Supp. 1947 § 45.17.15.]

Effective date, implementation—1979 ex.s. c 269: See note following RCW 48.14.010.

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

48.17.160 Appointment of agents—Approval—Termination—Fees. (Effective July 1, 2009.) (1) An insurance producer or title insurance agent shall not act as an agent of an insurer unless the insurance producer or title insurance agent becomes an appointed agent of that insurer. An insurance producer who is not acting as an agent of an insurer is not required to become appointed.

(2) To appoint an insurance producer or title insurance agent as its agent, the appointing insurer shall file, in a format approved by the commissioner, a notice of appointment

within fifteen days from the date the agency contract is executed or when the first insurance application is submitted, whichever is later.

(3) Upon receipt of the notice of appointment, the commissioner shall verify within a reasonable time, not to exceed thirty days, that the insurance producer or title insurance agent is eligible for appointment. If the insurance producer or title insurance agent is determined to be ineligible for appointment, the commissioner shall notify the insurer within ten days of the determination.

(4) An insurer shall pay an appointment fee, in the amount and method of payment set forth in RCW 48.14.010, for each insurance producer or title insurance agent appointed by the insurer.

(5) Contingent upon payment of the appointment renewal fee as set forth in RCW 48.14.010, an appointment shall be effective until terminated by the insurance company, insurance producer, or title insurance agent and notice has been given to the commissioner as required by RCW 48.17.595. [2007 c 117 § 11; 1994 c 131 § 5; 1990 1st ex.s. c 3 § 3; 1979 ex.s. c 269 § 2; 1967 c 150 § 20; 1959 c 225 § 6; 1955 c 303 § 13; 1947 c 79 § .17.16; Rem. Supp. 1947 § 45.17.16.]

Effective date, implementation—1979 ex.s. c 269: See note following RCW 48.14.010.

48.17.170 Insurance producers', title insurance agents', and adjusters' licenses—Authorized lines of authority—Definitions—Form and content of licenses. (Effective July 1, 2009.)

(1) Unless denied licensure under RCW 48.17.530, persons who have met the requirements of RCW 48.17.090 and 48.17.110 shall be issued an insurance producer license. An insurance producer may receive a license in one or more of the following lines of authority:

(a) "Life," which is insurance coverage on human lives, including benefits of endowment and annuities, and may include benefits in the event of death or dismemberment by accident and benefits for disability income;

(b) "Disability," which is insurance coverage for accident, health, and disability or sickness, bodily injury, or accidental death, and may include benefits for disability income;

(c) "Property," which is insurance coverage for the direct or consequential loss or damage to property of every kind;

(d) "Casualty," which is insurance coverage against legal liability, including that for death, injury, or disability or damage to real or personal property;

(e) "Variable life and variable annuity products," which is insurance coverage provided under variable life insurance contracts, variable annuities, or any other life insurance or annuity product that reflects the investment experience of a separate account;

(f) "Personal lines," which is property and casualty insurance coverage sold to individuals and families for primarily noncommercial purposes;

(g) Limited lines:

(i) Surety;

(ii) Limited line credit insurance;

(iii) Travel;

(h) Specialty lines:

(i) Communications equipment or services;

(ii) Rental car; or

(i) Any other line of insurance permitted under state laws or rules.

(2) Unless denied licensure under RCW 48.17.530, persons who have met the requirements of RCW 48.17.090(4) shall be issued a title insurance agent license.

(3) All insurance producers', title insurance agents', and adjusters' licenses issued by the commissioner shall be valid for the time period established by the commissioner unless suspended or revoked at an earlier date.

(4) Subject to the right of the commissioner to suspend, revoke, or refuse to renew any insurance producer's, title insurance agent's, or adjuster's license as provided in this title, the license may be renewed into another like period by filing with the commissioner by any means acceptable to the commissioner on or before the expiration date a request, by or on behalf of the licensee, for such renewal accompanied by payment of the renewal fee as specified in RCW 48.14.010.

(5) If the request and fee for renewal of an insurance producer's, title insurance agent's, or adjuster's license is filed with the commissioner prior to expiration of the existing license, the licensee may continue to act under such license, unless sooner revoked or suspended, until the issuance of a renewal license, or until the expiration of fifteen days after the commissioner has refused to renew the license and has mailed order of such refusal to the licensee. Any request for renewal not so filed until after date of expiration may be considered by the commissioner as an application for a new license.

(6) For all licenses, if request for renewal of an insurance producer's, title insurance agent's, or adjuster's license or payment of the fee is not received by the commissioner prior to the expiration date as required under subsection (4) of this section, the insurer or applicant for renewal shall pay to the commissioner and the commissioner shall collect, in addition to the regular fee, a surcharge as follows: For the first thirty days or part thereof of delinquency the surcharge is fifty percent of the fee; for all delinquencies extending more than thirty days, the surcharge is one hundred percent of the fee. A surcharge of two hundred percent of the renewal fee is required for any delinquency extending more than sixty days after the expiration date. This subsection shall not exempt any person from any penalty provided by law for transacting business without a valid and subsisting license or appointment, or affect the commissioner's right, at his or her discretion, to consider such delinquent application as one for a new license or appointment.

(7) An individual insurance producer, title insurance agent, or adjuster who allows his or her license to lapse may, within twelve months after the expiration date, reinstate the same license without the necessity of passing a written examination.

(8) A licensed insurance producer who is unable to comply with license renewal procedures due to military service or some other extenuating circumstance such as a long-term medical disability, may request a waiver of those procedures. The producer may also request a waiver of any examination requirement or any other fine or sanction imposed for failure to comply with renewal procedures.

(9) The license shall contain the licensee's name, address, personal identification number, and the date of issu-

ance, lines of authority, expiration date, and any other information the commissioner deems necessary.

(10) Licensees shall inform the commissioner by any means acceptable to the commissioner of a change of address within thirty days of the change. Failure to timely inform the commissioner of a change in legal name or address may result in a penalty under either RCW 48.17.530 or 48.17.560, or both. [2007 c 117 § 12; 1979 ex.s. c 269 § 3; 1947 c 79 § .17.17; Rem. Supp. 1947 § 45.17.17.]

Effective date, implementation—1979 ex.s. c 269: See note following RCW 48.14.010.

48.17.173 Nonresident license request—Conditions for approval—Service of legal process. (Effective July 1, 2009.)

(1) Unless denied licensure under RCW 48.17.530, a nonresident person shall receive a nonresident producer license for the line or lines of authority under RCW 48.17.170 which is substantially equivalent to the line or lines of authority granted to the nonresident person in the person's home state if:

(a) The person is currently licensed as a resident and in good standing in the person's home state;

(b) The person has submitted the proper request for licensure and has paid the fees required by RCW 48.14.010;

(c) The person has submitted or transmitted to the commissioner the application for licensure that the person submitted to the person's home state, or in lieu, a completed uniform application;

(d) The person's home state awards nonresident producer licenses to residents of this state on the same basis; and

(e) The person, as part of the request for licensure, has furnished information concerning the person's identity, including fingerprints for submission to the Washington state patrol, the federal bureau of investigation, and any governmental agency or entity authorized to receive this information for a state and national criminal history background check. If, in the process of verifying fingerprints, business records, or other information, the commissioner's office incurs fees or charges from another governmental agency or from a business firm, the amount of the fees or charges shall be paid to the commissioner's office by the applicant.

(2) The commissioner shall waive any license application requirements for a nonresident license applicant with a valid license from the applicant's home state, except the requirements imposed by this section, if the applicant's home state awards nonresident licenses to residents of this state on the same basis.

(3) A nonresident insurance producer's satisfaction of the nonresident insurance producer's home state's continuing education requirements for licensed insurance producers shall constitute satisfaction of this state's continuing education requirements if the nonresident producer's home state recognizes the satisfaction of its continuing education requirements imposed upon producers from this state on the same basis.

(4) The commissioner shall waive the requirement for providing fingerprints for submission to the Washington state patrol, the federal bureau of investigation, and any governmental agency or entity authorized to receive this information for a state and national criminal history background check, if the person possesses a valid insurance producer's or surplus

line broker's license from the person's home state and the person's home state requires submission of information concerning a person's identity, including fingerprints for the licensure of its resident insurance producers or surplus line brokers, respectively.

(5) The commissioner may verify the producer's licensing status through the producer database maintained by the NAIC, its affiliates, or subsidiaries.

(6) A nonresident producer who moves from one state to another state or a resident producer who moves from this state to another state shall file a change of address and provide certification from the new resident state within thirty days of the change of legal residence. No fee or license application is required.

(7) A person licensed as a surplus lines producer in the person's home state and complying with the requirements of subsection (1) of this section and chapter 48.15 RCW shall receive a nonresident surplus line broker license under subsection (1) of this section.

(8) A person licensed as a limited line credit insurance or other type of limited lines producer in the person's home state and who complies with the requirements of subsection (1) of this section shall receive a nonresident limited lines producer license, under subsection (1) of this section, granting the same scope of authority as granted under the license issued by the producer's home state. For the purpose of this subsection, limited line insurance is any authority granted by the home state which restricts the authority of the license to the lines set out in RCW 48.17.170(1)(g).

(9) Each licensed nonresident insurance producer or title insurance agent shall appoint the commissioner as the insurance producer's or title insurance agent's attorney to receive service of legal process issued against the insurance producer or title insurance agent in this state upon causes of action arising within this state. Service upon the commissioner as attorney shall constitute effective legal service upon the insurance producer or title insurance agent.

(a) The appointment shall be irrevocable for as long as there could be any cause of action against the insurance producer or title insurance agent arising out of the insurance producer's or title insurance agent's insurance transactions in this state.

(b) Duplicate copies of such legal process against such insurance producer or title insurance agent shall be served upon the commissioner either by a person competent to serve a summons, or through registered mail. At the time of such service the plaintiff shall pay to the commissioner ten dollars, taxable as costs in the action.

(c) Upon receiving such service, the commissioner shall forthwith send one of the copies of the process, by registered mail with return receipt requested, to the defendant insurance producer or title insurance agent at the insurance producer's or title insurance agent's last address of record with the commissioner.

(d) The commissioner shall keep a record of the day and hour of service upon the commissioner of all such legal process. No proceedings shall be had against the defendant insurance producer or title insurance agent, and the defendant shall not be required to appear, plead, or answer until the expiration of forty days after the date of service upon the commissioner. [2007 c 117 § 13.]

48.17.175 In-state applicant has license in another state. (Effective July 1, 2009.) (1) An individual who applies for an insurance producer license in this state who was previously licensed for the same lines of authority in another state shall not be required to complete any prelicensing education or examination. This exemption is only available if the person is currently licensed in that state or if the application is received within ninety days of the cancellation of the applicant's previous license, and if the prior state issues a certification that, at the time of cancellation, the applicant was in good standing in that state or the state's producer database records, maintained by the NAIC, its affiliates, or subsidiaries, indicate that the producer is or was licensed in good standing for the line of authority requested.

(2) A person licensed as an insurance producer in another state who moves to this state shall make application within ninety days of establishing legal residence to become a resident licensee under RCW 48.17.090. No prelicensing education or examination shall be required of that person to obtain any line of authority previously held in the prior state except where the commissioner determines otherwise by rule. [2007 c 117 § 14.]

48.17.180 Doing business under any name other than legal name. (Effective July 1, 2009.) An insurance producer or title insurance agent doing business under any name other than the insurance producer's or title insurance agent's legal name is required to register the name in accordance with chapter 19.80 RCW and notify the commissioner before using the assumed name. [2007 c 117 § 15; 1990 1st ex.s. c 3 § 4; 1979 ex.s. c 269 § 4; 1947 c 79 § .17.18; Rem. Supp. 1947 § 45.17.18.]

Effective date, implementation—1979 ex.s. c 269: See note following RCW 48.14.010.

Title insurance agents, separate licenses for individuals not required: RCW 48.29.170.

48.17.190 Repealed. (Effective July 1, 2009.) See Supplementary Table of Disposition of Former RCW Sections, this volume.

48.17.200 Repealed. (Effective July 1, 2009.) See Supplementary Table of Disposition of Former RCW Sections, this volume.

48.17.210 Repealed. (Effective July 1, 2009.) See Supplementary Table of Disposition of Former RCW Sections, this volume.

48.17.230 Repealed. (Effective July 1, 2009.) See Supplementary Table of Disposition of Former RCW Sections, this volume.

48.17.240 Repealed. (Effective July 1, 2009.) See Supplementary Table of Disposition of Former RCW Sections, this volume.

48.17.250 Insurance producer's bond. (Effective July 1, 2009.) (1) Every insurance producer licensed under this chapter on or after July 1, 2009, who places insurance either

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directly or indirectly with an insurer with which the insurance producer is not appointed as an agent must maintain in force while so licensed a bond in favor of the people of the state of Washington or a named insured such that the people of Washington are covered by the bond, executed by an authorized corporate surety approved by the commissioner, in the amount of two thousand five hundred dollars, or five percent of the premiums brokered in the previous calendar year, whichever is greater, but not to exceed one hundred thousand dollars total aggregate liability. The bond may be continuous in form, and total aggregate liability on the bond may be limited to the required amount of the bond. The bond shall be contingent on the accounting by the insurance producer to any person requesting the insurance producer to obtain insurance, for moneys or premiums collected in connection therewith.

(2) Authorized insurance producers of a business entity may meet the requirements of this section with a bond in the name of the business entity, continuous in form, and in the amounts set forth in subsection (1) of this section. Insurance producers may meet the requirements of this section with a bond in the name of an association. The association must have been in existence for five years, have common membership, and have been formed for a purpose other than obtaining a bond. An individual insurance producer remains responsible for assuring that a bond is in effect and is for the correct amount.

(3) The surety may cancel the bond and be released from further liability thereunder upon thirty days' written notice in advance to the principal. The cancellation does not affect any liability incurred or accrued under the bond before the termination of the thirty-day period.

(4) The insurance producer's license may be revoked if the insurance producer acts without a bond that is required under this section.

(5) If a party injured under the terms of the bond requests the insurance producer to provide the name of the surety and the bond number, the insurance producer must provide the information within three working days after receiving the request.

(6) An association may meet the requirements of this section for all of its members with a bond in the name of the association that is continuous in form and in the amounts set forth in subsection (1) of this section.

(7) All records relating to the bond required by this section shall be kept available and open to the inspection of the commissioner at any business time. [2007 c 117 § 16; 1979 ex.s. c 269 § 8; 1977 ex.s. c 182 § 4; 1947 c 79 § .17.25; Rem. Supp. 1947 § 45.17.25.]

Effective date, implementation—1979 ex.s. c 269: See note following RCW 48.14.010.

48.17.260 Repealed. (Effective July 1, 2009.) See Supplementary Table of Disposition of Former RCW Sections, this volume.

48.17.270 Insurance producer as insurer's agent—Compensation—Disclosure. (Effective July 1, 2009.) (1) The sole relationship between an insurance producer and an insurer as to which the insurance producer is appointed as an

agent shall, as to transactions arising during the existence of such agency appointment, be that of insurer and agent.

(2) Unless the agency-insurer agreement provides to the contrary, an insurance producer may receive the following compensation:

(a) A commission paid by the insurer;

(b) A fee paid by the insured; or

(c) A combination of commission paid by the insurer and a fee paid by the insured from which an insurance producer may offset or reimburse the insured for all or part of the fee.

(3) If the compensation received by an insurance producer who is dealing directly with the insured includes a fee, for each policy, the insurance producer must disclose in writing to the insured:

(a) The full amount of the fee paid by the insured;

(b) The full amount of any commission paid to the insurance producer by the insurer, if one is received;

(c) An explanation of any offset or reimbursement of fees or commissions as described in subsection (2)(c) of this section;

(d) When the insurance producer may receive additional commission, notice that states the insurance producer:

(i) May receive additional commission in the form of future incentive compensation from the insurer, including contingent commissions and other awards and bonuses based on factors that typically include the total sales volume, growth, profitability, and retention of business placed by the insurance producer with the insurer, and incentive compensation is only paid if the performance criteria established in the agency-insurer agreement is met by the insurance producer or the business entity with which the insurance producer is affiliated; and

(ii) Will furnish to the insured or prospective insured specific information relating to additional commission upon request; and

(e) The full name of the insurer that may pay any commission to the insurance producer.

(4) Written disclosure of compensation as required by subsection (3) of this section shall be provided by the insurance producer to the insured prior to the sale of the policy.

(5) Written disclosure as required by subsection (3) of this section must be signed by the insurance producer and the insured, and the writing must be retained by the insurance producer for five years. For the purposes of this section, written disclosure means the insured's written consent obtained prior to the insured's purchase of insurance. In the case of a purchase over the telephone or by electronic means for which written consent cannot be reasonably obtained, consent documented by the producer shall be acceptable. [2007 c 117 § 17; 1994 c 203 § 1; 1993 c 455 § 1; 1981 c 339 § 13; 1947 c 79 § .17.27; Rem. Supp. 1947 § 45.17.27.]

48.17.280 Repealed. (Effective July 1, 2009.) See Supplementary Table of Disposition of Former RCW Sections, this volume.

48.17.290 Repealed. (Effective July 1, 2009.) See Supplementary Table of Disposition of Former RCW Sections, this volume.

48.17.300 Repealed. (Effective July 1, 2009.) See Supplementary Table of Disposition of Former RCW Sections, this volume.

48.17.310 Repealed. (Effective July 1, 2009.) See Supplementary Table of Disposition of Former RCW Sections, this volume.

48.17.320 Repealed. (Effective July 1, 2009.) See Supplementary Table of Disposition of Former RCW Sections, this volume.

48.17.330 Repealed. (Effective July 1, 2009.) See Supplementary Table of Disposition of Former RCW Sections, this volume.

48.17.340 Repealed. (Effective July 1, 2009.) See Supplementary Table of Disposition of Former RCW Sections, this volume.

48.17.380 Adjusters—Qualifications for license—Bond. (Effective July 1, 2009.) The commissioner shall license as an adjuster only an individual or business entity which has otherwise complied with this code therefor and the individual or responsible officer of the business entity has furnished evidence satisfactory to the commissioner that the individual or responsible officer of the business entity is qualified as follows:

(1) Is eighteen or more years of age.

(2) Is a bona fide resident of this state, or is a resident of a state which will permit residents of this state to act as adjusters in such other state.

(3) Is a trustworthy person.

(4) Has had experience or special education or training with reference to the handling of loss claims under insurance contracts, of sufficient duration and extent reasonably to make the individual or responsible officer of the business entity competent to fulfill the responsibilities of an adjuster.

(5) Has successfully passed any examination as required under this chapter.

(6) If for a public adjuster's license, has filed the bond required by RCW 48.17.430. [2007 c 117 § 18; 1981 c 339 § 15; 1971 ex.s. c 292 § 48; 1947 c 79 § .17.38; Rem. Supp. 1947 § 45.17.38.]

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

48.17.390 Adjusters—Separate licenses. (Effective July 1, 2009.) The commissioner may license an individual or business entity as an independent adjuster or as a public adjuster, and separate licenses shall be required for each type of adjuster. An individual or business entity may be concurrently licensed under separate licenses as an independent adjuster and as a public adjuster. The full license fee shall be paid for each such license. [2007 c 117 § 19; 1981 c 339 § 16; 1947 c 79 § .17.39; Rem. Supp. 1947 § 45.17.39.]

48.17.410 Authority of adjuster. (Effective July 1, 2009.) An adjuster shall have authority under an adjuster's license only to investigate or report to the adjuster's principal upon claims as limited under RCW 48.17.010(1) on behalf

only of the insurers if licensed as an independent adjuster, or on behalf only of insureds if licensed as a public adjuster. An adjuster licensed concurrently as both an independent and a public adjuster shall not represent both the insurer and the insured in the same transaction. [2007 c 117 § 20; 1947 c 79 § .17.41; Rem. Supp. 1947 § 45.17.41.]

48.17.420 Appointed agent may adjust—Nonresident adjusters. (Effective July 1, 2009.) (1) On behalf of and as authorized by an insurer for which an insurance producer or title insurance agent has been appointed as an agent, an insurance producer or title insurance agent may from time to time act as an adjuster and investigate and report upon claims without being required to be licensed as an adjuster.

(2) No license by this state shall be required of a nonresident independent adjuster, for the adjustment in this state of a single loss, or of losses arising out of a catastrophe common to all such losses. [2007 c 117 § 21; 1947 c 79 § .17.42; Rem. Supp. 1947 § 45.17.42.]

48.17.450 Place of business. (Effective July 1, 2009.) (1) Every licensed insurance producer, title insurance agent, and adjuster, other than an insurance producer licensed for life or disability insurances only, shall have and maintain in this state, or, if a nonresident insurance producer or title insurance agent, in this state or in the state of the licensee's domicile, a place of business accessible to the public. Such place of business shall be that wherein the insurance producer or title insurance agent principally conducts transactions under that person's licenses. A licensee maintaining more than one place of business in this state shall obtain a duplicate license or licenses for each additional such place, and shall pay the full fee therefor.

(2) Any notice, order, or written communication from the commissioner to a person licensed under this chapter which directly affects the person's license shall be sent by mail to the person's last address of record with the commissioner. [2007 c 117 § 22; 1990 1st ex.s. c 3 § 5; 1988 c 248 § 11; 1953 c 197 § 6; 1947 c 79 § .17.45; Rem. Supp. 1947 § 45.17.45.]

48.17.460 Display of license. (Effective July 1, 2009.) The license or licenses of each insurance producer, title insurance agent, or adjuster shall be displayed in a conspicuous place in that part of the place of business which is customarily open to the public. [2007 c 117 § 23; 1947 c 79 § .17.46; Rem. Supp. 1947 § 45.17.46.]

48.17.470 Records of insurance producers, title insurance agents, adjusters. (Effective July 1, 2009.) (1) Every insurance producer, title insurance agent, or adjuster shall retain a record of all transactions consummated under the license. This record shall be in organized form and shall include:

(a) If an insurance producer or title insurance agent:

(i) A record of each insurance contract procured or issued, together with the names of the insurers and insureds, the amount of premium paid or to be paid, and a statement of the subject of the insurance;

(ii) The names of any other licensees from whom business is accepted, and of persons to whom commissions or allowances of any kind are promised or paid.

(b) If an adjuster, a record of each investigation or adjustment undertaken or consummated, and a statement of any fee, commission, or other compensation received or to be received by the adjuster on account of such investigation or adjustment.

(c) Such other and additional information as shall be customary, or as may reasonably be required by the commissioner.

(2) All such records as to any particular transaction shall be kept available and open to the inspection of the commissioner at any business time during the five years immediately after the date of the completion of such transaction.

(3) This section shall not apply as to life or disability insurances. [2007 c 117 § 24; 1947 c 79 § .17.47; Rem. Supp. 1947 § 45.17.47.]

48.17.475 Licensee to reply promptly to inquiry by commissioner. (Effective July 1, 2009.) Every insurance producer, title insurance agent, adjuster, or other person licensed under this chapter shall promptly reply in writing to an inquiry of the commissioner relative to the business of insurance. A timely response is one that is received by the commissioner within fifteen business days from receipt of the inquiry. Failure to make a timely response constitutes a violation of this section. [2007 c 117 § 25; 1967 c 150 § 13.]

48.17.480 Reporting and accounting for premiums. (Effective July 1, 2009.) (1) An insurance producer, title insurance agent, or any other representative of an insurer involved in the procuring or issuance of an insurance contract shall report to the insurer the exact amount of consideration charged as premium for such contract, and such amount shall likewise be shown in the contract and in the records of the insurance producer, title insurance agent, or other representative. Each willful violation of this provision is a misdemeanor.

(2) All funds representing premiums or return premiums received by an insurance producer or title insurance agent shall be so received in the insurance producer's or title insurance agent's fiduciary capacity, and shall be promptly accounted for and paid to the insured, insurer, title insurance agent, or insurance producer as entitled thereto.

(3) Any person licensed under this chapter who receives funds which belong to or should be paid to another person as a result of or in connection with an insurance transaction is deemed to have received the funds in a fiduciary capacity. The licensee shall promptly account for and pay the funds to the person entitled to the funds.

(4) Any insurance producer, title insurance agent, adjuster, or other person licensed under this chapter who, not being lawfully entitled thereto, diverts or appropriates funds received in a fiduciary capacity or any portion thereof to his or her own use, is guilty of theft under chapter 9A.56 RCW. [2007 c 117 § 26; 2003 c 53 § 269; 1988 c 248 § 12; 1947 c 79 § .17.48; Rem. Supp. 1947 § 45.17.48.]

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

48.17.490 Must be licensed to receive a commission, service fee, or other valuable consideration. (Effective July 1, 2009.) (1) An insurance company, insurance producer, or title insurance agent shall not pay a commission, service fee, or other valuable consideration to a person for selling, soliciting, or negotiating insurance in this state if that person is required to be licensed under this chapter or chapter 48.15 RCW and is not so licensed.

(2) A person shall not accept a commission, service fee, or other valuable consideration for selling, soliciting, or negotiating insurance in this state if that person is required to be licensed under this chapter or chapter 48.15 RCW and is not so licensed.

(3) Renewal or other deferred commissions may be paid to a person for selling, soliciting, or negotiating insurance in this state if the person was required to be licensed under this chapter or chapter 48.15 RCW at the time of the sale, solicitation, or negotiation, and was so licensed at that time.

(4) An insurer, except a title insurer, or insurance producer may pay or assign commissions, service fees, or other valuable consideration to an insurance agency, or to persons who do not sell, solicit, or negotiate insurance in this state, unless the payment would violate RCW 48.30.140, 48.30.150, 48.30.155, 48.30.157, or 48.30.170. [2007 c 117 § 27; 1988 c 248 § 13; 1947 c 79 § .17.49; Rem. Supp. 1947 § 45.17.49.]

48.17.500 Repealed. (Effective July 1, 2009.) See Supplementary Table of Disposition of Former RCW Sections, this volume.

48.17.510 Temporary licenses—Restrictions—Commissioner's discretion. (Effective July 1, 2009.) (1) The commissioner may issue a temporary insurance producer license for a period not to exceed one hundred eighty days without requiring an examination if the commissioner deems that the temporary license is necessary for the servicing of an insurance business in the following cases:

(a) To the surviving spouse or court-appointed personal representative of a licensed insurance producer who dies or becomes mentally or physically disabled to allow adequate time for the sale of the insurance business owned by the insurance producer or for the recovery or return of the insurance producer to the business, or to provide for the training and licensing of new personnel to operate the insurance producer's business;

(b) To a member or employee of a business entity licensed as an insurance producer, upon the death or disability of an individual designated in the business entity application or the license;

(c) To the designee of a licensed insurance producer entering active service in the armed forces of the United States; or

(d) In any other circumstance where the commissioner deems that the public interest will best be served by the issuance of this license.

(2) The commissioner may, by order, limit the authority of any temporary licensee in any way deemed necessary to protect insureds and the public. The commissioner may require the temporary licensee to have a suitable sponsor who is a licensed insurance producer or insurer and who assumes

responsibility for all acts of the temporary licensee, and may impose other similar requirements designed to protect insureds and the public. The commissioner may, by order, revoke a temporary license if the interest of insureds or the public are endangered. A temporary license may not continue after the owner or the personal representatives dispose of the business. [2007 c 117 § 28; 1982 c 181 § 7; 1955 c 303 § 15; 1953 c 197 § 8; 1947 c 79 § .17.51; Rem. Supp. 1947 § 45.17.51.]

Severability—1982 c 181: See note following RCW 48.03.010.

48.17.520 Repealed. (Effective July 1, 2009.) See Supplementary Table of Disposition of Former RCW Sections, this volume.

48.17.530 Commissioner may place on probation, suspend, revoke, or refuse to issue or renew a license. (Effective July 1, 2009.) (1) The commissioner may place on probation, suspend, revoke, or refuse to issue or renew an adjuster's license, an insurance producer's license, a title insurance agent's license, or any surplus line broker's license, or may levy a civil penalty in accordance with RCW 48.17.560 or any combination of actions, for any one or more of the following causes:

(a) Providing incorrect, misleading, incomplete, or materially untrue information in the license application;

(b) Violating any insurance laws, or violating any rule, subpoena, or order of the commissioner or of another state's insurance commissioner;

(c) Obtaining or attempting to obtain a license through misrepresentation or fraud;

(d) Improperly withholding, misappropriating, or converting any moneys or properties received in the course of doing insurance business;

(e) Intentionally misrepresenting the terms of an actual or proposed insurance contract or application for insurance;

(f) Having been convicted of a felony;

(g) Having admitted or been found to have committed any insurance unfair trade practice or fraud;

(h) Using fraudulent, coercive, or dishonest practices, or demonstrating incompetence, untrustworthiness, or financial irresponsibility in this state or elsewhere;

(i) Having an insurance producer license, or its equivalent, denied, suspended, or revoked in any other state, province, district, or territory;

(j) Forging another's name to an application for insurance or to any document related to an insurance transaction;

(k) Improperly using notes or any other reference material to complete an examination for an insurance license;

(l) Knowingly accepting insurance business from a person who is required to be licensed under this title and is not so licensed, other than orders for issuance of title insurance on property located in this state placed by a nonresident title insurance agent authorized to act as a title insurance agent in the title insurance agent's home state; or

(m) Obtaining a loan from an insurance client that is not a financial institution and who is not related to the insurance producer by birth, marriage, or adoption, except the commissioner may, by rule, define and permit reasonable arrangements.

(2) The license of a business entity may be suspended, revoked, or refused if the commissioner finds that an individual licensee's violation was known or should have been known by one or more of the partners, officers, or managers acting on behalf of the partnership or corporation, and the violation was neither reported to the commissioner nor corrective action taken.

(3) The commissioner shall retain the authority to enforce the provisions of and impose any penalty or remedy authorized by this chapter and this title against any person who is under investigation for or charged with a violation of this chapter or this title, even if the person's license or registration has been surrendered or has lapsed by operation of law.

(4) The holder of any license which has been revoked or suspended shall surrender the license certificate to the commissioner at the commissioner's request.

(5) The commissioner may probate a suspension or revocation of a license under reasonable terms determined by the commissioner. In addition, the commissioner may require a licensee who is placed on probation to:

(a) Report regularly to the commissioner on matters that are the basis of the probation;

(b) Limit practice to an area prescribed by the commissioner; or

(c) Continue or renew continuing education until the licensee attains a degree of skill satisfactory to the commissioner in the area that is the basis of the probation.

(6) At any time during a probation term where the licensee has violated the probation order, the commissioner may:

(a) Rescind the probation and enforce the commissioner's original order; and

(b) Impose any disciplinary action permitted under this section in addition to or in lieu of enforcing the original order. [2007 c 117 § 29; 1973 1st ex.s. c 152 § 2; 1969 ex.s. c 241 § 11; 1967 c 150 § 23; 1947 c 79 § .17.53; Rem. Supp. 1947 § 45.17.53.]

Severability—1973 1st ex.s. c 152: See note following RCW 48.05.140.

48.17.565 Insurance education providers—Violations—Costs awarded. (Effective July 1, 2009.) If an investigation of any insurance education provider culminates in a finding by the commissioner or by any court of competent jurisdiction, that the insurance education provider has failed to comply with or has violated any statute or regulation pertaining to insurance education, the insurance education provider shall pay the expenses reasonably attributable and allocable to such investigation.

(1) The commissioner shall calculate such expenses and render a bill therefor by registered mail to the insurance education provider. Within thirty days after receipt of such bill, the insurance education provider shall pay the full amount to the commissioner. The commissioner shall transmit such payment to the state treasurer. The state treasurer shall credit the payment to the office of the insurance commissioner regulatory account, treating such payment as recovery of a prior expenditure.

(2) In any action brought under this section, if the insurance commissioner prevails, the court may award to the

office of the commissioner all costs of the action, including a reasonable attorneys' fee to be fixed by the court. [2007 c 117 § 30; 1989 c 323 § 4.]

Effective date—1989 c 323: See note following RCW 48.17.055.

48.17.591 Termination of agency contract—Effect on insured—Definition—Application of section. (Effective July 1, 2009.) (1) No insurer authorized to do business in this state may cancel or refuse to renew any policy because that insurer's contract with the independent insurance producer through whom such policy is written has been terminated by the insurer, the insurance producer, or by mutual agreement.

(2) If an insurer intends to terminate a written agency contract with an independent insurance producer, the insurer shall give the insurance producer not less than one hundred twenty days' advance written notice of the intent, unless the reason for termination is one of the reasons set forth in RCW 48.17.530. During the notice period the insurer shall not amend the existing contract without the consent of the insurance producer.

(a) Unless the agency contract provides otherwise, during the one hundred twenty day notice period the independent insurance producer shall not write or bind any new business on behalf of the terminating insurer without specific written approval. However, routine adjustments by insureds are permitted. The terminating insurer shall permit renewal of all its policies in the insurance producer's book of business for a period of one year following the effective date of the termination, to the extent the policies meet the insurer's underwriting standards and the insurer has no other reason for nonrenewal. The rate of commission for any policies renewed under this provision shall be the same as the insurance producer would have received had the agency agreement not been terminated.

(b) An independent insurance producer whose agency contract has been terminated shall have a reasonable opportunity to transfer affected policies to other insurers with which the insurance producer has an appointment: PROVIDED, HOWEVER, That prior to the conclusion of the one-year renewal period following the effective date of the termination, an insurer without a reason for not renewing an insured's policy and which has not received notification of the placement of such policy with another insurer shall provide its insured with appropriate written notice of an offer to continue the policy. In such cases, except where the terminated insurance producer has placed the policy with another agent of the insurer, the insurer shall, where practical, assign the policy to an appointed insurance producer located reasonably near the insured willing to accept the assignment.

(c) An insurer is not required to continue the appointment of a terminated independent insurance producer during or after the one year renewal period. However, an insurance producer whose contract has been terminated by the insurer remains an agent of the terminating insurer as to actions associated with the policies subject to this section just as if the insurance producer were appointed by the insurer as its agent.

(3) In the absence of receipt of notice from the insured that coverage will not be continued with the existing insurer, an insurer whose agency contract has been terminated by an independent insurance producer, or by the mutual agreement of the insurer and the insurance producer, that elects to renew

or lacks a reason not to renew, shall give the renewal notice required by chapter 48.18 RCW to affected insureds, and continue renewed coverage in accordance with the methods specified in subsection (2)(b) of this section. Insurance producers affected by this subsection may provide the notice to an insurer that an insured does not intend to continue existing coverage with the insurer, after receiving written authority to do so from an insured.

(4) For purposes of this section an "independent insurance producer" is a licensed insurance producer representing an insurer on an independent contractor basis and not as an employee. This term includes only those insurance producers not obligated by contract to place insurance accounts with a particular insurer or group of insurers.

(5) This section does not apply to:

(a) Insurance producers or policies of an insurer or group of insurers if the business is not owned by the insurance producer and the termination of any such contractual agreement does not result in the cancellation or nonrenewal of any policies of insurance;

(b) Managing general agents, to the extent that they are acting in that capacity;

(c) Life, disability, surety, ocean marine and foreign trade, and title insurance policies;

(d) Situations where the termination of the agency contract results from the insolvency or liquidation of the terminating insurer.

(6) No insurer may terminate its agency contract with an appointed insurance producer unless it complies with this section.

(7) Nothing contained in this section excuses an insurer from giving cancellation and renewal notices that may be required by chapter 48.18 RCW. [2007 c 117 § 31; 1990 c 121 § 1. Formerly RCW 48.18.285.]

48.17.595 Termination of business relationship with an insurance producer or title insurance agent—Notice—Confidentiality of information—Immunity from civil liability. (Effective July 1, 2009.) (1) An insurer or authorized representative of the insurer that terminates the appointment, employment, contract, or other insurance business relationship with an insurance producer or title insurance agent shall notify the commissioner within thirty days following the effective date of the termination, using a format prescribed by the commissioner, if the reason for termination is one of the reasons set forth in RCW 48.17.530 or the insurer has knowledge the insurance producer or title insurance agent was found by a court, government body, or self-regulatory organization authorized by law to have engaged in any of the activities in RCW 48.17.530. Upon the written request of the commissioner, the insurer shall provide additional information, documents, records, or other data pertaining to the termination or activity of the insurance producer or title insurance agent.

(2) An insurer or authorized representative of the insurer that terminates the appointment, employment, or contract with an insurance producer or title insurance agent for any reason not set forth in RCW 48.17.530, shall notify the commissioner within thirty days following the effective date of the termination, using a format prescribed by the commissioner. Upon written request of the commissioner, the

insurer shall provide additional information, documents, records, or other data pertaining to the termination.

(3) The insurer or the authorized representative of the insurer shall promptly notify the commissioner in a format acceptable to the commissioner if, upon further review or investigation, the insurer discovers additional information that would have been reportable to the commissioner in accordance with subsection (1) of this section had the insurer then known of its existence.

(4) A copy of the notification to the commissioner shall be provided to the insurance producer or title insurance agent.

(a) Within fifteen days after making the notification required by subsections (1), (2), and (3) of this section, the insurer shall mail a copy of the notification to the insurance producer or title insurance agent at the insurance producer's or title insurance agent's last known address. If the insurance producer or title insurance agent is terminated for cause for any of the reasons listed in RCW 48.17.530, the insurer shall provide a copy of the notification to the insurance producer or title insurance agent at the insurance producer's or title insurance agent's last known address by certified mail, return receipt requested, postage prepaid, or by overnight delivery using a nationally recognized carrier.

(b) Within thirty days after the insurance producer or title insurance agent has received the original or additional notification, the insurance producer or title insurance agent may file written comments concerning the substance of the notification with the commissioner. The insurance producer or title insurance agent shall, by the same means, simultaneously send a copy of the comments to the reporting insurer, and the comments shall become a part of the commissioner's file and accompany every copy of a report distributed or disclosed for any reason about the insurance producer or title insurance agent as permitted under subsection (6) of this section.

(5) Immunities shall apply as follows:

(a) In the absence of actual malice, an insurer, the authorized representative of the insurer, an insurance producer, title insurance agent, the commissioner, or an organization of which the commissioner is a member and that compiles the information and makes it available to other insurance commissioners or regulatory or law enforcement agencies shall not be subject to civil liability, and a civil cause of action of any nature shall not arise against these entities or their respective agents or employees, as a result of any statement or information required by or provided under this section, or any information relating to any statement that may be requested in writing by the commissioner, from an insurer, insurance producer, or title insurance agent; or a statement by a terminating insurer, insurance producer, or title insurance agent to an insurer, insurance producer, or title insurance agent limited solely and exclusively to whether a termination for cause under subsection (1) of this section was reported to the commissioner, provided that the propriety of any termination for cause under subsection (1) of this section is certified in writing by an officer or authorized representative of the insurer, insurance producer, or title insurance agent terminating the relationship.

(b) In any action brought against a person that may have immunity under (a) of this subsection for making any statement required by this section or providing any information

relating to any statement that may be requested by the commissioner, the party bringing the action shall plead specifically in any allegation that (a) of this subsection does not apply because the person making the statement or providing the information did so with actual malice.

(c) Subsection (5)(a) or (b) of this section shall not abrogate or modify any existing statutory or common law privileges or immunities.

(6) Information provided under this section is confidential.

(a) Any documents, materials, or other information in the control or possession of the commissioner that is furnished by an insurer, insurance producer, title insurance agent, or an employee or agent thereof acting on behalf of the insurer, insurance producer, or title insurance agent, or obtained by the commissioner in an investigation pursuant to this section shall be confidential by law and privileged, shall not be subject to disclosure under chapter 42.56 RCW, shall not be subject to subpoena, and shall not be subject to discovery or admissible in evidence in any private civil action. However, the commissioner is authorized to use the documents, materials, or other information in the furtherance of any regulatory or legal action brought as a part of the commissioner's duties.

(b) Neither the commissioner nor any person who received documents, materials, or other information while acting under the authority of the commissioner shall be permitted or required to testify in any private civil action concerning any confidential or privileged documents, materials, or information subject to (a) of this subsection.

(c) In order to assist in the performance of the commissioner's duties under chapter 117, Laws of 2007 and in accordance with RCW 48.02.065, the commissioner:

(i) May share documents, materials, or other information, including the confidential and privileged documents, materials, or information subject to (a) of this subsection, with other state, federal, and international regulatory agencies, with the NAIC, its affiliates, or subsidiaries, and with state, federal, and international law enforcement authorities, provided that the recipient agrees to maintain the confidentiality and privileged status of the document, material, or other information;

(ii) May receive documents, materials, or information, including otherwise confidential and privileged documents, materials, or information, from the NAIC, its affiliates, or subsidiaries, and from regulatory and law enforcement officials of other foreign or domestic jurisdictions, and shall maintain as confidential or privileged any document, material, or information received with notice or the understanding that it is confidential or privileged under the laws of the jurisdiction that is the source of the document, material, or information; and

(iii) May enter into agreements governing sharing and use of information consistent with this subsection.

(d) No waiver of any applicable privilege or claim of confidentiality in the documents, materials, or information shall occur as a result of disclosure to the commissioner under this section or as a result of sharing as authorized in subsection (5)(c) of this section.

(e) Nothing in this chapter shall prohibit the commissioner from releasing final, adjudicated actions including for cause terminations that are open to public inspection pursuant

to chapter 42.56 RCW to a database or other clearinghouse service maintained by the NAIC, its affiliates, or subsidiaries.

(7) An insurer, the authorized representative of the insurer, insurance producer, or title insurance agent that fails to report as required under the provisions of this section or that is found to have reported with actual malice by a court of competent jurisdiction may, after notice and hearing, have its license or certificate of authority suspended or revoked, and may be fined in accordance with this title. [2007 c 117 § 32.]

48.17.597 Administrative action taken against a licensee in another jurisdiction or governmental agency—Report to commissioner. (Effective July 1, 2009.) (1) An insurance producer, title insurance agent, or adjuster shall report to the commissioner any administrative action taken against the insurance producer, title insurance agent, or adjuster in another jurisdiction or by another governmental agency in this state within thirty days of the final disposition of the matter. This report shall include a copy of the order, consent to order, or other relevant legal documents.

(2) Within thirty days of the initial pretrial hearing date, an insurance producer, title insurance agent, or adjuster shall report to the commissioner any criminal prosecution of the insurance producer, title insurance agent, or adjuster taken in any jurisdiction. The report shall include a copy of the initial complaint filed, the order resulting from the hearing, and any other relevant legal documents. [2007 c 117 § 34.]

48.17.600 Separation of premium funds. (Effective July 1, 2009.) (1) All funds representing premiums or return premiums received by an insurance producer or title insurance agent in the insurance producer's or title insurance agent's fiduciary capacity shall be accounted for and maintained in a separate account from all other business and personal funds.

(2) An insurance producer or title insurance agent shall not commingle or otherwise combine premiums with any other moneys, except as provided in subsection (3) of this section.

(3) An insurance producer or title insurance agent may commingle with premium funds any additional funds as the insurance producer or title insurance agent may deem prudent for the purpose of advancing premiums, establishing reserves for the paying of return premiums, or for any contingencies as may arise in the insurance producer's or title insurance agent's business of receiving and transmitting premium or return premium funds.

(4) Each willful violation of this section shall constitute a misdemeanor. [2007 c 117 § 33; 1988 c 248 § 15; 1986 c 69 § 1.]

Effective date—1986 c 69: "This act shall take effect on January 1, 1987." [1986 c 69 § 2.]

48.17.900 Severability—2007 c 117. If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected. [2007 c 117 § 38.]

48.17.901 Effective date—2007 c 117. This act takes effect July 1, 2009. [2007 c 117 § 40.]

Chapter 48.18 RCW THE INSURANCE CONTRACT

Sections

48.18.170 "Premium" defined.
48.18.180 Stated premium must include all charges.

48.18.170 "Premium" defined. "Premium" as used in this code means all sums charged, received, or deposited as consideration for an insurance contract or the continuance thereof. "Premium" does not include a regulatory surcharge imposed by RCW 48.02.190, except as otherwise provided in this section. Any assessment, or any "membership," "policy," "survey," "inspection," "service" or similar fee or charge made by the insurer in consideration for an insurance contract is deemed part of the premium. [2007 c 153 § 1; 1947 c 79 § .18.17; Rem. Supp. 1947 § 45.18.17.]

48.18.180 Stated premium must include all charges.

(1) The premium stated in the policy shall be inclusive of all fees, charges, premiums, or other consideration charged for the insurance or for the procurement thereof.

(2) No insurer or its officer, employee, agent, solicitor, or other representative shall charge or receive any fee, compensation, or consideration for insurance which is not included in the premium specified in the policy.

(3) Each violation of this section is a gross misdemeanor.

(4) This section does not apply to:

(a) A fee paid to a *broker by an insured as provided in RCW 48.17.270; or

(b) A regulatory surcharge imposed by RCW 48.02.190. [2007 c 153 § 2; 1994 c 203 § 2; 1947 c 79 § .18.18; Rem. Supp. 1947 § 45.18.18.]

*Reviser's note: 2007 c 117 replaced the terms "agent" and "broker" with the term "producer," effective July 1, 2009.

Chapter 48.19 RCW RATES

Sections

48.19.460 Automobile insurance—Premium reductions for older insureds completing accident prevention course.

48.19.460 Automobile insurance—Premium reductions for older insureds completing accident prevention course. Any schedule of rates or rating plan for automobile liability and physical damage insurance submitted to or filed with the commissioner shall provide for an appropriate reduction in premium charges except for underinsured motorist coverage for those insureds who are fifty-five years of age and older, for a two-year period after successfully completing a motor vehicle accident prevention course meeting the criteria of the department of licensing with a minimum of eight hours, or additional hours as determined by rule of the department of licensing. The classroom course may be conducted by a public or private agency approved by the department. An eight-hour course meeting the criteria of the department of licensing may be offered via an alternative delivery

method of instruction, which may include internet, video, or other technology-based delivery methods. An agency seeking approval from the department to offer an alternative delivery method course of instruction is not required to conduct classroom courses under this section. The department of licensing may adopt rules to ensure that insureds who seek certification for taking a course offered via an alternative delivery method have completed the course. [2007 c 258 § 1; 1987 c 377 § 1; 1986 c 235 § 1.]

Chapter 48.20 RCW DISABILITY INSURANCE

Sections

48.20.435 Option to cover dependents under age twenty-five. (*Effective January 1, 2009.*)
48.20.550 Fixed payment insurance—Standard disclosure form.
48.20.555 Fixed payment insurance—Benefit restrictions.
48.20.580 Mental health services—Definition—Coverage required, when. (*Effective January 1, 2008.*)

48.20.435 Option to cover dependents under age twenty-five. (*Effective January 1, 2009.*) Any disability insurance contract that provides coverage for a subscriber's dependent must offer the option of covering any unmarried dependent under the age of twenty-five. [2007 c 259 § 19.]

Effective date—2007 c 259 §§ 18-22: See note following RCW 41.05.095.

Severability—Subheadings not law—2007 c 259: See notes following RCW 41.05.033.

48.20.550 Fixed payment insurance—Standard disclosure form. The commissioner shall adopt rules setting forth the content of a standard disclosure form to be provided to all applicants for individual, illness-triggered fixed payment insurance, hospital confinement fixed payment insurance, or other fixed payment insurance. The standard disclosure shall provide information regarding the level, type, and amount of benefits provided and the limitations, exclusions, and exceptions under the policy, as well as additional information to enhance consumer understanding. The disclosure shall specifically disclose that the coverage is not comprehensive in nature and will not cover the cost of most hospital and other medical services. Such disclosure form must be filed for approval with the commissioner prior to use. The standard disclosure forms must be provided at the time of solicitation and completion of the application form. All advertising and marketing materials other than the standard disclosure form must be filed with the commissioner at least thirty days prior to use. [2007 c 296 § 2.]

48.20.555 Fixed payment insurance—Benefit restrictions. Illness-triggered fixed payment insurance, hospital confinement fixed payment insurance, or other fixed payment insurance policies are not considered to provide coverage for hospital or medical expenses under this chapter, if the benefits provided are a fixed dollar amount that is paid regardless of the amount charged. The benefits may not be related to, or be a percentage of, the amount charged by the provider of service and must be offered as an independent and noncoordinated benefit with any other health plan as defined in RCW 48.43.005(19). [2007 c 296 § 3.]

48.20.580 Mental health services—Definition—Coverage required, when. (*Effective January 1, 2008.*) (1) For the purposes of this section, "mental health services" means medically necessary outpatient and inpatient services provided to treat mental disorders covered by the diagnostic categories listed in the most current version of the diagnostic and statistical manual of mental disorders, published by the American psychiatric association, on July 24, 2005, or such subsequent date as may be provided by the insurance commissioner by rule, consistent with the purposes of chapter 6, Laws of 2005, with the exception of the following categories, codes, and services: (a) Substance related disorders; (b) life transition problems, currently referred to as "V" codes, and diagnostic codes 302 through 302.9 as found in the diagnostic and statistical manual of mental disorders, 4th edition, published by the American psychiatric association; (c) skilled nursing facility services, home health care, residential treatment, and custodial care; and (d) court-ordered treatment unless the insurer's medical director or designee determines the treatment to be medically necessary.

(2) Each disability insurance contract delivered, issued for delivery, or renewed on or after January 1, 2008, providing coverage for medical and surgical services shall provide coverage for:

(a) Mental health services. The copayment or coinsurance for mental health services may be no more than the copayment or coinsurance for medical and surgical services otherwise provided under the disability insurance contract. Wellness and preventive services that are provided or reimbursed at a lesser copayment, coinsurance, or other cost sharing than other medical and surgical services are excluded from this comparison. If the disability insurance contract imposes a maximum out-of-pocket limit or stop loss, it shall be a single limit or stop loss for medical, surgical, and mental health services; and

(b) Prescription drugs intended to treat any of the disorders covered in subsection (1) of this section to the same extent, and under the same terms and conditions, as other prescription drugs covered by the disability insurance contract.

(3) Each disability insurance contract delivered, issued for delivery, or renewed on or after July 1, 2010, providing coverage for medical and surgical services shall provide coverage for:

(a) Mental health services. The copayment or coinsurance for mental health services may be no more than the copayment or coinsurance for medical and surgical services otherwise provided under the disability insurance contract. Wellness and preventive services that are provided or reimbursed at a lesser copayment, coinsurance, or other cost sharing than other medical and surgical services are excluded from this comparison. If the disability insurance contract imposes a maximum out-of-pocket limit or stop loss, it shall be a single limit or stop loss for medical, surgical, and mental health services. If the disability insurance contract imposes any deductible, mental health services shall be included with medical and surgical services for the purpose of meeting the deductible requirement. Treatment limitations or any other financial requirements on coverage for mental health services are only allowed if the same limitations or requirements are imposed on coverage for medical and surgical services; and

(b) Prescription drugs intended to treat any of the disorders covered in subsection (1) of this section to the same extent, and under the same terms and conditions, as other prescription drugs covered by the disability insurance contract.

(4) In meeting the requirements of this section, disability insurance contracts may not reduce the number of mental health outpatient visits or mental health inpatient days below the level in effect on July 1, 2002.

(5) This section does not prohibit a requirement that mental health services be medically necessary as determined by the medical director or designee, if a comparable requirement is applicable to medical and surgical services.

(6) Nothing in this section shall be construed to prevent the management of mental health services. [2007 c 8 § 1.]

Effective date—2007 c 8: "This act takes effect January 1, 2008." [2007 c 8 § 8.]

Chapter 48.21 RCW

GROUP AND BLANKET DISABILITY INSURANCE

Sections

48.21.045	Health plan benefits for small employers—Coverage—Exemption from statutory requirements—Premium rates—Requirements for providing coverage for small employers—Definitions.
48.21.157	Option to cover dependents under age twenty-five. (<i>Effective January 1, 2009.</i>)
48.21.200	Individual or group disability, health care service contract, health maintenance agreement—Reduction of benefits on basis of other existing coverages.
48.21.240	Repealed. (<i>Effective January 1, 2008.</i>)
48.21.241	Mental health services—Group health plans—Definition—Coverage required, when. (<i>Effective January 1, 2008.</i>)
48.21.370	Fixed payment insurance—Standard disclosure form.
48.21.375	Fixed payment insurance—Benefit restrictions.

48.21.045 Health plan benefits for small employers—Coverage—Exemption from statutory requirements—Premium rates—Requirements for providing coverage for small employers—Definitions. (1)(a) An insurer offering any health benefit plan to a small employer, either directly or through an association or member-governed group formed specifically for the purpose of purchasing health care, may offer and actively market to the small employer a health benefit plan featuring a limited schedule of covered health care services. Nothing in this subsection shall preclude an insurer from offering, or a small employer from purchasing, other health benefit plans that may have more comprehensive benefits than those included in the product offered under this subsection. An insurer offering a health benefit plan under this subsection shall clearly disclose all covered benefits to the small employer in a brochure filed with the commissioner.

(b) A health benefit plan offered under this subsection shall provide coverage for hospital expenses and services rendered by a physician licensed under chapter 18.57 or 18.71 RCW but is not subject to the requirements of RCW 48.21.130, 48.21.140, 48.21.141, 48.21.142, 48.21.144, 48.21.146, 48.21.160 through 48.21.197, 48.21.200, 48.21.220, 48.21.225, 48.21.230, 48.21.235, *48.21.240, 48.21.244, 48.21.250, 48.21.300, 48.21.310, or 48.21.320.

(2) Nothing in this section shall prohibit an insurer from offering, or a purchaser from seeking, health benefit plans with benefits in excess of the health benefit plan offered

under subsection (1) of this section. All forms, policies, and contracts shall be submitted for approval to the commissioner, and the rates of any plan offered under this section shall be reasonable in relation to the benefits thereto.

(3) Premium rates for health benefit plans for small employers as defined in this section shall be subject to the following provisions:

(a) The insurer shall develop its rates based on an adjusted community rate and may only vary the adjusted community rate for:

- (i) Geographic area;
- (ii) Family size;
- (iii) Age; and
- (iv) Wellness activities.

(b) The adjustment for age in (a)(iii) of this subsection may not use age brackets smaller than five-year increments, which shall begin with age twenty and end with age sixty-five. Employees under the age of twenty shall be treated as those age twenty.

(c) The insurer shall be permitted to develop separate rates for individuals age sixty-five or older for coverage for which medicare is the primary payer and coverage for which medicare is not the primary payer. Both rates shall be subject to the requirements of this subsection (3).

(d) The permitted rates for any age group shall be no more than four hundred twenty-five percent of the lowest rate for all age groups on January 1, 1996, four hundred percent on January 1, 1997, and three hundred seventy-five percent on January 1, 2000, and thereafter.

(e) A discount for wellness activities shall be permitted to reflect actuarially justified differences in utilization or cost attributed to such programs.

(f) The rate charged for a health benefit plan offered under this section may not be adjusted more frequently than annually except that the premium may be changed to reflect:

- (i) Changes to the enrollment of the small employer;
- (ii) Changes to the family composition of the employee;
- (iii) Changes to the health benefit plan requested by the small employer; or
- (iv) Changes in government requirements affecting the health benefit plan.

(g) Rating factors shall produce premiums for identical groups that differ only by the amounts attributable to plan design, with the exception of discounts for health improvement programs.

(h) For the purposes of this section, a health benefit plan that contains a restricted network provision shall not be considered similar coverage to a health benefit plan that does not contain such a provision, provided that the restrictions of benefits to network providers result in substantial differences in claims costs. A carrier may develop its rates based on claims costs due to network provider reimbursement schedules or type of network. This subsection does not restrict or enhance the portability of benefits as provided in RCW 48.43.015.

(i) Adjusted community rates established under this section shall pool the medical experience of all small groups purchasing coverage, including the small group participants in the health insurance partnership established in RCW 70.47A.030. However, annual rate adjustments for each small group health benefit plan may vary by up to plus or

minus four percentage points from the overall adjustment of a carrier's entire small group pool, such overall adjustment to be approved by the commissioner, upon a showing by the carrier, certified by a member of the American academy of actuaries that: (i) The variation is a result of deductible leverage, benefit design, or provider network characteristics; and (ii) for a rate renewal period, the projected weighted average of all small group benefit plans will have a revenue neutral effect on the carrier's small group pool. Variations of greater than four percentage points are subject to review by the commissioner, and must be approved or denied within sixty days of submittal. A variation that is not denied within sixty days shall be deemed approved. The commissioner must provide to the carrier a detailed actuarial justification for any denial within thirty days of the denial.

(4) Nothing in this section shall restrict the right of employees to collectively bargain for insurance providing benefits in excess of those provided herein.

(5)(a) Except as provided in this subsection, requirements used by an insurer in determining whether to provide coverage to a small employer shall be applied uniformly among all small employers applying for coverage or receiving coverage from the carrier.

(b) An insurer shall not require a minimum participation level greater than:

- (i) One hundred percent of eligible employees working for groups with three or less employees; and
- (ii) Seventy-five percent of eligible employees working for groups with more than three employees.

(c) In applying minimum participation requirements with respect to a small employer, a small employer shall not consider employees or dependents who have similar existing coverage in determining whether the applicable percentage of participation is met.

(d) An insurer may not increase any requirement for minimum employee participation or modify any requirement for minimum employer contribution applicable to a small employer at any time after the small employer has been accepted for coverage.

(6) An insurer must offer coverage to all eligible employees of a small employer and their dependents. An insurer may not offer coverage to only certain individuals or dependents in a small employer group or to only part of the group. An insurer may not modify a health plan with respect to a small employer or any eligible employee or dependent, through riders, endorsements or otherwise, to restrict or exclude coverage or benefits for specific diseases, medical conditions, or services otherwise covered by the plan.

(7) As used in this section, "health benefit plan," "small employer," "adjusted community rate," and "wellness activities" mean the same as defined in RCW 48.43.005. [2007 c 260 § 7; 2004 c 244 § 1; 1995 c 265 § 14; 1990 c 187 § 2.]

***Reviser's note:** RCW 48.21.240 was repealed by 2007 c 8 § 7, effective January 1, 2008.

Application—2004 c 244: "Sections 1 through 15 of this act apply to all small group health benefit plans issued or renewed on or after June 10, 2004." [2004 c 244 § 17.]

Captions not law—Effective dates—Savings—Severability—1995 c 265: See notes following RCW 70.47.015.

Finding—Intent—1990 c 187: "The legislature finds that the rising cost of comprehensive group health coverage is exceeding the affordability of many small businesses and their employees. The legislature further finds

that certain public policies have an adverse impact on the cost of such coverage. It is therefore the intent of the legislature to reduce costs by authorizing the development of basic hospital and medical coverage for small groups." [1990 c 187 § 1.]

Severability—1990 c 187: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1990 c 187 § 6.]

48.21.157 Option to cover dependents under age twenty-five. (Effective January 1, 2009.) Any group disability insurance contract or blanket disability insurance contract that provides coverage for a participating member's dependent must offer each participating member the option of covering any unmarried dependent under the age of twenty-five. [2007 c 259 § 20.]

Effective date—2007 c 259 §§ 18-22: See note following RCW 41.05.095.

Severability—Subheadings not law—2007 c 259: See notes following RCW 41.05.033.

48.21.200 Individual or group disability, health care service contract, health maintenance agreement—Reduction of benefits on basis of other existing coverages. (1) No individual or group disability insurance policy, health care service contract, or health maintenance agreement providing hospital, medical or surgical expense benefits and which contains a provision for the reduction of benefits otherwise payable or available thereunder on the basis of other existing coverages, shall provide that such reduction will operate to reduce total benefits payable below an amount equal to one hundred percent of total allowable expenses.

(2) The commissioner shall by rule establish guidelines for the application of this section, including:

(a) The procedures by which persons covered under such policies, contracts, and agreements are to be made aware of the existence of such a provision;

(b) The benefits which may be subject to such a provision;

(c) The effect of such a provision on the benefits provided;

(d) Establishment of the order of benefit determination;

(e) Exceptions necessary to preserve policy, contract, or agreement requirements for use of particular health care facilities or providers; and

(f) Reasonable claim administration procedures to expedite claim payments and prevent duplication of payments or benefits under such a provision. [2007 c 80 § 3; 1993 c 492 § 282. Prior: 1983 c 202 § 16; 1983 c 106 § 24; 1975 1st ex.s. c 266 § 20.]

Findings—Intent—1993 c 492: See notes following RCW 43.20.050.

Short title—Severability—Savings—Captions not law—Reservation of legislative power—Effective dates—1993 c 492: See RCW 43.72.910 through 43.72.915.

Severability—1975 1st ex.s. c 266: See note following RCW 48.01.010.

48.21.240 Repealed. (Effective January 1, 2008.) See Supplementary Table of Disposition of Former RCW Sections, this volume.

[2007 RCW Supp—page 660]

48.21.241 Mental health services—Group health plans—Definition—Coverage required, when. (Effective January 1, 2008.) (1) For the purposes of this section, "mental health services" means medically necessary outpatient and inpatient services provided to treat mental disorders covered by the diagnostic categories listed in the most current version of the diagnostic and statistical manual of mental disorders, published by the American psychiatric association, on July 24, 2005, or such subsequent date as may be provided by the insurance commissioner by rule, consistent with the purposes of chapter 6, Laws of 2005, with the exception of the following categories, codes, and services: (a) Substance related disorders; (b) life transition problems, currently referred to as "V" codes, and diagnostic codes 302 through 302.9 as found in the diagnostic and statistical manual of mental disorders, 4th edition, published by the American psychiatric association; (c) skilled nursing facility services, home health care, residential treatment, and custodial care; and (d) court ordered treatment unless the insurer's medical director or designee determines the treatment to be medically necessary.

(2) All group disability insurance contracts and blanket disability insurance contracts providing health benefit plans that provide coverage for medical and surgical services shall provide:

(a) For all group health benefit plans for groups other than small groups, as defined in RCW 48.43.005 delivered, issued for delivery, or renewed on or after January 1, 2006, coverage for:

(i) Mental health services. The copayment or coinsurance for mental health services may be no more than the copayment or coinsurance for medical and surgical services otherwise provided under the health benefit plan. Wellness and preventive services that are provided or reimbursed at a lesser copayment, coinsurance, or other cost sharing than other medical and surgical services are excluded from this comparison; and

(ii) Prescription drugs intended to treat any of the disorders covered in subsection (1) of this section to the same extent, and under the same terms and conditions, as other prescription drugs covered by the health benefit plan.

(b) For all group health benefit plans delivered, issued for delivery, or renewed on or after January 1, 2008, coverage for:

(i) Mental health services. The copayment or coinsurance for mental health services may be no more than the copayment or coinsurance for medical and surgical services otherwise provided under the health benefit plan. Wellness and preventive services that are provided or reimbursed at a lesser copayment, coinsurance, or other cost sharing than other medical and surgical services are excluded from this comparison. If the health benefit plan imposes a maximum out-of-pocket limit or stop loss, it shall be a single limit or stop loss for medical, surgical, and mental health services; and

(ii) Prescription drugs intended to treat any of the disorders covered in subsection (1) of this section to the same extent, and under the same terms and conditions, as other prescription drugs covered by the health benefit plan.

(c) For all group health benefit plans delivered, issued for delivery, or renewed on or after July 1, 2010, coverage for:

(i) Mental health services. The copayment or coinsurance for mental health services may be no more than the copayment or coinsurance for medical and surgical services otherwise provided under the health benefit plan. Wellness and preventive services that are provided or reimbursed at a lesser copayment, coinsurance, or other cost sharing than other medical and surgical services are excluded from this comparison. If the health benefit plan imposes a maximum out-of-pocket limit or stop loss, it shall be a single limit or stop loss for medical, surgical, and mental health services. If the health benefit plan imposes any deductible, mental health services shall be included with medical and surgical services for the purpose of meeting the deductible requirement. Treatment limitations or any other financial requirements on coverage for mental health services are only allowed if the same limitations or requirements are imposed on coverage for medical and surgical services; and

(ii) Prescription drugs intended to treat any of the disorders covered in subsection (1) of this section to the same extent, and under the same terms and conditions, as other prescription drugs covered by the health benefit plan.

(3) In meeting the requirements of subsection (2)(a) and (b) of this section, health benefit plans may not reduce the number of mental health outpatient visits or mental health inpatient days below the level in effect on July 1, 2002.

(4) This section does not prohibit a requirement that mental health services be medically necessary as determined by the medical director or designee, if a comparable requirement is applicable to medical and surgical services.

(5) Nothing in this section shall be construed to prevent the management of mental health services. [2007 c 8 § 2; 2006 c 74 § 1; 2005 c 6 § 3.]

Effective date—2007 c 8: See note following RCW 48.20.580.

Effective date—2006 c 74: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately [March 15, 2006]." [2006 c 74 § 4.]

Findings—Intent—Severability—2005 c 6: See notes following RCW 41.05.600.

48.21.370 Fixed payment insurance—Standard disclosure form. The commissioner shall adopt rules setting forth the content of a standard disclosure form to be delivered to all applicants for group illness-triggered fixed payment insurance, hospital confinement fixed payment insurance, or other fixed payment insurance. The standard disclosure shall provide information regarding the level, type, and amount of benefits provided and the limitations, exclusions, and exceptions under the policy, as well as additional information to enhance consumer understanding. The disclosure shall specifically disclose that the coverage is not comprehensive in nature and will not cover the cost of most hospital and other medical services. Such disclosure form must be filed for approval with the commissioner prior to use. The standard disclosure form must be provided to the master policyholders at the time of solicitation and completion of the application and to all enrollees at the time of enrollment. All advertising and marketing materials other than the standard disclosure form must be filed with the commissioner at least thirty days prior to use. [2007 c 296 § 4.]

48.21.375 Fixed payment insurance—Benefit restrictions. Illness-triggered fixed payment insurance, hospital confinement fixed payment insurance, or other fixed payment insurance policies are not considered to provide coverage for hospital or medical expenses or care under this chapter, if the benefits provided are a fixed dollar amount that is paid regardless of the amount charged. The benefits may not be related to, or be a percentage of, the amount charged by the provider of service and must be offered as an independent and noncoordinated benefit with any other health plan as defined in RCW 48.43.005(19). [2007 c 296 § 5.]

Chapter 48.22 RCW CASUALTY INSURANCE

Sections

48.22.030 Underinsured, hit-and-run, phantom vehicle coverage to be provided—Purpose—Definitions—Exceptions—Conditions—Deductibles—Information on motorcycle or motor-driven cycle coverage—Intended victims.

48.22.030 Underinsured, hit-and-run, phantom vehicle coverage to be provided—Purpose—Definitions—Exceptions—Conditions—Deductibles—Information on motorcycle or motor-driven cycle coverage—Intended victims. (1) "Underinsured motor vehicle" means a motor vehicle with respect to the ownership, maintenance, or use of which either no bodily injury or property damage liability bond or insurance policy applies at the time of an accident, or with respect to which the sum of the limits of liability under all bodily injury or property damage liability bonds and insurance policies applicable to a covered person after an accident is less than the applicable damages which the covered person is legally entitled to recover.

(2) No new policy or renewal of an existing policy insuring against loss resulting from liability imposed by law for bodily injury, death, or property damage, suffered by any person arising out of the ownership, maintenance, or use of a motor vehicle shall be issued with respect to any motor vehicle registered or principally garaged in this state unless coverage is provided therein or supplemental thereto for the protection of persons insured thereunder who are legally entitled to recover damages from owners or operators of underinsured motor vehicles, hit-and-run motor vehicles, and phantom vehicles because of bodily injury, death, or property damage, resulting therefrom, except while operating or occupying a motorcycle or motor-driven cycle, and except while operating or occupying a motor vehicle owned or available for the regular use by the named insured or any family member, and which is not insured under the liability coverage of the policy. The coverage required to be offered under this chapter is not applicable to general liability policies, commonly known as umbrella policies, or other policies which apply only as excess to the insurance directly applicable to the vehicle insured.

(3) Except as to property damage, coverage required under subsection (2) of this section shall be in the same amount as the insured's third party liability coverage unless the insured rejects all or part of the coverage as provided in subsection (4) of this section. Coverage for property damage need only be issued in conjunction with coverage for bodily

injury or death. Property damage coverage required under subsection (2) of this section shall mean physical damage to the insured motor vehicle unless the policy specifically provides coverage for the contents thereof or other forms of property damage.

(4) A named insured or spouse may reject, in writing, underinsured coverage for bodily injury or death, or property damage, and the requirements of subsections (2) and (3) of this section shall not apply. If a named insured or spouse has rejected underinsured coverage, such coverage shall not be included in any supplemental or renewal policy unless a named insured or spouse subsequently requests such coverage in writing. The requirement of a written rejection under this subsection shall apply only to the original issuance of policies issued after July 24, 1983, and not to any renewal or replacement policy. When a named insured or spouse chooses a property damage coverage that is less than the insured's third party liability coverage for property damage, a written rejection is not required.

(5) The limit of liability under the policy coverage may be defined as the maximum limits of liability for all damages resulting from any one accident regardless of the number of covered persons, claims made, or vehicles or premiums shown on the policy, or premiums paid, or vehicles involved in an accident.

(6) The policy may provide that if an injured person has other similar insurance available to him under other policies, the total limits of liability of all coverages shall not exceed the higher of the applicable limits of the respective coverages.

(7)(a) The policy may provide for a deductible of not more than three hundred dollars for payment for property damage when the damage is caused by a hit-and-run driver or a phantom vehicle.

(b) In all other cases of underinsured property damage coverage, the policy may provide for a deductible of not more than one hundred dollars.

(8) For the purposes of this chapter, a "phantom vehicle" shall mean a motor vehicle which causes bodily injury, death, or property damage to an insured and has no physical contact with the insured or the vehicle which the insured is occupying at the time of the accident if:

(a) The facts of the accident can be corroborated by competent evidence other than the testimony of the insured or any person having an underinsured motorist claim resulting from the accident; and

(b) The accident has been reported to the appropriate law enforcement agency within seventy-two hours of the accident.

(9) An insurer who elects to write motorcycle or motor-driven cycle insurance in this state must provide information to prospective insureds about the coverage.

(10) An insurer who elects to write motorcycle or motor-driven cycle insurance in this state must provide an opportunity for named insureds, who have purchased liability coverage for a motorcycle or motor-driven cycle, to reject underinsured coverage for that motorcycle or motor-driven cycle in writing.

(11) If the covered person seeking underinsured motorist coverage under this section was the intended victim of the tortfeasor, the incident must be reported to the appropriate

law enforcement agency and the covered person must cooperate with any related law enforcement investigation.

(12) The purpose of this section is to protect innocent victims of motorists of underinsured motor vehicles. Covered persons are entitled to coverage without regard to whether an incident was intentionally caused. However, a person is not entitled to coverage if the insurer can demonstrate that the covered person intended to cause the event for which a claim is made under the coverage described in this section. As used in this section, and in the section of policies providing the underinsured motorist coverage described in this section, "accident" means an occurrence that is unexpected and unintended from the standpoint of the covered person.

(13) "Underinsured coverage," for the purposes of this section, means coverage for "underinsured motor vehicles," as defined in subsection (1) of this section. [2007 c 80 § 14. Prior: 2006 c 187 § 1; 2006 c 110 § 1; 2006 c 25 § 17; 2004 c 90 § 1; 1985 c 328 § 1; 1983 c 182 § 1; 1981 c 150 § 1; 1980 c 117 § 1; 1967 c 150 § 27.]

Severability—1983 c 182: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1983 c 182 § 3.]

Effective date—1981 c 150: "This act shall take effect on September 1, 1981." [1981 c 150 § 3.]

Effective date—1980 c 117: "This act shall take effect on September 1, 1980." [1980 c 117 § 8.]

Chapter 48.24 RCW

GROUP LIFE AND ANNUITIES

Sections

48.24.070 Trustee groups.

48.24.070 Trustee groups. The lives of a group of individuals may be insured under a policy issued to the trustees of a fund established by two or more employers or by two or more employer members of an employers' association, or by one or more labor unions, or by one or more employers and one or more labor unions, or by one or more employers and one or more labor unions whose members are in the same or related occupations or trades, which trustees shall be deemed the policyholder, to insure employees or members for the benefit of persons other than the employers or the unions, subject to the following requirements:

(1) If the policy is issued to two or more employer members of an employers' association, such policy may be issued only if (a) the association has been in existence for at least five years and was formed for purposes other than obtaining insurance and (b) the participating employers, meaning such employer members whose employees are to be insured, constitute at date of issue at least fifty percent of the total employers eligible to participate, unless the number of persons covered at date of issue exceeds six hundred, in which event such participating employers must constitute at least twenty-five percent of such total employers in either case omitting from consideration any employer whose employees are already covered for group life insurance.

(2) The persons eligible for insurance shall be all of the employees of the employers or all of the members of the

unions, or all of any class or classes thereof determined by conditions pertaining to their employment, or to membership in the unions, or to both. The policy may provide that the term "employees" shall include the individual proprietor or partners if an employer is an individual proprietor or a partnership. The policy may provide that the term "employees" shall include the trustees or their employees, or both, if their duties are connected with such trusteeship. The policy may provide that the term "employees" shall include retired employees.

(3) The premium for the policy shall be paid by the trustees wholly from funds contributed by the employer or employers of the insured persons, or by the union or unions, or partly or wholly from funds contributed by the insured persons, or any combination thereof. A policy on which all or part of the premium is to be derived from funds contributed by the insured persons specifically for their insurance may be placed in force if the eligible persons elect to make the required contributions. A policy on which no part of the premium is to be derived from funds contributed by the insured persons specifically for their insurance must insure all eligible persons, or all except any as to whom evidence of individual insurability is not satisfactory to the insurer.

(4) The policy must cover at least twenty persons at date of issue.

(5) The amounts of insurance under the policy must be based upon some plan precluding individual selection either by the insured persons or by the policyholder, employers, or unions. [2007 c 80 § 9; 1973 1st ex.s. c 163 § 9; 1963 c 86 § 1; 1959 c 225 § 9; 1955 c 303 § 21; 1953 c 197 § 12; 1947 c 79 § .24.07; Rem. Supp. 1947 § 45.24.07.]

Chapter 48.30 RCW

UNFAIR PRACTICES AND FRAUDS

Sections

48.30.010	Unfair practices in general—Remedies and penalties.
48.30.015	Unreasonable denial of a claim for coverage or payment of benefits.
48.30.340	Auto glass repair—Restrictions on insurer-owned facilities.

48.30.010 Unfair practices in general—Remedies and penalties. (1) No person engaged in the business of insurance shall engage in unfair methods of competition or in unfair or deceptive acts or practices in the conduct of such business as such methods, acts, or practices are defined pursuant to subsection (2) of this section.

(2) In addition to such unfair methods and unfair or deceptive acts or practices as are expressly defined and prohibited by this code, the commissioner may from time to time by regulation promulgated pursuant to chapter 34.05 RCW, define other methods of competition and other acts and practices in the conduct of such business reasonably found by the commissioner to be unfair or deceptive after a review of all comments received during the notice and comment rule-making period.

(3)(a) In defining other methods of competition and other acts and practices in the conduct of such business to be unfair or deceptive, and after reviewing all comments and documents received during the notice and comment rule-making period, the commissioner shall identify his or her rea-

sons for defining the method of competition or other act or practice in the conduct of insurance to be unfair or deceptive and shall include a statement outlining these reasons as part of the adopted rule.

(b) The commissioner shall include a detailed description of facts upon which he or she relied and of facts upon which he or she failed to rely, in defining the method of competition or other act or practice in the conduct of insurance to be unfair or deceptive, in the concise explanatory statement prepared under RCW 34.05.325(6).

(c) Upon appeal the superior court shall review the findings of fact upon which the regulation is based de novo on the record.

(4) No such regulation shall be made effective prior to the expiration of thirty days after the date of the order by which it is promulgated.

(5) If the commissioner has cause to believe that any person is violating any such regulation, the commissioner may order such person to cease and desist therefrom. The commissioner shall deliver such order to such person direct or mail it to the person by registered mail with return receipt requested. If the person violates the order after expiration of ten days after the cease and desist order has been received by him or her, he or she may be fined by the commissioner a sum not to exceed two hundred and fifty dollars for each violation committed thereafter.

(6) If any such regulation is violated, the commissioner may take such other or additional action as is permitted under the insurance code for violation of a regulation.

(7) An insurer engaged in the business of insurance may not unreasonably deny a claim for coverage or payment of benefits to any first party claimant. "First party claimant" has the same meaning as in RCW 48.30.015. [2007 c 498 § 2; 1997 c 409 § 107; 1985 c 264 § 13; 1973 1st ex.s. c 152 § 6; 1965 ex.s. c 70 § 24; 1947 c 79 § .30.01; Rem. Supp. 1947 § 45.30.01.]

Short title—2007 c 498: See note following RCW 48.30.015.

Part headings—Severability—1997 c 409: See notes following RCW 43.22.051.

Severability—1973 1st ex.s. c 152: See note following RCW 48.05.140.

48.30.015 Unreasonable denial of a claim for coverage or payment of benefits. (1) Any first party claimant to a policy of insurance who is unreasonably denied a claim for coverage or payment of benefits by an insurer may bring an action in the superior court of this state to recover the actual damages sustained, together with the costs of the action, including reasonable attorneys' fees and litigation costs, as set forth in subsection (3) of this section.

(2) The superior court may, after finding that an insurer has acted unreasonably in denying a claim for coverage or payment of benefits or has violated a rule in subsection (5) of this section, increase the total award of damages to an amount not to exceed three times the actual damages.

(3) The superior court shall, after a finding of unreasonable denial of a claim for coverage or payment of benefits, or after a finding of a violation of a rule in subsection (5) of this section, award reasonable attorneys' fees and actual and statutory litigation costs, including expert witness fees, to the

first party claimant of an insurance contract who is the prevailing party in such an action.

(4) "First party claimant" means an individual, corporation, association, partnership, or other legal entity asserting a right to payment as a covered person under an insurance policy or insurance contract arising out of the occurrence of the contingency or loss covered by such a policy or contract.

(5) A violation of any of the following is a violation for the purposes of subsections (2) and (3) of this section:

(a) WAC 284-30-330, captioned "specific unfair claims settlement practices defined";

(b) WAC 284-30-350, captioned "misrepresentation of policy provisions";

(c) WAC 284-30-360, captioned "failure to acknowledge pertinent communications";

(d) WAC 284-30-370, captioned "standards for prompt investigation of claims";

(e) WAC 284-30-380, captioned "standards for prompt, fair and equitable settlements applicable to all insurers"; or

(f) An unfair claims settlement practice rule adopted under RCW 48.30.010 by the insurance commissioner intending to implement this section. The rule must be codified in chapter 284-30 of the Washington Administrative Code.

(6) This section does not limit a court's existing ability to make any other determination regarding an action for an unfair or deceptive practice of an insurer or provide for any other remedy that is available at law.

(7) This section does not apply to a health plan offered by a health carrier. "Health plan" has the same meaning as in RCW 48.43.005. "Health carrier" has the same meaning as in RCW 48.43.005.

(8)(a) Twenty days prior to filing an action based on this section, a first party claimant must provide written notice of the basis for the cause of action to the insurer and office of the insurance commissioner. Notice may be provided by regular mail, registered mail, or certified mail with return receipt requested. Proof of notice by mail may be made in the same manner as prescribed by court rule or statute for proof of service by mail. The insurer and insurance commissioner are deemed to have received notice three business days after the notice is mailed.

(b) If the insurer fails to resolve the basis for the action within the twenty-day period after the written notice by the first party claimant, the first party claimant may bring the action without any further notice.

(c) The first party claimant may bring an action after the required period of time in (a) of this subsection has elapsed.

(d) If a written notice of claim is served under (a) of this subsection within the time prescribed for the filing of an action under this section, the statute of limitations for the action is tolled during the twenty-day period of time in (a) of this subsection. [2007 c 498 § 3.]

Short title—2007 c 498: "This act may be known and cited as the insurance fair conduct act." [2007 c 498 § 1.]

48.30.340 Auto glass repair—Restrictions on insurer-owned facilities. (1) A person in this state has the right to choose any glass repair facility for the repair of a loss relating to motor vehicle glass.

(2) An insurer or its third-party administrator that owns in whole or in part an automobile glass repair facility that is processing a claim limited only to auto glass shall:

(a) Verbally inform the person making the claim of loss, of the right provided under subsection (1) of this section, at the time information regarding the automobile glass repair or replacement facilities is provided; and

(b) Verbally inform the person making the claim of loss that the third-party administrator is an entity separate from the insurer that has a financial arrangement to process automobile glass claims on the insurer's behalf.

(3) An insurer or its third-party administrator that owns an interest in an automobile glass repair or replacement facility shall post the following notice in each of its repair facilities:

"THIS AUTOMOBILE GLASS REPAIR OR REPLACEMENT FACILITY IS OWNED IN WHOLE OR IN PART BY (NAME OF INSURER OR INSURER'S THIRD-PARTY ADMINISTRATOR). YOU ARE HEREBY NOTIFIED THAT YOU ARE ENTITLED UNDER WASHINGTON LAW TO SEEK REPAIRS AT ANY AUTOMOBILE GLASS REPAIR OR REPLACEMENT FACILITY OF YOUR CHOICE."

The notice must be posted, in not less than eighteen point font, prominently in a location in which it is likely to be seen and read by a customer. If the automobile glass repair or replacement facility is mobile, the notice must be given to the person making the claim verbally by the insurer or its third-party administrator prior to commencement of the repair or replacement.

(4) A person making a claim of loss whose motor vehicle is repaired at an automotive glass repair or replacement facility subject to the notice requirements of this section may file a complaint with the office of the insurance commissioner.

(5) This section does not create a private right or cause of action to or on behalf of any person. [2007 c 74 § 1.]

Chapter 48.31 RCW

MERGERS, REHABILITATION, LIQUIDATION, SUPERVISION

Sections

- 48.31.045 Rehabilitation order against insurer—Insurer is party to action or proceeding—Stay the action—Statute of limitations or defense of laches.
- 48.31.131 Appointment of liquidator—Actions at law or equity—Statute of limitations or defense of laches.
- 48.31.155 Unclaimed funds—Liquidator's application for discharge—Deposits with the department of revenue.

48.31.045 Rehabilitation order against insurer—Insurer is party to action or proceeding—Stay the action—Statute of limitations or defense of laches. (1) A court in this state before which an action or proceeding in which the insurer is a party, or is obligated to defend a party, is pending when a rehabilitation order against the insurer is entered shall stay the action or proceeding for ninety days and such additional time as is necessary for the rehabilitator to obtain proper representation and prepare for further proceedings. The rehabilitator shall take such action respecting the pending litigation as he or she deems necessary in the inter-

ests of justice and for the protection of creditors, policyholders, and the public. The rehabilitator shall immediately consider all litigation pending outside this state and shall petition the courts having jurisdiction over that litigation for stays whenever necessary to protect the estate of the insurer.

(2) A statute of limitations or defense of laches does not run with respect to an action by or against an insurer between the filing of a petition for appointment of a rehabilitator for that insurer and the order granting or denying that petition. An action against the insurer that might have been commenced when the petition was filed may be commenced for at least sixty days after the order of rehabilitation is entered or the petition is denied. The rehabilitator may institute an action or proceeding pursuant to an order of rehabilitation, within the later of two years following entry of the order or two years of the date the rehabilitator discovers, or in the exercise of reasonable care should have discovered, the injury from which the action or proceeding arose and its cause. However, actions against former directors, officers, and employees brought pursuant to an order of rehabilitation for the benefit or the protection of subscribers, policy beneficiaries, or the general public is subject to the limitations period of RCW 4.16.160.

(3) A guaranty association or foreign guaranty association covering life or health insurance or annuities has standing to appear in a court proceeding concerning the rehabilitation of a life or health insurer if the association is or may become liable to act as a result of the rehabilitation. [2007 c 80 § 10; 1993 c 462 § 77.]

Severability—Implementation—1993 c 462: See RCW 48.31B.901 and 48.31B.902.

48.31.131 Appointment of liquidator—Actions at law or equity—Statute of limitations or defense of laches. (1) Upon issuance of an order appointing a liquidator of a domestic insurer or of an alien insurer domiciled in this state, an action at law or equity or in arbitration may not be brought against the insurer or liquidator, whether in this state or elsewhere, nor may such an existing action be maintained or further presented after issuance of the order. The courts of this state shall give full faith and credit to injunctions against the liquidator or the company when the injunctions are included in an order to liquidate an insurer issued under laws in other states corresponding to this subsection. Whenever, in the liquidator's judgment, protection of the estate of the insurer necessitates intervention in an action against the insurer that is pending outside this state, the liquidator may intervene in the action. The liquidator may defend an action in which he or she intervenes under this section at the expense of the estate of the insurer.

(2) The liquidator may institute an action or proceeding pursuant to an order of rehabilitation, within the later of two years following entry of the order or two years of the date the liquidator discovers, or in the exercise of reasonable care should have discovered, the injury from which the action or proceeding arose and its cause. However, actions against former directors, officers, and employees brought pursuant to an order of rehabilitation for the benefit or the protection of subscribers, policy beneficiaries, or the general public is subject to the limitations period of RCW 4.16.160.

(3) A statute of limitation or defense of laches does not run with respect to an action against an insurer between the filing of a petition for liquidation against an insurer and the denial of the petition. An action against the insurer that might have been commenced when the petition was filed may be commenced for at least sixty days after the petition is denied.

(4) A guaranty association or foreign guaranty association has standing to appear in a court proceeding concerning the liquidation of an insurer if the association is or may become liable to act as a result of the liquidation. [2007 c 80 § 11; 1993 c 462 § 63.]

Severability—Implementation—1993 c 462: See RCW 48.31B.901 and 48.31B.902.

48.31.155 Unclaimed funds—Liquidator's application for discharge—Deposits with the department of revenue. Unclaimed funds subject to distribution remaining in the liquidator's hands when he or she is ready to apply to the court for discharge, including the amount distributable to a person who is unknown or cannot be found, shall be deposited with the state department of revenue as unclaimed funds, and shall be paid without interest to the person entitled to them or his or her legal representative upon proof satisfactory to the state department of revenue of his or her right to them. An amount on deposit not claimed within six years from the discharge of the liquidator is deemed to have been abandoned and shall be escheated without formal escheat proceedings and be deposited with the state treasurer. [2007 c 80 § 12; 1993 c 462 § 68.]

Severability—Implementation—1993 c 462: See RCW 48.31B.901 and 48.31B.902.

Chapter 48.36A RCW

FRATERNAL BENEFIT SOCIETIES

Sections

48.36A.260 Annual financial statement.

48.36A.260 Annual financial statement. (1) Every domestic society shall annually, on or before the first day of March, unless for cause shown such time has been extended by the commissioner, file with the commissioner a true statement of its financial condition, transactions, and affairs for the preceding calendar year and pay a fee of ten dollars for filing. The statement shall be in general form and context as approved by the national association of insurance commissioners for fraternal benefit societies and as supplemented by additional information required by the commissioner.

(2) All domestic, foreign, and alien societies transacting business in this state shall annually, on or before March 1st of each year, file with the national association of insurance commissioners a copy of its annual statement convention blank in electronic form.

(3) As part of the required annual statement, each society shall, on or before the first day of March, file with the commissioner a valuation of its certificates in force on December 31st last preceding, provided the commissioner may, in the commissioner's discretion for cause shown, extend the time for filing the valuation for not more than two calendar months. The valuation shall be done in accordance with the

standards specified in RCW 48.36A.250. The valuation and underlying data shall be certified by a qualified actuary or, at the expense of the society, verified by the actuary of the department of insurance of the state of domicile of the society.

(4) A society neglecting to file the annual statement in the form and within the time provided by this section shall forfeit one hundred dollars for each day during which the neglect continues, and, upon notice by the commissioner, its authority to do business in this state shall cease while the default continues. [2007 c 80 § 4; 1987 c 366 § 26.]

Chapter 48.37 RCW

MARKET CONDUCT OVERSIGHT

Sections

48.37.005	Short title.
48.37.010	Purpose—Intent.
48.37.020	Application.
48.37.030	Definitions.
48.37.040	Market analysis procedures—Commissioner's duties—Rules.
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48.37.060	Market conduct examinations—Procedures—Final orders—Fees.
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48.37.090	Market conduct oversight personnel.
48.37.100	Immunity for the commissioner, market conduct oversight personnel, authorized representatives, and examiners.
48.37.110	Fines and penalties.
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48.37.130	Coordination with other state insurance regulators through the NAIC.
48.37.140	Additional duties of the commissioner.
48.37.900	Captions not law.

48.37.005 Short title. This chapter may be known and cited as the market conduct oversight law. [2007 c 82 § 2.]

48.37.010 Purpose—Intent. (1) The purpose of this chapter is to establish a framework for the commissioner's market conduct actions, including:

(a) Processes and systems for identifying, assessing, and prioritizing market conduct problems that have a substantial adverse impact on consumers, policyholders, and claimants;

(b) Market conduct actions by the commissioner to substantiate such market conduct problems and a means to remedy significant market conduct problems; and

(c) Procedures to communicate and coordinate market conduct actions among state insurance regulators to foster the most efficient and effective use of resources.

(2) It is the intent of the legislature that the market analysis or market conduct process utilize available technology in the least intrusive and most cost-efficient manner to develop a baseline understanding of the marketplace and to identify insurers or practices that deviate significantly from the norm or that pose a potential risk to the insurance consumer. It is also the intent of the legislature that this process include discretion for the commissioner to use market conduct examinations when the continuum of available market conduct actions have not sufficiently addressed issues concerning insurer activities in Washington, or when the continuum of available market conduct actions are not reasonably expected to address issues concerning insurer activities in Washington.

(3) It is further the intent of the legislature that the commissioner work with the national association of insurance commissioners toward development of an accreditation process for market conduct oversight and an effective process for domestic deference that creates protections for Washington consumers and efficient and effective regulation of the industry. [2007 c 82 § 3.]

48.37.020 Application. This chapter applies to all entities regulated by this title, and to all persons or entities acting as or holding themselves out as insurers in this state, unless otherwise exempted from the provisions of this title. [2007 c 82 § 4.]

48.37.030 Definitions. The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

(1) "Best practices organization" means insurance marketplace standards association or a similar generally recognized organization whose purpose and central mission is the promotion of high ethical standards in the insurance marketplace.

(2) "Commissioner" means the insurance commissioner of this state.

(3) "Complaint" means a written or documented oral communication primarily expressing a grievance, meaning an expression of dissatisfaction.

(4) "Insurer" means every person engaged in the business of making contracts of insurance and includes every such entity regardless of name which is regulated by this title. For purposes of this chapter, health care service contractors defined in chapter 48.44 RCW, health maintenance organizations defined in chapter 48.46 RCW, fraternal benefit societies defined in chapter 48.36A RCW, and self-funded multiple employer welfare arrangements defined in chapter 48.125 RCW are defined as insurers.

(5) "Market analysis" means a process whereby market conduct oversight personnel collect and analyze information from filed schedules, surveys, required reports, and other sources in order to develop a baseline understanding of the marketplace and to identify patterns or practices of insurers that deviate significantly from the norm or that may pose a potential risk to the insurance consumer.

(6) "Market conduct action" means any of the full range of activities that the commissioner may initiate to assess and address the market conduct practices of insurers admitted to do business in this state, and entities operating illegally in this state, beginning with market analysis and extending to examinations. The commissioner's activities to resolve an individual consumer complaint or other report of a specific instance of misconduct are not market conduct actions for purposes of this chapter.

(7) "Market conduct oversight personnel" means those individuals employed or contracted by the commissioner to collect, analyze, review, or act on information on the insurance marketplace that identifies patterns or practices of insurers.

(8) "National association of insurance commissioners" (NAIC) has the same meaning as in RCW 48.02.140.

(9) "NAIC market regulation handbook" means the outline of the elements and objectives of market analysis developed and adopted by the NAIC, and the process by which states can establish and implement market analysis programs, and the set of guidelines developed and adopted by the NAIC that document established practices to be used by market conduct oversight personnel in developing and executing an examination, or a successor product.

(10) "NAIC market conduct uniform examination procedures" means the set of guidelines developed and adopted by the NAIC designed to be used by market conduct oversight personnel in conducting an examination, or a successor product.

(11) "NAIC standard data request" means the set of field names and descriptions developed and adopted by the NAIC for use by market conduct oversight personnel in market analysis, market conduct examination, or other market conduct actions, or a successor product.

(12) "Qualified contract examiner" means a person under contract to the commissioner, who is qualified by education, experience, and, where applicable, professional designations, to perform market conduct actions.

(13)(a) "Market conduct examination" means the examination of the insurance operations of an insurer licensed to do business in this state and entities operating illegally in this state, in order to evaluate compliance with the applicable laws and regulations of this state. A market conduct examination may be either a comprehensive examination or a targeted examination. A market conduct examination is separate and distinct from a financial examination of any insurer performed pursuant to chapter 48.03, 48.44, or 48.46 RCW, but may be conducted at the same time.

(b) "Comprehensive market conduct examination" means a review of one or more lines of business of an insurer. The term includes a review of rating, tier classification, underwriting, policyholder service, claims, marketing and sales, producer licensing, complaint handling practices, or compliance procedures and policies.

(c) "Targeted examination" means a focused examination conducted for cause, based on the results of market analysis indicating the need to review either a specific line or lines of business, or specific business practices, including but not limited to: (i) Underwriting and rating; (ii) marketing and sales; (iii) complaint handling; (iv) operations and management; (v) advertising; (vi) licensing; (vii) policyholder services; (viii) nonforfeitures; (ix) claims handling; and (x) policy forms and filings. A targeted examination may be conducted by desk examination or by an on-site examination.

(d) "Desk examination" means an examination that is conducted by an examiner at a location other than the insurer's premises. A desk examination is usually performed at the commissioner's offices with the insurer providing requested documents by hard copy, microfiche, discs, or other electronic media, for review.

(e) "On-site examination" means an examination conducted at the insurer's home office or the location where the records under review are stored.

(14) "Third-party model or product" means a model or product provided by an entity separate from and not under direct or indirect corporate control of the insurer using the model or product.

(15) "Insurance compliance self-evaluative audit" means a voluntary, internal evaluation, review, assessment, audit, or investigation for the purpose of identifying or preventing noncompliance with, or promoting compliance with laws, regulations, orders, or industry or professional standards, which is conducted by or on behalf of a company licensed or regulated under the insurance laws of this state, or which involves an activity regulated under this title.

(16) "Insurance compliance self-evaluative audit document" means documents prepared as a result of or in connection with an insurance compliance self-evaluative audit. An insurance compliance self-evaluative audit document may include:

(a) A written response to the findings of an insurance compliance self-evaluative audit;

(b) Any supporting information that is collected or developed for the primary purpose and in the course of an insurance compliance self-evaluative audit, including but not limited to field notes and records of observations, findings, opinions, suggestions, conclusions, drafts, memoranda, drawings, photographs, exhibits, computer-generated or electronically recorded information, phone records, maps, charts, graphs, and surveys;

(c) Any of the following:

(i) An insurance compliance self-evaluative audit report prepared by an auditor, who may be an employee of the company or an independent contractor, which may include the scope of the audit, the information gained in the audit, conclusions, and recommendations, with exhibits and appendices;

(ii) Memoranda and documents analyzing portions or all of the insurance compliance self-evaluative audit report and discussing potential implementation issues;

(iii) An implementation plan that addresses correcting past noncompliance, improving current compliance, and preventing future noncompliance; or

(iv) Analytic data generated in the course of conducting the insurance compliance self-evaluative audit. [2007 c 82 § 5.]

48.37.040 Market analysis procedures—Commissioner's duties—Rules. (1)(a) The commissioner shall collect and report market data information to the NAIC's market information systems, including the complaint database system, the examination tracking system, the regulatory retrieval system, other successor systems, or to additional systems as the commissioner determines is necessary for market analysis.

(b) Market data and information that is collected and maintained by the commissioner shall be compiled and submitted in a manner that meets the requirements of the NAIC and its systems.

(2)(a) Each entity subject to the provisions of this chapter shall file a market conduct annual statement or successor product, in the general form and context, in the time frame required by, and according to instructions provided by the NAIC, for each line of business written in the state of Washington. If a particular line of business does not have an approved market conduct annual statement form, the company is not required to file a report for that line of business

until such time as [the] NAIC adopts an annual statement form for that line of business.

(b) The commissioner may, for good cause, grant an extension of time for filing a market conduct annual statement, if written application for extension is received at least five business days before the filing due date. Any insurer that fails to file its market conduct annual statement when due or by the end of any extension of time for filing, which the commissioner in his or her sole discretion may have granted, is subject to the penalty and enforcement provisions applicable to the insurer as found in the Washington insurance code.

(3)(a) The commissioner shall gather information from data currently available to the commissioner, surveys, required reports, information collected by the NAIC, other sources in both the public or private sectors, and information from within and outside the insurance industry. The commissioner may request insurers to submit data and information that is necessary to conduct market analysis and shall adopt rules that provide for access to records and compliance with the request, that do not cause undue burden or cost to the consumer or insurer.

(b) The information shall be analyzed in order to develop a baseline understanding of the marketplace and to identify for further review insurers or practices that deviate significantly from the norm or that may pose a potential risk to the insurance consumer. The commissioner shall use the NAIC market regulation handbook as one resource in performing this analysis.

(c) The commissioner shall adopt by rule a process for verification by an insurer of Washington state-specific complaint information concerning that insurer before using the complaint information for market conduct surveillance purposes or transmitting it to NAIC databases after July 1, 2007.

(4)(a) If the commissioner determines, as a result of market analysis, that further inquiry into a particular insurer or practice is needed, the following continuum of market actions may be considered before conducting a market conduct examination. The commissioner shall not be required to follow the exact sequence of market conduct actions in the continuum or to use all actions in the continuum. As part of the chosen continuum action, the commissioner must discuss with the insurer the data used to choose the option and provide the insurer with an opportunity for data verification at that time. These actions may include, but are not limited to:

- (i) Correspondence with the insurer;
- (ii) Insurer interviews;
- (iii) Information gathering;
- (iv) Policy and procedure reviews;
- (v) Interrogatories;
- (vi) Review of insurer self-evaluation and compliance programs.

This may include consideration of the insurer's membership in a best practices organization, if the commissioner is satisfied that the organization's qualification process is likely to provide reasonable assurance of compliance with pertinent insurance laws;

- (vii) Desk examinations; and
- (viii) Investigations.

(b) Except in extraordinary circumstances, the commissioner shall select the least intrusive and most cost-effective market conduct action that the commissioner determines will provide the necessary protections for consumers.

(5) The commissioner shall take those steps reasonably necessary to eliminate duplicative inquiries. The commissioner shall not request insurers to submit data or information provided as part of an insurer's annual financial statement, the annual market conduct statement of the NAIC, or other required schedules, surveys, or reports that are regularly submitted to the commissioner, or with data requests made by other states if that information is available to the commissioner, unless the information is state specific. The commissioner shall coordinate market conduct actions and findings with other state insurance regulators.

(6) For purposes of conducting an examination or other market conduct action on an insurer, the commissioner may examine or conduct a market conduct action on any managing general agent or other person, insofar as that examination or market conduct action is, in the sole discretion of the commissioner, necessary or material to the examination or market conduct action of the insurer. [2007 c 82 § 6.]

48.37.050 Protocols for market conduct actions—Rules—Report to the legislature. (1) Market conduct actions shall be taken as a result of market analysis and shall focus on the general business practices and compliance activities of insurers, rather than identifying obviously infrequent or unintentional random errors that do not cause significant consumer harm.

(2)(a) The commissioner is authorized to determine the frequency and timing of such market conduct actions. The timing shall depend upon the specific market conduct action to be initiated, unless extraordinary circumstances indicating a risk to consumers require immediate action.

(b) If the commissioner has information that more than one insurer is engaged in common practices that may violate statutes or rules, the commissioner may schedule and coordinate multiple examinations simultaneously.

(3) The insurer shall be given reasonable opportunity to resolve matters that arise as a result of a market analysis to the satisfaction of the commissioner before any additional market conduct actions are taken against the insurer.

(4) The commissioner shall adopt by rule, under chapter 34.05 RCW, procedures and documents that are substantially similar to the NAIC work products defined or referenced in this chapter. Market analysis, market conduct actions, and market conduct examinations shall be performed in accordance with the rule.

(5) At the beginning of the next legislative session after the adoption of the rules adopted under the authority of this section, the commissioner shall report to the appropriate policy committees of the legislature what rules were adopted; what statutory policies these rules were intended to implement; and such other matters as are indicated for the legislature's understanding of the role played by the NAIC in regulation of the insurance industry of Washington. [2007 c 82 § 7.]

48.37.060 Market conduct examinations—Procedures—Final orders—Fees. (1) When the commissioner determines that other market conduct actions identified in RCW 48.37.040(4)(a) have not sufficiently addressed issues raised concerning company activities in Washington state,

the commissioner has the discretion to conduct market conduct examinations in accordance with the NAIC market conduct uniform examination procedures and the NAIC market regulation handbook.

(2)(a) In lieu of an examination of an insurer licensed in this state, the commissioner shall accept an examination report of another state, unless the commissioner determines that the other state does not have laws substantially similar to those of this state, or does not have a market oversight system that is comparable to the market conduct oversight system set forth in this law.

(b) The commissioner's determination under (a) of this subsection is discretionary with the commissioner and is not subject to appeal.

(c) If the insurer to be examined is part of an insurance holding company system, the commissioner may also seek to simultaneously examine any affiliates of the insurer under common control and management which are licensed to write the same lines of business in this state.

(3) Before commencement of a market conduct examination, market conduct oversight personnel shall prepare a work plan consisting of the following:

- (a) The name and address of the insurer being examined;
- (b) The name and contact information of the examiner-in-charge;
- (c) The name of all market conduct oversight personnel initially assigned to the market conduct examination;
- (d) The justification for the examination;
- (e) The scope of the examination;
- (f) The date the examination is scheduled to begin;
- (g) Notice of any noninsurance department personnel who will assist in the examination;
- (h) A time estimate for the examination;
- (i) A budget for the examination if the cost of the examination is billed to the insurer; and
- (j) An identification of factors that will be included in the billing if the cost of the examination is billed to the insurer.

(4)(a) Within ten days of the receipt of the information contained in subsection (3) of this section, insurers may request the commissioner's discretionary review of any alleged conflict of interest, pursuant to RCW 48.37.090(2), of market conduct oversight personnel and noninsurance department personnel assigned to a market conduct examination. The request for review shall specifically describe the alleged conflict of interest in the proposed assignment of any person to the examination.

(b) Within five business days of receiving a request for discretionary review of any alleged conflict of interest in the proposed assignment of any person to a market conduct examination, the commissioner or designee shall notify the insurer of any action regarding the assignment of personnel to a market conduct examination based on the insurer's allegation of conflict of interest.

(5) Market conduct examinations shall, to the extent feasible, use desk examinations and data requests before an on-site examination.

(6) Market conduct examinations shall be conducted in accordance with the provisions set forth in the NAIC market regulation handbook and the NAIC market conduct uniform examinations procedures, subject to the precedence of the provisions of chapter 82, Laws of 2007.

(7) The commissioner shall use the NAIC standard data request.

(8) Announcement of the examination shall be sent to the insurer and posted on the NAIC's examination tracking system as soon as possible but in no case later than sixty days before the estimated commencement of the examination, except where the exam [examination] is conducted in response to extraordinary circumstances as described in RCW 48.37.050(2)(a). The announcement sent to the insurer shall contain the examination work plan and a request for the insurer to name its examination coordinator.

(9) If an examination is expanded significantly beyond the original reasons provided to the insurer in the notice of the examination required by subsection (3) of this section, the commissioner shall provide written notice to the insurer, explaining the expansion and reasons for the expansion. The commissioner shall provide a revised work plan if the expansion results in significant changes to the items presented in the original work plan required by subsection (3) of this section.

(10) The commissioner shall conduct a preexamination conference with the insurer examination coordinator and key personnel to clarify expectations at least thirty days before commencement of the examination, unless otherwise agreed by the insurer and the commissioner.

(11) Before the conclusion of the field work for market conduct examination, the examiner-in-charge shall review examination findings to date with insurer personnel and schedule an exit conference with the insurer, in accordance with procedures in the NAIC market regulation handbook.

(12)(a) No later than sixty days after completion of each market conduct examination, the commissioner shall make a full written report of each market conduct examination containing only facts ascertained from the accounts, records, and documents examined and from the sworn testimony of individuals, and such conclusions and recommendations as may reasonably be warranted from such facts.

(b) The report shall be certified by the commissioner or by the examiner-in-charge of the examination, and shall be filed in the commissioner's office subject to (c) of this subsection.

(c) The commissioner shall furnish a copy of the market conduct examination report to the person examined not less than ten days and, unless the time is extended by the commissioner, not more than thirty days prior to the filing of the report for public inspection in the commissioner's office. If the person so requests in writing within such period, the commissioner shall hold a hearing to consider objections of such person to the report as proposed, and shall not so file the report until after such hearing and until after any modifications in the report deemed necessary by the commissioner have been made.

(d) Within thirty days of the end of the period described in (c) of this subsection, unless extended by order of the commissioner, the commissioner shall consider the report, together with any written submissions or rebuttals and any relevant portions of the examiner's work papers and enter an order:

(i) Adopting the market conduct examination report as filed or with modification or corrections. If the market conduct examination report reveals that the company is operating

in violation of any law, rule, or order of the commissioner, the commissioner may order the company to take any action the commissioner considers necessary and appropriate to cure that violation;

(ii) Rejecting the market conduct examination report with directions to the examiners to reopen the examination for purposes of obtaining additional data, documentation, or information, and refile under this subsection; or

(iii) Calling for an investigatory hearing with no less than twenty days' notice to the company for purposes of obtaining additional documentation, data, information, and testimony.

(e) All orders entered under (d) of this subsection must be accompanied by findings and conclusions resulting from the commissioner's consideration and review of the market conduct examination report, relevant examiner work papers, and any written submissions or rebuttals. The order is considered a final administrative decision and may be appealed under the administrative procedure act, chapter 34.05 RCW, and must be served upon the company by certified mail, together with a copy of the adopted examination report. A copy of the adopted examination report must be sent by certified mail to each director at the director's residential address.

(f)(i) Upon the adoption of the market conduct examination report under (d) of this subsection, the commissioner shall continue to hold the content of the examination report as private and confidential information for a period of five days except that the order may be disclosed to the person examined. Thereafter, the commissioner may open the report for public inspection so long as no court of competent jurisdiction has stayed its publication.

(ii) If the commissioner determines that regulatory action is appropriate as a result of any market conduct examination, he or she may initiate any proceedings or actions as provided by law.

(iii) Nothing contained in this subsection requires the commissioner to disclose any information or records that would indicate or show the existence or content of any investigation or activity of a criminal justice agency.

(g) The insurer's response shall be included in the commissioner's order adopting the final report as an exhibit to the order. The insurer is not obligated to submit a response.

(13) The commissioner may withhold from public inspection any examination or investigation report for so long as he or she deems it advisable.

(14)(a) Market conduct examinations within this state of any insurer domiciled or having its home offices in this state, other than a title insurer, made by the commissioner or the commissioner's examiners and employees shall, except as to fees, mileage, and expense incurred as to witnesses, be at the expense of the state.

(b) Every other examination, whatsoever, or any part of the market conduct examination of any person domiciled or having its home offices in this state requiring travel and services outside this state, shall be made by the commissioner or by examiners designated by the commissioner and shall be at the expense of the person examined; but a domestic insurer shall not be liable for the compensation of examiners employed by the commissioner for such services outside this state.

(c) When making a market conduct examination under this chapter, the commissioner may contract, in accordance with applicable state contracting procedures, for qualified attorneys, appraisers, independent certified public accountants, contract actuaries, and other similar individuals who are independently practicing their professions, even though those persons may from time to time be similarly employed or retained by persons subject to examination under this chapter, as examiners as the commissioner deems necessary for the efficient conduct of a particular examination. The compensation and per diem allowances paid to such contract persons shall be reasonable in the market and time incurred, shall not exceed one hundred twenty-five percent of the compensation and per diem allowances for examiners set forth in the guidelines adopted by the national association of insurance commissioners, unless the commissioner demonstrates that one hundred twenty-five percent is inadequate under the circumstances of the examination, and subject to the provisions of (a) of this subsection.

(d)(i) The person examined and liable shall reimburse the state upon presentation of an itemized statement thereof, for the actual travel expenses of the commissioner's examiners, their reasonable living expenses allowance, and their per diem compensation, including salary and the employer's cost of employee benefits, at a reasonable rate approved by the commissioner, incurred on account of the examination. Per diem, salary, and expenses for employees examining insurers domiciled outside the state of Washington shall be established by the commissioner on the basis of the national association of insurance commissioner's recommended salary and expense schedule for zone examiners, or the salary schedule established by the director of the Washington department of personnel and the expense schedule established by the office of financial management, whichever is higher. A domestic title insurer shall pay the examination expense and costs to the commissioner as itemized and billed by the commissioner.

(ii) The commissioner or the commissioner's examiners shall not receive or accept any additional emolument on account of any examination.

(iii) Market conduct examination fees subject to being reimbursed by an insurer shall be itemized and bills shall be provided to the insurer on a monthly basis for review prior to submission for payment, or as otherwise provided by state law.

(e) Nothing contained in this chapter limits the commissioner's authority to terminate or suspend any examination in order to pursue other legal or regulatory action under the insurance laws of this state. Findings of fact and conclusions made pursuant to any examination are prima facie evidence in any legal or regulatory action.

(f) The commissioner shall maintain active management and oversight of market conduct examination costs, including costs associated with the commissioner's own examiners, and with retaining qualified contract examiners necessary to perform an examination. Any agreement with a contract examiner shall:

(i) Clearly identify the types of functions to be subject to outsourcing;

(ii) Provide specific timelines for completion of the outsourced review;

(iii) Require disclosure to the insurer of contract examiners' recommendations;

(iv) Establish and use a dispute resolution or arbitration mechanism to resolve conflicts with insurers regarding examination fees; and

(v) Require disclosure of the terms of the contracts with the outside consultants that will be used, specifically the fees and/or hourly rates that can be charged.

(g) The commissioner, or the commissioner's designee, shall review and affirmatively endorse detailed billings from the qualified contract examiner before the detailed billings are sent to the insurer. [2007 c 82 § 8.]

48.37.070 Access to records and information—Commissioner's authority—Depositions, subpoena, and oaths.

(1) Except as otherwise provided by law, market conduct oversight personnel shall have free, convenient, and full access to all books, records, employees, officers, and directors, as practicable, of the insurer during regular business hours.

(2) An insurer using a third-party model or product for any of the activities under examination shall cause, upon the request of market conduct oversight personnel, the details of such models or products to be made available to such personnel.

(3) Each officer, director, employee, and agent of an insurer shall facilitate and aid in a market conduct action or examination.

(4) No waiver of any applicable privilege or claim of confidentiality in the documents, materials, or information shall occur as a result of disclosure to the commissioner, any employee of the office of the insurance commissioner, or any agent retained by the office of the insurance commissioner to assist in the market conduct examination under this chapter.

(5)(a) The commissioner may take depositions, subpoena witnesses or documentary evidence, administer oaths, and examine under oath any individual relative to the affairs of any person being examined, or relative to the subject of any hearing or investigation: PROVIDED, That the provisions of RCW 34.05.446 shall apply in lieu of the provisions of this section as to subpoenas relative to hearings in rule-making and adjudicative proceedings.

(b) The subpoena shall be effective if served within the state of Washington and shall be served in the same manner as if issued from a court of record.

(c) Witness fees and mileage, if claimed, shall be allowed the same as for testimony in a court of record. Witness fees, mileage, and the actual expenses necessarily incurred in securing attendance of witnesses and their testimony shall be itemized, and shall be paid by the person to whom the examination is being made, or by the person if other than the commissioner, at whose request the hearing is held.

(d) Enforcement of subpoenas shall be in accordance with RCW 34.05.588.

(6) In order to assist in the performance of the commissioner's duties, the commissioner may:

(a) Share documents, materials, market conduct examination reports, preliminary market conduct examination reports, and other matters related to such reports, or other information, including the confidential and privileged docu-

ments, materials, or information subject to subsection (1) of this section, with other state, federal, and international regulatory agencies and law enforcement authorities, and the NAIC and its affiliates and subsidiaries, provided that the recipient agrees to and asserts that it has the legal authority to maintain the confidentiality and privileged status of the document, material, communication, or other information;

(b) Receive documents, materials, communications, or information, including otherwise confidential and privileged documents, materials, or information, from the NAIC and its affiliates or subsidiaries, and from regulatory and law enforcement officials of other foreign or domestic jurisdictions, and shall maintain as confidential or privileged any document, material, or information received with notice or the understanding that it is confidential or privileged under the laws of the jurisdiction that is the source of the document, material, or information; and

(c) Enter into agreements governing the sharing and use of information consistent with this subsection. [2007 c 82 § 9.]

48.37.080 Confidentiality. (1) All data and documents, including but not limited to working papers, third-party models or products, complaint logs, and copies thereof, created, produced, or obtained by or disclosed to the commissioner, the commissioner's authorized representative, or an examiner appointed by the commissioner in the course of any market conduct actions or examinations made under this chapter, or in the course of market analysis by the commissioner of the market conditions of an insurer, or obtained by the NAIC as a result of any of the provisions of this chapter, to the extent the documents are in the possession of the commissioner or the NAIC, shall be confidential by law and privileged, shall not be subject to the provisions of chapter 42.56 RCW, shall not be subject to subpoena, and shall not be subject to discovery or admissible in evidence in any private civil action.

(2) If the commissioner elects to issue a report of an examination, a preliminary or draft market conduct examination report is confidential and not subject to disclosure by the commissioner nor is it subject to subpoena or discovery. This subsection does not limit the commissioner's authority to use a preliminary or draft market conduct examination report and related information in furtherance of any legal or regulatory action, or to release it in accordance with the provisions of RCW 48.02.065.

(3) An insurance compliance self-evaluative audit document in the possession of the commissioner is confidential by law and privileged, and shall not be:

- (a) Made public by the commissioner;
- (b) Subject to the provisions of chapter 42.56 RCW;
- (c) Subject to subpoena; and

(d) Subject to discovery and admissible in evidence in any private civil action.

(4) Neither the disclosure of any self-evaluative audit document to the commissioner or to the commissioner's designee nor the citation to this document in connection with an agency action shall constitute a waiver of any privilege that may otherwise apply. [2007 c 82 § 10.]

48.37.090 Market conduct oversight personnel. (1) Market conduct oversight personnel shall be qualified by education, experience, and, where applicable, professional designations. The commissioner may supplement the in-house market conduct oversight staff with qualified outside professional assistance if the commissioner determines that the assistance is necessary.

(2) Market conduct oversight personnel have a conflict of interest, either directly or indirectly, if they are affiliated with the management of, and have, within five years of any market conduct action, been employed by, or own a pecuniary interest in the insurer, subject to any examination under this chapter. This section shall not be construed to automatically preclude an individual from being:

(a) A policyholder or claimant under an insurance policy;

(b) A grantor of a mortgage or similar instrument on the individual's residence from a regulated entity, if done under customary terms and in the ordinary course of business;

(c) An investment owner in shares of regulated diversified investment companies; or

(d) A settlor or beneficiary of a "blind trust" into which any otherwise impermissible holdings have been placed. [2007 c 82 § 11.]

48.37.100 Immunity for the commissioner, market conduct oversight personnel, authorized representatives, and examiners. (1) No cause of action shall arise, nor shall any liability be imposed against the commissioner, the commissioner's authorized representatives, market conduct oversight personnel, or an examiner appointed by the commissioner for any statements made, or conduct performed in good faith while carrying out the provisions of this chapter.

(2) No cause of action shall arise, nor shall any liability be imposed against any person for the act of communicating or delivering information or data to the commissioner or the commissioner's authorized representative, market conduct oversight personnel, or examiner, under an examination made under this chapter, if the act of communication or delivery was performed in good faith and without fraudulent intent or the intent to deceive.

(3) A person identified in subsection (1) of this section is entitled to an award of attorneys' fees and costs if he or she is the prevailing party in a civil cause of action for libel, slander, or any other relevant tort arising out of activities in carrying out the provisions of this chapter, and the party bringing the action was not substantially justified in doing so. For purposes of this section, a proceeding is "substantially justified" if it had a reasonable basis in law or fact at the time that it was initiated.

(4) If a claim is made or threatened as described in subsection (1) of this section, the commissioner shall provide or pay for the defense of himself or herself, the examiner or representative, and shall pay a judgment or settlement, until it is determined that the person did not act in good faith or did act with fraudulent intent or the intent to deceive.

(5) The immunity, indemnification, and other protections under this section are in addition to those now or hereafter existing under other law.

(6) This section does not abrogate or modify in any way any common law or statutory privilege or immunity, now or

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hereafter existing under this section or other law, enjoyed by any person identified in subsection (1) of this section. [2007 c 82 § 12.]

48.37.110 Fines and penalties. (1) Fines and penalties, applicable to the insurer as found in the Washington insurance code, levied as a result of a market conduct action or examination shall be consistent, reasonable, and justified.

(2) The commissioner shall take into consideration actions taken by insurers to maintain membership in, and comply with the standards of, best practices organizations, and the extent to which insurers maintain regulatory compliance programs to self-assess, self-report, and remediate problems detected, and may include those considerations in determining the appropriate fines or penalties levied in accordance with subsection (1) of this section.

(3) Commissioner enforcement actions shall not be based solely on violations identified in the insurer self-evaluative audit document, unless the commissioner confirms both that the violations occurred and that the insurer has not taken reasonable action based on the self-evaluative audit document to resolve and remediate the identified violations. [2007 c 82 § 13.]

48.37.120 Dispute resolution—Rules. (1) At any point in the market analysis, the insurer may request a review and resolution of issues by identifying the issues either orally or in writing to the market conduct oversight manager, or deputy insurance commissioner responsible for market conduct oversight. At each level, a response to the insurer shall be provided within five business days.

(2) At any point in the market conduct examination, the insurer may request a review and resolution of issues either orally or in writing to the market conduct oversight manager, or deputy insurance commissioner responsible for market conduct oversight. At each level, a response to the insurer shall be provided within five business days. This authorization for dispute resolution shall be secondary to the specific procedures set forth in RCW 48.37.060.

(3) After the deputy insurance commissioner responsible for market conduct oversight has responded to an insurer's issues, the insurer may request mediation of the issues. The insurance commissioner shall adopt by rule a process to govern mediation of insurer market conduct oversight issues. That rule shall:

(a) Provide for the selection by the commissioner of a panel of preapproved mediators;

(b) Require that insurers, upon notice of the start of a market analysis process or the start of a market conduct examination, identify from the preapproved list a mediator and an alternative mediator;

(c) Require the party requesting mediation to pay the costs of the mediator; and

(d) Provide for other rule provisions as are reasonably necessary for the efficient operation of a mediation process.

(4) At any point in the dispute resolution process contained in this section, the insurer may commence an adjudicative proceeding under chapters 48.04 and 34.05 RCW. [2007 c 82 § 14.]

48.37.130 Coordination with other state insurance regulators through the NAIC. (1) The commissioner shall share information and coordinate the commissioner's market analysis, market conduct actions, and examination efforts with other state insurance regulators. Such matters will be coordinated in accordance with guidelines adopted by the NAIC.

(2)(a) If a market conduct examination or action performed by another state insurance regulator results in a finding that an insurer should modify a specific practice or procedure, the commissioner shall, in lieu of conducting a market conduct action or examination, accept verification that the insurer made a similar modification in this state, unless the commissioner determines that the other state does not have laws substantially similar to those of this state, or does not have a market conduct oversight system that is comparable to the market conduct oversight system set forth in this chapter.

(b) The commissioner's determination under (a) of this subsection is discretionary with the commissioner and is not subject to appeal. [2007 c 82 § 15.]

48.37.140 Additional duties of the commissioner. (1) The commissioner shall designate a specific person or persons within the commissioner's office whose responsibilities shall include the receipt of information from employees of insurers and licensed entities concerning violations of laws or rules by their employers, as defined in this chapter. These persons shall be provided with proper training on the handling of such information. The information shall be confidential and not open to public inspection.

(2) At least once per year, or more frequently if deemed necessary, the commissioner shall make available in an appropriate manner to insurers and other entities subject to the scope of this title, information on new laws and regulations, enforcement actions, and other information the commissioner deems pertinent to ensure compliance with market conduct requirements. [2007 c 82 § 16.]

48.37.900 Captions not law. Captions used in this chapter are not any part of the law. [2007 c 82 § 18.]

Chapter 48.41 RCW

HEALTH INSURANCE COVERAGE ACCESS ACT

Sections

48.41.037	Washington state health insurance pool account.
48.41.100	Eligibility for coverage.
48.41.110	Policy coverage—Eligible expenses, cost containment, limits—Explanatory brochure. (<i>Effective until January 1, 2008.</i>)
48.41.110	Policy coverage—Eligible expenses, cost containment, limits—Explanatory brochure. (<i>Effective January 1, 2008.</i>)
48.41.120	Comprehensive pool policy—Deductibles—Coinsurance—Carryover.
48.41.160	Pool policy requirements—Continued coverage—Rate changes—Continuation.
48.41.190	Civil and criminal immunity.
48.41.200	Rates—Standard risk and maximum.
48.41.220	Mental health services—Definition—Coverage required, when. (<i>Effective January 1, 2008.</i>)

48.41.037 Washington state health insurance pool account. The Washington state health insurance pool account is created in the custody of the state treasurer. All

receipts from moneys specifically appropriated to the account must be deposited in the account. Expenditures from this account shall be used to cover deficits incurred by the Washington state health insurance pool under this chapter in excess of the threshold established in this section. To the extent funds are available in the account, funds shall be expended from the account to offset that portion of the deficit that would otherwise have to be recovered by imposing an assessment on members in excess of a threshold of seventy cents per insured person per month. The commissioner shall authorize expenditures from the account, to the extent that funds are available in the account, upon certification by the pool board that assessments will exceed the threshold level established in this section. The account is subject to the allotment procedures under chapter 43.88 RCW, but an appropriation is not required for expenditures.

Whether the assessment has reached the threshold of seventy cents per insured person per month shall be determined by dividing the total aggregate amount of assessment by the proportion of total assessed members. Thus, stop loss members shall be counted as one-tenth of a whole member in the denominator given that is the amount they are assessed proportionately relative to a fully insured medical member. [2007 c 259 § 29; 2000 c 79 § 36.]

Severability—Subheadings not law—2007 c 259: See notes following RCW 41.05.033.

Effective date—Severability—2000 c 79: See notes following RCW 48.04.010.

48.41.100 Eligibility for coverage. (1) The following persons who are residents of this state are eligible for pool coverage:

(a) Any person who provides evidence of a carrier's decision not to accept him or her for enrollment in an individual health benefit plan as defined in RCW 48.43.005 based upon, and within ninety days of the receipt of, the results of the standard health questionnaire designated by the board and administered by health carriers under RCW 48.43.018;

(b) Any person who continues to be eligible for pool coverage based upon the results of the standard health questionnaire designated by the board and administered by the pool administrator pursuant to subsection (3) of this section;

(c) Any person who resides in a county of the state where no carrier or insurer eligible under chapter 48.15 RCW offers to the public an individual health benefit plan other than a catastrophic health plan as defined in RCW 48.43.005 at the time of application to the pool, and who makes direct application to the pool; and

(d) Any medicare eligible person upon providing evidence of rejection for medical reasons, a requirement of restrictive riders, an up-rated premium, or a preexisting conditions limitation on a medicare supplemental insurance policy under chapter 48.66 RCW, the effect of which is to substantially reduce coverage from that received by a person considered a standard risk by at least one member within six months of the date of application.

(2) The following persons are not eligible for coverage by the pool:

(a) Any person having terminated coverage in the pool unless (i) twelve months have lapsed since termination, or (ii) that person can show continuous other coverage which has

been involuntarily terminated for any reason other than non-payment of premiums. However, these exclusions do not apply to eligible individuals as defined in section 2741(b) of the federal health insurance portability and accountability act of 1996 (42 U.S.C. Sec. 300gg-41(b));

(b) Any person on whose behalf the pool has paid out two million dollars in benefits;

(c) Inmates of public institutions and persons whose benefits are duplicated under public programs. However, these exclusions do not apply to eligible individuals as defined in section 2741(b) of the federal health insurance portability and accountability act of 1996 (42 U.S.C. Sec. 300gg-41(b));

(d) Any person who resides in a county of the state where any carrier or insurer regulated under chapter 48.15 RCW offers to the public an individual health benefit plan other than a catastrophic health plan as defined in RCW 48.43.005 at the time of application to the pool and who does not qualify for pool coverage based upon the results of the standard health questionnaire, or pursuant to subsection (1)(d) of this section.

(3) When a carrier or insurer regulated under chapter 48.15 RCW begins to offer an individual health benefit plan in a county where no carrier had been offering an individual health benefit plan:

(a) If the health benefit plan offered is other than a catastrophic health plan as defined in RCW 48.43.005, any person enrolled in a pool plan pursuant to subsection (1)(c) of this section in that county shall no longer be eligible for coverage under that plan pursuant to subsection (1)(c) of this section, but may continue to be eligible for pool coverage based upon the results of the standard health questionnaire designated by the board and administered by the pool administrator. The pool administrator shall offer to administer the questionnaire to each person no longer eligible for coverage under subsection (1)(c) of this section within thirty days of determining that he or she is no longer eligible;

(b) Losing eligibility for pool coverage under this subsection (3) does not affect a person's eligibility for pool coverage under subsection (1)(a), (b), or (d) of this section; and

(c) The pool administrator shall provide written notice to any person who is no longer eligible for coverage under a pool plan under this subsection (3) within thirty days of the administrator's determination that the person is no longer eligible. The notice shall: (i) Indicate that coverage under the plan will cease ninety days from the date that the notice is dated; (ii) describe any other coverage options, either in or outside of the pool, available to the person; (iii) describe the procedures for the administration of the standard health questionnaire to determine the person's continued eligibility for coverage under subsection (1)(b) of this section; and (iv) describe the enrollment process for the available options outside of the pool.

(4) The board shall ensure that an independent analysis of the eligibility standards for the pool coverage is conducted, including examining the eight percent eligibility threshold, eligibility for medicaid enrollees and other publicly sponsored enrollees, and the impacts on the pool and the state budget. The board shall report the findings to the legislature by December 1, 2007. [2007 c 259 § 30; 2001 c 196 § 3; 2000 c 79 § 12; 1995 c 34 § 5; 1989 c 121 § 7; 1987 c 431 § 10.]

Effective date—2007 c 259 § 30: "Section 30 of this act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately [May 2, 2007]." [2007 c 259 § 75.]

Severability—Subheadings not law—2007 c 259: See notes following RCW 41.05.033.

Effective date—2001 c 196: See note following RCW 48.20.025.

Effective date—Severability—2000 c 79: See notes following RCW 48.04.010.

48.41.110 Policy coverage—Eligible expenses, cost containment, limits—Explanatory brochure. (Effective until January 1, 2008.) (1) The pool shall offer one or more care management plans of coverage. Such plans may, but are not required to, include point of service features that permit participants to receive in-network benefits or out-of-network benefits subject to differential cost shares. The pool may incorporate managed care features into existing plans.

(2) The administrator shall prepare a brochure outlining the benefits and exclusions of pool policies in plain language. After approval by the board, such brochure shall be made reasonably available to participants or potential participants.

(3) The health insurance policies issued by the pool shall pay only reasonable amounts for medically necessary eligible health care services rendered or furnished for the diagnosis or treatment of covered illnesses, injuries, and conditions. Eligible expenses are the reasonable amounts for the health care services and items for which benefits are extended under a pool policy.

(4) The pool shall offer at least two policies, one of which will be a comprehensive policy that must comply with RCW 48.41.120 and must at a minimum include the following services or related items:

(a) Hospital services, including charges for the most common semiprivate room, for the most common private room if semiprivate rooms do not exist in the health care facility, or for the private room if medically necessary, including no less than a total of one hundred eighty inpatient days in a calendar year, and no less than thirty days inpatient care for mental and nervous conditions, or alcohol, drug, or chemical dependency or abuse per calendar year;

(b) Professional services including surgery for the treatment of injuries, illnesses, or conditions, other than dental, which are rendered by a health care provider, or at the direction of a health care provider, by a staff of registered or licensed practical nurses, or other health care providers;

(c) No less than twenty outpatient professional visits for the diagnosis or treatment of one or more mental or nervous conditions or alcohol, drug, or chemical dependency or abuse rendered during a calendar year by one or more physicians, psychologists, or community mental health professionals, or, at the direction of a physician, by other qualified licensed health care practitioners, in the case of mental or nervous conditions, and rendered by a state certified chemical dependency program approved under chapter 70.96A RCW, in the case of alcohol, drug, or chemical dependency or abuse;

(d) Drugs and contraceptive devices requiring a prescription;

(e) Services of a skilled nursing facility, excluding custodial and convalescent care, for not less than one hundred days in a calendar year as prescribed by a physician;

(f) Services of a home health agency;

- (g) Chemotherapy, radioisotope, radiation, and nuclear medicine therapy;
- (h) Oxygen;
- (i) Anesthesia services;
- (j) Prostheses, other than dental;
- (k) Durable medical equipment which has no personal use in the absence of the condition for which prescribed;
- (l) Diagnostic x-rays and laboratory tests;
- (m) Oral surgery including at least the following: Fractures of facial bones; excisions of mandibular joints, lesions of the mouth, lip, or tongue, tumors, or cysts excluding treatment for temporomandibular joints; incision of accessory sinuses, mouth salivary glands or ducts; dislocations of the jaw; plastic reconstruction or repair of traumatic injuries occurring while covered under the pool; and excision of impacted wisdom teeth;
- (n) Maternity care services;
- (o) Services of a physical therapist and services of a speech therapist;
- (p) Hospice services;
- (q) Professional ambulance service to the nearest health care facility qualified to treat the illness or injury; and
- (r) Other medical equipment, services, or supplies required by physician's orders and medically necessary and consistent with the diagnosis, treatment, and condition.

(5) The board shall design and employ cost containment measures and requirements such as, but not limited to, care coordination, provider network limitations, preadmission certification, and concurrent inpatient review which may make the pool more cost-effective.

(6) The pool benefit policy may contain benefit limitations, exceptions, and cost shares such as copayments, coinsurance, and deductibles that are consistent with managed care products, except that differential cost shares may be adopted by the board for nonnetwork providers under point of service plans. No limitation, exception, or reduction may be used that would exclude coverage for any disease, illness, or injury.

(7) The pool may not reject an individual for health plan coverage based upon preexisting conditions of the individual or deny, exclude, or otherwise limit coverage for an individual's preexisting health conditions; except that it shall impose a six-month benefit waiting period for preexisting conditions for which medical advice was given, for which a health care provider recommended or provided treatment, or for which a prudent layperson would have sought advice or treatment, within six months before the effective date of coverage. The preexisting condition waiting period shall not apply to prenatal care services. The pool may not avoid the requirements of this section through the creation of a new rate classification or the modification of an existing rate classification. Credit against the waiting period shall be as provided in subsection (8) of this section.

(8)(a) Except as provided in (b) of this subsection, the pool shall credit any preexisting condition waiting period in its plans for a person who was enrolled at any time during the sixty-three day period immediately preceding the date of application for the new pool plan. For the person previously enrolled in a group health benefit plan, the pool must credit the aggregate of all periods of preceding coverage not separated by more than sixty-three days toward the waiting period

of the new health plan. For the person previously enrolled in an individual health benefit plan other than a catastrophic health plan, the pool must credit the period of coverage the person was continuously covered under the immediately preceding health plan toward the waiting period of the new health plan. For the purposes of this subsection, a preceding health plan includes an employer-provided self-funded health plan.

(b) The pool shall waive any preexisting condition waiting period for a person who is an eligible individual as defined in section 2741(b) of the federal health insurance portability and accountability act of 1996 (42 U.S.C. 300gg-41(b)).

(9) If an application is made for the pool policy as a result of rejection by a carrier, then the date of application to the carrier, rather than to the pool, should govern for purposes of determining preexisting condition credit.

(10) The pool shall contract with organizations that provide care management that has been demonstrated to be effective and shall encourage enrollees who are eligible for care management services to participate. The pool may encourage the use of shared decision making and certified decision aids for preference-sensitive care areas. [2007 c 259 § 26; 2001 c 196 § 4; 2000 c 80 § 2; 2000 c 79 § 13; 1997 c 231 § 213; 1987 c 431 § 11.]

Severability—Subheadings not law—2007 c 259: See notes following RCW 41.05.033

Effective date—2001 c 196: See note following RCW 48.20.025.

Effective date—Severability—2000 c 79: See notes following RCW 48.04.010.

Short title—Part headings and captions not law—Severability—Effective dates—1997 c 231: See notes following RCW 48.43.005.

48.41.110 Policy coverage—Eligible expenses, cost containment, limits—Explanatory brochure. (Effective January 1, 2008.) (1) The pool shall offer one or more care management plans of coverage. Such plans may, but are not required to, include point of service features that permit participants to receive in-network benefits or out-of-network benefits subject to differential cost shares. The pool may incorporate managed care features into existing plans.

(2) The administrator shall prepare a brochure outlining the benefits and exclusions of pool policies in plain language. After approval by the board, such brochure shall be made reasonably available to participants or potential participants.

(3) The health insurance policies issued by the pool shall pay only reasonable amounts for medically necessary eligible health care services rendered or furnished for the diagnosis or treatment of covered illnesses, injuries, and conditions. Eligible expenses are the reasonable amounts for the health care services and items for which benefits are extended under a pool policy.

(4) The pool shall offer at least two policies, one of which will be a comprehensive policy that must comply with RCW 48.41.120 and must at a minimum include the following services or related items:

(a) Hospital services, including charges for the most common semiprivate room, for the most common private room if semiprivate rooms do not exist in the health care facility, or for the private room if medically necessary, including no less than a total of one hundred eighty inpatient

days in a calendar year, and no less than thirty days inpatient care for alcohol, drug, or chemical dependency or abuse per calendar year;

(b) Professional services including surgery for the treatment of injuries, illnesses, or conditions, other than dental, which are rendered by a health care provider, or at the direction of a health care provider, by a staff of registered or licensed practical nurses, or other health care providers;

(c) No less than twenty outpatient professional visits for the diagnosis or treatment of alcohol, drug, or chemical dependency or abuse rendered during a calendar year by a state-certified chemical dependency program approved under chapter 70.96A RCW, or by one or more physicians, psychologists, or community mental health professionals, or, at the direction of a physician, by other qualified licensed health care practitioners;

(d) Drugs and contraceptive devices requiring a prescription;

(e) Services of a skilled nursing facility, excluding custodial and convalescent care, for not less than one hundred days in a calendar year as prescribed by a physician;

(f) Services of a home health agency;

(g) Chemotherapy, radioisotope, radiation, and nuclear medicine therapy;

(h) Oxygen;

(i) Anesthesia services;

(j) Prostheses, other than dental;

(k) Durable medical equipment which has no personal use in the absence of the condition for which prescribed;

(l) Diagnostic x-rays and laboratory tests;

(m) Oral surgery including at least the following: Fractures of facial bones; excisions of mandibular joints, lesions of the mouth, lip, or tongue, tumors, or cysts excluding treatment for temporomandibular joints; incision of accessory sinuses, mouth salivary glands or ducts; dislocations of the jaw; plastic reconstruction or repair of traumatic injuries occurring while covered under the pool; and excision of impacted wisdom teeth;

(n) Maternity care services;

(o) Services of a physical therapist and services of a speech therapist;

(p) Hospice services;

(q) Professional ambulance service to the nearest health care facility qualified to treat the illness or injury;

(r) Mental health services pursuant to RCW 48.41.220; and

(s) Other medical equipment, services, or supplies required by physician's orders and medically necessary and consistent with the diagnosis, treatment, and condition.

(5) The board shall design and employ cost containment measures and requirements such as, but not limited to, care coordination, provider network limitations, preadmission certification, and concurrent inpatient review which may make the pool more cost-effective.

(6) The pool benefit policy may contain benefit limitations, exceptions, and cost shares such as copayments, coinsurance, and deductibles that are consistent with managed care products, except that differential cost shares may be adopted by the board for nonnetwork providers under point of service plans. No limitation, exception, or reduction may

be used that would exclude coverage for any disease, illness, or injury.

(7) The pool may not reject an individual for health plan coverage based upon preexisting conditions of the individual or deny, exclude, or otherwise limit coverage for an individual's preexisting health conditions; except that it shall impose a six-month benefit waiting period for preexisting conditions for which medical advice was given, for which a health care provider recommended or provided treatment, or for which a prudent layperson would have sought advice or treatment, within six months before the effective date of coverage. The preexisting condition waiting period shall not apply to prenatal care services. The pool may not avoid the requirements of this section through the creation of a new rate classification or the modification of an existing rate classification. Credit against the waiting period shall be as provided in subsection (8) of this section.

(8)(a) Except as provided in (b) of this subsection, the pool shall credit any preexisting condition waiting period in its plans for a person who was enrolled at any time during the sixty-three day period immediately preceding the date of application for the new pool plan. For the person previously enrolled in a group health benefit plan, the pool must credit the aggregate of all periods of preceding coverage not separated by more than sixty-three days toward the waiting period of the new health plan. For the person previously enrolled in an individual health benefit plan other than a catastrophic health plan, the pool must credit the period of coverage the person was continuously covered under the immediately preceding health plan toward the waiting period of the new health plan. For the purposes of this subsection, a preceding health plan includes an employer-provided self-funded health plan.

(b) The pool shall waive any preexisting condition waiting period for a person who is an eligible individual as defined in section 2741(b) of the federal health insurance portability and accountability act of 1996 (42 U.S.C. 300gg-41(b)).

(9) If an application is made for the pool policy as a result of rejection by a carrier, then the date of application to the carrier, rather than to the pool, should govern for purposes of determining preexisting condition credit.

(10) The pool shall contract with organizations that provide care management that has been demonstrated to be effective and shall encourage enrollees who are eligible for care management services to participate. The pool may encourage the use of shared decision making and certified decision aids for preference-sensitive care areas. [2007 c 259 § 26; 2007 c 8 § 5; 2001 c 196 § 4; 2000 c 80 § 2; 2000 c 79 § 13; 1997 c 231 § 213; 1987 c 431 § 11.]

Reviser's note: This section was amended by 2007 c 8 § 5 and by 2007 c 259 § 26, each without reference to the other. Both amendments are incorporated in the publication of this section under RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

Severability—Subheadings not law—2007 c 259: See notes following RCW 41.05.033.

Effective date—2007 c 8: See note following RCW 48.20.580.

Effective date—2001 c 196: See note following RCW 48.20.025.

Effective date—Severability—2000 c 79: See notes following RCW 48.04.010.

Short title—Part headings and captions not law—Severability—Effective dates—1997 c 231: See notes following RCW 48.43.005.

48.41.120 Comprehensive pool policy—Deductibles—Coinsurance—Carryover. (1) Subject to the limitation provided in subsection (3) of this section, the comprehensive pool policy offered under RCW 48.41.110(4) shall impose a deductible as provided in this subsection. Deductibles of five hundred dollars and one thousand dollars on a per person per calendar year basis shall initially be offered. The board may authorize deductibles in other amounts. The deductible shall be applied to the first five hundred dollars, one thousand dollars, or other authorized amount of eligible expenses incurred by the covered person.

(2) Subject to the limitations provided in subsection (3) of this section, a mandatory coinsurance requirement shall be imposed at a rate not to exceed twenty percent of eligible expenses in excess of the mandatory deductible and which supports the efficient delivery of high quality health care services for the medical conditions of pool enrollees.

(3) The maximum aggregate out of pocket payments for eligible expenses by the insured in the form of deductibles and coinsurance under the comprehensive pool policy offered under RCW 48.41.110(4) shall not exceed in a calendar year:

(a) One thousand five hundred dollars per individual, or three thousand dollars per family, per calendar year for the five hundred dollar deductible policy;

(b) Two thousand five hundred dollars per individual, or five thousand dollars per family per calendar year for the one thousand dollar deductible policy; or

(c) An amount authorized by the board for any other deductible policy.

(4) Except for those enrolled in a high deductible health plan qualified under federal law for use with a health savings account, eligible expenses incurred by a covered person in the last three months of a calendar year, and applied toward a deductible, shall also be applied toward the deductible amount in the next calendar year.

(5) The board may modify cost-sharing as an incentive for enrollees to participate in care management services and other cost-effective programs and policies. [2007 c 259 § 31; 2000 c 79 § 14; 1989 c 121 § 8; 1987 c 431 § 12.]

Severability—Subheadings not law—2007 c 259: See notes following RCW 41.05.033.

Effective date—Severability—2000 c 79: See notes following RCW 48.04.010.

48.41.160 Pool policy requirements—Continued coverage—Rate changes—Continuation. (1) On or before December 31, 2007, the pool shall cancel all existing pool policies and replace them with policies that are identical to the existing policies except for the inclusion of a provision providing for a guarantee of the continuity of coverage consistent with this section. As a means to minimize the number of policy changes for enrollees, replacement policies provided under this subsection also may include the plan modifications authorized in RCW 48.41.100, 48.41.110, and 48.41.120.

(2) A pool policy shall contain a guarantee of the individual's right to continued coverage, subject to the provisions of subsections (4) and (5) of this section.

(3) The guarantee of continuity of coverage required by this section shall not prevent the pool from canceling or non-renewing a policy for:

(a) Nonpayment of premium;

(b) Violation of published policies of the pool;

(c) Failure of a covered person who becomes eligible for medicare benefits by reason of age to apply for a pool medical supplement plan, or a medicare supplement plan or other similar plan offered by a carrier pursuant to federal laws and regulations;

(d) Failure of a covered person to pay any deductible or copayment amount owed to the pool and not the provider of health care services;

(e) Covered persons committing fraudulent acts as to the pool;

(f) Covered persons materially breaching the pool policy; or

(g) Changes adopted to federal or state laws when such changes no longer permit the continued offering of such coverage.

(4)(a) The guarantee of continuity of coverage provided by this section requires that if the pool replaces a plan, it must make the replacement plan available to all individuals in the plan being replaced. The replacement plan must include all of the services covered under the replaced plan, and must not significantly limit access to the kind of services covered under the replacement plan through unreasonable cost-sharing requirements or otherwise. The pool may also allow individuals who are covered by a plan that is being replaced an unrestricted right to transfer to a fully comparable plan.

(b) The guarantee of continuity of coverage provided by this section requires that if the pool discontinues offering a plan: (i) The pool must provide notice to each individual of the discontinuation at least ninety days prior to the date of the discontinuation; (ii) the pool must offer to each individual provided coverage under the discontinued plan the option to enroll in any other plan currently offered by the pool for which the individual is otherwise eligible; and (iii) in exercising the option to discontinue a plan and in offering the option of coverage under (b)(ii) of this subsection, the pool must act uniformly without regard to any health status-related factor of enrolled individuals or individuals who may become eligible for this coverage.

(c) The pool cannot replace or discontinue a plan under this subsection (4) until it has completed an evaluation of the impact of replacing the plan upon:

(i) The cost and quality of care to pool enrollees;

(ii) Pool financing and enrollment;

(iii) The board's ability to offer comprehensive and other plans to its enrollees;

(iv) Other items identified by the board.

In its evaluation, the board must request input from the constituents represented by the board members.

(d) The guarantee of continuity of coverage provided by this section does not apply if the pool has zero enrollment in a plan.

(5) The pool may not change the rates for pool policies except on a class basis, with a clear disclosure in the policy of the pool's right to do so.

(6) A pool policy offered under this chapter shall provide that, upon the death of the individual in whose name the pol-

icy is issued, every other individual then covered under the policy may elect, within a period specified in the policy, to continue coverage under the same or a different policy. [2007 c 259 § 27; 1987 c 431 § 16.]

Severability—Subheadings not law—2007 c 259: See notes following RCW 41.05.033.

48.41.190 Civil and criminal immunity. The pool, members of the pool, board directors of the pool, officers of the pool, employees of the pool, the commissioner, the commissioner's representatives, and the commissioner's employees shall not be civilly or criminally liable and shall not have any penalty or cause of action of any nature arise against them for any action taken or not taken, including any discretionary decision or failure to make a discretionary decision, when the action or inaction is done in good faith and in the performance of the powers and duties under this chapter. Nothing in this section prohibits legal actions against the pool to enforce the pool's statutory or contractual duties or obligations. [2007 c 259 § 33; 1989 c 121 § 10; 1987 c 431 § 19.]

Severability—Subheadings not law—2007 c 259: See notes following RCW 41.05.033.

48.41.200 Rates—Standard risk and maximum. (1) The pool shall determine the standard risk rate by calculating the average individual standard rate charged for coverage comparable to pool coverage by the five largest members, measured in terms of individual market enrollment, offering such coverages in the state. In the event five members do not offer comparable coverage, the standard risk rate shall be established using reasonable actuarial techniques and shall reflect anticipated experience and expenses for such coverage in the individual market.

(2) Subject to subsection (3) of this section, maximum rates for pool coverage shall be as follows:

(a) Maximum rates for a pool indemnity health plan shall be one hundred fifty percent of the rate calculated under subsection (1) of this section;

(b) Maximum rates for a pool care management plan shall be one hundred twenty-five percent of the rate calculated under subsection (1) of this section; and

(c) Maximum rates for a person eligible for pool coverage pursuant to RCW 48.41.100(1)(a) who was enrolled at any time during the sixty-three day period immediately prior to the date of application for pool coverage in a group health benefit plan or an individual health benefit plan other than a catastrophic health plan as defined in RCW 48.43.005, where such coverage was continuous for at least eighteen months, shall be:

(i) For a pool indemnity health plan, one hundred twenty-five percent of the rate calculated under subsection (1) of this section; and

(ii) For a pool care management plan, one hundred ten percent of the rate calculated under subsection (1) of this section.

(3)(a) Subject to (b) and (c) of this subsection:

(i) The rate for any person whose current gross family income is less than two hundred fifty-one percent of the federal poverty level shall be reduced by thirty percent from what it would otherwise be;

(ii) The rate for any person whose current gross family income is more than two hundred fifty but less than three hundred one percent of the federal poverty level shall be reduced by fifteen percent from what it would otherwise be;

(iii) The rate for any person who has been enrolled in the pool for more than thirty-six months shall be reduced by five percent from what it would otherwise be.

(b) In no event shall the rate for any person be less than one hundred ten percent of the rate calculated under subsection (1) of this section.

(c) Rate reductions under (a)(i) and (ii) of this subsection shall be available only to the extent that funds are specifically appropriated for this purpose in the omnibus appropriations act. [2007 c 259 § 28; 2000 c 79 § 17; 1997 c 231 § 214; 1987 c 431 § 20.]

Severability—Subheadings not law—2007 c 259: See notes following RCW 41.05.033.

Effective date—Severability—2000 c 79: See notes following RCW 48.04.010.

Short title—Part headings and captions not law—Severability—Effective dates—1997 c 231: See notes following RCW 48.43.005.

48.41.220 Mental health services—Definition—Coverage required, when. (*Effective January 1, 2008.*) (1) For the purposes of this section, "mental health services" means medically necessary outpatient and inpatient services provided to treat mental disorders covered by the diagnostic categories listed in the most current version of the diagnostic and statistical manual of mental disorders, published by the American psychiatric association, on July 24, 2005, or such subsequent date as may be provided by the insurance commissioner by rule, consistent with the purposes of chapter 6, Laws of 2005, with the exception of the following categories, codes, and services: (a) Substance related disorders; (b) life transition problems, currently referred to as "V" codes, and diagnostic codes 302 through 302.9 as found in the diagnostic and statistical manual of mental disorders, 4th edition, published by the American psychiatric association; (c) skilled nursing facility services, home health care, residential treatment, and custodial care; and (d) court-ordered treatment unless the insurer's medical director or designee determines the treatment to be medically necessary.

(2) Each health insurance policy issued by the pool on or after January 1, 2008, shall provide coverage for:

(a) Mental health services. The copayment or coinsurance for mental health services may be no more than the copayment or coinsurance for medical and surgical services otherwise provided under the policy. Wellness and preventive services that are provided or reimbursed at a lesser copayment, coinsurance, or other cost sharing than other medical and surgical services are excluded from this comparison. If the policy imposes a maximum out-of-pocket limit or stop loss, it shall be a single limit or stop loss for medical, surgical, and mental health services; and

(b) Prescription drugs intended to treat any of the disorders covered in subsection (1) of this section to the same extent, and under the same terms and conditions, as other prescription drugs covered by the policy.

(3) Each health insurance policy issued by the pool on or after July 1, 2010, shall provide coverage for:

(a) Mental health services. The copayment or coinsurance for mental health services may be no more than the copayment or coinsurance for medical and surgical services otherwise provided under the policy. Wellness and preventive services that are provided or reimbursed at a lesser copayment, coinsurance, or other cost sharing than other medical and surgical services are excluded from this comparison. If the policy imposes a maximum out-of-pocket limit or stop loss, it shall be a single limit or stop loss for medical, surgical, and mental health services. If the policy imposes any deductible, mental health services shall be included with medical and surgical services for the purpose of meeting the deductible requirement. Treatment limitations or any other financial requirements on coverage for mental health services are only allowed if the same limitations or requirements are imposed on coverage for medical and surgical services; and

(b) Prescription drugs intended to treat any of the disorders covered in subsection (1) of this section to the same extent, and under the same terms and conditions, as other prescription drugs covered by the policy.

(4) In meeting the requirements of this section, a policy may not reduce the number of mental health outpatient visits or mental health inpatient days below the level in effect on July 1, 2002.

(5) This section does not prohibit a requirement that mental health services be medically necessary as determined by the medical director or designee, if a comparable requirement is applicable to medical and surgical services.

(6) Nothing in this section shall be construed to prevent the management of mental health services. [2007 c 8 § 6.]

Effective date—2007 c 8: See note following RCW 48.20.580.

Chapter 48.43 RCW INSURANCE REFORM

Sections

48.43.005	Definitions.
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48.43.018	Requirement to complete the standard health questionnaire—Exemptions—Results (<i>as amended by 2007 c 259</i>).
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48.43.650	Fixed payment insurance products—Commissioner's annual report.

48.43.005 Definitions. Unless otherwise specifically provided, the definitions in this section apply throughout this chapter.

(1) "Adjusted community rate" means the rating method used to establish the premium for health plans adjusted to reflect actuarially demonstrated differences in utilization or cost attributable to geographic region, age, family size, and use of wellness activities.

(2) "Basic health plan" means the plan described under chapter 70.47 RCW, as revised from time to time.

(3) "Basic health plan model plan" means a health plan as required in RCW 70.47.060(2)(e).

(4) "Basic health plan services" means that schedule of covered health services, including the description of how those benefits are to be administered, that are required to be delivered to an enrollee under the basic health plan, as revised from time to time.

(5) "Catastrophic health plan" means:

(a) In the case of a contract, agreement, or policy covering a single enrollee, a health benefit plan requiring a calendar year deductible of, at a minimum, one thousand seven hundred fifty dollars and an annual out-of-pocket expense required to be paid under the plan (other than for premiums) for covered benefits of at least three thousand five hundred dollars, both amounts to be adjusted annually by the insurance commissioner; and

(b) In the case of a contract, agreement, or policy covering more than one enrollee, a health benefit plan requiring a calendar year deductible of, at a minimum, three thousand five hundred dollars and an annual out-of-pocket expense required to be paid under the plan (other than for premiums) for covered benefits of at least six thousand dollars, both amounts to be adjusted annually by the insurance commissioner; or

(c) Any health benefit plan that provides benefits for hospital inpatient and outpatient services, professional and prescription drugs provided in conjunction with such hospital inpatient and outpatient services, and excludes or substantially limits outpatient physician services and those services usually provided in an office setting.

In July 2008, and in each July thereafter, the insurance commissioner shall adjust the minimum deductible and out-of-pocket expense required for a plan to qualify as a catastrophic plan to reflect the percentage change in the consumer price index for medical care for a preceding twelve months, as determined by the United States department of labor. The adjusted amount shall apply on the following January 1st.

(6) "Certification" means a determination by a review organization that an admission, extension of stay, or other health care service or procedure has been reviewed and, based on the information provided, meets the clinical requirements for medical necessity, appropriateness, level of care, or effectiveness under the auspices of the applicable health benefit plan.

(7) "Concurrent review" means utilization review conducted during a patient's hospital stay or course of treatment.

(8) "Covered person" or "enrollee" means a person covered by a health plan including an enrollee, subscriber, policyholder, beneficiary of a group plan, or individual covered by any other health plan.

(9) "Dependent" means, at a minimum, the enrollee's legal spouse and unmarried dependent children who qualify for coverage under the enrollee's health benefit plan.

(10) "Eligible employee" means an employee who works on a full-time basis with a normal work week of thirty or more hours. The term includes a self-employed individual, including a sole proprietor, a partner of a partnership, and may include an independent contractor, if the self-employed individual, sole proprietor, partner, or independent contractor is included as an employee under a health benefit plan of a small employer, but does not work less than thirty hours per

week and derives at least seventy-five percent of his or her income from a trade or business through which he or she has attempted to earn taxable income and for which he or she has filed the appropriate internal revenue service form. Persons covered under a health benefit plan pursuant to the consolidated omnibus budget reconciliation act of 1986 shall not be considered eligible employees for purposes of minimum participation requirements of chapter 265, Laws of 1995.

(11) "Emergency medical condition" means the emergent and acute onset of a symptom or symptoms, including severe pain, that would lead a prudent layperson acting reasonably to believe that a health condition exists that requires immediate medical attention, if failure to provide medical attention would result in serious impairment to bodily functions or serious dysfunction of a bodily organ or part, or would place the person's health in serious jeopardy.

(12) "Emergency services" means otherwise covered health care services medically necessary to evaluate and treat an emergency medical condition, provided in a hospital emergency department.

(13) "Enrollee point-of-service cost-sharing" means amounts paid to health carriers directly providing services, health care providers, or health care facilities by enrollees and may include copayments, coinsurance, or deductibles.

(14) "Grievance" means a written complaint submitted by or on behalf of a covered person regarding: (a) Denial of payment for medical services or nonprovision of medical services included in the covered person's health benefit plan, or (b) service delivery issues other than denial of payment for medical services or nonprovision of medical services, including dissatisfaction with medical care, waiting time for medical services, provider or staff attitude or demeanor, or dissatisfaction with service provided by the health carrier.

(15) "Health care facility" or "facility" means hospices licensed under chapter 70.127 RCW, hospitals licensed under chapter 70.41 RCW, rural health care facilities as defined in RCW 70.175.020, psychiatric hospitals licensed under chapter 71.12 RCW, nursing homes licensed under chapter 18.51 RCW, community mental health centers licensed under chapter 71.05 or 71.24 RCW, kidney disease treatment centers licensed under chapter 70.41 RCW, ambulatory diagnostic, treatment, or surgical facilities licensed under chapter 70.41 RCW, drug and alcohol treatment facilities licensed under chapter 70.96A RCW, and home health agencies licensed under chapter 70.127 RCW, and includes such facilities if owned and operated by a political subdivision or instrumentality of the state and such other facilities as required by federal law and implementing regulations.

(16) "Health care provider" or "provider" means:

(a) A person regulated under Title 18 or chapter 70.127 RCW, to practice health or health-related services or otherwise practicing health care services in this state consistent with state law; or

(b) An employee or agent of a person described in (a) of this subsection, acting in the course and scope of his or her employment.

(17) "Health care service" means that service offered or provided by health care facilities and health care providers relating to the prevention, cure, or treatment of illness, injury, or disease.

(18) "Health carrier" or "carrier" means a disability insurer regulated under chapter 48.20 or 48.21 RCW, a health care service contractor as defined in RCW 48.44.010, or a health maintenance organization as defined in RCW 48.46.020.

(19) "Health plan" or "health benefit plan" means any policy, contract, or agreement offered by a health carrier to provide, arrange, reimburse, or pay for health care services except the following:

(a) Long-term care insurance governed by chapter 48.84 RCW;

(b) Medicare supplemental health insurance governed by chapter 48.66 RCW;

(c) Coverage supplemental to the coverage provided under chapter 55, Title 10, United States Code;

(d) Limited health care services offered by limited health care service contractors in accordance with RCW 48.44.035;

(e) Disability income;

(f) Coverage incidental to a property/casualty liability insurance policy such as automobile personal injury protection coverage and homeowner guest medical;

(g) Workers' compensation coverage;

(h) Accident only coverage;

(i) Specified disease or illness-triggered fixed payment insurance, hospital confinement fixed payment insurance, or other fixed payment insurance offered as an independent, noncoordinated benefit;

(j) Employer-sponsored self-funded health plans;

(k) Dental only and vision only coverage; and

(l) Plans deemed by the insurance commissioner to have a short-term limited purpose or duration, or to be a student-only plan that is guaranteed renewable while the covered person is enrolled as a regular full-time undergraduate or graduate student at an accredited higher education institution, after a written request for such classification by the carrier and subsequent written approval by the insurance commissioner.

(20) "Material modification" means a change in the actuarial value of the health plan as modified of more than five percent but less than fifteen percent.

(21) "Preexisting condition" means any medical condition, illness, or injury that existed any time prior to the effective date of coverage.

(22) "Premium" means all sums charged, received, or deposited by a health carrier as consideration for a health plan or the continuance of a health plan. Any assessment or any "membership," "policy," "contract," "service," or similar fee or charge made by a health carrier in consideration for a health plan is deemed part of the premium. "Premium" shall not include amounts paid as enrollee point-of-service cost-sharing.

(23) "Review organization" means a disability insurer regulated under chapter 48.20 or 48.21 RCW, health care service contractor as defined in RCW 48.44.010, or health maintenance organization as defined in RCW 48.46.020, and entities affiliated with, under contract with, or acting on behalf of a health carrier to perform a utilization review.

(24) "Small employer" or "small group" means any person, firm, corporation, partnership, association, political subdivision, sole proprietor, or self-employed individual that is actively engaged in business that, on at least fifty percent of its working days during the preceding calendar quarter,

employed at least two but no more than fifty eligible employees, with a normal work week of thirty or more hours, the majority of whom were employed within this state, and is not formed primarily for purposes of buying health insurance and in which a bona fide employer-employee relationship exists. In determining the number of eligible employees, companies that are affiliated companies, or that are eligible to file a combined tax return for purposes of taxation by this state, shall be considered an employer. Subsequent to the issuance of a health plan to a small employer and for the purpose of determining eligibility, the size of a small employer shall be determined annually. Except as otherwise specifically provided, a small employer shall continue to be considered a small employer until the plan anniversary following the date the small employer no longer meets the requirements of this definition. A self-employed individual or sole proprietor must derive at least seventy-five percent of his or her income from a trade or business through which the individual or sole proprietor has attempted to earn taxable income and for which he or she has filed the appropriate internal revenue service form 1040, schedule C or F, for the previous taxable year except for a self-employed individual or sole proprietor in an agricultural trade or business, who must derive at least fifty-one percent of his or her income from the trade or business through which the individual or sole proprietor has attempted to earn taxable income and for which he or she has filed the appropriate internal revenue service form 1040, for the previous taxable year. A self-employed individual or sole proprietor who is covered as a group of one on the day prior to June 10, 2004, shall also be considered a "small employer" to the extent that individual or group of one is entitled to have his or her coverage renewed as provided in RCW 48.43.035(6).

(25) "Utilization review" means the prospective, concurrent, or retrospective assessment of the necessity and appropriateness of the allocation of health care resources and services of a provider or facility, given or proposed to be given to an enrollee or group of enrollees.

(26) "Wellness activity" means an explicit program of an activity consistent with department of health guidelines, such as, smoking cessation, injury and accident prevention, reduction of alcohol misuse, appropriate weight reduction, exercise, automobile and motorcycle safety, blood cholesterol reduction, and nutrition education for the purpose of improving enrollee health status and reducing health service costs. [2007 c 296 § 1; 2007 c 259 § 32; 2006 c 25 § 16; 2004 c 244 § 2. Prior: 2001 c 196 § 5; 2001 c 147 § 1; 2000 c 79 § 18; prior: 1997 c 231 § 202; 1997 c 55 § 1; 1995 c 265 § 4.]

Reviser's note: This section was amended by 2007 c 259 § 32 and by 2007 c 296 § 1, each without reference to the other. Both amendments are incorporated in the publication of this section under RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

Severability—Subheadings not law—2007 c 259: See notes following RCW 41.05.033.

Application—2004 c 244: See note following RCW 48.21.045.

Effective date—2001 c 196: See note following RCW 48.20.025.

Effective date—Severability—2000 c 79: See notes following RCW 48.04.010.

Short title—1997 c 231: "This act shall be known as the consumer assistance and insurance market stabilization act." [1997 c 231 § 402.]

Part headings and captions not law—1997 c 231: "Part headings and section captions used in this act are not part of the law." [1997 c 231 § 403.]

Severability—1997 c 231: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1997 c 231 § 404.]

Effective dates—1997 c 231: "(1) Sections 104 through 108 and 301 of this act take effect January 1, 1998.

(2) Section 111 of this act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect July 1, 1997.

(3) Section 205 of this act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately." [1997 c 231 § 405.]

Effective date—1997 c 55: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately [April 16, 1997]." [1997 c 55 § 2.]

Captions not law—Effective dates—Savings—Severability—1995 c 265: See notes following RCW 70.47.015.

48.43.008 Enrollment in employer-sponsored health plan—Person eligible for medical assistance. When the department of social and health services determines that it is cost-effective to enroll a person eligible for medical assistance under chapter 74.09 RCW in an employer-sponsored health plan, a carrier shall permit the enrollment of the person in the health plan for which he or she is otherwise eligible without regard to any open enrollment period restrictions. [2007 c 259 § 24.]

Severability—Subheadings not law—2007 c 259: See notes following RCW 41.05.033.

48.43.018 Requirement to complete the standard health questionnaire—Exemptions—Results (as amended by 2007 c 80). (1) Except as provided in (a) through ((e)) (d) of this subsection, a health carrier may require any person applying for an individual health benefit plan to complete the standard health questionnaire designated under chapter 48.41 RCW.

(a) If a person is seeking an individual health benefit plan due to his or her change of residence from one geographic area in Washington state to another geographic area in Washington state where his or her current health plan is not offered, completion of the standard health questionnaire shall not be a condition of coverage if application for coverage is made within ninety days of relocation.

(b) If a person is seeking an individual health benefit plan:

(i) Because a health care provider with whom he or she has an established care relationship and from whom he or she has received treatment within the past twelve months is no longer part of the carrier's provider network under his or her existing Washington individual health benefit plan; and

(ii) His or her health care provider is part of another carrier's provider network; and

(iii) Application for a health benefit plan under that carrier's provider network individual coverage is made within ninety days of his or her provider leaving the previous carrier's provider network; then completion of the standard health questionnaire shall not be a condition of coverage.

(c) If a person is seeking an individual health benefit plan due to his or her having exhausted continuation coverage provided under 29 U.S.C. Sec. 1161 et seq., completion of the standard health questionnaire shall not be a condition of coverage if application for coverage is made within ninety days of exhaustion of continuation coverage. A health carrier shall accept an application without a standard health questionnaire from a person currently covered by such continuation coverage if application is made within ninety days prior to the date the continuation coverage would be exhausted and the effective date of the individual coverage applied for is the date the continuation coverage would be exhausted, or within ninety days thereafter.

(d) (If a person is seeking an individual health benefit plan due to his or her receiving notice that his or her coverage under a conversion contract is discontinued, completion of the standard health questionnaire shall not be a condition of coverage if application for coverage is made within ninety days of discontinuation of eligibility under the conversion contract. A health carrier shall accept an application without a standard health questionnaire

from a person currently covered by such conversion contract if application is made within ninety days prior to the date eligibility under the conversion contract would be discontinued and the effective date of the individual coverage applied for is the date eligibility under the conversion contract would be discontinued, or within ninety days thereafter.

(e)) If a person is seeking an individual health benefit plan and, but for the number of persons employed by his or her employer, would have qualified for continuation coverage provided under 29 U.S.C. Sec. 1161 et seq., completion of the standard health questionnaire shall not be a condition of coverage if: (i) Application for coverage is made within ninety days of a qualifying event as defined in 29 U.S.C. Sec. 1163; and (ii) the person had at least twenty-four months of continuous group coverage immediately prior to the qualifying event. A health carrier shall accept an application without a standard health questionnaire from a person with at least twenty-four months of continuous group coverage if application is made no more than ninety days prior to the date of a qualifying event and the effective date of the individual coverage applied for is the date of the qualifying event, or within ninety days thereafter.

(2) If, based upon the results of the standard health questionnaire, the person qualifies for coverage under the Washington state health insurance pool, the following shall apply:

(a) The carrier may decide not to accept the person's application for enrollment in its individual health benefit plan; and

(b) Within fifteen business days of receipt of a completed application, the carrier shall provide written notice of the decision not to accept the person's application for enrollment to both the person and the administrator of the Washington state health insurance pool. The notice to the person shall state that the person is eligible for health insurance provided by the Washington state health insurance pool, and shall include information about the Washington state health insurance pool and an application for such coverage. If the carrier does not provide or postmark such notice within fifteen business days, the application is deemed approved.

(3) If the person applying for an individual health benefit plan: (a) Does not qualify for coverage under the Washington state health insurance pool based upon the results of the standard health questionnaire; (b) does qualify for coverage under the Washington state health insurance pool based upon the results of the standard health questionnaire and the carrier elects to accept the person for enrollment; or (c) is not required to complete the standard health questionnaire designated under this chapter under subsection (1)(a) or (b) of this section, the carrier shall accept the person for enrollment if he or she resides within the carrier's service area and provide or assure the provision of all covered services regardless of age, sex, family structure, ethnicity, race, health condition, geographic location, employment status, socioeconomic status, other condition or situation, or the provisions of RCW 49.60.174(2). The commissioner may grant a temporary exemption from this subsection if, upon application by a health carrier, the commissioner finds that the clinical, financial, or administrative capacity to serve existing enrollees will be impaired if a health carrier is required to continue enrollment of additional eligible individuals. [2007 c 80 § 13; 2004 c 244 § 3; 2001 c 196 § 8; 2000 c 80 § 4; 2000 c 79 § 21.]

48.43.018 Requirement to complete the standard health questionnaire—Exemptions—Results (as amended by 2007 c 259). (1) Except as provided in (a) through (e) of this subsection, a health carrier may require any person applying for an individual health benefit plan and the health care authority shall require any person applying for nonsubsidized enrollment in the basic health plan to complete the standard health questionnaire designated under chapter 48.41 RCW.

(a) If a person is seeking an individual health benefit plan or enrollment in the basic health plan as a nonsubsidized enrollee due to his or her change of residence from one geographic area in Washington state to another geographic area in Washington state where his or her current health plan is not offered, completion of the standard health questionnaire shall not be a condition of coverage if application for coverage is made within ninety days of relocation.

(b) If a person is seeking an individual health benefit plan or enrollment in the basic health plan as a nonsubsidized enrollee:

(i) Because a health care provider with whom he or she has an established care relationship and from whom he or she has received treatment within the past twelve months is no longer part of the carrier's provider network under his or her existing Washington individual health benefit plan; and

(ii) His or her health care provider is part of another carrier's or a basic health plan managed care system's provider network; and

(iii) Application for a health benefit plan under that carrier's provider network individual coverage or for basic health plan nonsubsidized enrollment is made within ninety days of his or her provider leaving the previous carrier's provider network; then completion of the standard health questionnaire shall not be a condition of coverage.

(c) If a person is seeking an individual health benefit plan or enrollment in the basic health plan as a nonsubsidized enrollee due to his or her having exhausted continuation coverage provided under 29 U.S.C. Sec. 1161 et seq., completion of the standard health questionnaire shall not be a condition of coverage if application for coverage is made within ninety days of exhaustion of continuation coverage. A health carrier or the health care authority as administrator of basic health plan nonsubsidized coverage shall accept an application without a standard health questionnaire from a person currently covered by such continuation coverage if application is made within ninety days prior to the date the continuation coverage would be exhausted and the effective date of the individual coverage applied for is the date the continuation coverage would be exhausted, or within ninety days thereafter.

(d) If a person is seeking an individual health benefit plan or enrollment in the basic health plan as a nonsubsidized enrollee due to his or her receiving notice that his or her coverage under a conversion contract is discontinued, completion of the standard health questionnaire shall not be a condition of coverage if application for coverage is made within ninety days of discontinuation of eligibility under the conversion contract. A health carrier or the health care authority as administrator of basic health plan nonsubsidized coverage shall accept an application without a standard health questionnaire from a person currently covered by such conversion contract if application is made within ninety days prior to the date eligibility under the conversion contract would be discontinued and the effective date of the individual coverage applied for is the date eligibility under the conversion contract would be discontinued, or within ninety days thereafter.

(e) If a person is seeking an individual health benefit plan (and, but for the number of persons employed by his or her employer, would have qualified for) or enrollment in the basic health plan as a nonsubsidized enrollee following disenrollment from a health plan that is exempt from continuation coverage provided under 29 U.S.C. Sec. 1161 et seq., completion of the standard health questionnaire shall not be a condition of coverage if: (i) (Application for coverage is made within ninety days of a qualifying event as defined in 29 U.S.C. Sec. 1163; and (ii)) The person had at least twenty-four months of continuous group coverage including church plans immediately prior to (the qualifying event. A health carrier shall accept an application without a standard health questionnaire from a person with at least twenty-four months of continuous group coverage if) disenrollment; (ii) application is made no more than ninety days prior to the date of (a qualifying event) disenrollment; and (iii) the effective date of the individual coverage applied for is the date of (the qualifying event) disenrollment, or within ninety days thereafter.

(f) If a person is seeking an individual health benefit plan, completion of the standard health questionnaire shall not be a condition of coverage if: (i) The person had at least twenty-four months of continuous basic health plan coverage under chapter 70.47 RCW immediately prior to disenrollment; and (ii) application for coverage is made within ninety days of disenrollment from the basic health plan. A health carrier shall accept an application without a standard health questionnaire from a person with at least twenty-four months of continuous basic health plan coverage if application is made no more than ninety days prior to the date of disenrollment and the effective date of the individual coverage applied for is the date of disenrollment, or within ninety days thereafter.

(2) If, based upon the results of the standard health questionnaire, the person qualifies for coverage under the Washington state health insurance pool, the following shall apply:

(a) The carrier may decide not to accept the person's application for enrollment in its individual health benefit plan and the health care authority, as administrator of basic health plan nonsubsidized coverage, shall not accept the person's application for enrollment as a nonsubsidized enrollee; and

(b) Within fifteen business days of receipt of a completed application, the carrier or the health care authority as administrator of basic health plan nonsubsidized coverage shall provide written notice of the decision not to accept the person's application for enrollment to both the person and the administrator of the Washington state health insurance pool. The notice to the person shall state that the person is eligible for health insurance provided by the Washington state health insurance pool, and shall include information about the Washington state health insurance pool and an application for such coverage. If the carrier or the health care authority as administrator of basic health plan nonsubsidized coverage does not provide or postmark such notice within fifteen business days, the application is deemed approved.

(3) If the person applying for an individual health benefit plan: (a) Does not qualify for coverage under the Washington state health insurance pool based upon the results of the standard health questionnaire; (b) does qualify for coverage under the Washington state health insurance pool based upon the results of the standard health questionnaire and the carrier elects to accept the person for enrollment; or (c) is not required to complete the standard health questionnaire designated under this chapter under subsection (1)(a) or (b) of this section, the carrier or the health care authority as administrator of basic health plan nonsubsidized coverage, whichever entity administered the standard health questionnaire, shall accept the person for enrollment if he or she resides within the carrier's or the basic health plan's service area and provide or assure the provision of all covered services regardless of age, sex, family structure, ethnicity, race, health condition, geographic location, employment status, socioeconomic status, other condition or situation, or the provisions of RCW 49.60.174(2). The commissioner may grant a temporary exemption from this subsection if, upon application by a health carrier, the commissioner finds that the clinical, financial, or administrative capacity to serve existing enrollees will be impaired if a health carrier is required to continue enrollment of additional eligible individuals. [2007 c 259 § 37; 2004 c 244 § 3; 2001 c 196 § 8; 2000 c 80 § 4; 2000 c 79 § 21.]

Reviser's note: RCW 48.43.018 was amended twice during the 2007 legislative session, each without reference to the other. For rule of construction concerning sections amended more than once during the same legislative session, see RCW 1.12.025.

Severability—Subheadings not law—2007 c 259: See notes following RCW 41.05.033.

Application—2004 c 244: See note following RCW 48.21.045.

Effective date—2001 c 196: See note following RCW 48.20.025.

Effective date—Severability—2000 c 79: See notes following RCW 48.04.010.

48.43.043 Colorectal cancer examinations and laboratory tests—Required benefits or coverage. (1) Health plans issued or renewed on or after July 1, 2008, must provide benefits or coverage for colorectal cancer examinations and laboratory tests consistent with the guidelines or recommendations of the United States preventive services task force or the federal centers for disease control and prevention. Benefits or coverage must be provided:

(a) For any of the colorectal screening examinations and tests in the selected guidelines or recommendations, at a frequency identified in such guidelines or recommendations, as deemed appropriate by the patient's physician after consultation with the patient; and

(b) To a covered individual who is:

(i) At least fifty years old; or

(ii) Less than fifty years old and at high risk or very high risk for colorectal cancer according to such guidelines or recommendations.

(2) To encourage colorectal cancer screenings, patients and health care providers must not be required to meet burdensome criteria or overcome significant obstacles to secure such coverage. An individual may not be required to pay an additional deductible or coinsurance for testing that is greater than an annual deductible or coinsurance established for similar benefits. If the health plan does not cover a similar benefit, a deductible or coinsurance may not be set at a level that materially diminishes the value of the colorectal cancer benefit required.

(3)(a) A health carrier is not required under this section to provide for a referral to a nonparticipating health care provider, unless the carrier does not have an appropriate health care provider that is available and accessible to administer the screening exam and that is a participating health care provider with respect to such treatment.

(b) If a health carrier refers an individual to a nonparticipating health care provider pursuant to this section, screening exam services or resulting treatment, if any, must be provided at no additional cost to the individual beyond what the individual would otherwise pay for services provided by a participating health care provider. [2007 c 23 § 1.]

48.43.045 Health plan requirements—Annual reports—Exemptions. (Effective July 1, 2008.) (1) Every health plan delivered, issued for delivery, or renewed by a health carrier on and after January 1, 1996, shall:

(a) Permit every category of health care provider to provide health services or care for conditions included in the basic health plan services to the extent that:

(i) The provision of such health services or care is within the health care providers' permitted scope of practice; and

(ii) The providers agree to abide by standards related to:

(A) Provision, utilization review, and cost containment of health services;

(B) Management and administrative procedures; and

(C) Provision of cost-effective and clinically efficacious health services.

(b) Annually report the names and addresses of all officers, directors, or trustees of the health carrier during the preceding year, and the amount of wages, expense reimbursements, or other payments to such individuals, unless substantially similar information is filed with the commissioner or the national association of insurance commissioners. This requirement does not apply to a foreign or alien insurer regulated under chapter 48.20 or 48.21 RCW that files a supplemental compensation exhibit in its annual statement as required by law.

(2) The requirements of subsection (1)(a) of this section do not apply to a licensed health care profession regulated under Title 18 RCW when the licensing statute for the profession states that such requirements do not apply. [2007 c 253 § 12; 2007 c 98 § 18; 2006 c 25 § 7; 1997 c 231 § 205; 1995 c 265 § 8.]

Severability—Effective date—Implementation—2007 c 253: See RCW 18.250.900 through 18.250.902.

Effective dates—2007 c 98: See RCW 18.74.912.

Short title—Part headings and captions not law—Severability—Effective dates—1997 c 231: See notes following RCW 48.43.005.

Captions not law—Effective dates—Savings—Severability—1995 c 265: See notes following RCW 70.47.015.

48.43.083 Chiropractor services—Participating provider agreement—Health carrier reimbursement. (Effective January 1, 2008.) (1) A health carrier must reimburse a chiropractor who has signed a participating provider agreement for services determined by the carrier to be medically necessary if:

(a) The service is:

(i) Covered chiropractic health care, as defined in RCW 48.43.515, by the health plan under which the enrollee received the services; and

(ii) Provided by the chiropractor, or the chiropractor's employee specified in RCW 18.25.190 (2) or (3) who works in the same location as the chiropractor and to whom the chiropractor, pursuant to rules adopted by the Washington state chiropractic quality assurance commission, has delegated the

service. The employee must meet the health carrier's reasonable qualifications for all such providers in the relevant class, including but not limited to standards for education and background checks, as applicable; and

(b) The chiropractor complies with the terms and conditions of the participating provider agreement. Violations of the participating provider agreement by an employee of the chiropractor to whom he or she has delegated a service may be deemed by the carrier to have been committed by the chiropractor.

(2) If a health carrier offers a participating provider agreement to a chiropractor within a single practice organized as a sole proprietorship, partnership, or corporation, the carrier must offer the same participating provider agreement to any other chiropractor within that practice providing services at the same location. The agreement may allow either party to terminate it without cause. [2007 c 502 § 1.]

Savings—2007 c 502: "This act does not affect any existing right acquired or liability or obligation incurred prior to January 1, 2008." [2007 c 502 § 3.]

Severability—2007 c 502: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [2007 c 502 § 4.]

Effective date—2007 c 502: "This act takes effect January 1, 2008." [2007 c 502 § 5.]

48.43.517 Enrollment of child participating in medical assistance program—Employer-sponsored health plan. When the department of social and health services has determined that it is cost-effective to enroll a child participating in a medical assistance program under chapter 74.09 RCW in an employer-sponsored health plan, the carrier shall permit the enrollment of the participant who is otherwise eligible for coverage in the health plan without regard to any open enrollment restrictions. The request for special enrollment shall be made by the department or participant within sixty days of the department's determination that the enrollment would be cost-effective. [2007 c 5 § 7.]

48.43.650 Fixed payment insurance products—Commissioner's annual report. The commissioner shall collect information from insurers offering fixed payment insurance products, and report aggregated data for each calendar year, including the number of groups purchasing the products, the number of enrollees, and the number of consumer complaints filed. The reports shall be provided to the legislature annually to reflect the calendar year experience, and the initial report shall reflect calendar year 2008 and be due no later than June 1, 2009, and each June thereafter. [2007 c 296 § 6.]

Chapter 48.44 RCW HEALTH CARE SERVICES

Sections

48.44.010	Definitions.
48.44.023	Health plan benefits for small employers—Coverage—Exemption from statutory requirements—Premium rates—Requirements for providing coverage for small employers.
48.44.215	Option to cover dependents under age twenty-five. (<i>Effective January 1, 2009.</i>)
48.44.340	Repealed. (<i>Effective January 1, 2008.</i>)
48.44.341	Mental health services—Health plans—Definition—Coverage required, when. (<i>Effective January 1, 2008.</i>)

48.44.010 Definitions. For the purposes of this chapter:

(1) "Health care services" means and includes medical, surgical, dental, chiropractic, hospital, optometric, podiatric, pharmaceutical, ambulance, custodial, mental health, and other therapeutic services.

(2) "Provider" means any health professional, hospital, or other institution, organization, or person that furnishes health care services and is licensed to furnish such services.

(3) "Health care service contractor" means any corporation, cooperative group, or association, which is sponsored by or otherwise intimately connected with a provider or group of providers, who or which not otherwise being engaged in the insurance business, accepts prepayment for health care services from or for the benefit of persons or groups of persons as consideration for providing such persons with any health care services. "Health care service contractor" does not include direct patient-provider primary care practices as defined in RCW 48.150.010.

(4) "Participating provider" means a provider, who or which has contracted in writing with a health care service contractor to accept payment from and to look solely to such contractor according to the terms of the subscriber contract for any health care services rendered to a person who has previously paid, or on whose behalf prepayment has been made, to such contractor for such services.

(5) "Enrolled participant" means a person or group of persons who have entered into a contractual arrangement or on whose behalf a contractual arrangement has been entered into with a health care service contractor to receive health care services.

(6) "Commissioner" means the insurance commissioner.

(7) "Uncovered expenditures" means the costs to the health care service contractor for health care services that are the obligation of the health care service contractor for which an enrolled participant would also be liable in the event of the health care service contractor's insolvency and for which no alternative arrangements have been made as provided herein. The term does not include expenditures for covered services when a provider has agreed not to bill the enrolled participant even though the provider is not paid by the health care service contractor, or for services that are guaranteed, insured or assumed by a person or organization other than the health care service contractor.

(8) "Copayment" means an amount specified in a group or individual contract which is an obligation of an enrolled participant for a specific service which is not fully prepaid.

(9) "Deductible" means the amount an enrolled participant is responsible to pay before the health care service contractor begins to pay the costs associated with treatment.

(10) "Group contract" means a contract for health care services which by its terms limits eligibility to members of a specific group. The group contract may include coverage for dependents.

(11) "Individual contract" means a contract for health care services issued to and covering an individual. An individual contract may include dependents.

(12) "Carrier" means a health maintenance organization, an insurer, a health care service contractor, or other entity responsible for the payment of benefits or provision of services under a group or individual contract.

(13) "Replacement coverage" means the benefits provided by a succeeding carrier.

(14) "Insolvent" or "insolvency" means that the organization has been declared insolvent and is placed under an order of liquidation by a court of competent jurisdiction.

(15) "Fully subordinated debt" means those debts that meet the requirements of RCW 48.44.037(3) and are recorded as equity.

(16) "Net worth" means the excess of total admitted assets as defined in RCW 48.12.010 over total liabilities but the liabilities shall not include fully subordinated debt. [2007 c 267 § 2; 1990 c 120 § 1; 1986 c 223 § 1. Prior: 1983 c 286 § 3; 1983 c 154 § 3; 1980 c 102 § 10; 1965 c 87 § 1; 1961 c 197 § 1; 1947 c 268 § 1; Rem. Supp. 1947 § 6131-10.]

Severability—1983 c 286: See note following RCW 48.44.309.

Severability—1983 c 154: See note following RCW 48.44.299.

48.44.023 Health plan benefits for small employers—

Coverage—Exemption from statutory requirements—

Premium rates—Requirements for providing coverage for small employers.

(1)(a) A health care services contractor offering any health benefit plan to a small employer, either directly or through an association or member-governed group formed specifically for the purpose of purchasing health care, may offer and actively market to the small employer a health benefit plan featuring a limited schedule of covered health care services. Nothing in this subsection shall preclude a contractor from offering, or a small employer from purchasing, other health benefit plans that may have more comprehensive benefits than those included in the product offered under this subsection. A contractor offering a health benefit plan under this subsection shall clearly disclose all covered benefits to the small employer in a brochure filed with the commissioner.

(b) A health benefit plan offered under this subsection shall provide coverage for hospital expenses and services rendered by a physician licensed under chapter 18.57 or 18.71 RCW but is not subject to the requirements of RCW 48.44.225, 48.44.240, 48.44.245, 48.44.290, 48.44.300, 48.44.310, 48.44.320, 48.44.325, 48.44.330, 48.44.335, *48.44.340, 48.44.344, 48.44.360, 48.44.400, 48.44.440, 48.44.450, and 48.44.460.

(2) Nothing in this section shall prohibit a health care service contractor from offering, or a purchaser from seeking, health benefit plans with benefits in excess of the health benefit plan offered under subsection (1) of this section. All forms, policies, and contracts shall be submitted for approval to the commissioner, and the rates of any plan offered under this section shall be reasonable in relation to the benefits thereto.

(3) Premium rates for health benefit plans for small employers as defined in this section shall be subject to the following provisions:

(a) The contractor shall develop its rates based on an adjusted community rate and may only vary the adjusted community rate for:

- (i) Geographic area;
- (ii) Family size;
- (iii) Age; and
- (iv) Wellness activities.

(b) The adjustment for age in (a)(iii) of this subsection may not use age brackets smaller than five-year increments, which shall begin with age twenty and end with age sixty-five. Employees under the age of twenty shall be treated as those age twenty.

(c) The contractor shall be permitted to develop separate rates for individuals age sixty-five or older for coverage for which medicare is the primary payer and coverage for which medicare is not the primary payer. Both rates shall be subject to the requirements of this subsection (3).

(d) The permitted rates for any age group shall be no more than four hundred twenty-five percent of the lowest rate for all age groups on January 1, 1996, four hundred percent on January 1, 1997, and three hundred seventy-five percent on January 1, 2000, and thereafter.

(e) A discount for wellness activities shall be permitted to reflect actuarially justified differences in utilization or cost attributed to such programs.

(f) The rate charged for a health benefit plan offered under this section may not be adjusted more frequently than annually except that the premium may be changed to reflect:

- (i) Changes to the enrollment of the small employer;
- (ii) Changes to the family composition of the employee;
- (iii) Changes to the health benefit plan requested by the small employer; or
- (iv) Changes in government requirements affecting the health benefit plan.

(g) Rating factors shall produce premiums for identical groups that differ only by the amounts attributable to plan design, with the exception of discounts for health improvement programs.

(h) For the purposes of this section, a health benefit plan that contains a restricted network provision shall not be considered similar coverage to a health benefit plan that does not contain such a provision, provided that the restrictions of benefits to network providers result in substantial differences in claims costs. A carrier may develop its rates based on claims costs due to network provider reimbursement schedules or type of network. This subsection does not restrict or enhance the portability of benefits as provided in RCW 48.43.015.

(i) Adjusted community rates established under this section shall pool the medical experience of all groups purchasing coverage, including the small group participants in the health insurance partnership established in RCW 70.47A.030. However, annual rate adjustments for each small group health benefit plan may vary by up to plus or minus four percentage points from the overall adjustment of a carrier's entire small group pool, such overall adjustment to be approved by the commissioner, upon a showing by the carrier, certified by a member of the American academy of actuaries that: (i) The variation is a result of deductible leverage, benefit design, or provider network characteristics; and (ii) for a rate renewal period, the projected weighted average of all small group benefit plans will have a revenue neutral effect on the carrier's small group pool. Variations of greater than four percentage points are subject to review by the commissioner, and must be approved or denied within sixty days of submittal. A variation that is not denied within sixty days shall be deemed approved. The commissioner must provide

to the carrier a detailed actuarial justification for any denial within thirty days of the denial.

(4) Nothing in this section shall restrict the right of employees to collectively bargain for insurance providing benefits in excess of those provided herein.

(5)(a) Except as provided in this subsection, requirements used by a contractor in determining whether to provide coverage to a small employer shall be applied uniformly among all small employers applying for coverage or receiving coverage from the carrier.

(b) A contractor shall not require a minimum participation level greater than:

(i) One hundred percent of eligible employees working for groups with three or less employees; and

(ii) Seventy-five percent of eligible employees working for groups with more than three employees.

(c) In applying minimum participation requirements with respect to a small employer, a small employer shall not consider employees or dependents who have similar existing coverage in determining whether the applicable percentage of participation is met.

(d) A contractor may not increase any requirement for minimum employee participation or modify any requirement for minimum employer contribution applicable to a small employer at any time after the small employer has been accepted for coverage.

(6) A contractor must offer coverage to all eligible employees of a small employer and their dependents. A contractor may not offer coverage to only certain individuals or dependents in a small employer group or to only part of the group. A contractor may not modify a health plan with respect to a small employer or any eligible employee or dependent, through riders, endorsements or otherwise, to restrict or exclude coverage or benefits for specific diseases, medical conditions, or services otherwise covered by the plan. [2007 c 260 § 8; 2004 c 244 § 7; 1995 c 265 § 16; 1990 c 187 § 3.]

***Reviser's note:** RCW 48.44.340 was repealed by 2007 c 8 § 7, effective January 1, 2008.

Application—2004 c 244: See note following RCW 48.21.045.

Captions not law—Effective dates—Savings—Severability—1995 c 265: See notes following RCW 70.47.015.

Finding—Intent—Severability—1990 c 187: See notes following RCW 48.21.045.

48.44.215 Option to cover dependents under age twenty-five. (Effective January 1, 2009.) (1) Any individual health care service plan contract that provides coverage for a subscriber's dependent must offer the option of covering any unmarried dependent under the age of twenty-five.

(2) Any group health care service plan contract that provides coverage for a participating member's dependent must offer each participating member the option of covering any unmarried dependent under the age of twenty-five. [2007 c 259 § 21.]

Effective date—2007 c 259 §§ 18-22: See note following RCW 41.05.095.

Severability—Subheadings not law—2007 c 259: See notes following RCW 41.05.033.

[2007 RCW Supp—page 686]

48.44.340 Repealed. (Effective January 1, 2008.)
See Supplementary Table of Disposition of Former RCW Sections, this volume.

48.44.341 Mental health services—Health plans—Definition—Coverage required, when. (Effective January 1, 2008.) (1) For the purposes of this section, "mental health services" means medically necessary outpatient and inpatient services provided to treat mental disorders covered by the diagnostic categories listed in the most current version of the diagnostic and statistical manual of mental disorders, published by the American psychiatric association, on July 24, 2005, or such subsequent date as may be provided by the insurance commissioner by rule, consistent with the purposes of chapter 6, Laws of 2005, with the exception of the following categories, codes, and services: (a) Substance related disorders; (b) life transition problems, currently referred to as "V" codes, and diagnostic codes 302 through 302.9 as found in the diagnostic and statistical manual of mental disorders, 4th edition, published by the American psychiatric association; (c) skilled nursing facility services, home health care, residential treatment, and custodial care; and (d) court ordered treatment unless the health care service contractor's medical director or designee determines the treatment to be medically necessary.

(2) All health service contracts providing health benefit plans that provide coverage for medical and surgical services shall provide:

(a) For all group health benefit plans for groups other than small groups, as defined in RCW 48.43.005 delivered, issued for delivery, or renewed on or after January 1, 2006, coverage for:

(i) Mental health services. The copayment or coinsurance for mental health services may be no more than the copayment or coinsurance for medical and surgical services otherwise provided under the health benefit plan. Wellness and preventive services that are provided or reimbursed at a lesser copayment, coinsurance, or other cost sharing than other medical and surgical services are excluded from this comparison; and

(ii) Prescription drugs intended to treat any of the disorders covered in subsection (1) of this section to the same extent, and under the same terms and conditions, as other prescription drugs covered by the health benefit plan.

(b) For all health benefit plans delivered, issued for delivery, or renewed on or after January 1, 2008, coverage for:

(i) Mental health services. The copayment or coinsurance for mental health services may be no more than the copayment or coinsurance for medical and surgical services otherwise provided under the health benefit plan. Wellness and preventive services that are provided or reimbursed at a lesser copayment, coinsurance, or other cost sharing than other medical and surgical services are excluded from this comparison. If the health benefit plan imposes a maximum out-of-pocket limit or stop loss, it shall be a single limit or stop loss for medical, surgical, and mental health services; and

(ii) Prescription drugs intended to treat any of the disorders covered in subsection (1) of this section to the same

extent, and under the same terms and conditions, as other prescription drugs covered by the health benefit plan.

(c) For all health benefit plans delivered, issued for delivery, or renewed on or after July 1, 2010, coverage for:

(i) Mental health services. The copayment or coinsurance for mental health services may be no more than the copayment or coinsurance for medical and surgical services otherwise provided under the health benefit plan. Wellness and preventive services that are provided or reimbursed at a lesser copayment, coinsurance, or other cost sharing than other medical and surgical services are excluded from this comparison. If the health benefit plan imposes a maximum out-of-pocket limit or stop loss, it shall be a single limit or stop loss for medical, surgical, and mental health services. If the health benefit plan imposes any deductible, mental health services shall be included with medical and surgical services for the purpose of meeting the deductible requirement. Treatment limitations or any other financial requirements on coverage for mental health services are only allowed if the same limitations or requirements are imposed on coverage for medical and surgical services; and

(ii) Prescription drugs intended to treat any of the disorders covered in subsection (1) of this section to the same extent, and under the same terms and conditions, as other prescription drugs covered by the health benefit plan.

(3) In meeting the requirements of subsection (2)(a) and (b) of this section, health benefit plans may not reduce the number of mental health outpatient visits or mental health inpatient days below the level in effect on July 1, 2002.

(4) This section does not prohibit a requirement that mental health services be medically necessary as determined by the medical director or designee, if a comparable requirement is applicable to medical and surgical services.

(5) Nothing in this section shall be construed to prevent the management of mental health services. [2007 c 8 § 3; 2006 c 74 § 2; 2005 c 6 § 4.]

Effective date—2007 c 8: See note following RCW 48.20.580.

Effective date—2006 c 74: See note following RCW 48.21.241.

Findings—Intent—Severability—2005 c 6: See notes following RCW 41.05.600.

Chapter 48.46 RCW

HEALTH MAINTENANCE ORGANIZATIONS

Sections

48.46.066	Health plan benefits for small employers—Coverage—Exemption from statutory requirements—Premium rates—Requirements for providing coverage for small employers.
48.46.120	Examination of health maintenance organizations—Duties of organizations, powers of commissioner—Independent audit reports.
48.46.290	Repealed. (<i>Effective January 1, 2008.</i>)
48.46.291	Mental health services—Health plans—Definition—Coverage required, when. (<i>Effective January 1, 2008.</i>)
48.46.325	Option to cover dependents under age twenty-five. (<i>Effective January 1, 2009.</i>)

48.46.066 Health plan benefits for small employers—Coverage—Exemption from statutory requirements—Premium rates—Requirements for providing coverage for small employers. (1)(a) A health maintenance organization offering any health benefit plan to a small employer, either directly or through an association or member-governed

group formed specifically for the purpose of purchasing health care, may offer and actively market to the small employer a health benefit plan featuring a limited schedule of covered health care services. Nothing in this subsection shall preclude a health maintenance organization from offering, or a small employer from purchasing, other health benefit plans that may have more comprehensive benefits than those included in the product offered under this subsection. A health maintenance organization offering a health benefit plan under this subsection shall clearly disclose all the covered benefits to the small employer in a brochure filed with the commissioner.

(b) A health benefit plan offered under this subsection shall provide coverage for hospital expenses and services rendered by a physician licensed under chapter 18.57 or 18.71 RCW but is not subject to the requirements of RCW 48.46.275, 48.46.280, 48.46.285, *48.46.290, 48.46.350, 48.46.355, 48.46.375, 48.46.440, 48.46.480, 48.46.510, 48.46.520, and 48.46.530.

(2) Nothing in this section shall prohibit a health maintenance organization from offering, or a purchaser from seeking, health benefit plans with benefits in excess of the health benefit plan offered under subsection (1) of this section. All forms, policies, and contracts shall be submitted for approval to the commissioner, and the rates of any plan offered under this section shall be reasonable in relation to the benefits thereto.

(3) Premium rates for health benefit plans for small employers as defined in this section shall be subject to the following provisions:

(a) The health maintenance organization shall develop its rates based on an adjusted community rate and may only vary the adjusted community rate for:

- (i) Geographic area;
- (ii) Family size;
- (iii) Age; and
- (iv) Wellness activities.

(b) The adjustment for age in (a)(iii) of this subsection may not use age brackets smaller than five-year increments, which shall begin with age twenty and end with age sixty-five. Employees under the age of twenty shall be treated as those age twenty.

(c) The health maintenance organization shall be permitted to develop separate rates for individuals age sixty-five or older for coverage for which medicare is the primary payer and coverage for which medicare is not the primary payer. Both rates shall be subject to the requirements of this subsection (3).

(d) The permitted rates for any age group shall be no more than four hundred twenty-five percent of the lowest rate for all age groups on January 1, 1996, four hundred percent on January 1, 1997, and three hundred seventy-five percent on January 1, 2000, and thereafter.

(e) A discount for wellness activities shall be permitted to reflect actuarially justified differences in utilization or cost attributed to such programs.

(f) The rate charged for a health benefit plan offered under this section may not be adjusted more frequently than annually except that the premium may be changed to reflect:

- (i) Changes to the enrollment of the small employer;
- (ii) Changes to the family composition of the employee;

(iii) Changes to the health benefit plan requested by the small employer; or

(iv) Changes in government requirements affecting the health benefit plan.

(g) Rating factors shall produce premiums for identical groups that differ only by the amounts attributable to plan design, with the exception of discounts for health improvement programs.

(h) For the purposes of this section, a health benefit plan that contains a restricted network provision shall not be considered similar coverage to a health benefit plan that does not contain such a provision, provided that the restrictions of benefits to network providers result in substantial differences in claims costs. A carrier may develop its rates based on claims costs due to network provider reimbursement schedules or type of network. This subsection does not restrict or enhance the portability of benefits as provided in RCW 48.43.015.

(i) Adjusted community rates established under this section shall pool the medical experience of all groups purchasing coverage, including the small group participants in the health insurance partnership established in RCW 70.47A.030. However, annual rate adjustments for each small group health benefit plan may vary by up to plus or minus four percentage points from the overall adjustment of a carrier's entire small group pool, such overall adjustment to be approved by the commissioner, upon a showing by the carrier, certified by a member of the American academy of actuaries that: (i) The variation is a result of deductible leverage, benefit design, or provider network characteristics; and (ii) for a rate renewal period, the projected weighted average of all small group benefit plans will have a revenue neutral effect on the carrier's small group pool. Variations of greater than four percentage points are subject to review by the commissioner, and must be approved or denied within sixty days of submittal. A variation that is not denied within sixty days shall be deemed approved. The commissioner must provide to the carrier a detailed actuarial justification for any denial within thirty days of the denial.

(4) Nothing in this section shall restrict the right of employees to collectively bargain for insurance providing benefits in excess of those provided herein.

(5)(a) Except as provided in this subsection, requirements used by a health maintenance organization in determining whether to provide coverage to a small employer shall be applied uniformly among all small employers applying for coverage or receiving coverage from the carrier.

(b) A health maintenance organization shall not require a minimum participation level greater than:

(i) One hundred percent of eligible employees working for groups with three or less employees; and

(ii) Seventy-five percent of eligible employees working for groups with more than three employees.

(c) In applying minimum participation requirements with respect to a small employer, a small employer shall not consider employees or dependents who have similar existing coverage in determining whether the applicable percentage of participation is met.

(d) A health maintenance organization may not increase any requirement for minimum employee participation or modify any requirement for minimum employer contribution

applicable to a small employer at any time after the small employer has been accepted for coverage.

(6) A health maintenance organization must offer coverage to all eligible employees of a small employer and their dependents. A health maintenance organization may not offer coverage to only certain individuals or dependents in a small employer group or to only part of the group. A health maintenance organization may not modify a health plan with respect to a small employer or any eligible employee or dependent, through riders, endorsements or otherwise, to restrict or exclude coverage or benefits for specific diseases, medical conditions, or services otherwise covered by the plan. [2007 c 260 § 9; 2004 c 244 § 9; 1995 c 265 § 18; 1990 c 187 § 4.]

***Reviser's note:** RCW 48.46.290 was repealed by 2007 c 8 § 7, effective January 1, 2008.

Application—2004 c 244: See note following RCW 48.21.045.

Captions not law—Effective dates—Savings—Severability—1995 c 265: See notes following RCW 70.47.015.

Finding—Intent—Severability—1990 c 187: See notes following RCW 48.21.045.

48.46.120 Examination of health maintenance organizations—Duties of organizations, powers of commissioner—Independent audit reports. (1) The commissioner may make an examination of the operations of any health maintenance organization as often as he deems necessary in order to carry out the purposes of this chapter.

(2) Every health maintenance organization shall submit its books and records relating its operation for financial condition and market conduct examinations and in every way facilitate them. The quality or appropriateness of medical services or systems shall not be examined except to the extent that such items are incidental to an examination of the financial condition or the market conduct of a health maintenance organization. For the purpose of examinations, the commissioner may issue subpoenas, administer oaths, and examine the officers and principals of the health maintenance organization and the principals of such providers concerning their business.

(3) The commissioner may elect to accept and rely on audit reports made by an independent certified public accountant for the health maintenance organization in the course of that part of the commissioner's examination covering the same general subject matter as the audit. The commissioner may incorporate the audit report in his report of the examination. [2007 c 468 § 2; 1987 c 83 § 1; 1986 c 296 § 9; 1985 c 7 § 115; 1983 c 63 § 2; 1975 1st ex.s. c 290 § 13.]

Severability—Effective date—1986 c 296: See notes following RCW 48.14.020.

48.46.290 Repealed. (Effective January 1, 2008.) See Supplementary Table of Disposition of Former RCW Sections, this volume.

48.46.291 Mental health services—Health plans—Definition—Coverage required, when. (Effective January 1, 2008.) (1) For the purposes of this section, "mental health services" means medically necessary outpatient and inpatient services provided to treat mental disorders covered by the diagnostic categories listed in the most current version of the

diagnostic and statistical manual of mental disorders, published by the American psychiatric association, on July 24, 2005, or such subsequent date as may be provided by the insurance commissioner by rule, consistent with the purposes of chapter 6, Laws of 2005, with the exception of the following categories, codes, and services: (a) Substance related disorders; (b) life transition problems, currently referred to as "V" codes, and diagnostic codes 302 through 302.9 as found in the diagnostic and statistical manual of mental disorders, 4th edition, published by the American psychiatric association; (c) skilled nursing facility services, home health care, residential treatment, and custodial care; and (d) court ordered treatment unless the health maintenance organization's medical director or designee determines the treatment to be medically necessary.

(2) All health benefit plans offered by health maintenance organizations that provide coverage for medical and surgical services shall provide:

(a) For all group health benefit plans for groups other than small groups, as defined in RCW 48.43.005 delivered, issued for delivery, or renewed on or after January 1, 2006, coverage for:

(i) Mental health services. The copayment or coinsurance for mental health services may be no more than the copayment or coinsurance for medical and surgical services otherwise provided under the health benefit plan. Wellness and preventive services that are provided or reimbursed at a lesser copayment, coinsurance, or other cost sharing than other medical and surgical services are excluded from this comparison; and

(ii) Prescription drugs intended to treat any of the disorders covered in subsection (1) of this section to the same extent, and under the same terms and conditions, as other prescription drugs covered by the health benefit plan.

(b) For all health benefit plans delivered, issued for delivery, or renewed on or after January 1, 2008, coverage for:

(i) Mental health services. The copayment or coinsurance for mental health services may be no more than the copayment or coinsurance for medical and surgical services otherwise provided under the health benefit plan. Wellness and preventive services that are provided or reimbursed at a lesser copayment, coinsurance, or other cost sharing than other medical and surgical services are excluded from this comparison. If the health benefit plan imposes a maximum out-of-pocket limit or stop loss, it shall be a single limit or stop loss for medical, surgical, and mental health services; and

(ii) Prescription drugs intended to treat any of the disorders covered in subsection (1) of this section to the same extent, and under the same terms and conditions, as other prescription drugs covered by the health benefit plan.

(c) For all health benefit plans delivered, issued for delivery, or renewed on or after July 1, 2010, coverage for:

(i) Mental health services. The copayment or coinsurance for mental health services may be no more than the copayment or coinsurance for medical and surgical services otherwise provided under the health benefit plan. Wellness and preventive services that are provided or reimbursed at a lesser copayment, coinsurance, or other cost sharing than other medical and surgical services are excluded from this

comparison. If the health benefit plan imposes a maximum out-of-pocket limit or stop loss, it shall be a single limit or stop loss for medical, surgical, and mental health services. If the health benefit plan imposes any deductible, mental health services shall be included with medical and surgical services for the purpose of meeting the deductible requirement. Treatment limitations or any other financial requirements on coverage for mental health services are only allowed if the same limitations or requirements are imposed on coverage for medical and surgical services; and

(ii) Prescription drugs intended to treat any of the disorders covered in subsection (1) of this section to the same extent, and under the same terms and conditions, as other prescription drugs covered by the health benefit plan.

(3) In meeting the requirements of subsection (2)(a) and (b) of this section, health benefit plans may not reduce the number of mental health outpatient visits or mental health inpatient days below the level in effect on July 1, 2002.

(4) This section does not prohibit a requirement that mental health services be medically necessary as determined by the medical director or designee, if a comparable requirement is applicable to medical and surgical services.

(5) Nothing in this section shall be construed to prevent the management of mental health services. [2007 c 8 § 4; 2006 c 74 § 3; 2005 c 6 § 5.]

Effective date—2007 c 8: See note following RCW 48.20.580.

Effective date—2006 c 74: See note following RCW 48.21.241.

Findings—Intent—Severability—2005 c 6: See notes following RCW 41.05.600.

48.46.325 Option to cover dependents under age twenty-five. (Effective January 1, 2009.) (1) Any individual health maintenance agreement that provides coverage for a subscriber's dependent must offer the option of covering any unmarried dependent under the age of twenty-five.

(2) Any group health maintenance agreement that provides coverage for a participating member's dependent must offer each participating member the option of covering any unmarried dependent under the age of twenty-five. [2007 c 259 § 22.]

Effective date—2007 c 259 §§ 18-22: See note following RCW 41.05.095.

Severability—Subheadings not law—2007 c 259: See notes following RCW 41.05.033.

Chapter 48.111 RCW

HOME HEATING FUEL SERVICE CONTRACTS

Sections

48.111.020 Registration required—Application—Required information—Grounds for refusal—Annual renewal.

48.111.020 Registration required—Application—Required information—Grounds for refusal—Annual renewal. (1) A person shall not act as, or offer to act as, or hold himself or herself out to be a home heating fuel service contract provider in this state, nor may a home heating fuel service contract be sold to a consumer in this state, unless the contract provider has a valid registration as a home heating fuel service contract provider issued by the commissioner.

(2) Applicants to be a home heating fuel service contract provider shall make an application to the commissioner upon a form to be furnished by the commissioner. The application must include or be accompanied by the following information and documents:

(a) All basic organizational documents of the home heating fuel service contract provider, including any articles of incorporation, articles of association, partnership agreement, trade name certificate, trust agreement, shareholder agreement, bylaws, and other applicable documents, and all amendments to those documents;

(b) The identities of the contract provider's executive officer or officers directly responsible for the contract provider's home heating fuel service contract business;

(c) Annual financial statements or other financial reports acceptable to the commissioner for the two most recent years which prove that the applicant is solvent and any information the commissioner may require in order to review the current financial condition of the applicant;

(d) An application fee of one hundred dollars, which must be deposited into the general fund; and

(e) Any other pertinent information required by the commissioner.

(3) The commissioner may refuse to issue a registration if the commissioner determines that the home heating fuel service contract provider, or any individual responsible for the conduct of the affairs of the contract provider under subsection (2)(b) of this section, is not competent, trustworthy, or financially responsible.

(4) A registration issued under this section is valid, unless surrendered, suspended, or revoked by the commissioner, or not renewed for so long as the service contract provider continues in business in this state and remains in compliance with this chapter. A registration is subject to renewal annually on July 1st upon application of the home heating fuel service contract provider and payment of a fee of twenty-five dollars, which must be deposited into the general fund. If not so renewed, the registration expires on June 30th next preceding.

(5) A home heating fuel service contract provider shall keep current the information required to be disclosed in its registration under this section by reporting all material changes or additions within thirty days after the end of the month in which the change or addition occurs. [2007 c 80 § 1; 2006 c 36 § 3.]

Chapter 48.140 RCW

MEDICAL MALPRACTICE CLOSED CLAIM REPORTING

Sections

48.140.020 Closed claim reporting requirements.

48.140.020 Closed claim reporting requirements. (1)

For claims closed on or after January 1, 2008:

(a) Every insuring entity or self-insurer that provides medical malpractice insurance to any facility or provider in Washington state must report each medical malpractice closed claim to the commissioner.

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(b) If a claim is not covered by an insuring entity or self-insurer, the facility or provider named in the claim must report it to the commissioner after a final claim disposition has occurred due to a court proceeding or a settlement by the parties.

Instances in which a claim may not be covered by an insuring entity or self-insurer include, but are not limited to, situations in which the:

(i) Facility or provider did not buy insurance or maintained a self-insured retention that was larger than the final judgment or settlement;

(ii) Claim was denied by an insuring entity or self-insurer because it did not fall within the scope of the insurance coverage agreement; or

(iii) Annual aggregate coverage limits had been exhausted by other claim payments.

(c) If a facility or provider is insured by a risk retention group and the risk retention group refuses to report closed claims and asserts that the federal liability risk retention act (95 Stat. 949; 15 U.S.C. Sec. 3901 et seq.) preempts state law, the facility or provider must report all data required by this chapter on behalf of the risk retention group.

(d) If a facility or provider is insured by an unauthorized insurer and the unauthorized insurer refuses to report closed claims and asserts a federal exemption or other jurisdictional preemption, the facility or provider must report all data required by this chapter on behalf of the unauthorized insurer.

(2) Beginning in 2009, reports required under subsection (1) of this section must be filed by March 1st, and include data for all claims closed in the preceding calendar year and any adjustments to data reported in prior years. The commissioner may adopt rules that require insuring entities, self-insurers, facilities, or providers to file closed claim data electronically.

(3) The commissioner may impose a fine of up to two hundred fifty dollars per day against any insuring entity, except a risk retention group, that violates the requirements of this section.

(4) The department of health, department of licensing, or department of social and health services may require a provider or facility to take corrective action to assure compliance with the requirements of this section. [2007 c 32 § 1; 2006 c 8 § 202.]

Chapter 48.150 RCW

DIRECT PATIENT-PROVIDER PRIMARY HEALTH CARE

Sections

48.150.005 Public policy.
 48.150.010 Definitions.
 48.150.020 Prohibition on discrimination.
 48.150.030 Direct fee—Monthly basis—Designated contact person.
 48.150.040 Prohibited and authorized practices.
 48.150.050 Acceptance or discontinuation of patients—Nonemployer third-party payments.
 48.150.060 Direct practices are not insurers.
 48.150.070 Conduct of business—Prohibitions.
 48.150.080 Misrepresenting the terms of a direct agreement.
 48.150.090 Chapter violations.
 48.150.100 Annual statements—Commissioner's report.
 48.150.110 Direct agreement requirements—Disclaimer.
 48.150.120 Commissioner's study—Report to legislature.

48.150.005 Public policy. It is the public policy of Washington to promote access to medical care for all citizens and to encourage innovative arrangements between patients and providers that will help provide all citizens with a medical home.

Washington needs a multipronged approach to provide adequate health care to many citizens who lack adequate access to it. Direct patient-provider practices, in which patients enter into a direct relationship with medical practitioners and pay a fixed amount directly to the health care provider for primary care services, represent an innovative, affordable option which could improve access to medical care, reduce the number of people who now lack such access, and cut down on emergency room use for primary care purposes, thereby freeing up emergency room facilities to treat true emergencies. [2007 c 267 § 1.]

48.150.010 Definitions. The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

(1) "Direct patient-provider primary care practice" and "direct practice" means a provider, group, or entity that meets the following criteria in (a), (b), (c), and (d) of this subsection:

(a)(i) A health care provider who furnishes primary care services through a direct agreement;

(ii) A group of health care providers who furnish primary care services through a direct agreement; or

(iii) An entity that sponsors, employs, or is otherwise affiliated with a group of health care providers who furnish only primary care services through a direct agreement, which entity is wholly owned by the group of health care providers or is a nonprofit corporation exempt from taxation under section 501(c)(3) of the internal revenue code, and is not otherwise regulated as a health care service contractor, health maintenance organization, or disability insurer under Title 48 RCW. Such entity is not prohibited from sponsoring, employing, or being otherwise affiliated with other types of health care providers not engaged in a direct practice;

(b) Enters into direct agreements with direct patients or parents or legal guardians of direct patients;

(c) Does not accept payment for health care services provided to direct patients from any entity subject to regulation under Title 48 RCW, plans administered under chapter 41.05, 70.47, or 70.47A RCW, or self-insured plans; and

(d) Does not provide, in consideration for the direct fee, services, procedures, or supplies such as prescription drugs, hospitalization costs, major surgery, dialysis, high level radiology (CT, MRI, PET scans or invasive radiology), rehabilitation services, procedures requiring general anesthesia, or similar advanced procedures, services, or supplies.

(2) "Direct patient" means a person who is party to a direct agreement and is entitled to receive primary care services under the direct agreement from the direct practice.

(3) "Direct fee" means a fee charged by a direct practice as consideration for being available to provide and providing primary care services as specified in a direct agreement.

(4) "Direct agreement" means a written agreement entered into between a direct practice and an individual direct patient, or the parent or legal guardian of the direct patient or a family of direct patients, whereby the direct practice

charges a direct fee as consideration for being available to provide and providing primary care services to the individual direct patient. A direct agreement must (a) describe the specific health care services the direct practice will provide; and (b) be terminable at will upon written notice by the direct patient.

(5) "Health care provider" or "provider" means a person regulated under Title 18 RCW or chapter 70.127 RCW to practice health or health-related services or otherwise practicing health care services in this state consistent with state law.

(6) "Health carrier" or "carrier" has the same meaning as in RCW 48.43.005.

(7) "Primary care" means routine health care services, including screening, assessment, diagnosis, and treatment for the purpose of promotion of health, and detection and management of disease or injury.

(8) "Network" means the group of participating providers and facilities providing health care services to a particular health carrier's health plan or to plans administered under chapter 41.05, 70.47, or 70.47A RCW. [2007 c 267 § 3.]

48.150.020 Prohibition on discrimination. Except as provided in RCW 48.150.050, no direct practice shall decline to accept any person solely on account of race, religion, national origin, the presence of any sensory, mental, or physical disability, education, economic status, or sexual orientation. [2007 c 267 § 4.]

48.150.030 Direct fee—Monthly basis—Designated contact person. (1) A direct practice must charge a direct fee on a monthly basis. The fee must represent the total amount due for all primary care services specified in the direct agreement and may be paid by the direct patient or on his or her behalf by others.

(2) A direct practice must:

(a) Maintain appropriate accounts and provide data regarding payments made and services received to direct patients upon request; and

(b) Either:

(i) Bill patients at the end of each monthly period; or

(ii) If the patient pays the monthly fee in advance, promptly refund to the direct patient all unearned direct fees following receipt of written notice of termination of the direct agreement from the direct patient. The amount of the direct fee considered earned shall be a proration of the monthly fee as of the date the notice of termination is received.

(3) If the patient chooses to pay more than one monthly direct fee in advance, the funds must be held in a trust account and paid to the direct practice as earned at the end of each month. Any unearned direct fees held in trust following receipt of termination of the direct agreement shall be promptly refunded to the direct patient. The amount of the direct fee earned shall be a proration of the monthly fee for the then current month as of the date the notice of termination is received.

(4) The direct fee schedule applying to an existing direct patient may not be increased over the annual negotiated amount more frequently than annually. A direct practice shall provide advance notice to existing patients of any change within the fee schedule applying to those existing

direct patients. A direct practice shall provide at least sixty days' advance notice of any change in the fee.

(5) A direct practice must designate a contact person to receive and address any patient complaints.

(6) Direct fees for comparable services within a direct practice shall not vary from patient to patient based on health status or sex. [2007 c 267 § 5.]

48.150.040 Prohibited and authorized practices. (1) Direct practices may not:

(a) Enter into a participating provider contract as defined in RCW 48.44.010 or 48.46.020 with any carrier or with any carrier's contractor or subcontractor, or plans administered under chapter 41.05, 70.47, or 70.47A RCW, to provide health care services through a direct agreement except as set forth in subsection (2) of this section;

(b) Submit a claim for payment to any carrier or any carrier's contractor or subcontractor, or plans administered under chapter 41.05, 70.47, or 70.47A RCW, for health care services provided to direct patients as covered by their agreement;

(c) With respect to services provided through a direct agreement, be identified by a carrier or any carrier's contractor or subcontractor, or plans administered under chapter 41.05, 70.47, or 70.47A RCW, as a participant in the carrier's or any carrier's contractor or subcontractor network for purposes of determining network adequacy or being available for selection by an enrollee under a carrier's benefit plan; or

(d) Pay for health care services covered by a direct agreement rendered to direct patients by providers other than the providers in the direct practice or their employees, except as described in subsection (2)(b) of this section.

(2) Direct practices and providers may:

(a) Enter into a participating provider contract as defined by RCW 48.44.010 and 48.46.020 or plans administered under chapter 41.05, 70.47, or 70.47A RCW for purposes other than payment of claims for services provided to direct patients through a direct agreement. Such providers shall be subject to all other provisions of the participating provider contract applicable to participating providers including but not limited to the right to:

(i) Make referrals to other participating providers;

(ii) Admit the carrier's members to participating hospitals and other health care facilities;

(iii) Prescribe prescription drugs; and

(iv) Implement other customary provisions of the contract not dealing with reimbursement of services;

(b) Pay for charges associated with the provision of routine lab and imaging services provided in connection with wellness physical examinations. In aggregate such payments per year per direct patient are not to exceed fifteen percent of the total annual direct fee charged that direct patient. Exceptions to this limitation may occur in the event of short-term equipment failure if such failure prevents the provision of care that should not be delayed; and

(c) Charge an additional fee to direct patients for supplies, medications, and specific vaccines provided to direct patients that are specifically excluded under the agreement, provided the direct practice notifies the direct patient of the additional charge, prior to their administration or delivery. [2007 c 267 § 6.]

48.150.050 Acceptance or discontinuation of patients—Nonemployer third-party payments. (1) Direct practices may not decline to accept new direct patients or discontinue care to existing patients solely because of the patient's health status. A direct practice may decline to accept a patient if the practice has reached its maximum capacity, or if the patient's medical condition is such that the provider is unable to provide the appropriate level and type of health care services in the direct practice. So long as the direct practice provides the patient notice and opportunity to obtain care from another physician, the direct practice may discontinue care for direct patients if: (a) The patient fails to pay the direct fee under the terms required by the direct agreement; (b) the patient has performed an act that constitutes fraud; (c) the patient repeatedly fails to comply with the recommended treatment plan; (d) the patient is abusive and presents an emotional or physical danger to the staff or other patients of the direct practice; or (e) the direct practice discontinues operation as a direct practice.

(2) Direct practices may accept payment of direct fees directly or indirectly from nonemployer third parties. [2007 c 267 § 7.]

48.150.060 Direct practices are not insurers. Direct practices, as defined in RCW 48.150.010, who comply with this chapter are not insurers under RCW 48.01.050, health carriers under chapter 48.43 RCW, health care service contractors under chapter 48.44 RCW, or health maintenance organizations under chapter 48.46 RCW. [2007 c 267 § 8.]

48.150.070 Conduct of business—Prohibitions. A person shall not make, publish, or disseminate any false, deceptive, or misleading representation or advertising in the conduct of the business of a direct practice, or relative to the business of a direct practice. [2007 c 267 § 9.]

48.150.080 Misrepresenting the terms of a direct agreement. A person shall not make, issue, or circulate, or cause to be made, issued, or circulated, a misrepresentation of the terms of any direct agreement, or the benefits or advantages promised thereby, or use the name or title of any direct agreement misrepresenting the nature thereof. [2007 c 267 § 10.]

48.150.090 Chapter violations. Violations of this chapter constitute unprofessional conduct enforceable under RCW 18.130.180. [2007 c 267 § 11.]

48.150.100 Annual statements—Commissioner's report. (1) Direct practices must submit annual statements, beginning on October 1, 2007, to the office of [the] insurance commissioner specifying the number of providers in each practice, total number of patients being served, the average direct fee being charged, providers' names, and the business address for each direct practice. The form and content for the annual statement must be developed in a manner prescribed by the commissioner.

(2) A health care provider may not act as, or hold himself or herself out to be, a direct practice in this state, nor may a direct agreement be entered into with a direct patient in this

state, unless the provider submits the annual statement in subsection (1) of this section to the commissioner.

(3) The commissioner shall report annually to the legislature on direct practices including, but not limited to, participation trends, complaints received, voluntary data reported by the direct practices, and any necessary modifications to this chapter. The initial report shall be due December 1, 2009. [2007 c 267 § 12.]

48.150.110 Direct agreement requirements—Disclaimer. (1) A direct agreement must include the following disclaimer: "This agreement does not provide comprehensive health insurance coverage. It provides only the health care services specifically described." The direct agreement may not be sold to a group and may not be entered with a group of subscribers. It must be an agreement between a direct practice and an individual direct patient. Nothing prohibits the presentation of marketing materials to groups of potential subscribers or their representatives.

(2) A comprehensive disclosure statement shall be distributed to all direct patients with their participation forms. Such disclosure must inform the direct patients of their financial rights and responsibilities to the direct practice as provided for in this chapter, encourage that direct patients obtain and maintain insurance for services not provided by the direct practice, and state that the direct practice will not bill a carrier for services covered under the direct agreement. The disclosure statement shall include contact information for the office of the insurance commissioner. [2007 c 267 § 13.]

48.150.120 Commissioner's study—Report to legislature. By December 1, 2012, the commissioner shall submit a study of direct care practices to the appropriate committees of the senate and house of representatives. The study shall include an analysis of the extent to which direct care practices:

(1) Improve or reduce access to primary health care services by recipients of medicare and medicaid, individuals with private health insurance, and the uninsured;

(2) Provide adequate protection for consumers from practice bankruptcy, practice decisions to drop participants, or health conditions not covered by direct care practices;

(3) Increase premium costs for individuals who have health coverage through traditional health insurance;

(4) Have an impact on a health carrier's ability to meet network adequacy standards set by the commissioner or state health purchasing agencies; and

(5) Cover a population that is different from individuals covered through traditional health insurance.

The study shall also examine the extent to which individuals and families participating in a direct care practice maintain health coverage for health conditions not covered by the direct care practice. The commissioner shall recommend to the legislature whether the statutory authority for direct care practices to operate should be continued, modified, or repealed. [2007 c 267 § 14.]

Title 49

LABOR REGULATIONS

Chapters

- 49.17 Washington industrial safety and health act.
- 49.19 Safety—Health care settings.
- 49.44 Violations—Prohibited practices.
- 49.60 Discrimination—Human rights commission.
- 49.86 Family leave insurance.

Chapter 49.17 RCW

WASHINGTON INDUSTRIAL SAFETY AND HEALTH ACT

Sections

- 49.17.400 Construction crane safety—Definitions. (*Effective January 1, 2010.*)
- 49.17.410 Construction crane safety—Application. (*Effective January 1, 2010.*)
- 49.17.420 Construction crane certification program—Rules—Certificate of operation. (*Effective January 1, 2010.*)
- 49.17.430 Qualified construction crane operators—Rules—Apprentice operators or trainees—Reciprocity. (*Effective January 1, 2010.*)
- 49.17.440 Construction crane safety—Rules—Implementation. (*Effective January 1, 2010.*)

49.17.400 Construction crane safety—Definitions. (*Effective January 1, 2010.*) The definitions in this section apply throughout RCW 49.17.400 through 49.17.430 unless the context clearly requires otherwise.

(1) "Apprentice operator or trainee" means a crane operator who has not met requirements established by the department under RCW 49.17.430.

(2) "Attachments" includes, but is not limited to, crane-attached or suspended hooks, magnets, grapples, clamshell buckets, orange peel buckets, concrete buckets, drag lines, personnel platforms, augers, or drills and pile-driving equipment.

(3) "Certified crane inspector" means a crane inspector who has been certified by the department.

(4) "Construction" means all or any part of excavation, construction, erection, alteration, repair, demolition, and dismantling of buildings and other structures and all related operations; the excavation, construction, alteration, and repair of sewers, trenches, caissons, conduits, pipelines, roads, and all related operations; the moving of buildings and other structures, and the construction, alteration, repair, or removal of wharfs, docks, bridges, culverts, trestles, piers, abutments, or any other related construction, alteration, repair, or removal work. "Construction" does not include manufacturing facilities or powerhouses.

(5) "Crane" means power-operated equipment used in construction that can hoist, lower, and horizontally move a suspended load. "Crane" includes, but is not limited to: Articulating cranes, such as knuckle-boom cranes; crawler cranes; floating cranes; cranes on barges; locomotive cranes; mobile cranes, such as wheel-mounted, rough-terrain, all-terrain, commercial truck mounted, and boom truck cranes; multipurpose machines when configured to hoist and lower by means of a winch or hook and horizontally move a suspended load; industrial cranes, such as carry-deck cranes; dedicated pile drivers; service/mechanic trucks with a hoist-

ing device; a crane on a monorail; tower cranes, such as fixed jib, hammerhead boom, luffing boom, and self-erecting; pedestal cranes; portal cranes; overhead and gantry cranes; straddle cranes; side-boom tractors; derricks; and variations of such equipment.

(6) "Crane operator" means an individual engaged in the operation of a crane.

(7) "Professional engineer" means a professional engineer as defined in RCW 18.43.020.

(8) "Qualified crane operator" means a crane operator who meets the requirements established by the department under RCW 49.17.430.

(9) "Safety or health standard" means a standard adopted under this chapter. [2007 c 27 § 2.]

Intent—2007 c 27: "The legislature intends to promote the safe condition and operation of cranes used in construction work by establishing certification requirements for construction cranes and qualifications for construction crane operators. The legislature intends that standards for safety of construction cranes and for certification of personnel operating cranes in construction work be established." [2007 c 27 § 1.]

Effective date—2007 c 27: "This act takes effect January 1, 2010." [2007 c 27 § 7.]

49.17.410 Construction crane safety—Application. (Effective January 1, 2010.) (1) RCW 49.17.400 through 49.17.430 apply to cranes used with or without attachments.

(2) RCW 49.17.400 through 49.17.430 do not apply to:

(a) A crane while it has been converted or adapted for a nonhoisting or nonlifting use including, but not limited to, power shovels, excavators, and concrete pumps;

(b) Power shovels, excavators, wheel loaders, backhoes, loader backhoes, and track loaders when used with or without chains, slings, or other rigging to lift suspended loads;

(c) Automotive wreckers and tow trucks when used to clear wrecks and haul vehicles;

(d) Service trucks with mobile lifting devices designed specifically for use in the power line and electric service industries, such as digger derricks (radial boom derricks), when used in the power line and electric service industries for auguring holes to set power and utility poles, or handling associated materials to be installed or removed from utility poles;

(e) Equipment originally designed as vehicle-mounted aerial devices (for lifting personnel) and self-propelled elevating work platforms;

(f) Hydraulic jacking systems, including telescopic/hydraulic gantries;

(g) Stacker cranes;

(h) Powered industrial trucks (forklifts);

(i) Mechanic's truck with a hoisting device when used in activities related to equipment maintenance and repair;

(j) Equipment that hoists by using a come-along or chainfall;

(k) Dedicated drilling rigs;

(l) Gin poles used for the erection of communication towers;

(m) Tree trimming and tree removal work;

(n) Anchor handling with a vessel or barge using an affixed A-frame;

(o) Roustabouts;

(p) Cranes used on-site in manufacturing facilities or powerhouses for occasional or routine maintenance and repair work; and

(q) Crane operators operating cranes on-site in manufacturing facilities or powerhouses for occasional or routine maintenance and repair work. [2007 c 27 § 3.]

Intent—Effective date—2007 c 27: See notes following RCW 49.17.400.

49.17.420 Construction crane certification program—Rules—Certificate of operation. (Effective January 1, 2010.) (1) The department shall establish, by rule, a crane certification program for cranes used in construction. In establishing rules, the department shall consult nationally recognized crane standards.

(2) The crane certification program must include, at a minimum, the following:

(a) The department shall establish certification requirements for crane inspectors, including an experience requirement, an education requirement, a training requirement, and other necessary requirements determined by the director;

(b) The department shall establish a process for certified crane inspectors to issue temporary certificates of operation for a crane and the department to issue a final certificate of operation for a crane after a certified crane inspector determines that the crane meets safety or health standards, including meeting or exceeding national periodic inspection requirements recognized by the department;

(c) Crane owners must ensure that cranes are inspected and load proof tested by a certified crane inspector at least annually and after any significant modification or significant repairs of structural parts. If the use of weights for a unit proof load test is not possible or reasonable, other recording test equipment may be used. In adopting rules implementing this requirement, the department may consider similar standards and practices used by the federal government;

(d) Tower cranes and tower crane assembly parts must be inspected by a certified crane inspector both prior to assembly and following erection of a tower crane;

(e) Before installation of a nonstandard tower crane base, the engineering design of the nonstandard base shall be reviewed and acknowledged as acceptable by an independent professional engineer;

(f) A certified crane inspector must notify the department and the crane owner if, after inspection, the certified crane inspector finds that the crane does not meet safety or health standards. A certified crane inspector shall not attest that a crane meets safety or health standards until any deficiencies are corrected and the correction is verified by the certified crane inspector; and

(g) Inspection reports including all information and documentation obtained from a crane inspection shall be made available or provided to the department by a certified crane inspector upon request.

(3) Except as provided in RCW 49.17.410(2), any crane operated in the state must have a valid temporary or final certificate of operation issued by the certified crane inspector or department posted in the operator's cab or station.

(4) Certificates of operation issued by the department under the crane certification program established in this section are valid for one year from the effective date of the tem-

porary operating certificate issued by the certified crane inspector.

(5) This section does not apply to maritime cranes regulated by the department. [2007 c 27 § 4.]

Intent—Effective date—2007 c 27: See notes following RCW 49.17.400.

49.17.430 Qualified construction crane operators—Rules—Apprentice operators or trainees—Reciprocity. (Effective January 1, 2010.) (1) Except for training purposes as provided in subsection (3) of this section, an employer or contractor shall not permit a crane operator to operate a crane unless the crane operator is a qualified crane operator.

(2) The department shall establish, by rule, requirements that must be met to be considered a qualified crane operator. In establishing rules, the department shall consult nationally recognized crane standards for crane operator certification. The rules must include, at a minimum, the following:

(a) The crane operator must have a valid crane operator certificate, for the type of crane to be operated, issued by a crane operator testing organization accredited by a nationally recognized accrediting agency which administers written and practical examinations, has procedures for recertification that enable the crane operator to recertify at least every five years, and is recognized by the department;

(b) The crane operator must have up to two thousand hours of documented crane operator experience, which meets experience levels established by the department for crane types and capacities by rule; and

(c) The crane operator must pass a substance abuse test conducted by a recognized laboratory service.

(3) An apprentice operator or trainee may operate a crane when:

(a) The apprentice operator or trainee has been provided with training prior to operating the crane that enables the apprentice operator or trainee to operate the crane safely;

(b) The apprentice operator or trainee performs operating tasks that are within his or her ability, as determined by the supervising qualified crane operator; and

(c) The apprentice operator or trainee is under the direct and continuous supervision of a qualified crane operator who meets the following requirements:

(i) The qualified crane operator is an employee or agent of the employer of the apprentice operator or trainee;

(ii) The qualified crane operator is familiar with the proper use of the crane's controls;

(iii) While supervising the apprentice operator or trainee, the qualified crane operator performs no tasks that detract from the qualified crane operator's ability to supervise the apprentice operator or trainee;

(iv) For equipment other than tower cranes, the qualified crane operator and the apprentice operator or trainee must be in direct line of sight of each other and shall communicate verbally or by hand signals; and

(v) For tower cranes, the qualified crane operator and the apprentice operator or trainee must be in direct communication with each other.

(4) The department may recognize crane operator certification from another state or territory of the United States as equivalent to qualified crane operator requirements if the

department determines that the other jurisdiction's credentialing standards are substantially similar to the qualified crane operator requirements. [2007 c 27 § 5.]

Intent—Effective date—2007 c 27: See notes following RCW 49.17.400.

49.17.440 Construction crane safety—Rules—Implementation. (Effective January 1, 2010.) The department of labor and industries shall adopt rules necessary to implement RCW 49.17.400 through 49.17.430. [2007 c 27 § 6.]

Intent—Effective date—2007 c 27: See notes following RCW 49.17.400.

Chapter 49.19 RCW

SAFETY—HEALTH CARE SETTINGS

Sections

49.19.010 Definitions.

49.19.010 Definitions. For purposes of this chapter:

(1) "Health care setting" means:

(a) Hospitals as defined in RCW 70.41.020;

(b) Home health, hospice, and home care agencies under chapter 70.127 RCW, subject to RCW 49.19.070;

(c) Evaluation and treatment facilities as defined in RCW 71.05.020; and

(d) Community mental health programs as defined in RCW 71.24.025.

(2) "Department" means the department of labor and industries.

(3) "Employee" means an employee as defined in RCW 49.17.020.

(4) "Violence" or "violent act" means any physical assault or verbal threat of physical assault against an employee of a health care setting. [2007 c 414 § 3; 2007 c 375 § 10; 2000 c 94 § 18; 1999 c 377 § 2.]

Reviser's note: This section was amended by 2007 c 375 § 10 and by 2007 c 414 § 3, each without reference to the other. Both amendments are incorporated in the publication of this section under RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

Findings—Purpose—Construction—Severability—2007 c 375: See notes following RCW 10.31.110.

Chapter 49.44 RCW

VIOLATIONS—PROHIBITED PRACTICES

Sections

49.44.120 Requiring lie detector tests—Penalty.

49.44.120 Requiring lie detector tests—Penalty. (1)

It shall be unlawful for any person, firm, corporation or the state of Washington, its political subdivisions or municipal corporations to require, directly or indirectly, that any employee or prospective employee take or be subjected to any lie detector or similar tests as a condition of employment or continued employment: PROVIDED, That this section shall not apply to persons making application for employment with any law enforcement agency or with the juvenile court services agency of any county, or to persons returning after a break of more than twenty-four consecutive months in service as a fully commissioned law enforcement officer:

PROVIDED FURTHER, That this section shall not apply to either the initial application for employment or continued employment of persons who manufacture, distribute, or dispense controlled substances as defined in chapter 69.50 RCW, or to persons in sensitive positions directly involving national security.

(2) Nothing in this section shall be construed to prohibit the use of psychological tests as defined in RCW 18.83.010.

(3) Any person violating this section is guilty of a misdemeanor.

(4) As used in this section, "person" includes any individual, firm, corporation, or agency or political subdivision of the state.

(5) Nothing in this section may be construed as limiting any statutory or common law rights of any person illegally denied employment or continued employment under this section for purposes of any civil action or injunctive relief. [2007 c 14 § 1; 2005 c 265 § 1; 2003 c 53 § 278; 1985 c 426 § 1; 1973 c 145 § 1; 1965 c 152 § 1.]

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

Chapter 49.60 RCW DISCRIMINATION—HUMAN RIGHTS COMMISSION

Sections

49.60.010	Purpose of chapter.
49.60.020	Construction of chapter—Election of other remedies.
49.60.030	Freedom from discrimination—Declaration of civil rights.
49.60.040	Definitions (<i>as amended by 2007 c 187</i>).
49.60.040	Definitions (<i>as amended by 2007 c 317</i>).
49.60.120	Certain powers and duties of commission.
49.60.130	May create advisory agencies and conciliation councils.
49.60.175	Unfair practices of financial institutions.
49.60.176	Unfair practices with respect to credit transactions.
49.60.180	Unfair practices of employers.
49.60.190	Unfair practices of labor unions.
49.60.200	Unfair practices of employment agencies.
49.60.215	Unfair practices of places of public resort, accommodation, assemblage, amusement.
49.60.222	Unfair practices with respect to real estate transactions, facilities, or services.
49.60.223	Unfair practice to induce sale or rental of real property by representations regarding entry into neighborhood of persons of particular race, disability, etc.
49.60.224	Real property contract provisions restricting conveyance, encumbrance, occupancy, or use to persons of particular race, disability, etc., void—Unfair practice.
49.60.225	Relief for unfair practice in real estate transaction—Damages—Penalty.

49.60.010 Purpose of chapter. This chapter shall be known as the "law against discrimination." It is an exercise of the police power of the state for the protection of the public welfare, health, and peace of the people of this state, and in fulfillment of the provisions of the Constitution of this state concerning civil rights. The legislature hereby finds and declares that practices of discrimination against any of its inhabitants because of race, creed, color, national origin, families with children, sex, marital status, sexual orientation, age, honorably discharged veteran or military status, or the presence of any sensory, mental, or physical disability or the use of a trained dog guide or service animal by a person with a disability are a matter of state concern, that such discrimination threatens not only the rights and proper privileges of its inhabitants but menaces the institutions and foundation of

a free democratic state. A state agency is herein created with powers with respect to elimination and prevention of discrimination in employment, in credit and insurance transactions, in places of public resort, accommodation, or amusement, and in real property transactions because of race, creed, color, national origin, families with children, sex, marital status, sexual orientation, age, honorably discharged veteran or military status, or the presence of any sensory, mental, or physical disability or the use of a trained dog guide or service animal by a person with a disability; and the commission established hereunder is hereby given general jurisdiction and power for such purposes. [2007 c 187 § 1; 2006 c 4 § 1; 1997 c 271 § 1; 1995 c 259 § 1; 1993 c 510 § 1; 1985 c 185 § 1; 1973 1st ex.s. c 214 § 1; 1973 c 141 § 1; 1969 ex.s. c 167 § 1; 1957 c 37 § 1; 1949 c 183 § 1; Rem. Supp. 1949 § 7614-20.]

Effective date—1995 c 259: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and shall take effect July 1, 1995." [1995 c 259 § 7.]

Severability—1993 c 510: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1993 c 510 § 26.]

Severability—1969 ex.s. c 167: "If any provision of this act, or its application to any person or circumstance is held invalid, the remainder of the act, or the application of the provision to other persons or circumstances is not affected." [1969 ex.s. c 167 § 10.]

Severability—1957 c 37: "If any provision of this act or the application of such provision to any person or circumstance shall be held invalid, the remainder of such act or the application of such provision to persons or circumstances other than those to which it is held invalid shall not be affected thereby." [1957 c 37 § 27.]

Severability—1949 c 183: "If any provision of this act or the application of such provision to any person or circumstance shall be held invalid, the remainder of such act or the application of such provision to persons or circumstances other than those to which it is held invalid shall not be affected thereby." [1949 c 183 § 13.]

Community renewal law—Discrimination prohibited: RCW 35.81.170.

49.60.020 Construction of chapter—Election of other remedies. The provisions of this chapter shall be construed liberally for the accomplishment of the purposes thereof. Nothing contained in this chapter shall be deemed to repeal any of the provisions of any other law of this state relating to discrimination because of race, color, creed, national origin, sex, marital status, sexual orientation, age, honorably discharged veteran or military status, or the presence of any sensory, mental, or physical disability, other than a law which purports to require or permit doing any act which is an unfair practice under this chapter. Nor shall anything herein contained be construed to deny the right to any person to institute any action or pursue any civil or criminal remedy based upon an alleged violation of his or her civil rights. This chapter shall not be construed to endorse any specific belief, practice, behavior, or orientation. Inclusion of sexual orientation in this chapter shall not be construed to modify or supersede state law relating to marriage. [2007 c 187 § 2; 2006 c 4 § 2; 1993 c 510 § 2; 1973 1st ex.s. c 214 § 2; 1973 c 141 § 2; 1957 c 37 § 2; 1949 c 183 § 12; Rem. Supp. 1949 § 7614-30.]

Severability—1993 c 510: See note following RCW 49.60.010.

49.60.030 Freedom from discrimination—Declaration of civil rights. (1) The right to be free from discrimina-

tion because of race, creed, color, national origin, sex, honorably discharged veteran or military status, sexual orientation, or the presence of any sensory, mental, or physical disability or the use of a trained dog guide or service animal by a person with a disability is recognized as and declared to be a civil right. This right shall include, but not be limited to:

(a) The right to obtain and hold employment without discrimination;

(b) The right to the full enjoyment of any of the accommodations, advantages, facilities, or privileges of any place of public resort, accommodation, assemblage, or amusement;

(c) The right to engage in real estate transactions without discrimination, including discrimination against families with children;

(d) The right to engage in credit transactions without discrimination;

(e) The right to engage in insurance transactions or transactions with health maintenance organizations without discrimination: PROVIDED, That a practice which is not unlawful under RCW 48.30.300, 48.44.220, or 48.46.370 does not constitute an unfair practice for the purposes of this subparagraph; and

(f) The right to engage in commerce free from any discriminatory boycotts or blacklists. Discriminatory boycotts or blacklists for purposes of this section shall be defined as the formation or execution of any express or implied agreement, understanding, policy or contractual arrangement for economic benefit between any persons which is not specifically authorized by the laws of the United States and which is required or imposed, either directly or indirectly, overtly or covertly, by a foreign government or foreign person in order to restrict, condition, prohibit, or interfere with or in order to exclude any person or persons from any business relationship on the basis of race, color, creed, religion, sex, honorably discharged veteran or military status, sexual orientation, the presence of any sensory, mental, or physical disability, or the use of a trained dog guide or service animal by a person with a disability, or national origin or lawful business relationship: PROVIDED HOWEVER, That nothing herein contained shall prohibit the use of boycotts as authorized by law pertaining to labor disputes and unfair labor practices.

(2) Any person deeming himself or herself injured by any act in violation of this chapter shall have a civil action in a court of competent jurisdiction to enjoin further violations, or to recover the actual damages sustained by the person, or both, together with the cost of suit including reasonable attorneys' fees or any other appropriate remedy authorized by this chapter or the United States Civil Rights Act of 1964 as amended, or the Federal Fair Housing Amendments Act of 1988 (42 U.S.C. Sec. 3601 et seq.).

(3) Except for any unfair practice committed by an employer against an employee or a prospective employee, or any unfair practice in a real estate transaction which is the basis for relief specified in the amendments to RCW 49.60.225 contained in chapter 69, Laws of 1993, any unfair practice prohibited by this chapter which is committed in the course of trade or commerce as defined in the Consumer Protection Act, chapter 19.86 RCW, is, for the purpose of applying that chapter, a matter affecting the public interest, is not reasonable in relation to the development and preservation of business, and is an unfair or deceptive act in trade or com-

merce. [2007 c 187 § 3; 2006 c 4 § 3; 1997 c 271 § 2; 1995 c 135 § 3. Prior: 1993 c 510 § 3; 1993 c 69 § 1; 1984 c 32 § 2; 1979 c 127 § 2; 1977 ex.s. c 192 § 1; 1974 ex.s. c 32 § 1; 1973 1st ex.s. c 214 § 3; 1973 c 141 § 3; 1969 ex.s. c 167 § 2; 1957 c 37 § 3; 1949 c 183 § 2; Rem. Supp. 1949 § 7614-21.]

Intent—1995 c 135: See note following RCW 29A.08.760.

Severability—1993 c 510: See note following RCW 49.60.010.

Severability—1993 c 69: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1993 c 69 § 17.]

Severability—1969 ex.s. c 167: See note following RCW 49.60.010.

Severability—1957 c 37: See note following RCW 49.60.010.

Severability—1949 c 183: See note following RCW 49.60.010.

49.60.040 Definitions (as amended by 2007 c 187). The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

(1) "Person" includes one or more individuals, partnerships, associations, organizations, corporations, cooperatives, legal representatives, trustees and receivers, or any group of persons; it includes any owner, lessee, proprietor, manager, agent, or employee, whether one or more natural persons; and further includes any political or civil subdivisions of the state and any agency or instrumentality of the state or of any political or civil subdivision thereof(§).

(2) "Commission" means the Washington state human rights commission(§).

(3) "Employer" includes any person acting in the interest of an employer, directly or indirectly, who employs eight or more persons, and does not include any religious or sectarian organization not organized for private profit(§).

(4) "Employee" does not include any individual employed by his or her parents, spouse, or child, or in the domestic service of any person(§).

(5) "Labor organization" includes any organization which exists for the purpose, in whole or in part, of dealing with employers concerning grievances or terms or conditions of employment, or for other mutual aid or protection in connection with employment(§).

(6) "Employment agency" includes any person undertaking with or without compensation to recruit, procure, refer, or place employees for an employer(§).

(7) "Marital status" means the legal status of being married, single, separated, divorced, or widowed(§).

(8) "National origin" includes "ancestry"(§).

(9) "Full enjoyment of" includes the right to purchase any service, commodity, or article of personal property offered or sold on, or by, any establishment to the public, and the admission of any person to accommodations, advantages, facilities, or privileges of any place of public resort, accommodation, assemblage, or amusement, without acts directly or indirectly causing persons of any particular race, creed, color, sex, sexual orientation, national origin, or with any sensory, mental, or physical disability, or the use of a trained dog guide or service animal by a (disabled) person with a disability, to be treated as not welcome, accepted, desired, or solicited(§).

(10) "Any place of public resort, accommodation, assemblage, or amusement" includes, but is not limited to, any place, licensed or unlicensed, kept for gain, hire, or reward, or where charges are made for admission, service, occupancy, or use of any property or facilities, whether conducted for the entertainment, housing, or lodging of transient guests, or for the benefit, use, or accommodation of those seeking health, recreation, or rest, or for the burial or other disposition of human remains, or for the sale of goods, merchandise, services, or personal property, or for the rendering of personal services, or for public conveyance or transportation on land, water, or in the air, including the stations and terminals thereof and the garaging of vehicles, or where food or beverages of any kind are sold for consumption on the premises, or where public amusement, entertainment, sports, or recreation of any kind is offered with or without charge, or where medical service or care is made available, or where the public gathers, congregates, or assembles for amusement, recreation, or public purposes, or public halls, public elevators, and public washrooms of buildings and structures occupied by two or more tenants, or by the owner and one or more tenants, or any public library or educational institution, or schools of special instruction, or nursery schools, or day care centers or children's camps: PROVIDED, That nothing contained in this definition shall be construed to include or apply to any institute,

bona fide club, or place of accommodation, which is by its nature distinctly private, including fraternal organizations, though where public use is permitted that use shall be covered by this chapter; nor shall anything contained in this definition apply to any educational facility, columbarium, crematory, mausoleum, or cemetery operated or maintained by a bona fide religious or sectarian institution((:)).

(11) "Real property" includes buildings, structures, dwellings, real estate, lands, tenements, leaseholds, interests in real estate cooperatives, condominiums, and hereditaments, corporeal and incorporeal, or any interest therein((:)).

(12) "Real estate transaction" includes the sale, appraisal, brokering, exchange, purchase, rental, or lease of real property, transacting or applying for a real estate loan, or the provision of brokerage services((:)).

(13) " Dwelling" means any building, structure, or portion thereof that is occupied as, or designed or intended for occupancy as, a residence by one or more families, and any vacant land that is offered for sale or lease for the construction or location thereon of any such building, structure, or portion thereof((:)).

(14) "Sex" means gender((:)).

(15) "Sexual orientation" means heterosexuality, homosexuality, bisexuality, and gender expression or identity. As used in this definition, "gender expression or identity" means having or being perceived as having a gender identity, self-image, appearance, behavior, or expression, whether or not that gender identity, self-image, appearance, behavior, or expression is different from that traditionally associated with the sex assigned to that person at birth((:)).

(16) "Aggrieved person" means any person who: (a) Claims to have been injured by an unfair practice in a real estate transaction; or (b) believes that he or she will be injured by an unfair practice in a real estate transaction that is about to occur((:)).

(17) "Complainant" means the person who files a complaint in a real estate transaction((:)).

(18) "Respondent" means any person accused in a complaint or amended complaint of an unfair practice in a real estate transaction((:)).

(19) "Credit transaction" includes any open or closed end credit transaction, whether in the nature of a loan, retail installment transaction, credit card issue or charge, or otherwise, and whether for personal or for business purposes, in which a service, finance, or interest charge is imposed, or which provides for repayment in scheduled payments, when such credit is extended in the regular course of any trade or commerce, including but not limited to transactions by banks, savings and loan associations or other financial lending institutions of whatever nature, stock brokers, or by a merchant or mercantile establishment which as part of its ordinary business permits or provides that payment for purchases of property or service therefrom may be deferred((:)).

(20) "Families with children status" means one or more individuals who have not attained the age of eighteen years being domiciled with a parent or another person having legal custody of such individual or individuals, or with the designee of such parent or other person having such legal custody, with the written permission of such parent or other person. Families with children status also applies to any person who is pregnant or is in the process of securing legal custody of any individual who has not attained the age of eighteen years((:)).

(21) "Covered multifamily dwelling" means: (a) Buildings consisting of four or more dwelling units if such buildings have one or more elevators; and (b) ground floor dwelling units in other buildings consisting of four or more dwelling units((:)).

(22) "Premises" means the interior or exterior spaces, parts, components, or elements of a building, including individual dwelling units and the public and common use areas of a building((:)).

(23) "Dog guide" means a dog that is trained for the purpose of guiding blind persons or a dog that is trained for the purpose of assisting hearing impaired persons((:)).

(24) "Service animal" means an animal that is trained for the purpose of assisting or accommodating a ((disabled person's)) person with a disability's sensory, mental, or physical disability.

(25) "Honorably discharged veteran or military status" means a person who is:

(a) A veteran, as defined in RCW 41.04.007; or

(b) An active or reserve member in any branch of the armed forces of the United States, including the national guard, coast guard, and armed forces reserves. [2007 c 187 § 4; 2006 c 4 § 4; 1997 c 271 § 3; 1995 c 259 § 2. Prior: 1993 c 510 § 4; 1993 c 69 § 3; prior: 1985 c 203 § 2; 1985 c 185 § 2; 1979 c 127 § 3; 1973 c 141 § 4; 1969 ex.s. c 167 § 3; 1961 c 103 § 1; 1957 c 37 § 4; 1949 c 183 § 3; Rem. Supp. 1949 § 7614-22.]

49.60.040 Definitions (as amended by 2007 c 317). The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

(1) "Person" includes one or more individuals, partnerships, associations, organizations, corporations, cooperatives, legal representatives, trustees and receivers, or any group of persons; it includes any owner, lessee, proprietor, manager, agent, or employee, whether one or more natural persons; and further includes any political or civil subdivisions of the state and any agency or instrumentality of the state or of any political or civil subdivision thereof;

(2) "Commission" means the Washington state human rights commission;

(3) "Employer" includes any person acting in the interest of an employer, directly or indirectly, who employs eight or more persons, and does not include any religious or sectarian organization not organized for private profit;

(4) "Employee" does not include any individual employed by his or her parents, spouse, or child, or in the domestic service of any person;

(5) "Labor organization" includes any organization which exists for the purpose, in whole or in part, of dealing with employers concerning grievances or terms or conditions of employment, or for other mutual aid or protection in connection with employment;

(6) "Employment agency" includes any person undertaking with or without compensation to recruit, procure, refer, or place employees for an employer;

(7) "Marital status" means the legal status of being married, single, separated, divorced, or widowed;

(8) "National origin" includes "ancestry";

(9) "Full enjoyment of" includes the right to purchase any service, commodity, or article of personal property offered or sold on, or by, any establishment to the public, and the admission of any person to accommodations, advantages, facilities, or privileges of any place of public resort, accommodation, assemblage, or amusement, without acts directly or indirectly causing persons of any particular race, creed, color, sex, sexual orientation, national origin, or with any sensory, mental, or physical disability, or the use of a trained dog guide or service animal by a ((disabled)) person with a disability, to be treated as not welcome, accepted, desired, or solicited;

(10) "Any place of public resort, accommodation, assemblage, or amusement" includes, but is not limited to, any place, licensed or unlicensed, kept for gain, hire, or reward, or where charges are made for admission, service, occupancy, or use of any property or facilities, whether conducted for the entertainment, housing, or lodging of transient guests, or for the benefit, use, or accommodation of those seeking health, recreation, or rest, or for the burial or other disposition of human remains, or for the sale of goods, merchandise, services, or personal property, or for the rendering of personal services, or for public conveyance or transportation on land, water, or in the air, including the stations and terminals thereof and the garaging of vehicles, or where food or beverages of any kind are sold for consumption on the premises, or where public amusement, entertainment, sports, or recreation of any kind is offered with or without charge, or where medical service or care is made available, or where the public gathers, congregates, or assembles for amusement, recreation, or public purposes, or public halls, public elevators, and public washrooms of buildings and structures occupied by two or more tenants, or by the owner and one or more tenants, or any public library or educational institution, or schools of special instruction, or nursery schools, or day care centers or children's camps: PROVIDED, That nothing contained in this definition shall be construed to include or apply to any institute, bona fide club, or place of accommodation, which is by its nature distinctly private, including fraternal organizations, though where public use is permitted that use shall be covered by this chapter; nor shall anything contained in this definition apply to any educational facility, columbarium, crematory, mausoleum, or cemetery operated or maintained by a bona fide religious or sectarian institution;

(11) "Real property" includes buildings, structures, dwellings, real estate, lands, tenements, leaseholds, interests in real estate cooperatives, condominiums, and hereditaments, corporeal and incorporeal, or any interest therein;

(12) "Real estate transaction" includes the sale, appraisal, brokering, exchange, purchase, rental, or lease of real property, transacting or applying for a real estate loan, or the provision of brokerage services;

(13) " Dwelling" means any building, structure, or portion thereof that is occupied as, or designed or intended for occupancy as, a residence by one or more families, and any vacant land that is offered for sale or lease for the construction or location thereon of any such building, structure, or portion thereof;

(14) "Sex" means gender;

(15) "Sexual orientation" means heterosexuality, homosexuality, bisexuality, and gender expression or identity. As used in this definition, "gender expression or identity" means having or being perceived as having a gender identity, self-image, appearance, behavior, or expression, whether or not that gender identity, self-image, appearance, behavior, or expression is different from that traditionally associated with the sex assigned to that person at birth;

(16) "Aggrieved person" means any person who: (a) Claims to have been injured by an unfair practice in a real estate transaction; or (b) believes that he or she will be injured by an unfair practice in a real estate transaction that is about to occur;

(17) "Complainant" means the person who files a complaint in a real estate transaction;

(18) "Respondent" means any person accused in a complaint or amended complaint of an unfair practice in a real estate transaction;

(19) "Credit transaction" includes any open or closed end credit transaction, whether in the nature of a loan, retail installment transaction, credit card issue or charge, or otherwise, and whether for personal or for business purposes, in which a service, finance, or interest charge is imposed, or which provides for repayment in scheduled payments, when such credit is extended in the regular course of any trade or commerce, including but not limited to transactions by banks, savings and loan associations or other financial lending institutions of whatever nature, stock brokers, or by a merchant or mercantile establishment which as part of its ordinary business permits or provides that payment for purchases of property or service therefrom may be deferred;

(20) "Families with children status" means one or more individuals who have not attained the age of eighteen years being domiciled with a parent or another person having legal custody of such individual or individuals, or with the designee of such parent or other person having such legal custody, with the written permission of such parent or other person. Families with children status also applies to any person who is pregnant or is in the process of securing legal custody of any individual who has not attained the age of eighteen years;

(21) "Covered multifamily dwelling" means: (a) Buildings consisting of four or more dwelling units if such buildings have one or more elevators; and (b) ground floor dwelling units in other buildings consisting of four or more dwelling units;

(22) "Premises" means the interior or exterior spaces, parts, components, or elements of a building, including individual dwelling units and the public and common use areas of a building;

(23) "Dog guide" means a dog that is trained for the purpose of guiding blind persons or a dog that is trained for the purpose of assisting hearing impaired persons;

(24) "Service animal" means an animal that is trained for the purpose of assisting or accommodating a ~~((disabled person's))~~ sensory, mental, or physical disability of a person with a disability;

(25)(a) "Disability" means the presence of a sensory, mental, or physical impairment that:

(i) Is medically cognizable or diagnosable; or

(ii) Exists as a record or history; or

(iii) Is perceived to exist whether or not it exists in fact.

(b) A disability exists whether it is temporary or permanent, common or uncommon, mitigated or unmitigated, or whether or not it limits the ability to work generally or work at a particular job or whether or not it limits any other activity within the scope of this chapter.

(c) For purposes of this definition, "impairment" includes, but is not limited to:

(i) Any physiological disorder, or condition, cosmetic disfigurement, or anatomical loss affecting one or more of the following body systems: Neurological, musculoskeletal, special sense organs, respiratory, including speech organs, cardiovascular, reproductive, digestive, genitor-urinary, hemic and lymphatic, skin, and endocrine; or

(ii) Any mental, developmental, traumatic, or psychological disorder, including but not limited to cognitive limitation, organic brain syndrome, emotional or mental illness, and specific learning disabilities.

(d) Only for the purposes of qualifying for reasonable accommodation in employment, an impairment must be known or shown through an interactive process to exist in fact and:

(i) The impairment must have a substantially limiting effect upon the individual's ability to perform his or her job, the individual's ability to apply or be considered for a job, or the individual's access to equal benefits, privileges, or terms or conditions of employment; or

(ii) The employee must have put the employer on notice of the existence of an impairment, and medical documentation must establish a reasonable likelihood that engaging in job functions without an accommodation

would aggravate the impairment to the extent that it would create a substantially limiting effect.

(e) For purposes of (d) of this subsection, a limitation is not substantial if it has only a trivial effect. [2007 c 317 § 2; 2006 c 4 § 4; 1997 c 271 § 3; 1995 c 259 § 2. Prior: 1993 c 510 § 4; 1993 c 69 § 3; prior: 1985 c 203 § 2; 1985 c 185 § 2; 1979 c 127 § 3; 1973 c 141 § 4; 1969 ex.s. c 167 § 3; 1961 c 103 § 1; 1957 c 37 § 4; 1949 c 183 § 3; Rem. Supp. 1949 § 7614-22.]

Reviser's note: RCW 49.60.040 was amended twice during the 2007 legislative session, each without reference to the other. For rule of construction concerning sections amended more than once during the same legislative session, see RCW 1.12.025.

Finding—2007 c 317: "The legislature finds that the supreme court, in its opinion in *McClarty v. Totem Electric*, 157 Wn.2d 214, 137 P.3d 844 (2006), failed to recognize that the law against discrimination affords to state residents protections that are wholly independent of those afforded by the federal Americans with disabilities act of 1990, and that the law against discrimination has provided such protections for many years prior to passage of the federal act." [2007 c 317 § 1.]

Retroactive application—2007 c 317: "This act is remedial and retroactive, and applies to all causes of action occurring before July 6, 2006, and to all causes of action occurring on or after July 22, 2007." [2007 c 317 § 3.]

Effective date—1995 c 259: See note following RCW 49.60.010.

Severability—1993 c 510: See note following RCW 49.60.010.

Severability—1993 c 69: See note following RCW 49.60.030.

Severability—1969 ex.s. c 167: See note following RCW 49.60.010.

Construction—1961 c 103: "Nothing herein shall be construed to render any person or corporation liable for breach of preexisting contracts by reason of compliance by such person or corporation with this act." [1961 c 103 § 4.]

Severability—1957 c 37: See note following RCW 49.60.010.

Severability—1949 c 183: See note following RCW 49.60.010.

49.60.120 Certain powers and duties of commission.

The commission shall have the functions, powers, and duties:

(1) To appoint an executive director and chief examiner, and such investigators, examiners, clerks, and other employees and agents as it may deem necessary, fix their compensation within the limitations provided by law, and prescribe their duties.

(2) To obtain upon request and utilize the services of all governmental departments and agencies.

(3) To adopt, amend, and rescind suitable rules to carry out the provisions of this chapter, and the policies and practices of the commission in connection therewith.

(4) To receive, impartially investigate, and pass upon complaints alleging unfair practices as defined in this chapter.

(5) To issue such publications and results of investigations and research as in its judgment will tend to promote good will and minimize or eliminate discrimination because of sex, sexual orientation, race, creed, color, national origin, marital status, age, honorably discharged veteran or military status, or the presence of any sensory, mental, or physical disability, or the use of a trained dog guide or service animal by a person with a disability.

(6) To make such technical studies as are appropriate to effectuate the purposes and policies of this chapter and to publish and distribute the reports of such studies.

(7) To cooperate and act jointly or by division of labor with the United States or other states, with other Washington state agencies, commissions, and other government entities, and with political subdivisions of the state of Washington and their respective human rights agencies to carry out the purposes of this chapter. However, the powers which may be

exercised by the commission under this subsection permit investigations and complaint dispositions only if the investigations are designed to reveal, or the complaint deals only with, allegations which, if proven, would constitute unfair practices under this chapter. The commission may perform such services for these agencies and be reimbursed therefor.

(8) To foster good relations between minority and majority population groups of the state through seminars, conferences, educational programs, and other intergroup relations activities. [2007 c 187 § 5; 2006 c 4 § 5; 1997 c 271 § 4. Prior: 1993 c 510 § 6; 1993 c 69 § 4; 1985 c 185 § 10; 1973 1st ex.s. c 214 § 4; 1973 c 141 § 7; 1971 ex.s. c 81 § 1; 1957 c 37 § 7; 1955 c 270 § 8; prior: 1949 c 183 § 6, part; Rem. Supp. 1949 § 7614-25, part.]

Severability—1993 c 510: See note following RCW 49.60.010.

Severability—1993 c 69: See note following RCW 49.60.030.

Effective date—1971 ex.s. c 81: "The effective date of this act shall be July 1, 1971." [1971 ex.s. c 81 § 6.]

Human rights commission to investigate unlawful use of refueling services for individuals with disabilities: RCW 49.60.360.

49.60.130 May create advisory agencies and conciliation councils. The commission has power to create such advisory agencies and conciliation councils, local, regional, or statewide, as in its judgment will aid in effectuating the purposes of this chapter. The commission may empower them to study the problems of discrimination in all or specific fields of human relationships or in specific instances of discrimination because of sex, race, creed, color, national origin, marital status, sexual orientation, age, honorably discharged veteran or military status, or the presence of any sensory, mental, or physical disability or the use of a trained dog guide or service animal by a person with a disability; to foster through community effort or otherwise good will, cooperation, and conciliation among the groups and elements of the population of the state, and to make recommendations to the commission for the development of policies and procedures in general and in specific instances, and for programs of formal and informal education which the commission may recommend to the appropriate state agency.

Such advisory agencies and conciliation councils shall be composed of representative citizens, serving without pay, but with reimbursement for travel expenses in accordance with RCW 43.03.050 and 43.03.060 as now existing or hereafter amended, and the commission may make provision for technical and clerical assistance to such agencies and councils and for the expenses of such assistance. The commission may use organizations specifically experienced in dealing with questions of discrimination. [2007 c 187 § 6; 2006 c 4 § 6; 1997 c 271 § 5; 1993 c 510 § 7; 1985 c 185 § 11; 1975-'76 2nd ex.s. c 34 § 146; 1973 1st ex.s. c 214 § 5; 1973 c 141 § 8; 1971 ex.s. c 81 § 2; 1955 c 270 § 9. Prior: 1949 c 183 § 6, part; Rem. Supp. 1949 § 7614-25, part.]

Severability—1993 c 510: See note following RCW 49.60.010.

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

Effective date—1971 ex.s. c 81: See note following RCW 49.60.120.

49.60.175 Unfair practices of financial institutions. It shall be an unfair practice to use the sex, race, creed, color, national origin, marital status, honorably discharged veteran

or military status, sexual orientation, or the presence of any sensory, mental, or physical disability of any person, or the use of a trained dog guide or service animal by a person with a disability, concerning an application for credit in any credit transaction to determine the credit worthiness of an applicant. [2007 c 187 § 7; 2006 c 4 § 7; 1997 c 271 § 7; 1993 c 510 § 9; 1979 c 127 § 4; 1977 ex.s. c 301 § 14; 1973 c 141 § 9; 1959 c 68 § 1.]

Severability—1993 c 510: See note following RCW 49.60.010.

Fairness in lending act: RCW 30.04.500 through 30.04.515.

49.60.176 Unfair practices with respect to credit transactions. (1) It is an unfair practice for any person whether acting for himself, herself, or another in connection with any credit transaction because of race, creed, color, national origin, sex, marital status, honorably discharged veteran or military status, sexual orientation, or the presence of any sensory, mental, or physical disability or the use of a trained dog guide or service animal by a person with a disability:

- (a) To deny credit to any person;
- (b) To increase the charges or fees for or collateral required to secure any credit extended to any person;
- (c) To restrict the amount or use of credit extended or to impose different terms or conditions with respect to the credit extended to any person or any item or service related thereto;
- (d) To attempt to do any of the unfair practices defined in this section.

(2) Nothing in this section shall prohibit any party to a credit transaction from considering the credit history of any individual applicant.

(3) Further, nothing in this section shall prohibit any party to a credit transaction from considering the application of the community property law to the individual case or from taking reasonable action thereon. [2007 c 187 § 8; 2006 c 4 § 8; 1997 c 271 § 8; 1993 c 510 § 10; 1979 c 127 § 5; 1973 c 141 § 5.]

Severability—1993 c 510: See note following RCW 49.60.010.

49.60.180 Unfair practices of employers. It is an unfair practice for any employer:

(1) To refuse to hire any person because of age, sex, marital status, sexual orientation, race, creed, color, national origin, honorably discharged veteran or military status, or the presence of any sensory, mental, or physical disability or the use of a trained dog guide or service animal by a person with a disability, unless based upon a bona fide occupational qualification: PROVIDED, That the prohibition against discrimination because of such disability shall not apply if the particular disability prevents the proper performance of the particular worker involved: PROVIDED, That this section shall not be construed to require an employer to establish employment goals or quotas based on sexual orientation.

(2) To discharge or bar any person from employment because of age, sex, marital status, sexual orientation, race, creed, color, national origin, honorably discharged veteran or military status, or the presence of any sensory, mental, or physical disability or the use of a trained dog guide or service animal by a person with a disability.

(3) To discriminate against any person in compensation or in other terms or conditions of employment because of age, sex, marital status, sexual orientation, race, creed, color, national origin, honorably discharged veteran or military status, or the presence of any sensory, mental, or physical disability or the use of a trained dog guide or service animal by a person with a disability: PROVIDED, That it shall not be an unfair practice for an employer to segregate washrooms or locker facilities on the basis of sex, or to base other terms and conditions of employment on the sex of employees where the commission by regulation or ruling in a particular instance has found the employment practice to be appropriate for the practical realization of equality of opportunity between the sexes.

(4) To print, or circulate, or cause to be printed or circulated any statement, advertisement, or publication, or to use any form of application for employment, or to make any inquiry in connection with prospective employment, which expresses any limitation, specification, or discrimination as to age, sex, marital status, sexual orientation, race, creed, color, national origin, honorably discharged veteran or military status, or the presence of any sensory, mental, or physical disability or the use of a trained dog guide or service animal by a person with a disability, or any intent to make any such limitation, specification, or discrimination, unless based upon a bona fide occupational qualification: PROVIDED, Nothing contained herein shall prohibit advertising in a foreign language. [2007 c 187 § 9; 2006 c 4 § 10; 1997 c 271 § 10; 1993 c 510 § 12; 1985 c 185 § 16; 1973 1st ex.s. c 214 § 6; 1973 c 141 § 10; 1971 ex.s. c 81 § 3; 1961 c 100 § 1; 1957 c 37 § 9. Prior: 1949 c 183 § 7, part; Rem. Supp. 1949 § 7614-26, part.]

Severability—1993 c 510: See note following RCW 49.60.010.

Effective date—1971 ex.s. c 81: See note following RCW 49.60.120.

Element of age not to affect apprenticeship agreements: RCW 49.04.910.

Employment rights of persons serving in uniformed services: RCW 73.16.032.

Labor—Prohibited practices: Chapter 49.44 RCW.

Unfair practices in employment because of age of employee or applicant: RCW 49.44.090.

49.60.190 Unfair practices of labor unions. It is an unfair practice for any labor union or labor organization:

(1) To deny membership and full membership rights and privileges to any person because of age, sex, marital status, sexual orientation, race, creed, color, national origin, honorably discharged veteran or military status, or the presence of any sensory, mental, or physical disability or the use of a trained dog guide or service animal by a person with a disability.

(2) To expel from membership any person because of age, sex, marital status, sexual orientation, race, creed, color, national origin, honorably discharged veteran or military status, or the presence of any sensory, mental, or physical disability or the use of a trained dog guide or service animal by a person with a disability.

(3) To discriminate against any member, employer, employee, or other person to whom a duty of representation is owed because of age, sex, marital status, sexual orientation, race, creed, color, national origin, honorably discharged veteran or military status, or the presence of any sensory,

mental, or physical disability or the use of a trained dog guide or service animal by a person with a disability. [2007 c 187 § 10; 2006 c 4 § 11; 1997 c 271 § 11; 1993 c 510 § 13; 1985 c 185 § 17; 1973 1st ex.s. c 214 § 8; 1973 c 141 § 11; 1971 ex.s. c 81 § 4; 1961 c 100 § 2; 1957 c 37 § 10. Prior: 1949 c 183 § 7, part; Rem. Supp. 1949 § 7614-26, part.]

Severability—1993 c 510: See note following RCW 49.60.010.

Effective date—1971 ex.s. c 81: See note following RCW 49.60.120.

Element of age not to affect apprenticeship agreements: RCW 49.04.910.

49.60.200 Unfair practices of employment agencies.

It is an unfair practice for any employment agency to fail or refuse to classify properly or refer for employment, or otherwise to discriminate against, an individual because of age, sex, marital status, sexual orientation, race, creed, color, national origin, honorably discharged veteran or military status, or the presence of any sensory, mental, or physical disability or the use of a trained dog guide or service animal by a person with a disability, or to print or circulate, or cause to be printed or circulated any statement, advertisement, or publication, or to use any form of application for employment, or to make any inquiry in connection with prospective employment, which expresses any limitation, specification or discrimination as to age, sex, race, sexual orientation, creed, color, or national origin, honorably discharged veteran or military status, or the presence of any sensory, mental, or physical disability or the use of a trained dog guide or service animal by a person with a disability, or any intent to make any such limitation, specification, or discrimination, unless based upon a bona fide occupational qualification: PROVIDED, Nothing contained herein shall prohibit advertising in a foreign language. [2007 c 187 § 11; 2006 c 4 § 12; 1997 c 271 § 12; 1993 c 510 § 14; 1973 1st ex.s. c 214 § 9; 1973 c 141 § 12; 1971 ex.s. c 81 § 5; 1961 c 100 § 3; 1957 c 37 § 11. Prior: 1949 c 183 § 7, part; Rem. Supp. 1949 § 7614-26, part.]

Severability—1993 c 510: See note following RCW 49.60.010.

Effective date—1971 ex.s. c 81: See note following RCW 49.60.120.

Element of age not to affect apprenticeship agreements: RCW 49.04.910.

Fraud by employment agent: RCW 49.44.050.

49.60.215 Unfair practices of places of public resort, accommodation, assemblage, amusement.

It shall be an unfair practice for any person or the person's agent or employee to commit an act which directly or indirectly results in any distinction, restriction, or discrimination, or the requiring of any person to pay a larger sum than the uniform rates charged other persons, or the refusing or withholding from any person the admission, patronage, custom, presence, frequenting, dwelling, staying, or lodging in any place of public resort, accommodation, assemblage, or amusement, except for conditions and limitations established by law and applicable to all persons, regardless of race, creed, color, national origin, sexual orientation, sex, honorably discharged veteran or military status, the presence of any sensory, mental, or physical disability, or the use of a trained dog guide or service animal by a person with a disability: PROVIDED, That this section shall not be construed to require structural changes, modifications, or additions to make any place accessible to a person with a disability except as otherwise

required by law: PROVIDED, That behavior or actions constituting a risk to property or other persons can be grounds for refusal and shall not constitute an unfair practice. [2007 c 187 § 12; 2006 c 4 § 13; 1997 c 271 § 13; 1993 c 510 § 16. Prior: 1985 c 203 § 1; 1985 c 90 § 6; 1979 c 127 § 7; 1957 c 37 § 14.]

Severability—1993 c 510: See note following RCW 49.60.010.

Denial of civil rights: RCW 9.91.010.

49.60.222 Unfair practices with respect to real estate transactions, facilities, or services. (1) It is an unfair practice for any person, whether acting for himself, herself, or another, because of sex, marital status, sexual orientation, race, creed, color, national origin, families with children status, honorably discharged veteran or military status, the presence of any sensory, mental, or physical disability, or the use of a trained dog guide or service animal by a person with a disability:

(a) To refuse to engage in a real estate transaction with a person;

(b) To discriminate against a person in the terms, conditions, or privileges of a real estate transaction or in the furnishing of facilities or services in connection therewith;

(c) To refuse to receive or to fail to transmit a bona fide offer to engage in a real estate transaction from a person;

(d) To refuse to negotiate for a real estate transaction with a person;

(e) To represent to a person that real property is not available for inspection, sale, rental, or lease when in fact it is so available, or to fail to bring a property listing to his or her attention, or to refuse to permit the person to inspect real property;

(f) To discriminate in the sale or rental, or to otherwise make unavailable or deny a dwelling, to any person; or to a person residing in or intending to reside in that dwelling after it is sold, rented, or made available; or to any person associated with the person buying or renting;

(g) To make, print, circulate, post, or mail, or cause to be so made or published a statement, advertisement, or sign, or to use a form of application for a real estate transaction, or to make a record or inquiry in connection with a prospective real estate transaction, which indicates, directly or indirectly, an intent to make a limitation, specification, or discrimination with respect thereto;

(h) To offer, solicit, accept, use, or retain a listing of real property with the understanding that a person may be discriminated against in a real estate transaction or in the furnishing of facilities or services in connection therewith;

(i) To expel a person from occupancy of real property;

(j) To discriminate in the course of negotiating, executing, or financing a real estate transaction whether by mortgage, deed of trust, contract, or other instrument imposing a lien or other security in real property, or in negotiating or executing any item or service related thereto including issuance of title insurance, mortgage insurance, loan guarantee, or other aspect of the transaction. Nothing in this section shall limit the effect of RCW 49.60.176 relating to unfair practices in credit transactions; or

(k) To attempt to do any of the unfair practices defined in this section.

(2) For the purposes of this chapter discrimination based on the presence of any sensory, mental, or physical disability or the use of a trained dog guide or service animal by a person who is blind, deaf, or physically disabled includes:

(a) A refusal to permit, at the expense of the person with a disability, reasonable modifications of existing premises occupied or to be occupied by such person if such modifications may be necessary to afford such person full enjoyment of the dwelling, except that, in the case of a rental, the landlord may, where it is reasonable to do so, condition permission for a modification on the renter agreeing to restore the interior of the dwelling to the condition that existed before the modification, reasonable wear and tear excepted;

(b) To refuse to make reasonable accommodation in rules, policies, practices, or services when such accommodations may be necessary to afford a person with the presence of any sensory, mental, or physical disability and/or the use of a trained dog guide or service animal by a person who is blind, deaf, or physically disabled equal opportunity to use and enjoy a dwelling; or

(c) To fail to design and construct covered multifamily dwellings and premises in conformance with the federal fair housing amendments act of 1988 (42 U.S.C. Sec. 3601 et seq.) and all other applicable laws or regulations pertaining to access by persons with any sensory, mental, or physical disability or use of a trained dog guide or service animal. Whenever the requirements of applicable laws or regulations differ, the requirements which require greater accessibility for persons with any sensory, mental, or physical disability shall govern.

Nothing in (a) or (b) of this subsection shall apply to: (i) A single-family house rented or leased by the owner if the owner does not own or have an interest in the proceeds of the rental or lease of more than three such single-family houses at one time, the rental or lease occurred without the use of a real estate broker or salesperson, as defined in RCW 18.85.010, and the rental or lease occurred without the publication, posting, or mailing of any advertisement, sign, or statement in violation of subsection (1)(g) of this section; or (ii) rooms or units in dwellings containing living quarters occupied or intended to be occupied by no more than four families living independently of each other if the owner maintains and occupies one of the rooms or units as his or her residence.

(3) Notwithstanding any other provision of this chapter, it shall not be an unfair practice or a denial of civil rights for any public or private educational institution to separate the sexes or give preference to or limit use of dormitories, residence halls, or other student housing to persons of one sex or to make distinctions on the basis of marital or families with children status.

(4) Except pursuant to subsection (2)(a) of this section, this section shall not be construed to require structural changes, modifications, or additions to make facilities accessible to a person with a disability except as otherwise required by law. Nothing in this section affects the rights, responsibilities, and remedies of landlords and tenants pursuant to chapter 59.18 or 59.20 RCW, including the right to post and enforce reasonable rules of conduct and safety for all tenants and their guests, provided that chapters 59.18 and 59.20 RCW are only affected to the extent they are inconsistent with the nondiscrimination requirements of this chapter.

Nothing in this section limits the applicability of any reasonable federal, state, or local restrictions regarding the maximum number of occupants permitted to occupy a dwelling.

(5) Notwithstanding any other provision of this chapter, it shall not be an unfair practice for any public establishment providing for accommodations offered for the full enjoyment of transient guests as defined by RCW 9.91.010(1)(c) to make distinctions on the basis of families with children status. Nothing in this section shall limit the effect of RCW 49.60.215 relating to unfair practices in places of public accommodation.

(6) Nothing in this chapter prohibiting discrimination based on families with children status applies to housing for older persons as defined by the federal fair housing amendments act of 1988, 42 U.S.C. Sec. 3607(b)(1) through (3), as amended by the housing for older persons act of 1995, P.L. 104-76, as enacted on December 28, 1995. Nothing in this chapter authorizes requirements for housing for older persons different than the requirements in the federal fair housing amendments act of 1988, 42 U.S.C. Sec. 3607(b)(1) through (3), as amended by the housing for older persons act of 1995, P.L. 104-76, as enacted on December 28, 1995.

(7) Nothing in this chapter shall apply to real estate transactions involving the sharing of a dwelling unit, or rental or sublease of a portion of a dwelling unit, when the dwelling unit is to be occupied by the owner or sublessor. For purposes of this section, "dwelling unit" has the same meaning as in RCW 59.18.030. [2007 c 187 § 13; 2006 c 4 § 14. Prior: 1997 c 400 § 3; 1997 c 271 § 14; 1995 c 259 § 3; prior: 1993 c 510 § 17; 1993 c 69 § 5; 1989 c 61 § 1; 1979 c 127 § 8; 1975 1st ex.s. c 145 § 1; 1973 c 141 § 13; 1969 ex.s. c 167 § 4.]

Effective date—1995 c 259: See note following RCW 49.60.010.

Severability—1993 c 510: See note following RCW 49.60.010.

Severability—1993 c 69: See note following RCW 49.60.030.

Severability—1969 ex.s. c 167: See note following RCW 49.60.010.

49.60.223 Unfair practice to induce sale or rental of real property by representations regarding entry into neighborhood of persons of particular race, disability, etc. It is an unfair practice for any person, for profit, to induce or attempt to induce any person to sell or rent any real property by representations regarding the entry or prospective entry into the neighborhood of a person or persons of a particular race, creed, color, sex, national origin, sexual orientation, families with children status, honorably discharged veteran or military status, or with any sensory, mental, or physical disability and/or the use of a trained dog guide or service animal by a person who is blind, deaf, or physically disabled. [2007 c 187 § 14; 2006 c 4 § 15; 1997 c 271 § 15. Prior: 1993 c 510 § 18; 1993 c 69 § 6; 1979 c 127 § 9; 1969 ex.s. c 167 § 5.]

Severability—1993 c 510: See note following RCW 49.60.010.

Severability—1993 c 69: See note following RCW 49.60.030.

Severability—1969 ex.s. c 167: See note following RCW 49.60.010.

49.60.224 Real property contract provisions restricting conveyance, encumbrance, occupancy, or use to persons of particular race, disability, etc., void—Unfair practice. (1) Every provision in a written instrument relating to real property which purports to forbid or restrict the convey-

ance, encumbrance, occupancy, or lease thereof to individuals of a specified race, creed, color, sex, national origin, sexual orientation, families with children status, honorably discharged veteran or military status, or with any sensory, mental, or physical disability or the use of a trained dog guide or service animal by a person who is blind, deaf, or physically disabled, and every condition, restriction, or prohibition, including a right of entry or possibility of reverter, which directly or indirectly limits the use or occupancy of real property on the basis of race, creed, color, sex, national origin, sexual orientation, families with children status, honorably discharged veteran or military status, or the presence of any sensory, mental, or physical disability or the use of a trained dog guide or service animal by a person who is blind, deaf, or physically disabled is void.

(2) It is an unfair practice to insert in a written instrument relating to real property a provision that is void under this section or to honor or attempt to honor such a provision in the chain of title. [2007 c 187 § 15; 2006 c 4 § 16; 1997 c 271 § 16; 1993 c 69 § 8; 1979 c 127 § 10; 1969 ex.s. c 167 § 6.]

Severability—1993 c 69: See note following RCW 49.60.030.

Severability—1969 ex.s. c 167: See note following RCW 49.60.010.

49.60.225 Relief for unfair practice in real estate transaction—Damages—Penalty. (1) When a reasonable cause determination has been made under RCW 49.60.240 that an unfair practice in a real estate transaction has been committed and a finding has been made that the respondent has engaged in any unfair practice under RCW 49.60.250, the administrative law judge shall promptly issue an order for such relief suffered by the aggrieved person as may be appropriate, which may include actual damages as provided by the federal fair housing amendments act of 1988 (42 U.S.C. Sec. 3601 et seq.), and injunctive or other equitable relief. Such order may, to further the public interest, assess a civil penalty against the respondent:

(a) In an amount up to ten thousand dollars if the respondent has not been determined to have committed any prior unfair practice in a real estate transaction;

(b) In an amount up to twenty-five thousand dollars if the respondent has been determined to have committed one other unfair practice in a real estate transaction during the five-year period ending on the date of the filing of this charge; or

(c) In an amount up to fifty thousand dollars if the respondent has been determined to have committed two or more unfair practices in a real estate transaction during the seven-year period ending on the date of the filing of this charge, for loss of the right secured by RCW 49.60.010, 49.60.030, 49.60.040, and 49.60.222 through 49.60.224, as now or hereafter amended, to be free from discrimination in real property transactions because of sex, marital status, race, creed, color, national origin, sexual orientation, families with children status, honorably discharged veteran or military status, or the presence of any sensory, mental, or physical disability or the use of a trained dog guide or service animal by a person who is blind, deaf, or physically disabled. Enforcement of the order and appeal therefrom by the complainant or respondent may be made as provided in RCW 49.60.260 and 49.60.270. If acts constituting the unfair practice in a real estate transaction that is the object of the charge are a deter-

mined to have been committed by the same natural person who has been previously determined to have committed acts constituting an unfair practice in a real estate transaction, then the civil penalty of up to fifty thousand dollars may be imposed without regard to the period of time within which any subsequent unfair practice in a real estate transaction occurred. All civil penalties assessed under this section shall be paid into the state treasury and credited to the general fund.

(2) Such order shall not affect any contract, sale, conveyance, encumbrance, or lease consummated before the issuance of an order that involves a bona fide purchaser, encumbrancer, or tenant who does not have actual notice of the charge filed under this chapter.

(3) Notwithstanding any other provision of this chapter, persons awarded damages under this section may not receive additional damages pursuant to RCW 49.60.250. [2007 c 187 § 16; 2006 c 4 § 17; 1997 c 271 § 17; 1995 c 259 § 4. Prior: 1993 c 510 § 20; 1993 c 69 § 9; 1985 c 185 § 19; 1979 c 127 § 11; 1973 c 141 § 14; 1969 ex.s. c 167 § 7.]

Effective date—1995 c 259: See note following RCW 49.60.010.

Severability—1993 c 510: See note following RCW 49.60.010.

Severability—1993 c 69: See note following RCW 49.60.030.

Severability—1969 ex.s. c 167: See note following RCW 49.60.010.

Chapter 49.86 RCW

FAMILY LEAVE INSURANCE

Sections

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49.86.005 Findings. The legislature finds that, although family leave laws have assisted individuals to balance the demands of the workplace with their family responsibilities, more needs to be done to achieve the goals of parent and child bonding, workforce stability, and economic security. In particular, the legislature finds that many individuals do not have access to family leave laws, and those who do may not be in

a financial position to take family leave that is unpaid, and that employer-paid benefits meet only a relatively small part of this need. The legislature declares it to be in the public interest to establish a program that: (1) Allows parents to bond with a newborn or newly placed child; (2) provides limited and additional income support for a reasonable period while an individual is away from work on family leave; (3) reduces the impact on state income support programs by increasing an individual's ability to provide caregiving services for a child while maintaining an employment relationship; and (4) establishes a wage replacement benefit to be coordinated with current existing state and federal family leave laws. [2007 c 357 § 1.]

Joint legislative task force—2007 c 357: "(1)(a) The joint legislative task force on family leave insurance is established, with thirteen members as provided in this subsection.

(i) The chair and the ranking member of the senate labor, commerce, research and development committee.

(ii) The chair and the ranking member of the house commerce and labor committee.

(iii) The majority leader of the senate shall appoint one member from each of the two largest caucuses of the senate.

(iv) The speaker of the house of representatives shall appoint one member from each of the two largest caucuses of the house of representatives.

(v) The majority leader of the senate and the speaker of the house of representatives jointly shall appoint four nonlegislative members of the task force, which shall include one member representing large business, one member representing small business, one member representing labor, and one member representing advocates for family leave.

(vi) The governor shall appoint one member of the task force.

(b) The department of labor and industries and the employment security department shall cooperate with the task force and shall each maintain a liaison representative, who shall be a nonvoting member.

(c) The majority leader of the senate and the speaker of the house of representatives jointly shall appoint the cochairs of the task force from among the legislative members of the task force. The cochairs shall convene the initial meeting of the task force. A steering committee consisting of the legislative members of the task force shall advise the cochairs on the meetings and other activities of the task force.

(2) The task force shall study the establishment of a family leave insurance program including, but not limited to, the following:

(a) The manner in which the benefits and the administrative costs should be financed;

(b) The manner in which the program should be implemented and administered;

(c) Any government efficiencies that should be adopted to improve program administration and reduce program costs; and

(d) The impacts, if any, of the family leave insurance program on the unemployment compensation system, and options for mitigating such impacts.

(3) Staff support for the task force must be provided by the senate committee services and the house of representatives office of program research. The task force may hire additional staff with specific technical expertise if such expertise is necessary to carry out the mandates of this study, and only if an appropriation is specifically provided for this purpose.

(4) Legislative members of the task force must be reimbursed for travel expenses in accordance with RCW 44.04.120. Nonlegislative members, except those representing an employer or organization, are entitled to be reimbursed for travel expenses in accordance with RCW 43.03.050 and 43.03.060.

(5) The expenses of the task force must be paid jointly by the senate and the house of representatives. Task force expenditures are subject to approval by the senate facilities and operations committee and the house of representatives executive rules committee, or their successor committees.

(6) The task force shall report its findings and recommendations, which shall include recommendations as to the specific manner in which the benefits and the administrative costs should be financed as well as proposed legislation, to the legislature by January 1, 2008.

(7) This section expires July 1, 2009." [2007 c 357 § 2.]

49.86.010 Definitions. (*Effective July 1, 2008.*) The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

(1) "Application year" means the twelve-month period beginning on the first day of the calendar week in which an individual files an application for family leave insurance benefits and, thereafter, the twelve-month period beginning with the first day of the calendar week in which the individual next files an application for family leave insurance benefits after the expiration of the individual's last preceding application year.

(2) "Calendar quarter" means the same as in RCW 50.04.050.

(3) "Child" means a biological or an adopted child.

(4) "Department" means the state agency to be directed to administer the family leave insurance program.

(5) "Director" means the director of the department.

(6) "Employer" means: (a) The same as in RCW 50.04.080; and (b) the state and its political subdivisions.

(7) "Employment" has the meaning provided in RCW 50.04.100.

(8) "Family leave" means leave: (a) Because of the birth of a child of the employee and in order to care for the child; or (b) because of the placement of a child with the employee for adoption.

(9) "Family leave insurance benefits" means the benefits payable under RCW 49.86.050 and 49.86.060.

(10) "Federal family and medical leave act" means the federal family and medical leave act of 1993 (Act Feb. 5, 1993, P.L. 103-3, 107 Stat. 6).

(11) "Qualifying year" means the first four of the last five completed calendar quarters or the last four completed calendar quarters immediately preceding the first day of the individual's application year.

(12) "Regularly working" means the average number of hours per workweek that an individual worked in the two quarters of the individual's qualifying year in which total wages were highest. [2007 c 357 § 3.]

Joint legislative task force—2007 c 357: See note following RCW 49.86.005.

49.86.020 Family leave insurance program. (*Effective July 1, 2008.*) (1) The department shall establish and administer a family leave insurance program and pay family leave insurance benefits as specified in this chapter.

(2) The department shall establish procedures and forms for filing claims for benefits under this chapter. The department shall notify the employer within five business days of a claim being filed under RCW 49.86.030.

(3) The department shall use information sharing and integration technology to facilitate the disclosure of relevant information or records by the employment security department, so long as an individual consents to the disclosure as required under RCW 49.86.030(4).

(4) Information contained in the files and records pertaining to an individual under this chapter are confidential and not open to public inspection, other than to public employees in the performance of their official duties. However, the individual or an authorized representative of an individual may review the records or receive specific information from the records on the presentation of the signed authoriza-

tion of the individual. An employer or the employer's duly authorized representative may review the records of an individual employed by the employer in connection with a pending claim. At the department's discretion, other persons may review records when such persons are rendering assistance to the department at any stage of the proceedings on any matter pertaining to the administration of this chapter.

(5) The department shall develop and implement an outreach program to ensure that individuals who may be eligible to receive family leave insurance benefits under this chapter are made aware of these benefits. Outreach information shall explain, in an easy to understand format, eligibility requirements, the claims process, weekly benefit amounts, maximum benefits payable, notice requirements, reinstatement and nondiscrimination rights, confidentiality, and coordination of leave under this chapter and other laws, collective bargaining agreements, and employer policies. Outreach information shall be available in English and other primary languages as defined in RCW 74.04.025. [2007 c 357 § 4.]

Joint legislative task force—2007 c 357: See note following RCW 49.86.005.

49.86.030 Eligibility for benefits. (*Effective July 1, 2008.*) Beginning October 1, 2009, family leave insurance benefits are payable to an individual during a period in which the individual is unable to perform his or her regular or customary work because he or she is on family leave if the individual:

(1) Files a claim for benefits in each week in which the individual is on family leave, and as required by rules adopted by the director;

(2) Has been employed for at least six hundred eighty hours in employment during the individual's qualifying year;

(3) Establishes an application year. An application year may not be established if the qualifying year includes hours worked before establishment of a previous application year;

(4) Consents to the disclosure of information or records deemed private and confidential under chapter 50.13 RCW. Initial disclosure of this information and these records by the employment security department to the department is solely for purposes related to the administration of this chapter. Further disclosure of this information or these records is subject to RCW 49.86.020(3);

(5) Discloses whether or not he or she owes child support obligations as defined in RCW 50.40.050; and

(6) Documents that he or she has provided the employer from whom family leave is to be taken with written notice of the individual's intention to take family leave in the same manner as an employee is required to provide notice in RCW 49.78.250. [2007 c 357 § 5.]

Joint legislative task force—2007 c 357: See note following RCW 49.86.005.

49.86.040 Disqualification from benefits. (*Effective July 1, 2008.*) An individual is disqualified from family leave insurance benefits beginning with the first day of the calendar week, and continuing for the next fifty-two consecutive weeks, in which the individual willfully made a false statement or misrepresentation regarding a material fact, or willfully failed to report a material fact, to obtain benefits under this chapter. [2007 c 357 § 6.]

Joint legislative task force—2007 c 357: See note following RCW 49.86.005.

49.86.050 Duration of benefits—Payment of benefits. (Effective July 1, 2008.) (1) The maximum number of weeks during which family leave insurance benefits are payable in an application year is five weeks. However, benefits are not payable during a waiting period consisting of the first seven calendar days of family leave taken in an application year, whether the first seven calendar days of family leave are employer paid or unpaid.

(2)(a) The first payment of benefits must be made to an individual within two weeks after the claim is filed or the family leave began, whichever is later, and subsequent payments must be made semimonthly thereafter.

(b) The payment of benefits under this chapter shall not be considered a binding determination of the obligations of the department under this chapter. The acceptance of compensation by the individual shall likewise not be considered a binding determination of his or her rights under this chapter. Whenever any payment of benefits under this chapter has been made and timely appeal therefrom has been made where the final decision is that the payment was improper, the individual shall repay it and recoupment may be made from any future payment due to the individual on any claim under this chapter. The director may exercise his or her discretion to waive, in whole or in part, the amount of any such payments where the recovery would be against equity and good conscience.

(c) If an individual dies before he or she receives a payment of benefits, the payment shall be made by the department and distributed consistent with the terms of the decedent's will or, if the decedent dies intestate, consistent with the terms of RCW 11.04.015. [2007 c 357 § 7.]

Joint legislative task force—2007 c 357: See note following RCW 49.86.005.

49.86.060 Amount of benefits. (Effective July 1, 2008.) The amount of family leave insurance benefits shall be determined as follows:

(1) The weekly benefit shall be two hundred fifty dollars per week for an individual who at the time of beginning family leave was regularly working thirty-five hours or more per week.

(2) If an individual who at the time of beginning family leave was regularly working thirty-five hours or more per week is on family leave for less than thirty-five hours but at least eight hours in a week, the individual's weekly benefit shall be .025 times the maximum weekly benefit times the number of hours of family leave taken in the week. Benefits are not payable for less than eight hours of family leave taken in a week.

(3) For an individual who at the time of beginning family leave was regularly working less than thirty-five hours per week, the department shall calculate a prorated schedule for a weekly benefit amount and a minimum number of hours of family leave that must be taken in a week for benefits to be payable, with the prorated schedule based on the amounts and the calculations specified under subsections (1) and (2) of this section.

(4) If an individual discloses that he or she owes child support obligations under RCW 49.86.030 and the department determines that the individual is eligible for benefits, the department shall notify the applicable state or local child support enforcement agency and deduct and withhold an amount from benefits in a manner consistent with RCW 50.40.050.

(5) If the internal revenue service determines that family leave insurance benefits under this chapter are subject to federal income tax and an individual elects to have federal income tax deducted and withheld from benefits, the department shall deduct and withhold the amount specified in the federal internal revenue code in a manner consistent with RCW 49.86.070. [2007 c 357 § 8.]

Joint legislative task force—2007 c 357: See note following RCW 49.86.005.

49.86.070 Federal income tax. (Effective July 1, 2008.) (1) If the internal revenue service determines that family leave insurance benefits under this chapter are subject to federal income tax, the department must advise an individual filing a new claim for family leave insurance benefits, at the time of filing such claim, that:

(a) The internal revenue service has determined that benefits are subject to federal income tax;

(b) Requirements exist pertaining to estimated tax payments;

(c) The individual may elect to have federal income tax deducted and withheld from the individual's payment of benefits at the amount specified in the federal internal revenue code; and

(d) The individual is permitted to change a previously elected withholding status.

(2) Amounts deducted and withheld from benefits must remain in the family leave insurance account until transferred to the federal taxing authority as a payment of income tax.

(3) The director shall follow all procedures specified by the federal internal revenue service pertaining to the deducting and withholding of income tax. [2007 c 357 § 9.]

Joint legislative task force—2007 c 357: See note following RCW 49.86.005.

49.86.080 Erroneous payments—Payments induced by willful misrepresentation—Claim rejected after payments. (Effective July 1, 2008.) If family leave insurance benefits are paid erroneously or as a result of willful misrepresentation, or if a claim for family leave benefits is rejected after benefits are paid, RCW 51.32.240 shall apply, except that appeals are governed by RCW 49.86.120, penalties are paid into the family leave insurance account, and the department shall seek repayment of benefits from the recipient. [2007 c 357 § 10.]

Joint legislative task force—2007 c 357: See note following RCW 49.86.005.

49.86.090 Leave and employment protection. (Effective July 1, 2008.) (1) During a period in which an individual receives family leave insurance benefits or earns waiting period credits under this chapter, the individual is entitled to family leave and, at the established ending date of leave, to be

restored to a position of employment with the employer from whom leave was taken.

(2) The individual entitled to leave under this section shall be restored to a position of employment in the same manner as an employee entitled to leave under chapter 49.78 RCW is restored to a position of employment, as specified in RCW 49.78.280.

(3) This section applies only to an individual if:

(a) The employer from whom the individual takes family leave employs more than twenty-five employees; and

(b) The individual has been employed for at least twelve months by that employer, and for at least one thousand two hundred fifty hours of service with that employer during the previous twelve-month period.

(4) This section shall be enforced as provided in chapter 49.78 RCW. [2007 c 357 § 11.]

Joint legislative task force—2007 c 357: See note following RCW 49.86.005.

49.86.100 Employment by same employer. (Effective July 1, 2008.) If spouses or people involved in a legal relationship established under chapter 26.60 RCW who are entitled to leave under this chapter are employed by the same employer, the employer may require that spouses or people involved in such a relationship governed by Title 26 RCW not take such leave concurrently. [2007 c 357 § 12.]

Joint legislative task force—2007 c 357: See note following RCW 49.86.005.

49.86.110 Elective coverage. (Effective July 1, 2008.) (1) An employer of individuals not covered by this chapter or a self-employed person, including a sole proprietor, partner, or joint venturer, may elect coverage under this chapter for all individuals in its employ for an initial period of not less than three years or a subsequent period of not less than one year immediately following another period of coverage. The employer or self-employed person must file a notice of election in writing with the director, as required by the department. The election becomes effective on the date of filing the notice.

(2) An employer or self-employed person who has elected coverage may withdraw from coverage within thirty days after the end of the three-year period of coverage, or at such other times as the director may prescribe by rule, by filing written notice with the director, such withdrawal to take effect not sooner than thirty days after filing the notice. Within five days of filing written notice of the withdrawal with the director, an employer must provide written notice of the withdrawal to all individuals in the employer's employ. [2007 c 357 § 13.]

Joint legislative task force—2007 c 357: See note following RCW 49.86.005.

49.86.120 Appeals. (Effective July 1, 2008.) (1) A person aggrieved by a decision of the department under this chapter must file a notice of appeal with the director, by mail or personally, within thirty days after the date on which a copy of the department's decision was communicated to the person. Upon receipt of the notice of appeal, the director shall request the assignment of an administrative law judge in accordance with chapter 34.05 RCW to conduct a hearing

and issue a proposed decision and order. The hearing shall be conducted in accordance with chapter 34.05 RCW.

(2) The administrative law judge's proposed decision and order shall be final and not subject to further appeal unless, within thirty days after the decision is communicated to the interested parties, a party petitions for review by the director. If the director's review is timely requested, the director may order additional evidence by the administrative law judge. On the basis of the evidence before the administrative law judge and such additional evidence as the director may order to be taken, the director shall render a decision affirming, modifying, or setting aside the administrative law judge's decision. The director's decision becomes final and not subject to further appeal unless, within thirty days after the decision is communicated to the interested parties, a party files a petition for judicial review as provided in chapter 34.05 RCW. The director is a party to any judicial action involving the director's decision and shall be represented in the action by the attorney general.

(3) If, upon administrative or judicial review, the final decision of the department is reversed or modified, the administrative law judge or the court in its discretion may award reasonable attorneys' fees and costs to the prevailing party. Attorneys' fees and costs owed by the department, if any, are payable from the family leave insurance account. [2007 c 357 § 14.]

Joint legislative task force—2007 c 357: See note following RCW 49.86.005.

49.86.130 Prohibited acts—Discrimination—Enforcement. (Effective July 1, 2008.) An employer, temporary help company, employment agency, employee organization, or other person may not discharge, expel, or otherwise discriminate against a person because he or she has filed or communicated to the employer an intent to file a claim, a complaint, or an appeal, or has testified or is about to testify or has assisted in any proceeding, under this chapter, at any time, including during the waiting period described in RCW 49.86.050 and the period in which the person receives family leave insurance benefits under this chapter. This section shall be enforced as provided in RCW 51.48.025. [2007 c 357 § 15.]

Joint legislative task force—2007 c 357: See note following RCW 49.86.005.

49.86.140 Coordination of leave. (Effective July 1, 2008.) (1)(a) Leave taken under this chapter must be taken concurrently with any leave taken under the federal family and medical leave act of 1993 (Act Feb. 5, 1993, P.L. 103-3, 107 Stat. 6) or under chapter 49.78 RCW.

(b) An employer may require that leave taken under this chapter be taken concurrently or otherwise coordinated with leave allowed under the terms of a collective bargaining agreement or employer policy, as applicable, for the birth or placement of a child. The employer must give individuals in its employ written notice of this requirement.

(2)(a) This chapter does not diminish an employer's obligation to comply with a collective bargaining agreement or employer policy, as applicable, that provides greater leave for the birth or placement of a child.

(b) An individual's right to leave under this chapter may not be diminished by a collective bargaining agreement entered into or renewed or an employer policy adopted or retained after July 1, 2008. Any agreement by an individual to waive his or her rights under this chapter is void as against public policy. [2007 c 357 § 16.]

Joint legislative task force—2007 c 357: See note following RCW 49.86.005.

49.86.150 Continuing entitlement or contractual rights—Not created. (Effective July 1, 2008.) This chapter does not create a continuing entitlement or contractual right. The legislature reserves the right to amend or repeal all or part of this chapter at any time, and a benefit or other right granted under this chapter exists subject to the legislature's power to amend or repeal this chapter. There is no vested private right of any kind against such amendment or repeal. [2007 c 357 § 17.]

Joint legislative task force—2007 c 357: See note following RCW 49.86.005.

49.86.160 Rules. (Effective July 1, 2008.) The director may adopt rules as necessary to implement this chapter. In adopting rules, the director shall maintain consistency with the rules adopted to implement the federal family and medical leave act, and chapter 49.78 RCW, to the extent such rules are not in conflict with this chapter. [2007 c 357 § 18.]

Joint legislative task force—2007 c 357: See note following RCW 49.86.005.

49.86.170 Family leave insurance account. The family leave insurance account is created in the custody of the state treasurer. Expenditures from the account may be used only for the purposes of the family leave insurance program. Only the director of the department of labor and industries or the director's designee may authorize expenditures from the account. The account is subject to the allotment procedures under chapter 43.88 RCW. An appropriation is required for administrative expenses, but not for benefit payments. [2007 c 357 § 19.]

Joint legislative task force—2007 c 357: See note following RCW 49.86.005.

49.86.180 Family leave insurance account funds—Investment. Whenever, in the judgment of the state investment board, there shall be in the family leave insurance account funds in excess of that amount deemed by the state investment board to be sufficient to meet the current expenditures properly payable therefrom, the state investment board shall have full power to invest, reinvest, manage, contract, or sell or exchange investments acquired with such excess funds in the manner prescribed by RCW 43.84.150, and not otherwise. [2007 c 357 § 20.]

Joint legislative task force—2007 c 357: See note following RCW 49.86.005.

49.86.190 Initial program administration—Loans. (Expires October 1, 2011.) If necessary to ensure that money is available in the family leave insurance account for the initial administration of the family leave insurance program, the director of labor and industries may, from time to time before

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July 1, 2009, lend funds from the supplemental pension fund to the family leave insurance account. These loaned funds may be expended solely for the initial administration of the program under this chapter. The director of labor and industries shall repay the supplemental pension fund, plus its proportionate share of earnings from investment of moneys in the supplemental pension fund during the loan period, from the family leave insurance account within two years of the date of the loan. This section expires October 1, 2011. [2007 c 357 § 22.]

Joint legislative task force—2007 c 357: See note following RCW 49.86.005.

49.86.200 Authority to contract. (Expires October 1, 2011.) (1) The department of labor and industries may contract or enter into interagency agreements with other state agencies for the initial administration of the family leave insurance program.

(2) This section expires October 1, 2011. [2007 c 357 § 24.]

Joint legislative task force—2007 c 357: See note following RCW 49.86.005.

49.86.210 Reports. (Effective July 1, 2008.) Beginning September 1, 2010, the department shall report to the legislature by September 1st of each year on projected and actual program participation, premium rates, fund balances, and outreach efforts. [2007 c 357 § 26.]

Joint legislative task force—2007 c 357: See note following RCW 49.86.005.

49.86.900 Severability—2007 c 357. If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected. [2007 c 357 § 27.]

49.86.901 Captions not law—2007 c 357. Captions used in this act are not any part of the law. [2007 c 357 § 28.]

49.86.902 Effective dates—2007 c 357. (1) Sections 3 through 18 and 26 of this act take effect July 1, 2008.

(2) Sections 2 and 19 through 25 of this act are necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and take effect immediately [May 8, 2007]. [2007 c 357 § 30.]

Title 50

UNEMPLOYMENT COMPENSATION

Chapters

50.04 Definitions.

50.12 Administration.

50.16 Funds.

50.20 Benefits and claims.

50.24 Contributions by employers.

50.29 Employer experience rating.

50.44 Special coverage provisions.

Chapter 50.04 RCW

DEFINITIONS

Sections

50.04.065	Common paymaster or pay agent.
50.04.080	Employer.
50.04.090	Employing unit.
50.04.165	Employment—Corporate officers—Election of coverage—Notification—Reinstatement of coverage. (<i>Effective January 1, 2009.</i>)
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50.04.245	Employment—Services performed for temporary services agency, employee leasing agency, or services referral agency.
50.04.248	Employment—Third-party payer.
50.04.275	Employment—Small performing arts.
50.04.298	Professional employer—Coemployment—Covered employee.
50.04.310	Unemployed individual—Individual not "unemployed"—Corporate officer. (<i>Effective January 1, 2008.</i>)

50.04.065 Common paymaster or pay agent. (1) For purposes of this title, "common paymaster" or "common pay agent" means an independent third party who contracts with, and represents, two or more employers, and who files a combined tax report for those employers.

(2) Common paymaster combined tax reporting is prohibited. "Common paymaster" does not meet the definition of a joint account under RCW 50.24.170.

(3) A common pay agent or common paymaster is not an employer as defined in RCW 50.04.080 or an employing unit as defined in RCW 50.04.090. [2007 c 146 § 16.]

Conflict with federal requirements—Severability—2007 c 146: See notes following RCW 50.04.080.

50.04.080 Employer. (1) "Employer" means any individual or type of organization, including any partnership, association, trust, estate, joint stock company, insurance company, limited liability company, or corporation, whether domestic or foreign, or the receiver, trustee in bankruptcy, trustee, or the legal representative of a deceased person, having any person in employment or, having become an employer, has not ceased to be an employer as provided in this title.

(2) For the purposes of collection remedies available under chapter 50.24 RCW, "employer," in the case of a corporation or limited liability company, includes persons found personally liable for any unpaid contributions and interest and penalties on those contributions under RCW 50.24.230.

(3) Except for corporations covered by chapters 50.44 and 50.50 RCW, "employer" does not include a corporation when all personal services are performed only by bona fide corporate officers, unless the corporation registers with the department as required in RCW 50.12.070 and elects to provide coverage for its corporate officers under RCW 50.24.160. [2007 c 146 § 19; 1985 c 41 § 1; 1971 c 3 § 5; 1949 c 214 § 2; 1945 c 35 § 9; Rem. Supp. 1949 § 9998-148. Prior: 1943 c 127 § 13; 1941 c 253 § 14; 1939 c 214 § 19; 1937 c 162 § 19.]

Conflict with federal requirements—2007 c 146: "If any part of this act is found to be in conflict with federal requirements that are a prescribed condition to the allocation of federal funds to the state or the eligibility of employers in this state for federal unemployment tax credits, the conflicting part of this act is inoperative solely to the extent of the conflict, and the finding or determination does not affect the operation of the remainder of this act. Rules adopted under this act must meet federal requirements that are a necessary condition to the receipt of federal funds by the state or the granting

of federal unemployment tax credits to employers in this state." [2007 c 146 § 21.]

Severability—2007 c 146: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [2007 c 146 § 22.]

Conflict with federal requirements—1985 c 41: "If any part of this act is found to be in conflict with federal requirements which are a prescribed condition to the allocation of federal funds to the state or the eligibility of employers in this state for federal unemployment tax credits, the conflicting part of this act is hereby declared to be inoperative solely to the extent of the conflict, and such finding or determination shall not affect the operation of the remainder of this act. The rules under this act shall meet federal requirements which are a necessary condition to the receipt of federal funds by the state or the granting of federal unemployment tax credits to employers in this state." [1985 c 41 § 2.]

Severability—1985 c 41: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1985 c 41 § 3.]

Construction—Compliance with federal act—1971 c 3: See RCW 50.44.080.

50.04.090 Employing unit. (1) "Employing unit" means any individual or any type of organization, including any partnership, association, trust, estate, joint stock company, insurance company, or corporation, whether domestic or foreign, or the receiver, trustee in bankruptcy, trustee or successor thereof, or the legal representative of a deceased person, which has or subsequent to January 1, 1937, had in its employ or in its "employment" one or more individuals performing services within this state. The state and its political subdivisions shall be deemed employing units as to any transactions occurring on or after September 21, 1977, which would render an employing unit liable for contributions, interest, or penalties under RCW 50.24.130. "Employing unit" includes Indian tribes as defined in RCW 50.50.010.

(2) Except for corporations covered by chapters 50.44 and 50.50 RCW, "employing unit" does not include a corporation when all personal services are performed only by bona fide corporate officers, unless the corporation registers with the department as required in RCW 50.12.070 and elects to provide coverage for its corporate officers under RCW 50.24.160. [2007 c 146 § 20; 2001 1st sp.s. c 11 § 1; 1983 1st ex.s. c 23 § 2; 1977 ex.s. c 73 § 1; 1947 c 215 § 2; 1945 c 35 § 10; Rem. Supp. 1947 § 9998-149. Prior: 1943 c 127 § 13; 1941 c 253 § 14; 1939 c 214 § 19; 1937 c 162 § 19.]

Conflict with federal requirements—Severability—2007 c 146: See notes following RCW 50.04.080.

Conflict with federal requirements—Severability—Effective date—Retroactive application—2001 1st sp.s. c 11: See RCW 50.50.900 through 50.50.903.

Conflict with federal requirements—Effective dates—Construction—1983 1st ex.s. c 23: See notes following RCW 50.04.073.

50.04.165 Employment—Corporate officers—Election of coverage—Notification—Reinstatement of coverage. (*Effective January 1, 2009.*) (1)(a) Services performed by a person appointed as an officer of a corporation under RCW 23B.08.400 are considered services in employment. However, a corporation, other than those covered by chapters 50.44 and 50.50 RCW, may elect to exempt from coverage under this title as provided in subsection (2) of this section,

any bona fide officer of a public company as defined in RCW 23B.01.400 who:

(i) Is voluntarily elected or voluntarily appointed in accordance with the articles of incorporation or bylaws of the corporation;

(ii) Is a shareholder of the corporation;

(iii) Exercises substantial control in the daily management of the corporation; and

(iv) Whose primary responsibilities do not include the performance of manual labor.

(b) A corporation, other than those covered by chapters 50.44 and 50.50 RCW, that is not a public company as defined in RCW 23B.01.400 may exempt from coverage under this title as provided in subsection (2) of this section:

(i) Eight or fewer bona fide officers who: Voluntarily agree to be exempted from coverage; are voluntarily elected or voluntarily appointed in accordance with the articles of incorporation or bylaws of the corporation; and who exercise substantial control in the daily management of the corporation, from coverage under this title without regard to the officers' performance of manual labor if the exempted officer is a shareholder of the corporation; and

(ii) Any number of officers if all the exempted officers are related by blood within the third degree or marriage.

(c) Determinations with respect to the status of persons performing services for a corporation must be made, in part, by reference to Title 23B RCW and to compliance by the corporation with its own articles of incorporation and bylaws. For the purpose of determining coverage under this title, substance controls over form, and mandatory coverage under this title extends to all workers of this state, regardless of honorary titles conferred upon those actually serving as workers.

(2)(a) The corporation must notify the department when it elects to exempt one or more corporate officers from coverage. The notice must be in a format prescribed by the department and signed by the officer or officers being exempted and by another corporate officer verifying the decision to be exempt from coverage.

(b) The election to exempt one or more corporate officers from coverage under this title may be made when the corporation registers as required under RCW 50.12.070. The corporation may also elect exemption at any time following registration; however, an exemption will be effective only as of the first day of a calendar year. A written notice from the corporation must be sent to the department by January 15th following the end of the last calendar year of coverage. Exemption from coverage will not be retroactive, and the corporation is not eligible for a refund or credit for contributions paid for corporate officers for periods before the effective date of the exemption.

(3) A corporation may elect to reinstate coverage for one or more officers previously exempted under this section, subject to the following:

(a) Coverage may be reinstated only at set intervals of five years beginning with the calendar year that begins five years after January 1, 2009.

(b) Coverage may only be reinstated effective the first day of the calendar year. A written notice from the corporation must be sent to the department by January 15th following the end of the last calendar year the exemption from coverage will apply.

(c) Coverage will not be reinstated if the corporation: Has committed fraud related to the payment of contributions within the previous five years; is delinquent in the payment of contributions; or is assigned the array calculation factor rate for nonqualified employers because of a failure to pay contributions when due as provided in RCW 50.29.025, or for related reasons as determined by the commissioner.

(d) Coverage will not be reinstated retroactively.

(4) Except for corporations covered by chapters 50.44 and 50.50 RCW, personal services performed by bona fide corporate officers for corporations described under RCW 50.04.080(3) and 50.04.090(2) are not considered services in employment, unless the corporation registers with the department as required in RCW 50.12.070 and elects to provide coverage for its corporate officers under RCW 50.24.160. [2007 c 146 § 4; 1993 c 290 § 2; 1993 c 58 § 1; 1991 c 72 § 57; 1986 c 110 § 1; 1983 1st ex.s. c 23 § 4; 1981 c 35 § 13.]

Effective date—2007 c 146 § 4: "Section 4 of this act takes effect January 1, 2009." [2007 c 146 § 24.]

Conflict with federal requirements—Severability—2007 c 146: See notes following RCW 50.04.080.

Conflict with federal requirements—1993 c 58: "If any part of this act is found to be in conflict with federal requirements which are a prescribed condition to the allocation of federal funds to the state or the eligibility of employers in this state for federal unemployment tax credits, the conflicting part of this act is hereby declared to be inoperative solely to the extent of the conflict, and such finding or determination shall not affect the operation of the remainder of this act. The rules under this act shall meet federal requirements which are a necessary condition to the receipt of federal funds by the state or the granting of federal unemployment tax credits to employers in this state." [1993 c 58 § 4.]

Severability—1993 c 58: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1993 c 58 § 5.]

Effective date—1993 c 58: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and shall take effect March 6, 1993." [1993 c 58 § 6.] 1993 c 58 was signed by the governor on April 19, 1993.

Conflict with federal requirements—1986 c 110: "If any part of this act is found to be in conflict with federal requirements which are a prescribed condition to the allocation of federal funds to the state or the eligibility of employers in this state for federal unemployment tax credits, the conflicting part of this act is hereby declared to be inoperative solely to the extent of the conflict, and such finding or determination shall not affect the operation of the remainder of this act. The rules under this act shall meet federal requirements which are a necessary condition to the receipt of federal funds by the state or the granting of federal unemployment tax credits to employers in this state." [1986 c 110 § 2.]

Severability—1986 c 110: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1986 c 110 § 3.]

Effective date—1986 c 110: "This act shall take effect July 1, 1986." [1986 c 110 § 4.]

Conflict with federal requirements—Effective dates—Construction—1983 1st ex.s. c 23: See notes following RCW 50.04.073.

Severability—1981 c 35: See note following RCW 50.22.030.

50.04.240 Employment—Newspaper delivery person. The term "employment" shall not include service as a newspaper delivery person selling or distributing newspapers on the street or from house to house. [2007 c 218 § 85; 1945 c 35 § 25; Rem. Supp. 1945 § 9998-163. Prior: 1943 c 127 § 13; 1941 c 253 § 14; 1939 c 214 § 16; 1937 c 162 § 19.]

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

Conflict with federal requirements—Severability—2007 c 146: See notes following RCW 50.04.080.

50.04.245 Employment—Services performed for temporary services agency, employee leasing agency, or services referral agency. (1) Subject to the other provisions of this title, personal services performed for, or for the benefit of, a third party pursuant to a contract with a temporary staffing services company or services referral agency constitutes employment for the temporary staffing services company or services referral agency when the agency is responsible, under contract or in fact, for the payment of wages in remuneration for the services performed.

(2) The temporary staffing services company or services referral agency is considered the employer as defined in RCW 50.04.080.

(3) For the purposes of this section:

(a) "Temporary staffing services company" means an individual or entity that engages in: Recruiting and hiring its own employees; finding other organizations that need the services of those employees; and assigning those employees on a temporary basis to perform work at or services for a client to support or supplement the client's work forces, or to provide assistance in special work situations, such as employee absences, skill shortages, and seasonal workloads, or to perform special assignments or projects, all under the direction and supervision of the client. "Temporary staffing services company" does not include professional employer organizations as defined in RCW 50.04.298, permanent employee leasing, or permanent employee placement services.

(b) "Services referral agency" means an individual or entity other than a professional employer organization as defined in RCW 50.04.298 that is engaged in the business of offering the services of one or more individuals to perform specific tasks for a third party. [2007 c 146 § 14; 1995 c 120 § 1.]

Conflict with federal requirements—Severability—2007 c 146: See notes following RCW 50.04.080.

Conflict with federal requirements—1995 c 120: "If any part of this act is found to be in conflict with federal requirements that are a prescribed condition to the allocation of federal funds to the state or the eligibility of employers in this state for federal unemployment tax credits, the conflicting part of this act is hereby declared to be inoperative solely to the extent of the conflict, and such finding or determination shall not affect the operation of the remainder of this act. The rules under this act shall meet federal requirements that are a necessary condition to the receipt of federal funds by the state or the granting of federal unemployment tax credits to employers in this state." [1995 c 120 § 2.]

50.04.248 Employment—Third-party payer. (1) Subject to the other provisions of this title, personal services performed for, or for the benefit of, an employer who utilizes a third-party payer constitutes employment for the employer. The third-party payer is not considered the employer as defined in RCW 50.04.080.

(2) For purposes of this section, "third-party payer" means an individual or entity that enters into an agreement with one or more employers to provide administrative, human resource, or payroll administration services, but does not provide an employment or coemployment relationship. Temporary staffing services companies, services referral agencies, professional employer organizations, and labor organizations are not third-party payers. [2007 c 146 § 15.]

50.04.275 Employment—Small performing arts. The term "employment" shall not include services performed by a person who is participating in a performance sponsored by an employer whose North American industry classification system code is within "711110," "711120," "711130," or "712110," so long as the person receives no remuneration other than a nominal stipend and the employer does not have more than three individuals in its employ during any portion of a day during the calendar year.

For purposes of this section, "stipend" means a fixed sum of money paid periodically to defray expenses. The stipend is presumed to defray the person's incidental expenses involved in participating in the performance, including, but not limited to, meals, transportation, lodging, costumes, supplies, and child care. [2007 c 366 § 1.]

50.04.298 Professional employer—Coemployment—Covered employee. For the purposes of this title:

(1) "Professional employer organization" means a person or entity that enters into an agreement with one or more client employers to provide professional employer services. "Professional employer organization" includes entities that use the term "staff leasing company," "permanent leasing company," "registered staff leasing company," "employee leasing company," "administrative employer," or any other name, when they provide professional employer services to client employers. The following are not classified as professional employer organizations: Independent contractors in RCW 50.04.140; temporary staffing services companies and services referral agencies as defined in RCW 50.04.245; third-party payers as defined in RCW 50.04.248; or labor organizations.

(2) "Client employer" means any employer who enters into a professional employer agreement with a professional employer organization.

(3) "Coemployer" means either a professional employer organization or a client employer that has entered into a professional employer agreement.

(4) "Covered employee" means an individual performing services for a client employer that constitutes employment under this title.

(5) "Professional employer services" means services provided by the professional employer organization to the client employer, which include, but are not limited to, human resource functions, risk management, or payroll administration services, in a coemployment relationship.

(6) "Coemployment relationship" means a relationship that is intended to be ongoing rather than temporary or project-specific, where the rights, duties, and obligations of an employer in an employment relationship are allocated between coemployers pursuant to a professional employer agreement and state law. A coemployment relationship exists only if a majority of the employees performing services to a client employer, or to a division or work unit of a client employer, are covered employees. In determining the allocation of rights and obligations in a coemployment relationship:

(a) The professional employer organization has only those employer rights and is subject only to those obligations specifically allocated to it by the professional employer agreement or state law;

(b) The client employer has those rights and obligations allocated to it by the professional employer agreement or state law, as well as any other right or obligation of an employer that is not specifically allocated by the professional employer agreement or state law.

(7) "Professional employer agreement" means a written contract between a client employer and a professional employer organization that provides for: (a) The coemployment of covered employees; and (b) the allocation of employer rights and obligations between the client and the professional employer organization with respect to the covered employees. [2007 c 146 § 8.]

Report on implementation and impact—2007 c 146 §§ 8-12: "The department shall report on the implementation of sections 8 through 12 of this act and its impacts on professional employer organizations, small businesses, and the integrity and operations of the unemployment insurance system operated under Title 50 RCW. The department shall report to the unemployment insurance advisory committee and to the appropriate committees of the legislature no later than December 1, 2010." [2007 c 146 § 13.]

Conflict with federal requirements—Severability—2007 c 146: See notes following RCW 50.04.080.

50.04.310 Unemployed individual—Individual not "unemployed"—Corporate officer. (Effective January 1, 2008.) (1) An individual is "unemployed" in any week during which the individual performs no services and with respect to which no remuneration is payable to the individual, or in any week of less than full time work, if the remuneration payable to the individual with respect to such week is less than one and one-third times the individual's weekly benefit amount plus five dollars. The commissioner shall prescribe regulations applicable to unemployed individuals making such distinctions in the procedures as to such types of unemployment as the commissioner deems necessary.

(2) An individual is not "unemployed" during any week which falls totally within a period during which the individual, pursuant to a collective bargaining agreement or individual employment contract, is employed full time in accordance with a definition of full time contained in the agreement or contract, and for which compensation for full time work is payable. This subsection may not be applied retroactively to an individual who had no guarantee of work at the start of such period and subsequently is provided additional work by the employer.

(3) An officer of a corporation who owns ten percent or more of the outstanding stock of the corporation, or a corporate officer who is a family member of an officer who owns ten percent or more of the outstanding stock of the corporation, whose claim for benefits is based on any wages with that corporation, is:

(a) Not "unemployed" in any week during the individual's term of office or ownership in the corporation, even if wages are not being paid;

(b) "Unemployed" in any week upon dissolution of the corporation or if the officer permanently resigns or is permanently removed from their appointment and responsibilities with that corporation in accordance with its articles of incorporation or bylaws.

As used in this section, "family member" means persons who are members of a family by blood or marriage as parents, stepparents, grandparents, spouses, children, brothers, sisters, stepchildren, adopted children, or grandchildren. [2007 c 146 § 5; 1984 c 134 § 1; 1973 2nd ex.s. c 7 § 1; 1945 c 35 § 32; Rem. Supp. 1945 § 9998-170. Prior: 1943 c 127 § 13; 1941 c 253 § 14; 1939 c 214 § 16; 1939 c 162 § 19.]

Effective date—2007 c 146 §§ 5, 6, and 10-12: "Sections 5, 6, and 10 through 12 of this act take effect January 1, 2008." [2007 c 146 § 25.]

Conflict with federal requirements—Severability—2007 c 146: See notes following RCW 50.04.080.

Application—1973 2nd ex.s. c 7: "This act shall apply to weeks of unemployment commencing on or after January 6, 1974." [1973 2nd ex.s. c 7 § 4.]

Chapter 50.12 RCW ADMINISTRATION

Sections

50.12.070	Employing unit records, reports, and registration—Unified business identifier account number records.
50.12.220	Penalties for late reports or contributions—Warning—Assessment—Waiver—Appeal.
50.12.290	Printed materials—Department's duties.
50.12.300	Professional employer organizations—Reports and records.
50.12.310	Professional employer organizations—Revocation of authority to act as coemployer. (<i>Effective January 1, 2008.</i>)

50.12.070 Employing unit records, reports, and registration—Unified business identifier account number records. (1)(a) Each employing unit shall keep true and accurate work records, containing such information as the commissioner may prescribe. Such records shall be open to inspection and be subject to being copied by the commissioner or his or her authorized representatives at any reasonable time and as often as may be necessary. The commissioner may require from any employing unit any sworn or unsworn reports with respect to persons employed by it, which he or she deems necessary for the effective administration of this title.

(b) An employer who contracts with another person or entity for work subject to chapter 18.27 or 19.28 RCW shall obtain and preserve a record of the unified business identifier account number for the person or entity performing the work. Failure to obtain or maintain the record is subject to RCW 39.06.010 and to a penalty determined by the commissioner, but not to exceed two hundred fifty dollars, to be collected as provided in RCW 50.24.120.

(2)(a) Each employer shall register with the department and obtain an employment security account number. Registration must include the names and social security numbers of the owners, partners, members, or corporate officers of the business, as well as their mailing addresses and telephone numbers and other information the commissioner may by rule prescribe. Registration of corporations must also include the percentage of stock ownership for each corporate officer, delineated by zero percent, less than ten percent, or ten percent or more. Any changes in the owners, partners, members, or corporate officers of the business, and changes in percentage of ownership of the outstanding shares of stock of the corporation, must be reported to the department at intervals prescribed by the commissioner under (b) of this subsection.

(b) Each employer shall make periodic reports at such intervals as the commissioner may by regulation prescribe, setting forth the remuneration paid for employment to workers in its employ, the full names and social security numbers of all such workers, and the total hours worked by each worker and such other information as the commissioner may by regulation prescribe.

(c) If the employing unit fails or has failed to report the number of hours in a reporting period for which a worker worked, such number will be computed by the commissioner and given the same force and effect as if it had been reported by the employing unit. In computing the number of such hours worked, the total wages for the reporting period, as reported by the employing unit, shall be divided by the dollar amount of the state's minimum wage in effect for such reporting period and the quotient, disregarding any remainder, shall be credited to the worker: PROVIDED, That although the computation so made will not be subject to appeal by the employing unit, monetary entitlement may be redetermined upon request if the department is provided with credible evidence of the actual hours worked. Benefits paid using computed hours are not considered an overpayment and are not subject to collections when the correction of computed hours results in an invalid or reduced claim; however:

(i) A contribution paying employer who fails to report the number of hours worked will have its experience rating account charged for all benefits paid that are based on hours computed under this subsection; and

(ii) An employer who reimburses the trust fund for benefits paid to workers and fails to report the number of hours worked shall reimburse the trust fund for all benefits paid that are based on hours computed under this subsection. [2007 c 146 § 1; 1997 c 54 § 2; 1983 1st ex.s. c 23 § 8; 1977 ex.s. c 33 § 3; 1975 1st ex.s. c 228 § 2; 1945 c 35 § 46; Rem. Supp. 1945 § 9998-184. Prior: 1943 c 127 § 8; 1939 c 214 § 9; 1937 c 162 § 11.]

Conflict with federal requirements—Severability—2007 c 146: See notes following RCW 50.04.080.

Conflict with federal requirements—Effective dates—Construction—1983 1st ex.s. c 23: See notes following RCW 50.04.073.

Effective dates—Construction—1977 ex.s. c 33: See notes following RCW 50.04.030.

Effective date—1975 1st ex.s. c 228: See note following RCW 50.04.355.

50.12.220 Penalties for late reports or contributions—Warning—Assessment—Waiver—Appeal. (1) If an employer fails to file a timely report as required by RCW 50.12.070, or the rules adopted pursuant thereto, the employer is subject to a penalty of twenty-five dollars per violation, unless the penalty is waived by the commissioner.

(2) An employer who files an incomplete or incorrectly formatted tax and wage report as required by RCW 50.12.070 must receive a warning letter for the first occurrence. The warning letter will provide instructions for accurate reporting or notify the employer how to obtain technical assistance from the department. Except as provided in subsections (3) and (4) of this section, for subsequent occurrences within five years of the last occurrence, the employer is subject to a penalty as follows:

(a) When no contributions are due: For the second occurrence, the penalty is seventy-five dollars; for the third occurrence, the penalty is one hundred fifty dollars; and for the fourth occurrence and for each occurrence thereafter, the penalty is two hundred fifty dollars.

(b) When contributions are due: For the second occurrence, the penalty is ten percent of the quarterly contributions due, but not less than seventy-five dollars and not more than two hundred fifty dollars; for the third occurrence, the penalty is ten percent of the quarterly contributions due, but not less than one hundred fifty dollars and not more than two hundred fifty dollars; and for the fourth occurrence and each occurrence thereafter, the penalty is two hundred fifty dollars.

(3) If an employer knowingly misrepresents to the employment security department the amount of his or her payroll upon which contributions under this title are based, the employer shall be liable to the state for up to ten times the amount of the difference in contributions paid, if any, and the amount the employer should have paid and for the reasonable expenses of auditing his or her books and collecting such sums. Such liability may be enforced in the name of the department.

(4) If contributions are not paid on the date on which they are due and payable as prescribed by the commissioner, there shall be assessed a penalty of five percent of the amount of the contributions for the first month or part thereof of delinquency; there shall be assessed a total penalty of ten percent of the amount of the contributions for the second month or part thereof of delinquency; and there shall be assessed a total penalty of twenty percent of the amount of the contributions for the third month or part thereof of delinquency. No penalty so added shall be less than ten dollars. These penalties are in addition to the interest charges assessed under RCW 50.24.040.

(5) Penalties shall not accrue on contributions from an estate in the hands of a receiver, executor, administrator, trustee in bankruptcy, common law assignee, or other liquidating officer subsequent to the date when such receiver, executor, administrator, trustee in bankruptcy, common law assignee, or other liquidating officer qualifies as such, but contributions accruing with respect to employment of persons by a receiver, executor, administrator, trustee in bankruptcy, common law assignee, or other liquidating officer shall become due and shall be subject to penalties in the same manner as contributions due from other employers.

(6) Where adequate information has been furnished to the department and the department has failed to act or has advised the employer of no liability or inability to decide the issue, penalties shall be waived by the commissioner. Penalties may also be waived for good cause if the commissioner determines that the failure to file timely, complete, and correctly formatted reports or pay timely contributions was not due to the employer's fault.

(7) Any decision to assess a penalty as provided by this section shall be made by the chief administrative officer of the tax branch or his or her designee.

(8) Nothing in this section shall be construed to deny an employer the right to appeal the assessment of any penalty. Such appeal shall be made in the manner provided in RCW

50.32.030. [2007 c 146 § 3; 2006 c 47 § 3; 2004 c 97 § 1; 2003 2nd sp.s. c 4 § 22; 1987 c 111 § 2; 1979 ex.s. c 190 § 1.]

Application—2007 c 146 § 3: "Section 3 of this act applies for penalties assessed on reports and contributions due beginning October 1, 2007." [2007 c 146 § 23.]

Conflict with federal requirements—Severability—2007 c 146: See notes following RCW 50.04.080.

Conflict with federal requirements—Severability—Effective date—Retroactive application—2006 c 47: See notes following RCW 50.29.062.

Conflict with federal requirements—Severability—Effective date—2003 2nd sp.s. c 4: See notes following RCW 50.01.010.

Conflict with federal requirements—1987 c 111: "If any part of this act is found to be in conflict with federal requirements which are a prescribed condition to the allocation of federal funds to the state or the eligibility of employers in this state for federal unemployment tax credits, the conflicting part of this act is hereby declared to be inoperative solely to the extent of the conflict, and such finding or determination shall not affect the operation of the remainder of this act. The rules under this act shall meet federal requirements which are a necessary condition to the receipt of federal funds by the state or the granting of federal unemployment tax credits to employers in this state." [1987 c 111 § 10.]

Severability—1987 c 111: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1987 c 111 § 11.]

Effective date—1987 c 111: "This act shall take effect July 1, 1987. Sections 2 and 8 of this act shall be effective for quarters beginning on and after July 1, 1987." [1987 c 111 § 12.]

50.12.290 Printed materials—Department's duties.

When an employer initially files a master application under chapter 19.02 RCW for the purpose, in whole or in part, of registering to pay unemployment insurance taxes, the employment security department shall send to the employer any printed material the department recommends or requires the employer to post. Any time the printed material has substantive changes in the information, the department shall send a copy to each employer. [2007 c 287 § 1.]

50.12.300 Professional employer organizations—Reports and records. (1) A professional employer organization must register with the department and ensure that its client employers are registered with the department as provided in RCW 50.12.070.

(2) By September 1, 2007, the professional employer organization shall provide the department with:

(a) The names, addresses, unified business identifier numbers, and employment security account numbers of all its existing client employers who do business or have covered employees in Washington state. This requirement applies whether or not the client employer currently has covered employees performing services in Washington state;

(b) The names and social security numbers of corporate officers, owners, or limited liability company members of client employers; and

(c) The business location in Washington state where payroll records of its client employers will be made available for review or inspection upon request of the department.

(3) For client employers registering for the first time as required in RCW 50.12.070, the professional employer organization must:

(a) Provide the names, addresses, unified business identifier numbers, and employment security account numbers of the client employers who do business or have covered

employees in Washington state. This requirement applies whether or not the client employer currently has covered employees performing services in Washington state;

(b) Provide the names and social security numbers of corporate officers, owners, or limited liability company members of the client employers; and

(c) Provide the business location in Washington state where payroll records of its client employers will be made available for review or inspection at the time of registration or upon request of the department.

(4) The professional employer organization must notify the department within thirty days each time it adds or terminates a relationship with a client employer. Notification must take place on forms provided by the department. The notification must include the name, employment security account number, unified business identifier number, and address of the client employer, as well as the effective date the relationship began or terminated.

(5) The professional employer organization must provide a power of attorney, confidential information authorization, or other evidence, completed by each client employer as required by the department, authorizing it to act on behalf of the client employer for unemployment insurance purposes.

(6) The professional employer organization must file quarterly wage and contribution reports with the department. The professional employer organization may file either a single electronic report containing separate and distinct information for each client employer and using the employer account number and tax rate assigned to each client employer by the department, or separate paper reports for each client employer.

(7) The professional employer organization must maintain accurate payroll records for each client employer and make these records available for review or inspection upon request of the department at the location provided by the professional employer organization. [2007 c 146 § 9.]

Report on implementation and impact—2007 c 146 §§ 8-12: See note following RCW 50.04.298.

Conflict with federal requirements—Severability—2007 c 146: See notes following RCW 50.04.080.

50.12.310 Professional employer organizations—Revocation of authority to act as coemployer. (*Effective January 1, 2008.*) A professional employer organization's authority to act as a coemployer for purposes of this title may be revoked by the department when it determines that the professional employer organization has substantially failed to comply with the requirements of RCW 50.12.300. [2007 c 146 § 12.]

Report on implementation and impact—2007 c 146 §§ 8-12: See note following RCW 50.04.298.

Effective date—2007 c 146 §§ 5, 6, and 10-12: See note following RCW 50.04.310.

Conflict with federal requirements—Severability—2007 c 146: See notes following RCW 50.04.080.

Chapter 50.16 RCW

FUNDS

Sections

50.16.010 Unemployment compensation fund—Administrative contingency fund—Federal interest payment fund.

50.16.010 Unemployment compensation fund—Administrative contingency fund—Federal interest payment fund. (1) There shall be maintained as special funds, separate and apart from all public moneys or funds of this state an unemployment compensation fund, an administrative contingency fund, and a federal interest payment fund, which shall be administered by the commissioner exclusively for the purposes of this title, and to which RCW 43.01.050 shall not be applicable.

(2)(a) The unemployment compensation fund shall consist of:

(i) All contributions collected under RCW 50.24.010 and payments in lieu of contributions collected pursuant to the provisions of this title;

(ii) Any property or securities acquired through the use of moneys belonging to the fund;

(iii) All earnings of such property or securities;

(iv) Any moneys received from the federal unemployment account in the unemployment trust fund in accordance with Title XII of the social security act, as amended;

(v) All money recovered on official bonds for losses sustained by the fund;

(vi) All money credited to this state's account in the unemployment trust fund pursuant to section 903 of the social security act, as amended;

(vii) All money received from the federal government as reimbursement pursuant to section 204 of the federal-state extended compensation act of 1970 (84 Stat. 708-712; 26 U.S.C. Sec. 3304); and

(viii) All moneys received for the fund from any other source.

(b) All moneys in the unemployment compensation fund shall be commingled and undivided.

(3)(a) Except as provided in (b) of this subsection, the administrative contingency fund shall consist of:

(i) All interest on delinquent contributions collected pursuant to this title;

(ii) All fines and penalties collected pursuant to the provisions of this title;

(iii) All sums recovered on official bonds for losses sustained by the fund; and

(iv) Revenue received under RCW 50.24.014.

(b) All fees, fines, forfeitures, and penalties collected or assessed by a district court because of the violation of this title or rules adopted under this title shall be remitted as provided in chapter 3.62 RCW.

(c) Moneys available in the administrative contingency fund, other than money in the special account created under RCW 50.24.014(1)(a), shall be expended upon the direction of the commissioner, with the approval of the governor, whenever it appears to him or her that such expenditure is necessary solely for:

(i) The proper administration of this title and that insufficient federal funds are available for the specific purpose to

which such expenditure is to be made, provided, the moneys are not substituted for appropriations from federal funds which, in the absence of such moneys, would be made available.

(ii) The proper administration of this title for which purpose appropriations from federal funds have been requested but not yet received, provided, the administrative contingency fund will be reimbursed upon receipt of the requested federal appropriation.

(iii) The proper administration of this title for which compliance and audit issues have been identified that establish federal claims requiring the expenditure of state resources in resolution. Claims must be resolved in the following priority: First priority is to provide services to eligible participants within the state; second priority is to provide substitute services or program support; and last priority is the direct payment of funds to the federal government.

Money in the special account created under RCW 50.24.014(1)(a) may only be expended, after appropriation, for the purposes specified in this section and RCW 50.62.010, 50.62.020, 50.62.030, 50.24.014, 50.44.053, and 50.22.010. [2007 c 327 § 4; 2006 c 13 § 18. Prior: 2005 c 518 § 933; prior: 2003 2nd sp.s. c 4 § 23; 2003 1st sp.s. c 25 § 925; 2002 c 371 § 914; prior: 1993 c 483 § 7; 1993 c 226 § 10; 1993 c 226 § 9; 1991 sp.s. c 13 § 59; 1987 c 202 § 218; 1985 ex.s. c 5 § 6; 1983 1st ex.s. c 13 § 5; 1980 c 142 § 1; 1977 ex.s. c 292 § 24; 1973 c 73 § 4; 1969 ex.s. c 199 § 27; 1959 c 170 § 1; 1955 c 286 § 2; 1953 ex.s. c 8 § 5; 1945 c 35 § 60; Rem. Supp. 1945 § 9998-198; prior: 1943 c 127 § 6; 1941 c 253 §§ 7, 10; 1939 c 214 § 11; 1937 c 162 § 13.]

Severability—Conflict with federal requirements—Effective date—2007 c 327: See notes following RCW 50.24.014.

Retroactive application—2006 c 13 §§ 8-22: See note following RCW 50.04.293.

Conflict with federal requirements—Part headings not law—Severability—2006 c 13: See notes following RCW 50.20.120.

Severability—Effective date—2005 c 518: See notes following RCW 28A.305.210.

Conflict with federal requirements—Severability—Effective date—2003 2nd sp.s. c 4: See notes following RCW 50.01.010.

Severability—Effective date—2003 1st sp.s. c 25: See notes following RCW 19.28.351.

Severability—Effective date—2002 c 371: See notes following RCW 9.46.100.

Conflict with federal requirements—Severability—1993 c 483: See notes following RCW 50.04.293.

Effective dates—1993 c 226 §§ 10, 12, and 14: "(1) Sections 10 and 12 of this act shall take effect June 30, 1999;

(2) Section 14 of this act shall take effect January 1, 1998." [1993 c 226 § 20.]

Conflict with federal requirements—1993 c 226: "If any part of this act is found to be in conflict with federal requirements that are a prescribed condition to the allocation of federal funds to the state or the eligibility of employers in this state for federal unemployment tax credits, the conflicting part of this act is hereby declared to be inoperative solely to the extent of the conflict, and such finding or determination shall not affect the operation of the remainder of this act. The rules under this act shall meet federal requirements that are a necessary condition to the receipt of federal funds by the state or the granting of federal unemployment tax credits to employers in this state." [1993 c 226 § 21.]

Severability—1993 c 226: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1993 c 226 § 22.]

Application—1993 c 226: "This act applies to tax rate years beginning with tax rate year 1994." [1993 c 226 § 23.]

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

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

Conflict with federal requirements—Severability—1985 ex.s. c 5: See notes following RCW 50.62.010.

Conflict with federal requirements—1983 1st ex.s. c 13: "If any part of this act is found to be in conflict with federal requirements which are a prescribed condition to the allocation of federal funds to the state, the conflicting part of this act is hereby declared to be inoperative solely to the extent of the conflict, and such finding or determination shall not affect the operation of the remainder of this act. The rules under this act shall meet federal requirements which are a necessary condition to the receipt of federal funds by the state." [1983 1st ex.s. c 13 § 13.]

Effective dates—1977 ex.s. c 292: See note following RCW 50.04.116.

Effective dates—1973 c 73: See note following RCW 50.04.030.

Chapter 50.20 RCW BENEFITS AND CLAIMS

Sections

50.20.070	Disqualification for misrepresentation—Penalties.
50.20.095	Disqualification for attending school or institution of higher education. (2007 c 248 § 2 effective January 1, 2008, until July 1, 2012.)
50.20.190	Recovery of benefit payments.
50.20.250	Finding—Self-employment assistance program—Rules. (Effective January 1, 2008, until July 1, 2012.)

50.20.070 Disqualification for misrepresentation—Penalties. (1) With respect to determinations delivered or mailed before January 1, 2008, an individual is disqualified for benefits for any week he or she has knowingly made a false statement or representation involving a material fact or knowingly failed to report a material fact and, as a result, has obtained or attempted to obtain any benefits under the provisions of this title, and for an additional twenty-six weeks beginning with the first week for which he or she completes an otherwise compensable claim for waiting period credit or benefits following the date of the delivery or mailing of the determination of disqualification under this section. However, such disqualification shall not be applied after two years have elapsed from the date of the delivery or mailing of the determination of disqualification under this section.

(2) With respect to determinations delivered or mailed on or after January 1, 2008:

(a) An individual is disqualified for benefits for any week he or she has knowingly made a false statement or representation involving a material fact or knowingly failed to report a material fact and, as a result, has obtained or attempted to obtain any benefits under the provisions of this title;

(b) An individual disqualified for benefits under this subsection for the first time is also disqualified for an additional twenty-six weeks beginning with the Sunday of the week in which the determination is mailed or delivered;

(c) An individual disqualified for benefits under this subsection for the second time is also disqualified for an additional fifty-two weeks beginning with the Sunday of the week in which the determination is mailed or delivered, and is subject to an additional penalty of twenty-five percent of the amount of benefits overpaid or deemed overpaid;

(d) An individual disqualified for benefits under this subsection a third time and any time thereafter is also disqualified for an additional one hundred four weeks beginning with the Sunday of the week in which the determination is mailed or delivered, and is subject to an additional penalty of fifty percent of the amount of benefits overpaid or deemed overpaid.

(3) All penalties collected under this section must be expended for the proper administration of this title as authorized under RCW 50.16.010 and for no other purposes.

(4) All overpayments and penalties established by such determination of disqualification must be collected as otherwise provided by this title. [2007 c 146 § 7; 1973 1st ex.s. c 158 § 5; 1953 ex.s. c 8 § 10; 1951 c 265 § 10; 1949 c 214 § 14; 1947 c 215 § 17; 1945 c 35 § 75; Rem. Supp. 1949 § 9998-213. Prior: 1943 c 127 § 3; 1941 c 253 § 3; 1939 c 214 § 3; 1937 c 162 § 5.]

Conflict with federal requirements—Severability—2007 c 146: See notes following RCW 50.04.080.

Effective date—1973 1st ex.s. c 158: See note following RCW 50.08.020.

Severability—1951 c 265: See note following RCW 50.98.070.

50.20.095 Disqualification for attending school or institution of higher education. (2007 c 248 § 2 effective January 1, 2008, until July 1, 2012.) Any individual registered at an established school in a course of study providing scholastic instruction of twelve or more hours per week, or the equivalent thereof, shall be disqualified from receiving benefits or waiting period credit for any week during the school term commencing with the first week of such scholastic instruction or the week of leaving employment to return to school, whichever is the earlier, and ending with the week immediately before the first full week in which the individual is no longer registered for twelve or more hours of scholastic instruction per week: PROVIDED, That registration for less than twelve hours will be for a period of sixty days or longer. The term "school" includes primary schools, secondary schools, and "institutions of higher education" as that phrase is defined in RCW 50.44.037.

This disqualification shall not apply to any individual who:

(1) Is in approved training within the meaning of RCW 50.20.043;

(2) Is in an approved self-employment assistance program under RCW 50.20.250; or

(3) Demonstrates to the commissioner by a preponderance of the evidence his or her actual availability for work, and in arriving at this determination the commissioner shall consider the following factors:

(a) Prior work history;

(b) Scholastic history;

(c) Past and current labor market attachment; and

(d) Past and present efforts to seek work. [2007 c 248 § 2; 1980 c 74 § 4; 1977 ex.s. c 33 § 8.]

Report to legislature—Effective date—Implementation—Expiration date—2007 c 248: See notes following RCW 50.20.250.

Severability—1980 c 74: See note following RCW 50.04.323.

Effective dates—Construction—1977 ex.s. c 33: See notes following RCW 50.04.030.

50.20.190 Recovery of benefit payments. (1) An individual who is paid any amount as benefits under this title to which he or she is not entitled shall, unless otherwise relieved pursuant to this section, be liable for repayment of the amount overpaid. The department shall issue an overpayment assessment setting forth the reasons for and the amount of the overpayment. The amount assessed, to the extent not collected, may be deducted from any future benefits payable to the individual: PROVIDED, That in the absence of a back pay award, a settlement affecting the allowance of benefits, fraud, misrepresentation, or willful nondisclosure, every determination of liability shall be mailed or personally served not later than two years after the close of or final payment made on the individual's applicable benefit year for which the purported overpayment was made, whichever is later, unless the merits of the claim are subjected to administrative or judicial review in which event the period for serving the determination of liability shall be extended to allow service of the determination of liability during the six-month period following the final decision affecting the claim.

(2) The commissioner may waive an overpayment if the commissioner finds that the overpayment was not the result of fraud, misrepresentation, willful nondisclosure, or fault attributable to the individual and that the recovery thereof would be against equity and good conscience: PROVIDED, HOWEVER, That the overpayment so waived shall be charged against the individual's applicable entitlement for the eligibility period containing the weeks to which the overpayment was attributed as though such benefits had been properly paid.

(3) Any assessment herein provided shall constitute a determination of liability from which an appeal may be had in the same manner and to the same extent as provided for appeals relating to determinations in respect to claims for benefits: PROVIDED, That an appeal from any determination covering overpayment only shall be deemed to be an appeal from the determination which was the basis for establishing the overpayment unless the merits involved in the issue set forth in such determination have already been heard and passed upon by the appeal tribunal. If no such appeal is taken to the appeal tribunal by the individual within thirty days of the delivery of the notice of determination of liability, or within thirty days of the mailing of the notice of determination, whichever is the earlier, the determination of liability shall be deemed conclusive and final. Whenever any such notice of determination of liability becomes conclusive and final, the commissioner, upon giving at least twenty days notice by certified mail return receipt requested to the individual's last known address of the intended action, may file with the superior court clerk of any county within the state a warrant in the amount of the notice of determination of liability plus a filing fee under RCW 36.18.012(10). The clerk of the county where the warrant is filed shall immediately designate a superior court cause number for the warrant, and the clerk shall cause to be entered in the judgment docket under the superior court cause number assigned to the warrant, the name of the person(s) mentioned in the warrant, the amount of the notice of determination of liability, and the date when the warrant was filed. The amount of the warrant as docketed shall become a lien upon the title to, and any interest in, all real and personal property of the person(s) against whom the

warrant is issued, the same as a judgment in a civil case duly docketed in the office of such clerk. A warrant so docketed shall be sufficient to support the issuance of writs of execution and writs of garnishment in favor of the state in the manner provided by law for a civil judgment. A copy of the warrant shall be mailed to the person(s) mentioned in the warrant by certified mail to the person's last known address within five days of its filing with the clerk.

(4) On request of any agency which administers an employment security law of another state, the United States, or a foreign government and which has found in accordance with the provisions of such law that a claimant is liable to repay benefits received under such law, the commissioner may collect the amount of such benefits from the claimant to be refunded to the agency. In any case in which under this section a claimant is liable to repay any amount to the agency of another state, the United States, or a foreign government, such amounts may be collected without interest by civil action in the name of the commissioner acting as agent for such agency if the other state, the United States, or the foreign government extends such collection rights to the employment security department of the state of Washington, and provided that the court costs be paid by the governmental agency benefiting from such collection.

(5) Any employer who is a party to a back pay award or settlement due to loss of wages shall, within thirty days of the award or settlement, report to the department the amount of the award or settlement, the name and social security number of the recipient of the award or settlement, and the period for which it is awarded. When an individual has been awarded or receives back pay, for benefit purposes the amount of the back pay shall constitute wages paid in the period for which it was awarded. For contribution purposes, the back pay award or settlement shall constitute wages paid in the period in which it was actually paid. The following requirements shall also apply:

(a) The employer shall reduce the amount of the back pay award or settlement by an amount determined by the department based upon the amount of unemployment benefits received by the recipient of the award or settlement during the period for which the back pay award or settlement was awarded;

(b) The employer shall pay to the unemployment compensation fund, in a manner specified by the commissioner, an amount equal to the amount of such reduction;

(c) The employer shall also pay to the department any taxes due for unemployment insurance purposes on the entire amount of the back pay award or settlement notwithstanding any reduction made pursuant to (a) of this subsection;

(d) If the employer fails to reduce the amount of the back pay award or settlement as required in (a) of this subsection, the department shall issue an overpayment assessment against the recipient of the award or settlement in the amount that the back pay award or settlement should have been reduced; and

(e) If the employer fails to pay to the department an amount equal to the reduction as required in (b) of this subsection, the department shall issue an assessment of liability against the employer which shall be collected pursuant to the procedures for collection of assessments provided herein and in RCW 50.24.110.

(6) When an individual fails to repay an overpayment assessment that is due and fails to arrange for satisfactory repayment terms, the commissioner shall impose an interest penalty of one percent per month of the outstanding balance. Interest shall accrue immediately on overpayments assessed pursuant to RCW 50.20.070 and shall be imposed when the assessment becomes final. For any other overpayment, interest shall accrue when the individual has missed two or more of the individual's monthly payments either partially or in full.

(7) The department shall: (a) Conduct social security number cross-match audits or engage in other more effective activities that ensure that individuals are entitled to all amounts of benefits that they are paid; and (b) engage in other detection and recovery of overpayment and collection activities. [2007 c 327 § 1; 2006 c 13 § 21. Prior: 2005 c 518 § 934; 2003 2nd sp.s. c 4 § 26; 2002 c 371 § 915; 2001 c 146 § 7; 1995 c 90 § 1; 1993 c 483 § 13; 1991 c 117 § 3; 1990 c 245 § 5; 1989 c 92 § 2; 1981 c 35 § 6; 1975 1st ex.s. c 228 § 3; 1973 1st ex.s. c 158 § 7; 1953 ex.s. c 8 § 14; 1951 c 215 § 8; 1947 c 215 § 18; 1945 c 35 § 87; Rem. Supp. 1947 § 9998-225; prior: 1943 c 127 § 12; 1941 c 253 § 13; 1939 c 214 § 14; 1937 c 162 § 16.]

Severability—Conflict with federal requirements—Effective date—2007 c 327: See notes following RCW 50.24.014.

Retroactive application—2006 c 13 §§ 8-22: See note following RCW 50.04.293.

Conflict with federal requirements—Part headings not law—Severability—2006 c 13: See notes following RCW 50.20.120.

Severability—Effective date—2005 c 518: See notes following RCW 28A.305.210.

Conflict with federal requirements—Severability—Effective date—2003 2nd sp.s. c 4: See notes following RCW 50.01.010.

Severability—Effective date—2002 c 371: See notes following RCW 9.46.100.

Conflict with federal requirements—1995 c 90: "If any part of this act is found to be in conflict with federal requirements that are a prescribed condition to the allocation of federal funds to the state or the eligibility of employers in this state for federal unemployment tax credits, the conflicting part of this act is hereby declared to be inoperative solely to the extent of the conflict, and such finding or determination shall not affect the operation of the remainder of this act. The rules under this act shall meet federal requirements that are a necessary condition to the receipt of federal funds by the state or the granting of federal unemployment tax credits to employers in this state." [1995 c 90 § 2.]

Application—1995 c 90: "This act applies to job separations occurring after July 1, 1995." [1995 c 90 § 3.]

Effective date—1995 c 90: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and shall take effect immediately [April 18, 1995]." [1995 c 90 § 4.]

Effective dates, applicability—Conflict with federal requirements—Severability—1993 c 483: See notes following RCW 50.04.293.

Conflict with federal requirements—Severability—Effective dates—1991 c 117: See notes following RCW 50.04.030.

Conflict with federal requirements—1990 c 245: See note following RCW 50.04.030.

Severability—1981 c 35: See note following RCW 50.22.030.

Effective date—1975 1st ex.s. c 228: See note following RCW 50.04.355.

Effective date—1973 1st ex.s. c 158: See note following RCW 50.08.020.

Government or retirement pension plan payments as remuneration or wages—Recovery of excess over benefits allowable, limitations: RCW 50.04.323.

[2007 RCW Supp—page 718]

50.20.250 Finding—Self-employment assistance program—Rules. (*Effective January 1, 2008, until July 1, 2012.*) (1) The legislature finds that the establishment of a self-employment assistance program would assist unemployed individuals and create new businesses and job opportunities in Washington state. The department shall inform individuals identified as likely to exhaust regular unemployment benefits of the opportunity to enroll in commissioner-approved self-employment assistance programs.

(2) An unemployed individual is eligible to participate in a self-employment assistance program if it has been determined that he or she:

(a) Is otherwise eligible for regular benefits as defined in RCW 50.22.010;

(b) Has been identified as likely to exhaust regular unemployment benefits under a profiling system established by the commissioner as defined in P.L. 103-152; and

(c) Is enrolled in a self-employment assistance program that is approved by the commissioner, and includes entrepreneurial training, business counseling, technical assistance, and requirements to engage in activities relating to the establishment of a business and becoming self-employed.

(3) Individuals participating in a self-employment assistance program approved by the commissioner are eligible to receive their regular unemployment benefits.

(a) The requirements of RCW 50.20.010 and 50.20.080 relating to availability for work, active search for work, and refusal to accept suitable work are not applicable to an individual in the self-employment assistance program for the first fifty-two weeks of the individual's participation in the program. However, enrollment in a self-employment assistance program does not entitle the enrollee to any benefit payments he or she would not be entitled to had he or she not enrolled in the program.

(b) An individual who meets the requirements of this section is considered to be "unemployed" under RCW 50.04.310 and 50.20.010.

(4) An individual who fails to participate in his or her approved self-employment assistance program as prescribed by the commissioner is disqualified from continuation in the program.

(5) An individual completing the program may not directly compete with his or her separating employer for a specific time period and in a specific geographic area. The time period may not, in any case, exceed one year. Both the time period and the geographic area must be reasonable, considering the following factors:

(a) Whether restraining the individual from performing services is necessary for the protection of the employer or the employer's goodwill;

(b) Whether the agreement harms the individual more than is reasonably necessary to secure the employer's business or goodwill; and

(c) Whether the loss of the employee's services and skills injures the public to a degree warranting nonenforcement of the agreement.

(6) The commissioner shall take all steps necessary in carrying out this section to assure collaborative involvement of interested parties in program development, and to ensure that the self-employment assistance programs meet all federal criteria for withdrawal from the unemployment fund.

The commissioner may approve, as self-employment assistance programs, existing self-employment training programs available through community colleges, workforce investment boards, or other organizations and is not obligated by this section to expend any departmental funds for the operation of self-employment assistance programs, unless specific funding is provided to the department for that purpose through federal or state appropriations.

(7) The commissioner may adopt rules as necessary to implement this section. [2007 c 248 § 1.]

Report to legislature—2007 c 248: "By December 1, 2011, the employment security department shall report to the house of representatives commerce and labor committee and the senate labor, commerce, research and development committee on the performance of the self-employment assistance program. The report shall include an analysis of the following:

- (1) Self-employment impacts;
- (2) Wage and salary outcomes;
- (3) Benefit payment outcomes; and
- (4) A cost-benefit analysis." [2007 c 248 § 3.]

Effective date—2007 c 248: "This act takes effect January 1, 2008." [2007 c 248 § 4.]

Implementation—2007 c 248: "The commissioner of employment security may take the necessary steps to ensure that this act is implemented on its effective date." [2007 c 248 § 5.]

Expiration date—2007 c 248: "This act expires July 1, 2012." [2007 c 248 § 6.]

Chapter 50.24 RCW

CONTRIBUTIONS BY EMPLOYERS

Sections

50.24.014	Financing special unemployment assistance—Financing the employment security department's administrative costs—Accounts—Contributions.
50.24.160	Election of coverage. (<i>Effective January 1, 2008.</i>)
50.24.170	Joint accounts.
50.24.220	Client employer liability—Collection. (<i>Effective January 1, 2008.</i>)
50.24.230	Corporate or limited liability company officers, members, and owners—Personal liability.

50.24.014 Financing special unemployment assistance—Financing the employment security department's administrative costs—Accounts—Contributions. (1)(a) A separate and identifiable account to provide for the financing of special programs to assist the unemployed is established in the administrative contingency fund. All money in this account shall be expended solely for the purposes of this title and for no other purposes whatsoever. Contributions to this account shall accrue and become payable by each employer, except employers as described in RCW 50.44.010 and 50.44.030 who have properly elected to make payments in lieu of contributions, taxable local government employers as described in RCW 50.44.035, and those employers who are required to make payments in lieu of contributions, at a basic rate of two one-hundredths of one percent. The amount of wages subject to tax shall be determined under RCW 50.24.010.

(b) A separate and identifiable account is established in the administrative contingency fund for financing the employment security department's administrative cost under RCW 50.22.150 and the costs under RCW 50.22.150(10). All money in this account shall be expended solely for the purposes of this title and for no other purposes whatsoever. Contributions to this account shall accrue and become pay-

able by each employer, except employers as described in RCW 50.44.010 and 50.44.030 who have properly elected to make payments in lieu of contributions, taxable local government employers as described in RCW 50.44.035, those employers who are required to make payments in lieu of contributions, those employers described under RCW 50.29.025(1)(f)(ii), and those qualified employers assigned rate class 20 or rate class 40, as applicable, under RCW 50.29.025, at a basic rate of one one-hundredth of one percent. The amount of wages subject to tax shall be determined under RCW 50.24.010. Any amount of contributions payable under this subsection (1)(b) that exceeds the amount that would have been collected at a rate of four one-thousandths of one percent must be deposited in the account created in (a) of this subsection.

(2)(a) Contributions under this section shall become due and be paid by each employer under rules as the commissioner may prescribe, and shall not be deducted, in whole or in part, from the remuneration of individuals in the employ of the employer. Any deduction in violation of this section is unlawful.

(b) In the payment of any contributions under this section, a fractional part of a cent shall be disregarded unless it amounts to one-half cent or more, in which case it shall be increased to one cent.

(3) If the commissioner determines that federal funding has been increased to provide financing for the services specified in chapter 50.62 RCW, the commissioner shall direct that collection of contributions under this section be terminated on the following January 1st. [2007 c 327 § 2; 2006 c 13 § 20. Prior: 2003 2nd sp.s. c 4 § 25; 2000 c 2 § 15; prior: 1998 c 346 § 901; 1998 c 161 § 7; 1994 c 187 § 3; 1993 c 483 § 20; 1987 c 171 § 4; 1985 ex.s. c 5 § 8.]

Severability—2007 c 327: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [2007 c 327 § 5.]

Conflict with federal requirements—2007 c 327: "If any part of this act is found to be in conflict with federal requirements that are a prescribed condition to the allocation of federal funds to the state or the eligibility of employers in this state for federal unemployment tax credits, the conflicting part of this act is inoperative solely to the extent of the conflict, and the finding or determination does not affect the operation of the remainder of this act. Rules adopted under this act must meet federal requirements that are a necessary condition to the receipt of federal funds by the state or the granting of federal unemployment tax credits to employers in this state." [2007 c 327 § 6.]

Effective date—2007 c 327: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect July 1, 2007." [2007 c 327 § 7.]

Retroactive application—2006 c 13 §§ 8-22: See note following RCW 50.04.293.

Conflict with federal requirements—Part headings not law—Severability—2006 c 13: See notes following RCW 50.20.120.

Conflict with federal requirements—Severability—Effective date—2003 2nd sp.s. c 4: See notes following RCW 50.01.010.

Application—2000 c 2 §§ 1, 2, 4, 5, 8, and 12-15: See note following RCW 50.22.150.

Conflict with federal requirements—Severability—Effective date—2000 c 2: See notes following RCW 50.04.355.

Construction—1998 c 346: "This act shall not be construed as affecting any right or cause of action asserted in *Washington State Legislature v. State of Washington* (Thurston county superior court cause no. 98-2-00105-1)." [1998 c 346 § 912.]

Severability—1998 c 346: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1998 c 346 § 914.]

Effective date—1998 c 346: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately [April 3, 1998]." [1998 c 346 § 915.]

Finding—Intent—1998 c 161: See note following RCW 50.20.140.

Conflict with federal requirements—1994 c 187: "If any part of this act is found to be in conflict with federal requirements that are a prescribed condition to the allocation of federal funds to the state or the eligibility of employers in this state for federal unemployment tax credits, the conflicting part of this act is hereby declared to be inoperative solely to the extent of the conflict, and such finding or determination shall not affect the operation of the remainder of this act. The rules under this act shall meet federal requirements that are a necessary condition to the receipt of federal funds by the state or the granting of federal unemployment tax credits to employers in this state." [1994 c 187 § 6.]

Effective dates, applicability—Conflict with federal requirements—Severability—1993 c 483: See notes following RCW 50.04.293.

Conflict with federal requirements—Severability—1987 c 171: See notes following RCW 50.62.010.

Conflict with federal requirements—Severability—1985 ex.s. c 5: See notes following RCW 50.62.010.

50.24.160 Election of coverage. (Effective January 1, 2008.) Except as provided in RCW 50.04.165, any employing unit for which services that do not constitute employment as defined in this title are performed may file with the commissioner a written election that all such services performed by any distinct class or group of individuals or by all individuals in its employment in one or more distinct establishments or places of business shall be deemed to constitute employment for all the purposes of this title for at least two calendar years. Upon the written approval of such election by the commissioner, such services shall be deemed to constitute employment subject to this title on and after the date stated in the approval. Services covered under this section shall cease to be deemed employment as of January 1st of any calendar year subsequent to the two-calendar year period, only if the employing unit files with the commissioner before January 15th of that year a written application for termination of coverage. [2007 c 146 § 6; 1977 ex.s. c 292 § 12; 1972 ex.s. c 35 § 1; 1971 c 3 § 14; 1959 c 266 § 6; 1951 c 265 § 8; 1951 c 215 § 9; 1945 c 35 § 104; Rem. Supp. 1945 § 9998-242.]

Effective date—2007 c 146 §§ 5, 6, and 10-12: See note following RCW 50.04.310.

Conflict with federal requirements—Severability—2007 c 146: See notes following RCW 50.04.080.

Effective dates—1977 ex.s. c 292: See note following RCW 50.04.116.

Construction—Compliance with federal act—1971 c 3: See RCW 50.44.080.

Severability—1951 c 265: See note following RCW 50.98.070.

Corporate officers, election of coverage: RCW 50.04.165.

50.24.170 Joint accounts. (1) The commissioner shall prescribe regulations for the establishment, maintenance, and dissolution of joint accounts by two or more employers, and shall, in accordance with such regulations and upon application by two or more employers to establish such account, or to merge their several individual accounts in a joint account,

maintain such joint account as if it constituted a single employer's account.

(2) Joint accounts may not be established for professional employer organizations, as defined in RCW 50.04.298, or third-party payers, as defined in RCW 50.04.248, and their clients. [2007 c 146 § 17; 1945 c 35 § 105; Rem. Supp. 1945 § 9998-243. Prior: 1941 c 253 § 5.]

Conflict with federal requirements—Severability—2007 c 146: See notes following RCW 50.04.080.

50.24.220 Client employer liability—Collection. (Effective January 1, 2008.) (1) The client employer of a professional employer organization is liable for the payment of any taxes, interest, or penalties due.

(2) The professional employer organization may collect and pay taxes due to the department for unemployment insurance coverage from its client employers in accordance with its professional employer agreement. If such payments have been made to the professional employer organization by the client employer, the department shall first attempt to collect the contributions due from the professional employer organization.

(3) To collect any contributions, penalties, or interest due to the department from the professional employer organization, the department must follow the procedures contained in chapter 50.24 RCW. If the amount of contributions, interest, or penalties assessed by the commissioner pursuant to chapter 50.24 RCW is not paid by the professional employer organization within ten days, then the commissioner may follow the collection procedures in chapter 50.24 RCW. After the ten-day period, if the professional employer organization has not paid the total amount owing, the commissioner may also pursue the client employer to collect what is owed using the procedures contained in chapter 50.24 RCW. [2007 c 146 § 11.]

Report on implementation and impact—2007 c 146 §§ 8-12: See note following RCW 50.04.298.

Effective date—2007 c 146 §§ 5, 6, and 10-12: See note following RCW 50.04.310.

Conflict with federal requirements—Severability—2007 c 146: See notes following RCW 50.04.080.

50.24.230 Corporate or limited liability company officers, members, and owners—Personal liability. (1) Upon termination, dissolution, or abandonment of a corporate or limited liability company business, any officer, member, or owner who, having control or supervision of payment of unemployment tax contributions under RCW 50.24.010 or 50.24.014: (a) Willfully evades any contributions imposed under this title; (b) willfully destroys, mutilates, or falsifies any book, document, or record; or (c) willfully fails to truthfully account for, or makes under oath, any false statement relating to the financial condition of the corporation or limited liability company business, is personally liable for any unpaid contributions and interest and penalties on those contributions. For purposes of this section, "willfully" means an intentional, conscious, and voluntary course of action.

(2) Persons liable under subsection (1) of this section are liable only for contributions that became due during the period he or she had the control, supervision, responsibility, or duty to act for the corporation or limited liability company, plus interest and penalties on those contributions.

(3) Persons liable under subsection (1) of this section are exempt from liability if all of the assets of the corporation or limited liability company have been applied to its debts through bankruptcy or receivership.

(4) Any person having been issued a notice of assessment under this section is entitled to the appeal procedures under chapter 50.32 RCW.

(5) This section applies only when the employment security department determines that there is no reasonable means of collecting the contributions owed directly from the corporation or limited liability company.

(6) This section does not relieve the corporation or limited liability company of other tax liabilities under this title or impair other tax collection remedies afforded by law.

(7) Collection authority and procedures described in this chapter apply to collections under this section. [2007 c 146 § 18.]

Conflict with federal requirements—Severability—2007 c 146: See notes following RCW 50.04.080.

Chapter 50.29 RCW

EMPLOYER EXPERIENCE RATING

Sections

50.29.021	Experience rating accounts—Benefits not charged—Claims with an effective date on or after January 4, 2004.
50.29.025	Contribution rate.
50.29.063	Predecessor or successor employers—Transfer to obtain reduced array calculation factor rate—Evasion of successor provisions—Penalties.
50.29.090	Contribution rates for client employers. (<i>Effective January 1, 2008.</i>)

50.29.021 Experience rating accounts—Benefits not charged—Claims with an effective date on or after January 4, 2004. (1) This section applies to benefits charged to the experience rating accounts of employers for claims that have an effective date on or after January 4, 2004.

(2)(a) An experience rating account shall be established and maintained for each employer, except employers as described in RCW 50.44.010, 50.44.030, and 50.50.030 who have properly elected to make payments in lieu of contributions, taxable local government employers as described in RCW 50.44.035, and those employers who are required to make payments in lieu of contributions, based on existing records of the employment security department.

(b) Benefits paid to an eligible individual shall be charged to the experience rating accounts of each of such individual's employers during the individual's base year in the same ratio that the wages paid by each employer to the individual during the base year bear to the wages paid by all employers to that individual during that base year, except as otherwise provided in this section.

(c) When the eligible individual's separating employer is a covered contribution paying base year employer, benefits paid to the eligible individual shall be charged to the experience rating account of only the individual's separating employer if the individual qualifies for benefits under:

(i) RCW 50.20.050(2)(b)(i), as applicable, and became unemployed after having worked and earned wages in the bona fide work; or

(ii) RCW 50.20.050(2)(b)(v) through (x).

(3) The legislature finds that certain benefit payments, in whole or in part, should not be charged to the experience rating accounts of employers except those employers described in RCW 50.44.010, 50.44.030, and 50.50.030 who have properly elected to make payments in lieu of contributions, taxable local government employers described in RCW 50.44.035, and those employers who are required to make payments in lieu of contributions, as follows:

(a) Benefits paid to any individual later determined to be ineligible shall not be charged to the experience rating account of any contribution paying employer. However, when a benefit claim becomes invalid due to an amendment or adjustment of a report where the employer failed to report or inaccurately reported hours worked or remuneration paid, or both, all benefits paid will be charged to the experience rating account of the contribution paying employer or employers that originally filed the incomplete or inaccurate report or reports. An employer who reimburses the trust fund for benefits paid to workers and who fails to report or inaccurately reported hours worked or remuneration paid, or both, shall reimburse the trust fund for all benefits paid that are based on the originally filed incomplete or inaccurate report or reports.

(b) Benefits paid to an individual filing under the provisions of chapter 50.06 RCW shall not be charged to the experience rating account of any contribution paying employer only if:

(i) The individual files under RCW 50.06.020(1) after receiving crime victims' compensation for a disability resulting from a nonwork-related occurrence; or

(ii) The individual files under RCW 50.06.020(2).

(c) Benefits paid which represent the state's share of benefits payable as extended benefits defined under RCW 50.22.010(6) shall not be charged to the experience rating account of any contribution paying employer.

(d) In the case of individuals who requalify for benefits under RCW 50.20.050 or 50.20.060, benefits based on wage credits earned prior to the disqualifying separation shall not be charged to the experience rating account of the contribution paying employer from whom that separation took place.

(e) Individuals who qualify for benefits under RCW 50.20.050(2)(b)(iv), as applicable, shall not have their benefits charged to the experience rating account of any contribution paying employer.

(f) With respect to claims with an effective date on or after the first Sunday following April 22, 2005, benefits paid that exceed the benefits that would have been paid if the weekly benefit amount for the claim had been determined as one percent of the total wages paid in the individual's base year shall not be charged to the experience rating account of any contribution paying employer.

(4)(a) A contribution paying base year employer, not otherwise eligible for relief of charges for benefits under this

section, may receive such relief if the benefit charges result from payment to an individual who:

- (i) Last left the employ of such employer voluntarily for reasons not attributable to the employer;
- (ii) Was discharged for misconduct or gross misconduct connected with his or her work not a result of inability to meet the minimum job requirements;
- (iii) Is unemployed as a result of closure or severe curtailment of operation at the employer’s plant, building, work-site, or other facility. This closure must be for reasons directly attributable to a catastrophic occurrence such as fire, flood, or other natural disaster; or
- (iv) Continues to be employed on a regularly scheduled permanent part-time basis by a base year employer and who at some time during the base year was concurrently employed and subsequently separated from at least one other base year employer. Benefit charge relief ceases when the employment relationship between the employer requesting relief and the claimant is terminated. This subsection does not apply to shared work employers under chapter 50.06 RCW.

(b) The employer requesting relief of charges under this subsection must request relief in writing within thirty days following mailing to the last known address of the notification of the valid initial determination of such claim, stating the date and reason for the separation or the circumstances of continued employment. The commissioner, upon investigation of the request, shall determine whether relief should be granted. [2007 c 146 § 2; 2006 c 13 § 6; 2005 c 133 § 4; 2003 2nd sp.s. c 4 § 21.]

Conflict with federal requirements—Severability—2007 c 146: See notes following RCW 50.04.080.

Conflict with federal requirements—Part headings not law—Severability—2006 c 13: See notes following RCW 50.20.120.

Findings—Intent—Conflict with federal requirements—Effective date—2005 c 133: See notes following RCW 50.20.120.

Additional employees authorized—2005 c 133: See note following RCW 50.01.020.

Conflict with federal requirements—Severability—Effective date—2003 2nd sp.s. c 4: See notes following RCW 50.01.010.

50.29.025 Contribution rate. (1) Except as provided in subsection (2) of this section, the contribution rate for each employer subject to contributions under RCW 50.24.010 shall be determined under this subsection.

(a) A fund balance ratio shall be determined by dividing the balance in the unemployment compensation fund as of the September 30th immediately preceding the rate year by the total remuneration paid by all employers subject to contributions during the second calendar year preceding the rate year and reported to the department by the following March 31st. The division shall be carried to the fourth decimal place with the remaining fraction, if any, disregarded. The fund balance ratio shall be expressed as a percentage.

(b) The interval of the fund balance ratio, expressed as a percentage, shall determine which tax schedule in (e) of this subsection shall be in effect for assigning tax rates for the rate year. The intervals for determining the effective tax schedule shall be:

Interval of the Fund Balance Ratio Expressed as a Percentage	Effective Tax Schedule
2.90 and above	AA
2.10 to 2.89	A
1.70 to 2.09	B
1.40 to 1.69	C
1.00 to 1.39	D
0.70 to 0.99	E
Less than 0.70	F

(c) An array shall be prepared, listing all qualified employers in ascending order of their benefit ratios. The array shall show for each qualified employer: (i) Identification number; (ii) benefit ratio; (iii) taxable payrolls for the four calendar quarters immediately preceding the computation date and reported to the department by the cut-off date; (iv) a cumulative total of taxable payrolls consisting of the employer’s taxable payroll plus the taxable payrolls of all other employers preceding him or her in the array; and (v) the percentage equivalent of the cumulative total of taxable payrolls.

(d) Each employer in the array shall be assigned to one of twenty rate classes according to the percentage intervals of cumulative taxable payrolls set forth in (e) of this subsection: PROVIDED, That if an employer’s taxable payroll falls within two or more rate classes, the employer and any other employer with the same benefit ratio shall be assigned to the lowest rate class which includes any portion of the employer’s taxable payroll.

(e) Except as provided in RCW 50.29.026, the contribution rate for each employer in the array shall be the rate specified in the following tables for the rate class to which he or she has been assigned, as determined under (d) of this subsection, within the tax schedule which is to be in effect during the rate year:

Percent of Cumulative Taxable Payrolls		Schedules of Contributions Rates for Effective Tax Schedule							
From	To	Rate Class	AA	A	B	C	D	E	F
0.00	5.00	1	0.47	0.47	0.57	0.97	1.47	1.87	2.47
5.01	10.00	2	0.47	0.47	0.77	1.17	1.67	2.07	2.67
10.01	15.00	3	0.57	0.57	0.97	1.37	1.77	2.27	2.87
15.01	20.00	4	0.57	0.73	1.11	1.51	1.90	2.40	2.98
20.01	25.00	5	0.72	0.92	1.30	1.70	2.09	2.59	3.08
25.01	30.00	6	0.91	1.11	1.49	1.89	2.29	2.69	3.18
30.01	35.00	7	1.00	1.29	1.69	2.08	2.48	2.88	3.27
35.01	40.00	8	1.19	1.48	1.88	2.27	2.67	3.07	3.47
40.01	45.00	9	1.37	1.67	2.07	2.47	2.87	3.27	3.66
45.01	50.00	10	1.56	1.86	2.26	2.66	3.06	3.46	3.86
50.01	55.00	11	1.84	2.14	2.45	2.85	3.25	3.66	3.95
55.01	60.00	12	2.03	2.33	2.64	3.04	3.44	3.85	4.15
60.01	65.00	13	2.22	2.52	2.83	3.23	3.64	4.04	4.34
65.01	70.00	14	2.40	2.71	3.02	3.43	3.83	4.24	4.54
70.01	75.00	15	2.68	2.90	3.21	3.62	4.02	4.43	4.63
75.01	80.00	16	2.87	3.09	3.42	3.81	4.22	4.53	4.73

80.01	85.00	17	3.27	3.47	3.77	4.17	4.57	4.87	4.97
85.01	90.00	18	3.67	3.87	4.17	4.57	4.87	4.97	5.17
90.01	95.00	19	4.07	4.27	4.57	4.97	5.07	5.17	5.37
95.01	100.00	20	5.40	5.40	5.40	5.40	5.40	5.40	5.40

0.012500	0.013750	12	1.45
0.013750	0.015000	13	1.60
0.015000	0.016250	14	1.75
0.016250	0.017500	15	1.90
0.017500	0.018750	16	2.05
0.018750	0.020000	17	2.20
0.020000	0.021250	18	2.35
0.021250	0.022500	19	2.50
0.022500	0.023750	20	2.65
0.023750	0.025000	21	2.80
0.025000	0.026250	22	2.95
0.026250	0.027500	23	3.10
0.027500	0.028750	24	3.25
0.028750	0.030000	25	3.40
0.030000	0.031250	26	3.55
0.031250	0.032500	27	3.70
0.032500	0.033750	28	3.85
0.033750	0.035000	29	4.00
0.035000	0.036250	30	4.15
0.036250	0.037500	31	4.30
0.037500	0.040000	32	4.45
0.040000	0.042500	33	4.60
0.042500	0.045000	34	4.75
0.045000	0.047500	35	4.90
0.047500	0.050000	36	5.05
0.050000	0.052500	37	5.20
0.052500	0.055000	38	5.30
0.055000	0.057500	39	5.35
0.057500		40	5.40

(f) The contribution rate for each employer not qualified to be in the array shall be as follows:

(i) Employers who do not meet the definition of "qualified employer" by reason of failure to pay contributions when due shall be assigned a contribution rate two-tenths higher than that in rate class 20 for the applicable rate year, except employers who have an approved agency-deferred payment contract by September 30 of the previous rate year. If any employer with an approved agency-deferred payment contract fails to make any one of the succeeding deferred payments or fails to submit any succeeding tax report and payment in a timely manner, the employer's tax rate shall immediately revert to a contribution rate two-tenths higher than that in rate class 20 for the applicable rate year; and

(ii) For all other employers not qualified to be in the array, the contribution rate shall be a rate equal to the average industry rate as determined by the commissioner; however, the rate may not be less than one percent.

(2) Beginning with contributions assessed for rate year 2005, the contribution rate for each employer subject to contributions under RCW 50.24.010 shall be the sum of the array calculation factor rate and the graduated social cost factor rate determined under this subsection, and the solvency surcharge determined under RCW 50.29.041, if any.

(a) The array calculation factor rate shall be determined as follows:

(i) An array shall be prepared, listing all qualified employers in ascending order of their benefit ratios. The array shall show for each qualified employer: (A) Identification number; (B) benefit ratio; and (C) taxable payrolls for the four consecutive calendar quarters immediately preceding the computation date and reported to the employment security department by the cut-off date.

(ii) Each employer in the array shall be assigned to one of forty rate classes according to his or her benefit ratio as follows, and, except as provided in RCW 50.29.026, the array calculation factor rate for each employer in the array shall be the rate specified in the rate class to which the employer has been assigned:

Benefit Ratio		Rate Class	Rate (percent)
At least	Less than		
	0.000001	1	0.00
0.000001	0.001250	2	0.13
0.001250	0.002500	3	0.25
0.002500	0.003750	4	0.38
0.003750	0.005000	5	0.50
0.005000	0.006250	6	0.63
0.006250	0.007500	7	0.75
0.007500	0.008750	8	0.88
0.008750	0.010000	9	1.00
0.010000	0.011250	10	1.15
0.011250	0.012500	11	1.30

(b) The graduated social cost factor rate shall be determined as follows:

(i)(A) Except as provided in (b)(i)(B) and (C) of this subsection, the commissioner shall calculate the flat social cost factor for a rate year by dividing the total social cost by the total taxable payroll. The division shall be carried to the second decimal place with the remaining fraction disregarded unless it amounts to five hundredths or more, in which case the second decimal place shall be rounded to the next higher digit. The flat social cost factor shall be expressed as a percentage.

(B) If, on the cut-off date, the balance in the unemployment compensation fund is determined by the commissioner to be an amount that will provide more than ten months of unemployment benefits, the commissioner shall calculate the flat social cost factor for the rate year immediately following the cut-off date by reducing the total social cost by the dollar amount that represents the number of months for which the balance in the unemployment compensation fund on the cut-off date will provide benefits above ten months and dividing the result by the total taxable payroll. However, the calculation under this subsection (2)(b)(i)(B) for a rate year may not result in a flat social cost factor that is more than four-tenths

lower than the calculation under (b)(i)(A) of this subsection for that rate year.

For the purposes of this subsection, the commissioner shall determine the number of months of unemployment benefits in the unemployment compensation fund using the benefit cost rate for the average of the three highest calendar benefit cost rates in the twenty consecutive completed calendar years immediately preceding the cut-off date or a period of consecutive calendar years immediately preceding the cut-off date that includes three recessions, if longer.

(C) The minimum flat social cost factor calculated under this subsection (2)(b) shall be six-tenths of one percent, except that if the balance in the unemployment compensation fund is determined by the commissioner to be an amount that will provide:

(I) At least twelve months but less than fourteen months of unemployment benefits, the minimum shall be five-tenths of one percent; or

(II) At least fourteen months of unemployment benefits, the minimum shall be five-tenths of one percent, except that, for employers in rate class 1, the minimum shall be forty-five hundredths of one percent.

(ii)(A) Except as provided in (b)(ii)(B) of this subsection, the graduated social cost factor rate for each employer in the array is the flat social cost factor multiplied by the percentage specified as follows for the rate class to which the employer has been assigned in (a)(ii) of this subsection, except that the sum of an employer's array calculation factor rate and the graduated social cost factor rate may not exceed six and five-tenths percent or, for employers whose North American industry classification system code is within "111," "112," "1141," "115," "3114," "3117," "42448," or "49312," may not exceed six percent through rate year 2007 and may not exceed five and seven-tenths percent for rate year 2008 and thereafter:

(I) Rate class 1 - 78 percent;

(II) Rate class 2 - 82 percent;

(III) Rate class 3 - 86 percent;

(IV) Rate class 4 - 90 percent;

(V) Rate class 5 - 94 percent;

(VI) Rate class 6 - 98 percent;

(VII) Rate class 7 - 102 percent;

(VIII) Rate class 8 - 106 percent;

(IX) Rate class 9 - 110 percent;

(X) Rate class 10 - 114 percent;

(XI) Rate class 11 - 118 percent; and

(XII) Rate classes 12 through 40 - 120 percent.

(B) For contributions assessed beginning July 1, 2005, through December 31, 2007, for employers whose North American industry classification system code is "111," "112," "1141," "115," "3114," "3117," "42448," or "49312," the graduated social cost factor rate is zero.

(iii) For the purposes of this section:

(A) "Total social cost" means the amount calculated by subtracting the array calculation factor contributions paid by all employers with respect to the four consecutive calendar quarters immediately preceding the computation date and paid to the employment security department by the cut-off date from the total unemployment benefits paid to claimants in the same four consecutive calendar quarters. To calculate the flat social cost factor for rate year 2005, the commissioner

shall calculate the total social cost using the array calculation factor contributions that would have been required to be paid by all employers in the calculation period if (a) of this subsection had been in effect for the relevant period.

(B) "Total taxable payroll" means the total amount of wages subject to tax, as determined under RCW 50.24.010, for all employers in the four consecutive calendar quarters immediately preceding the computation date and reported to the employment security department by the cut-off date.

(c) For employers who do not meet the definition of "qualified employer" by reason of failure to pay contributions when due:

(i) The array calculation factor rate shall be two-tenths higher than that in rate class 40, except employers who have an approved agency-deferred payment contract by September 30th of the previous rate year. If any employer with an approved agency-deferred payment contract fails to make any one of the succeeding deferred payments or fails to submit any succeeding tax report and payment in a timely manner, the employer's tax rate shall immediately revert to an array calculation factor rate two-tenths higher than that in rate class 40; and

(ii) The social cost factor rate shall be the social cost factor rate assigned to rate class 40 under (b)(ii) of this subsection.

(d) For all other employers not qualified to be in the array:

(i) For rate years 2005, 2006, and 2007:

(A) The array calculation factor rate shall be a rate equal to the average industry array calculation factor rate as determined by the commissioner, plus fifteen percent of that amount; however, the rate may not be less than one percent or more than the array calculation factor rate in rate class 40; and

(B) The social cost factor rate shall be a rate equal to the average industry social cost factor rate as determined by the commissioner, plus fifteen percent of that amount, but not more than the social cost factor rate assigned to rate class 40 under (b)(ii) of this subsection.

(ii) Beginning with contributions assessed for rate year 2008:

(A) The array calculation factor rate shall be a rate equal to the average industry array calculation factor rate as determined by the commissioner, multiplied by the history factor, but not less than one percent or more than the array calculation factor rate in rate class 40;

(B) The social cost factor rate shall be a rate equal to the average industry social cost factor rate as determined by the commissioner, multiplied by the history factor, but not more than the social cost factor rate assigned to rate class 40 under (b)(ii) of this subsection; and

(C) The history factor shall be based on the total amounts of benefits charged and contributions paid in the three fiscal years ending prior to the computation date by employers not qualified to be in the array, other than employers in (c) of this subsection, who were first subject to contributions in the calendar year ending three years prior to the computation date. The commissioner shall calculate the history ratio by dividing the total amount of benefits charged by the total amount of contributions paid in this three-year period by these employers. The division shall be carried to the second deci-

mal place with the remaining fraction disregarded unless it amounts to five one-hundredths or more, in which case the second decimal place shall be rounded to the next higher digit. The commissioner shall determine the history factor according to the history ratio as follows:

	History Ratio		History Factor (percent)
	At least	Less than	
(I)		.95	90
(II)	.95	1.05	100
(III)	1.05		115

(3) Assignment of employers by the commissioner to industrial classification, for purposes of this section, shall be in accordance with established classification practices found in the "Standard Industrial Classification Manual" issued by the federal office of management and budget to the third digit provided in the standard industrial classification code, or in the North American industry classification system code. [2007 c 51 § 1; 2006 c 13 § 4; 2005 c 133 § 5; 2003 2nd sp.s. c 4 § 14; 2003 c 4 § 1; 2000 c 2 § 4; 1995 c 4 § 2; (1995 c 4 § 1 expired January 1, 1998). Prior: 1993 c 483 § 21; 1993 c 226 § 14; 1993 c 226 § 13; 1990 c 245 § 7; 1989 c 380 § 79; 1987 c 171 § 3; 1985 ex.s. c 5 § 7; 1984 c 205 § 5.]

Conflict with federal requirements—2007 c 51: "If any part of this act is found to be in conflict with federal requirements that are a prescribed condition to the allocation of federal funds to the state or the eligibility of employers in this state for federal unemployment tax credits, the conflicting part of this act is inoperative solely to the extent of the conflict, and the finding or determination does not affect the operation of the remainder of this act. Rules adopted under this act must meet federal requirements that are a necessary condition to the receipt of federal funds by the state or the granting of federal unemployment tax credits to employers in this state." [2007 c 51 § 2.]

Severability—2007 c 51: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [2007 c 51 § 3.]

Application—2007 c 51: "This act applies for rate years beginning on or after January 1, 2008." [2007 c 51 § 4.]

Application—2006 c 13 §§ 4 and 5: "Sections 4 and 5 of this act apply to rate years beginning on or after January 1, 2007." [2006 c 13 § 26.]

Conflict with federal requirements—Part headings not law—Severability—2006 c 13: See notes following RCW 50.20.120.

Findings—Intent—Conflict with federal requirements—Effective date—2005 c 133: See notes following RCW 50.20.120.

Additional employees authorized—2005 c 133: See note following RCW 50.01.020.

Conflict with federal requirements—Severability—Effective date—2003 2nd sp.s. c 4: See notes following RCW 50.01.010.

Application—2003 c 4 § 1: "Section 1 of this act applies to rate years beginning on or after January 1, 2003." [2003 c 4 § 2.]

Effective date—2003 c 4: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately [March 12, 2003]." [2003 c 4 § 3.]

Application—2000 c 2 §§ 1, 2, 4, 5, 8, and 12-15: See note following RCW 50.22.150.

Conflict with federal requirements—Severability—Effective date—2000 c 2: See notes following RCW 50.04.355.

Effective dates—1995 c 4: "(1) Section 1 of this act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and shall take effect

immediately [March 16, 1995].

(2) Section 2 of this act shall take effect January 1, 1998." [1995 c 4 § 4.]

Expiration date—1995 c 4 § 1: "Section 1 of this act shall expire January 1, 1998." [1995 c 4 § 5.]

Effective dates, applicability—Conflict with federal requirements—Severability—1993 c 483: See notes following RCW 50.04.293.

Elevation of employer contribution rates—Report by commissioner—1993 c 226: "Prior to any increase in the employer tax schedule as provided in section 13, chapter 226, Laws of 1993, the commissioner shall provide a report to the appropriate committees of the legislature specifying to what extent the work force training expenditures in chapter 226, Laws of 1993 elevated employer contribution rates for the effective tax schedule." [1993 c 226 § 16.]

Effective dates—1993 c 226 §§ 10, 12, and 14: See note following RCW 50.16.010.

Conflict with federal requirements—Severability—Application—1993 c 226: See notes following RCW 50.16.010.

Conflict with federal requirements—Effective dates—1990 c 245: See notes following RCW 50.04.030.

Effective date—1989 c 380 §§ 78-81: See note following RCW 50.04.150.

Conflict with federal requirements—1989 c 380: See note following RCW 50.04.150.

Severability—1989 c 380: See RCW 15.58.942.

Conflict with federal requirements—Severability—1987 c 171: See notes following RCW 50.62.010.

Conflict with federal requirements—Severability—1985 ex.s. c 5: See notes following RCW 50.62.010.

Conflict with federal requirements—Severability—Effective dates—1984 c 205: See notes following RCW 50.20.120.

50.29.063 Predecessor or successor employers—Transfer to obtain reduced array calculation factor rate—Evasion of successor provisions—Penalties. (1) If it is found that a significant purpose of the transfer of a business was to obtain a reduced array calculation factor rate, then the following applies:

(a) If the successor was an employer at the time of the transfer, then the experience rating accounts of the employers involved shall be combined into a single account and the employers assigned the higher of the predecessor or successor array calculation factor rate to take effect as of the date of the transfer.

(b) If the successor was not an employer at the time of the transfer, then the experience rating account of the acquired business must not be transferred and, instead, the sum of the rate determined by the commissioner under *RCW 50.29.025(2) (c)(ii) and (d)(ii), and 50.29.041 if applicable, shall be assigned.

(2) If any part of a delinquency for which an assessment is made under this title is due to an intent to knowingly evade the successorship provisions of RCW 50.29.062 and this section, then with respect to the employer, and to any business found to be knowingly promoting the evasion of such provisions:

(a) The commissioner shall, for the rate year in which the commissioner makes the determination under this subsection and for each of the three consecutive rate years following that rate year, assign to the employer or business the total rate, which is the sum of the recalculated array calculation factor rate and a civil penalty assessment rate, calculated as follows:

(i) Recalculate the array calculation factor rate as the array calculation factor rate that should have applied to the

employer or business under RCW 50.29.025 and 50.29.062; and

(ii) Calculate a civil penalty assessment rate in an amount that, when added to the array calculation factor rate determined under (a)(i) of this subsection for the applicable rate year, results in a total rate equal to the maximum array calculation factor rate under RCW 50.29.025 plus two percent, which total rate is not limited by any maximum array calculation factor rate established in RCW 50.29.025(2)(b)(ii);

(b) The employer or business may be prosecuted under the penalties prescribed in RCW 50.36.020; and

(c) The employer or business must pay for the employment security department's reasonable expenses of auditing the employer's or business's books and collecting the civil penalty assessment.

(3) If the person knowingly evading the successorship provisions, or knowingly attempting to evade these provisions, or knowingly promoting the evasion of these provisions, is not an employer, the person is subject to a civil penalty assessment of five thousand dollars per occurrence. In addition, the person is subject to the penalties prescribed in RCW 50.36.020 as if the person were an employer. The person must also pay for the employment security department's reasonable expenses of auditing his or her books and collecting the civil penalty assessment.

(4) For purposes of this section:

(a) "Knowingly" means having actual knowledge of or acting with deliberate ignorance or reckless disregard for the prohibition involved and includes, but is not limited to, intent to evade, misrepresentation, or willful nondisclosure.

(b) "Person" means and includes an individual, a trust, estate, partnership, association, company, or corporation.

(c) "Transfer of a business" includes the transfer or acquisition of substantially all or a portion of the operating assets, which may include the employer's work force.

(5) Any decision to assess a penalty under this section shall be made by the chief administrative officer of the tax branch or his or her designee.

(6) Nothing in this section shall be construed to deny an employer the right to appeal the assessment of a penalty in the manner provided in RCW 50.32.030.

(7) The commissioner shall engage in prevention, detection, and collection activities related to evasion of the successorship provisions of RCW 50.29.062 and this section, and establish procedures to enforce this section. [2007 c 327 § 3; 2006 c 47 § 1.]

***Reviser's note:** RCW 50.29.025 was amended by 2007 c 51 § 1, incorporating the substance of subsection (2)(c)(ii) and (d)(ii) into subsection (2)(d)(i).

Severability—Conflict with federal requirements—Effective date—2007 c 327: See notes following RCW 50.24.014.

Conflict with federal requirements—Severability—Effective date—Retroactive application—2006 c 47: See notes following RCW 50.29.062.

50.29.090 Contribution rates for client employers. (Effective January 1, 2008.) For purposes of this title, each client employer of a professional employer organization is assigned its individual contribution rate based on its own experience. [2007 c 146 § 10.]

[2007 RCW Supp—page 726]

Report on implementation and impact—2007 c 146 §§ 8-12: See note following RCW 50.04.298.

Effective date—2007 c 146 §§ 5, 6, and 10-12: See note following RCW 50.04.310.

Conflict with federal requirements—Severability—2007 c 146: See notes following RCW 50.04.080.

Chapter 50.44 RCW

SPECIAL COVERAGE PROVISIONS

Sections

50.44.040	Services excluded under "employment" for certain purposes.
50.44.045	Religious organizations—Exemption—Notification to employee.

50.44.040 Services excluded under "employment" for certain purposes. The term "employment" as used in RCW 50.44.010, 50.44.020, and 50.44.030 shall not include service performed:

(1) In the employ of (a) a church or convention or association of churches, or (b) an organization which is operated primarily for religious purposes and which is operated, supervised, controlled, or principally supported by a church or convention or association of churches; however, the employer shall notify its employees as required by RCW 50.44.045; or

(2) By a duly ordained, commissioned, or licensed minister of a church in the exercise of his ministry or by a member of a religious order in the exercise of duties required by such order; or

(3) In a facility conducted for the purpose of carrying out a program of (a) rehabilitation for individuals whose earning capacity is impaired by age or physical or mental deficiency or injury, or (b) providing remunerative work for individuals who because of their impaired physical or mental capacity cannot be readily absorbed in the competitive labor market, by an individual receiving such rehabilitation or remunerative work; or

(4) As part of an unemployment work-relief or work-training program assisted or financed in whole or in part by a federal agency or an agency of a state or political subdivision thereof, by an individual receiving such work-relief or work-training; or

(5) For a custodial or penal institution by an inmate of the custodial or penal institution; or

(6) In the employ of a hospital, if such service is performed by a patient of such hospital; or

(7) In the employ of a school, college, or university, if such service is performed (a) by a student who is enrolled and is regularly attending classes at such school, college, or university, or (b) by the spouse of such a student, if such spouse is advised, at the time such spouse commences to perform such service, that (i) the employment of such spouse to perform such service is provided under a program to provide financial assistance to such student by such school, college, or university, and (ii) such employment will not be covered by any program of unemployment insurance; or

(8) By an individual under the age of twenty-two who is enrolled at a nonprofit or public educational institution which normally maintains a regular faculty and curriculum and normally has a regularly organized body of students in atten-

dance at the place where its educational activities are carried on as a student in a full time program, taken for credit at such institution, which combines academic instruction with work experience, if such service is an integral part of such program, and such institution has so certified to the employee, except that this subsection shall not apply to service performed in a program established for or on behalf of an employer or group of employers; or

(9) In the employ of a nongovernmental preschool which is devoted exclusively to the area of child development training of preschool age children through an established curriculum of formal classroom or laboratory instruction which did not employ four or more individuals on each of some twenty days during the calendar year or the preceding calendar year, each day being in a different calendar week; or

(10) In the employ of the state or any of its instrumentalities or political subdivisions of this state in any of its instrumentalities by an individual in the exercise of duties:

(a) As an elected official;

(b) As a member of the national guard or air national guard; or

(c) In a policymaking position the performance of the duties of which ordinarily do not require more than eight hours per week. [2007 c 386 § 1; 1977 ex.s. c 292 § 17; 1975 1st ex.s. c 67 § 1; 1975 c 4 § 1; 1973 c 73 § 9; 1971 c 3 § 21.]

Effective dates—1977 ex.s. c 292: See note following RCW 50.04.116.

Effective dates—1973 c 73: See note following RCW 50.04.030.

Exemption from unemployment compensation coverage

conservation corps members: RCW 43.220.170.

Washington service corps enrollees: RCW 50.65.120.

50.44.045 Religious organizations—Exemption—Notification to employee. A church or convention or association of churches, or an organization which is operated primarily for religious purposes and which is operated, supervised, controlled, or principally supported by a church or convention or association of churches shall inform each individual performing services exempt from "employment" under RCW 50.44.040(1) that the individual may not be eligible to receive unemployment benefits based on such services. The employer shall provide a written notice of this exclusion to the individual at the time of hire. The employer shall display a poster giving notice of this exclusion in a conspicuous place. The employer's compliance with these notice requirements shall not affect an individual's eligibility for benefits. The employment security department shall make posters available to employers without charge. [2007 c 386 § 2.]

Title 51

INDUSTRIAL INSURANCE

Chapters

51.04 General provisions.

51.08 Definitions.

51.12 Employments and occupations covered.

51.14 Self-insurers.

51.28 Notice and report of accident—Application for compensation.

51.32 Compensation—Right to and amount.

51.36 Medical aid.

51.44 Funds.

51.52 Appeals.

Chapter 51.04 RCW

GENERAL PROVISIONS

Sections

51.04.080 Sending notices, orders, warrants to claimants.

51.04.080 Sending notices, orders, warrants to claimants. On all claims under this title, claimants' written notices, orders, or warrants must be forwarded directly to the claimant until such time as there has been entered an order on the claim appealable to the board of industrial insurance appeals. Claimants' written notices, orders, or warrants may be forwarded to the claimant in care of a representative before an order has been entered if the claimant sets forth in writing the name and address of the representative to whom the claimant desires this information to be forwarded. [2007 c 78 § 1; 1972 ex.s. c 43 § 2; 1961 c 23 § 51.04.080. Prior: 1959 c 308 § 2; 1957 c 70 § 5; prior: 1947 c 56 § 1, part; 1927 c 310 § 7, part; 1923 c 136 § 4, part; 1921 c 182 § 6, part; 1919 c 131 § 6, part; 1911 c 74 § 10, part; Rem. Supp. 1947 § 7684, part.]

Chapter 51.08 RCW

DEFINITIONS

Sections

51.08.178 "Wages"—Monthly wages as basis of compensation—Computation thereof.

51.08.178 "Wages"—Monthly wages as basis of compensation—Computation thereof. (1) For the purposes of this title, the monthly wages the worker was receiving from all employment at the time of injury shall be the basis upon which compensation is computed unless otherwise provided specifically in the statute concerned. In cases where the worker's wages are not fixed by the month, they shall be determined by multiplying the daily wage the worker was receiving at the time of the injury:

(a) By five, if the worker was normally employed one day a week;

(b) By nine, if the worker was normally employed two days a week;

(c) By thirteen, if the worker was normally employed three days a week;

(d) By eighteen, if the worker was normally employed four days a week;

(e) By twenty-two, if the worker was normally employed five days a week;

(f) By twenty-six, if the worker was normally employed six days a week;

(g) By thirty, if the worker was normally employed seven days a week.

The term "wages" shall include the reasonable value of board, housing, fuel, or other consideration of like nature received from the employer as part of the contract of hire, but

shall not include overtime pay except in cases under subsection (2) of this section. As consideration of like nature to board, housing, and fuel, wages shall also include the employer's payment or contributions, or appropriate portions thereof, for health care benefits unless the employer continues ongoing and current payment or contributions for these benefits at the same level as provided at the time of injury. However, tips shall also be considered wages only to the extent such tips are reported to the employer for federal income tax purposes. The daily wage shall be the hourly wage multiplied by the number of hours the worker is normally employed. The number of hours the worker is normally employed shall be determined by the department in a fair and reasonable manner, which may include averaging the number of hours worked per day.

(2) In cases where (a) the worker's employment is exclusively seasonal in nature or (b) the worker's current employment or his or her relation to his or her employment is essentially part-time or intermittent, the monthly wage shall be determined by dividing by twelve the total wages earned, including overtime, from all employment in any twelve successive calendar months preceding the injury which fairly represent the claimant's employment pattern.

(3) If, within the twelve months immediately preceding the injury, the worker has received from the employer at the time of injury a bonus as part of the contract of hire, the average monthly value of such bonus shall be included in determining the worker's monthly wages.

(4) In cases where a wage has not been fixed or cannot be reasonably and fairly determined, the monthly wage shall be computed on the basis of the usual wage paid other employees engaged in like or similar occupations where the wages are fixed. [2007 c 297 § 1; 1988 c 161 § 12; 1980 c 14 § 5. Prior: 1977 ex.s. c 350 § 14; 1977 ex.s. c 323 § 6; 1971 ex.s. c 289 § 14.]

Application—2007 c 297 § 1: "Section 1 of this act applies to all wage determinations issued on or after July 22, 2007." [2007 c 297 § 2.]

Severability—Effective date—1977 ex.s. c 323: See notes following RCW 51.04.040.

Effective dates—Severability—1971 ex.s. c 289: See RCW 51.98.060 and 51.98.070.

Chapter 51.12 RCW

EMPLOYMENTS AND OCCUPATIONS COVERED

Sections

51.12.100 Maritime occupations—Segregation of payrolls—Common enterprise—Geoduck harvesting.

51.12.100 Maritime occupations—Segregation of payrolls—Common enterprise—Geoduck harvesting. (1) Except as otherwise provided in this section, the provisions of this title shall not apply to a master or member of a crew of any vessel, or to employers and workers for whom a right or obligation exists under the maritime laws or federal employees' compensation act for personal injuries or death of such workers.

(2) If an accurate segregation of payrolls of workers for whom such a right or obligation exists under the maritime laws cannot be made by the employer, the director is hereby authorized and directed to fix from time to time a basis for the

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approximate segregation of the payrolls of employees to cover the part of their work for which no right or obligation exists under the maritime laws for injuries or death occurring in such work, and the employer, if not a self-insurer, shall pay premiums on that basis for the time such workers are engaged in their work.

(3) Where two or more employers are simultaneously engaged in a common enterprise at one and the same site or place in maritime occupations under circumstances in which no right or obligation exists under the maritime laws for personal injuries or death of such workers, such site or place shall be deemed for the purposes of this title to be the common plant of such employers.

(4) In the event payments are made both under this title and under the maritime laws or federal employees' compensation act, such benefits paid under this title shall be repaid by the worker or beneficiary. For any claims made under the Jones Act, the employer is deemed a third party, and the injured worker's cause of action is subject to RCW 51.24.030 through 51.24.120.

(5) Commercial divers harvesting geoduck clams under an agreement made pursuant to RCW 79.135.210, workers tending to such divers, and the employers of such divers and tenders shall be subject to the provisions of this title whether or not such work is performed from a vessel. [2007 c 324 § 1; 1991 c 88 § 3; 1988 c 271 § 2; 1977 ex.s. c 350 § 21; 1975 1st ex.s. c 224 § 3; 1972 ex.s. c 43 § 11; 1961 c 23 § 51.12.100. Prior: 1931 c 79 § 1; 1925 ex.s. c 111 § 1; RRS § 7693a.]

Effective date—Applicability—1988 c 271 §§ 1-4: See note following RCW 51.12.102.

Effective date—1975 1st ex.s. c 224: See note following RCW 51.04.110.

Ferry system employees in extrahazardous employment: RCW 47.64.070.

Chapter 51.14 RCW

SELF-INSURERS

Sections

OFFICE OF THE OMBUDSMAN

- 51.14.300 Ombudsman office created—Appointment—Open and competitive contracting.
- 51.14.310 Ombudsman—Term of office—Removal—Vacancies.
- 51.14.320 Ombudsman—Training or experience qualifications.
- 51.14.330 Ombudsman office—Staffing level.
- 51.14.340 Ombudsman office—Powers and duties.
- 51.14.350 Ombudsman office—Referral procedures—Department response to referred complaints.
- 51.14.360 Ombudsman liability—Discriminatory, disciplinary, or retaliatory actions—Communications privileged and confidential—Testimony.
- 51.14.370 Confidentiality of ombudsman records and files—Disclosure prohibited—Exception.
- 51.14.380 Explaining ombudsman program—Posters and brochures.
- 51.14.390 Ombudsman office—Funding.
- 51.14.400 Ombudsman—Annual report to governor.

OFFICE OF THE OMBUDSMAN

51.14.300 Ombudsman office created—Appointment—Open and competitive contracting. The office of the ombudsman for workers of industrial insurance self-insured employers is created. The ombudsman shall be appointed by the governor and report directly to the director

of the department. The office of the ombudsman may be openly and competitively contracted by the governor in accordance with chapter 39.29 RCW but shall not be physically housed within the industrial insurance division. [2007 c 281 § 1.]

51.14.310 Ombudsman—Term of office—Removal—Vacancies. The person appointed ombudsman shall hold office for a term of six years and shall continue to hold office until reappointed or until his or her successor is appointed. The governor may remove the ombudsman only for neglect of duty, misconduct, or inability to perform duties. Any vacancy shall be filled by similar appointment for the remainder of the unexpired term. [2007 c 281 § 2.]

51.14.320 Ombudsman—Training or experience qualifications. Any ombudsman appointed under this chapter shall have training or experience, or both, in the following areas:

- (1) Washington state industrial insurance including self-insurance programs;
- (2) The Washington state legal system;
- (3) Dispute or problem resolution techniques, including investigation, mediation, and negotiation. [2007 c 281 § 3.]

51.14.330 Ombudsman office—Staffing level. During the first two years after the office of the ombudsman is created, the staffing level shall be no more than four persons, including the ombudsman and any administrative staff. Thereafter, the staffing levels shall be determined based upon the office of the ombudsman's workload and whether any additional locations are needed. [2007 c 281 § 4.]

51.14.340 Ombudsman office—Powers and duties. The office of the ombudsman shall have the following powers and duties:

- (1) To act as an advocate for injured workers of self-insured employers;
- (2) To offer and provide information on industrial insurance as appropriate to workers of self-insured employers;
- (3) To identify, investigate, and facilitate resolution of industrial insurance complaints from workers of self-insured employers;
- (4) To maintain a statewide toll-free telephone number for the receipt of complaints and inquiries; and
- (5) To refer complaints to the department when appropriate. [2007 c 281 § 5.]

51.14.350 Ombudsman office—Referral procedures—Department response to referred complaints. (1) The office of the ombudsman shall develop referral procedures for complaints by workers of self-insured employers. The department shall act as quickly as possible on any complaint referred to them by the office of the ombudsman.

(2) The department shall respond to any complaint against a self-insured employer referred to it by the office of the ombudsman and shall forward the office of the ombudsman a summary of the results of the investigation and action proposed or taken. [2007 c 281 § 6.]

51.14.360 Ombudsman liability—Discriminatory, disciplinary, or retaliatory actions—Communications privileged and confidential—Testimony. (1) No ombudsman is liable for good faith performance of responsibilities under this chapter.

(2) No discriminatory, disciplinary, or retaliatory action may be taken against any employee of a self-insured employer for any communication made, or information given or disclosed, to assist the ombudsman in carrying out its duties and responsibilities, unless the same was done maliciously. This subsection is not intended to infringe on the rights of the employer to supervise, discipline, or terminate an employee for other reasons.

(3) All communications by the ombudsman, if reasonably related to the requirements of his or her responsibilities under this chapter and done in good faith, are privileged and confidential, and this shall serve as a defense to any action in libel or slander.

(4) Representatives of the office of the ombudsman are exempt from being required to testify as to any privileged or confidential matters except as the court may deem necessary to enforce this chapter. [2007 c 281 § 7.]

51.14.370 Confidentiality of ombudsman records and files—Disclosure prohibited—Exception. All records and files of the ombudsman relating to any complaint or investigation made pursuant to carrying out its duties and the identities of complainants, witnesses, or injured workers shall remain confidential unless disclosure is authorized by the complainant or injured worker or his or her guardian or legal representative. No disclosures may be made outside the office of the ombudsman without the consent of any named witness or complainant unless the disclosure is made without the identity of any of these individuals being disclosed. [2007 c 281 § 8.]

51.14.380 Explaining ombudsman program—Posters and brochures. The ombudsman shall integrate into existing posters and brochures information explaining the ombudsman program. Both the posters and the brochures shall contain the ombudsman's toll-free telephone number. Every self-insured employer must place a poster in an area where all workers have access to it. The self-insured employer must provide a brochure to all injured workers at the time the employer is notified of the worker's injury. [2007 c 281 § 9.]

51.14.390 Ombudsman office—Funding. (1) To provide start-up funding for the office of the ombudsman, the department shall impose a one-time assessment on all self-insurers. The amount of the assessment shall be determined by the department and shall not exceed the amount needed to pay the start-up costs.

(2) Ongoing funding for the office of the ombudsman shall be obtained as part of an annual administrative assessment of self-insurers under RCW 51.44.150. This assessment shall be proportionately based on the number of claims for each self-insurer during the past year. [2007 c 281 § 10.]

51.14.400 Ombudsman—Annual report to governor.

(1) The ombudsman shall provide the governor with an annual report that includes the following:

(a) A description of the issues addressed during the past year and a very brief description of case scenarios in a form that does not compromise confidentiality;

(b) An accounting of the monitoring activities by the ombudsman; and

(c) An identification of the deficiencies in the industrial insurance system related to self-insurers, if any, and recommendations for remedial action in policy or practice.

(2) The first annual report shall be due on or before October 1, 2008. Subsequent reports shall be due on or before October 1st. [2007 c 281 § 12.]

Chapter 51.28 RCW**NOTICE AND REPORT OF ACCIDENT—
APPLICATION FOR COMPENSATION**

Sections

51.28.010	Notice of accident—Notification of worker's rights—Claim suppression.
51.28.025	Duty of employer to report injury or disease—Contents of report—Claim suppression—Penalty.
51.28.050	Time limitation for filing application or enforcing claim for injury.
51.28.100	Physician assistant signatures—Documents required by the department.

51.28.010 Notice of accident—Notification of worker's rights—Claim suppression. (1) Whenever any accident occurs to any worker it shall be the duty of such worker or someone in his or her behalf to forthwith report such accident to his or her employer, superintendent, or supervisor in charge of the work, and of the employer to at once report such accident and the injury resulting therefrom to the department pursuant to RCW 51.28.025 where the worker has received treatment from a physician, has been hospitalized, disabled from work, or has died as the apparent result of such accident and injury.

(2) Upon receipt of such notice of accident, the department shall immediately forward to the worker or his or her beneficiaries or dependents notification, in nontechnical language, of their rights under this title. The notice must specify the worker's right to receive health services from a physician of the worker's choice under RCW 51.36.010, including chiropractic services under RCW 51.36.015, and must list the types of providers authorized to provide these services.

(3) Employers shall not engage in claim suppression.

(4) For the purposes of this section, "claim suppression" means intentionally:

(a) Inducing employees to fail to report injuries;

(b) Inducing employees to treat injuries in the course of employment as off-the-job injuries; or

(c) Acting otherwise to suppress legitimate industrial insurance claims.

(5) In determining whether an employer has engaged in claim suppression, the department shall consider the employer's history of compliance with industrial insurance reporting requirements, and whether the employer has discouraged employees from reporting injuries or filing claims.

The department has the burden of proving claim suppression by a preponderance of the evidence.

(6) Claim suppression does not include bona fide workplace safety and accident prevention programs or an employer's provision at the worksite of first aid as defined by the department. The department shall adopt rules defining bona fide workplace safety and accident prevention programs and defining first aid. [2007 c 77 § 1; 2001 c 231 § 1; 1977 ex.s. c 350 § 32; 1975 1st ex.s. c 224 § 4; 1971 ex.s. c 289 § 5; 1961 c 23 § 51.28.010. Prior: 1915 c 188 § 9; 1911 c 74 § 14; RRS § 7689.]

Implementation—2007 c 77: "The department of labor and industries shall adopt rules necessary to implement this act." [2007 c 77 § 4.]

Effective date—2001 c 231: "This act takes effect January 1, 2002." [2001 c 231 § 4.]

Effective date—1975 ex.s. c 224: See note following RCW 51.04.110.

Effective dates—Severability—1971 ex.s. c 289: See RCW 51.98.060 and 51.98.070.

51.28.025 Duty of employer to report injury or disease—Contents of report—Claim suppression—Penalty.

(1) Whenever an employer has notice or knowledge of an injury or occupational disease sustained by any worker in his or her employment who has received treatment from a physician, has been hospitalized, disabled from work or has died as the apparent result of such injury or occupational disease, the employer shall immediately report the same to the department on forms prescribed by it. The report shall include:

(a) The name, address, and business of the employer;

(b) The name, address, and occupation of the worker;

(c) The date, time, cause, and nature of the injury or occupational disease;

(d) Whether the injury or occupational disease arose in the course of the injured worker's employment;

(e) All available information pertaining to the nature of the injury or occupational disease including but not limited to any visible signs, any complaints of the worker, any time lost from work, and the observable effect on the worker's bodily functions, so far as is known; and

(f) Such other pertinent information as the department may prescribe by regulation.

(2) The employer shall not engage in claim suppression. An employer found to have engaged in claim suppression shall be subject to a penalty of at least two hundred fifty dollars, not to exceed two thousand five hundred dollars, for each offense. The penalty shall be payable to the supplemental pension fund. The department shall adopt rules establishing the amount of penalties, taking into account the size of the employer and whether there are prior findings of claim suppression. When a determination of claim suppression has been made, the employer shall be prohibited from any current or future participation in a retrospective rating program. If self-insured, the director shall withdraw certification as provided in RCW 51.14.080.

(3) When a determination of claim suppression is made and the penalty is assessed, the department shall serve the employer and any affected retrospective rating group with a determination as provided in RCW 51.52.050. The determination may be protested to the department or appealed to the board of industrial insurance appeals. Once the order is final,

the amount due shall be collected in accordance with the provisions of RCW 51.48.140 and 51.48.150.

(4) The director, or the director's designee, shall investigate reports or complaints that an employer has engaged in claim suppression as prohibited in RCW 51.28.010(3). The complaints or allegations must be received in writing, and must include the name or names of the individuals or organizations submitting the complaint. In cases where the department can show probable cause, the director may subpoena records from the employer, medical providers, and any other entity that the director believes may have relevant information. The director's investigative and subpoena authority in this subsection is limited solely to investigations into allegations of claim suppression or where the director has probable cause that claim suppression might have occurred.

(5) If the director determines that an employer has engaged in claim suppression and, as a result, the worker has not filed a claim for industrial insurance benefits as prescribed by law, then the director in his or her sole discretion may waive the time limits for filing a claim provided in RCW 51.28.050, if the complaint or allegation of claim suppression is received within two years of the worker's accident or exposure. For the director to exercise this discretion, the claim must be filed with the department within ninety days of the date the determination of claim suppression is issued.

(6) For the purposes of this section, "claim suppression" has the same meaning as in RCW 51.28.010(4). [2007 c 77 § 2; 1987 c 185 § 32; 1985 c 347 § 1; 1975 1st ex.s. c 224 § 5; 1971 ex.s. c 289 § 39.]

Implementation—2007 c 77: See note following RCW 51.28.010.

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

Effective date—1975 1st ex.s. c 224: See note following RCW 51.04.110.

Effective dates—Severability—1971 ex.s. c 289: See RCW 51.98.060 and 51.98.070.

51.28.050 Time limitation for filing application or enforcing claim for injury. No application shall be valid or claim thereunder enforceable unless filed within one year after the day upon which the injury occurred or the rights of dependents or beneficiaries accrued, except as provided in RCW 51.28.055 and 51.28.025(5). [2007 c 77 § 3; 1984 c 159 § 1; 1961 c 23 § 51.28.050. Prior: 1927 c 310 § 6, part; 1921 c 182 § 7, part; 1911 c 74 § 12, part; RRS § 7686, part.]

Implementation—2007 c 77: See note following RCW 51.28.010.

51.28.100 Physician assistant signatures—Documents required by the department. The department shall accept the signature of a physician assistant on any certificate, card, form, or other documentation required by the department that the physician assistant's supervising physician or physicians may sign, provided that it is within the physician assistant's scope of practice, and is consistent with the terms of the physician assistant's practice arrangement plan as required by chapters 18.57A and 18.71A RCW. Consistent with the terms of this section, the authority of a physician assistant to sign such certificates, cards, forms, or other documentation includes, but is not limited to, the execution of the certificate required in RCW 51.28.020. A physician

assistant may not rate a worker's permanent partial disability under RCW 51.32.055. [2007 c 263 § 1.]

Report to legislature—2007 c 263: "By December 1, 2008, the department of labor and industries shall report to the legislature on implementation of this act, including but not limited to the effects of this act on injured worker outcomes, claim costs, and disputed claims." [2007 c 263 § 2.]

Effective date—2007 c 263: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect July 1, 2007." [2007 c 263 § 3.]

Chapter 51.32 RCW

COMPENSATION—RIGHT TO AND AMOUNT

Sections

51.32.050	Death benefits. <i>(Effective July 1, 2008.)</i>
51.32.060	Permanent total disability compensation—Personal attendant. <i>(Effective July 1, 2008.)</i>
51.32.080	Permanent partial disability—Specified—Unspecified, rules for classification—Injury after permanent partial disability.
51.32.090	Temporary total disability—Partial restoration of earning power—Return to available work—When employer continues wages—Limitations. <i>(Effective until July 1, 2008.)</i>
51.32.090	Temporary total disability—Partial restoration of earning power—Return to available work—When employer continues wages—Limitations. <i>(Effective July 1, 2008.)</i>
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51.32.099	Vocational rehabilitation pilot program—Vocational plans. <i>(Effective January 1, 2008, until June 30, 2013.)</i>
51.32.0991	Vocational services and plans—Costs—Medical aid fund expenses. <i>(Effective January 1, 2008, until June 30, 2013.)</i>
51.32.185	Occupational diseases—Presumption of occupational disease for firefighters—Limitations—Exception—Rules.
51.32.220	Reduction in total disability compensation—Limitations—Notice—Waiver—Adjustment for retroactive reduction in federal social security disability benefit—Restrictions.

51.32.050 Death benefits. *(Effective July 1, 2008.)* (1)

Where death results from the injury the expenses of burial not to exceed two hundred percent of the average monthly wage in the state as defined in RCW 51.08.018 shall be paid.

(2)(a) Where death results from the injury, a surviving spouse of a deceased worker eligible for benefits under this title shall receive monthly for life or until remarriage payments according to the following schedule:

(i) If there are no children of the deceased worker, sixty percent of the wages of the deceased worker;

(ii) If there is one child of the deceased worker and in the legal custody of such spouse, sixty-two percent of the wages of the deceased worker;

(iii) If there are two children of the deceased worker and in the legal custody of such spouse, sixty-four percent of the wages of the deceased worker;

(iv) If there are three children of the deceased worker and in the legal custody of such spouse, sixty-six percent of the wages of the deceased worker;

(v) If there are four children of the deceased worker and in the legal custody of such spouse, sixty-eight percent of the wages of the deceased worker; or

(vi) If there are five or more children of the deceased worker and in the legal custody of such spouse, seventy percent of the wages of the deceased worker.

(b) Where the surviving spouse does not have legal custody of any child or children of the deceased worker or where after the death of the worker legal custody of such child or

children passes from such surviving spouse to another, any payment on account of such child or children not in the legal custody of the surviving spouse shall be made to the person or persons having legal custody of such child or children. The amount of such payments shall be five percent of the monthly benefits payable as a result of the worker's death for each such child but such payments shall not exceed twenty-five percent. Such payments on account of such child or children shall be subtracted from the amount to which such surviving spouse would have been entitled had such surviving spouse had legal custody of all of the children and the surviving spouse shall receive the remainder after such payments on account of such child or children have been subtracted. Such payments on account of a child or children not in the legal custody of such surviving spouse shall be apportioned equally among such children.

(c) Payments to the surviving spouse of the deceased worker shall cease at the end of the month in which remarriage occurs: PROVIDED, That a monthly payment shall be made to the child or children of the deceased worker from the month following such remarriage in a sum equal to five percent of the wages of the deceased worker for one child and a sum equal to five percent for each additional child up to a maximum of five such children. Payments to such child or children shall be apportioned equally among such children. Such sum shall be in place of any payments theretofore made for the benefit of or on account of any such child or children. If the surviving spouse does not have legal custody of any child or children of the deceased worker, or if after the death of the worker, legal custody of such child or children passes from such surviving spouse to another, any payment on account of such child or children not in the legal custody of the surviving spouse shall be made to the person or persons having legal custody of such child or children.

(d) In no event shall the monthly payments provided in subsection (2) of this section:

(i) Exceed the applicable percentage of the average monthly wage in the state as computed under RCW 51.08.018 as follows:

AFTER	PERCENTAGE
June 30, 1993	105%
June 30, 1994	110%
June 30, 1995	115%
June 30, 1996	120%

(ii) For dates of injury or disease manifestation after July 1, 2008, be less than fifteen percent of the average monthly wage in the state as computed under RCW 51.08.018 plus an additional ten dollars per month for a surviving spouse and an additional ten dollars per month for each child of the worker up to a maximum of five children. However, if the monthly payment computed under this subsection (2)(d)(ii) is greater than one hundred percent of the wages of the deceased worker as determined under RCW 51.08.178, the monthly payment due to the surviving spouse shall be equal to the greater of the monthly wages of the deceased worker or the minimum benefit set forth in this section on June 30, 2008.

(e) In addition to the monthly payments provided for in subsection (2)(a) through (c) of this section, a surviving spouse or child or children of such worker if there is no sur-

living spouse, or dependent parent or parents, if there is no surviving spouse or child or children of any such deceased worker shall be forthwith paid a sum equal to one hundred percent of the average monthly wage in the state as defined in RCW 51.08.018, any such children, or parents to share and share alike in said sum.

(f) Upon remarriage of a surviving spouse the monthly payments for the child or children shall continue as provided in this section, but the monthly payments to such surviving spouse shall cease at the end of the month during which remarriage occurs. However, after September 8, 1975, an otherwise eligible surviving spouse of a worker who died at any time prior to or after September 8, 1975, shall have an option of:

(i) Receiving, once and for all, a lump sum of twenty-four times the monthly compensation rate in effect on the date of remarriage allocable to the spouse for himself or herself pursuant to subsection (2)(a)(i) of this section and subject to any modifications specified under subsection (2)(d) of this section and RCW 51.32.075(3) or fifty percent of the then remaining annuity value of his or her pension, whichever is the lesser: PROVIDED, That if the injury occurred prior to July 28, 1991, the remarriage benefit lump sum available shall be as provided in the remarriage benefit schedules then in effect; or

(ii) If a surviving spouse does not choose the option specified in subsection (2)(f)(i) of this section to accept the lump sum payment, the remarriage of the surviving spouse of a worker shall not bar him or her from claiming the lump sum payment authorized in subsection (2)(f)(i) of this section during the life of the remarriage, or shall not prevent subsequent monthly payments to him or to her if the remarriage has been terminated by death or has been dissolved or annulled by valid court decree provided he or she has not previously accepted the lump sum payment.

(g) If the surviving spouse during the remarriage should die without having previously received the lump sum payment provided in subsection (2)(f)(i) of this section, his or her estate shall be entitled to receive the sum specified under subsection (2)(f)(i) of this section or fifty percent of the then remaining annuity value of his or her pension whichever is the lesser.

(h) The effective date of resumption of payments under subsection (2)(f)(ii) of this section to a surviving spouse based upon termination of a remarriage by death, annulment, or dissolution shall be the date of the death or the date the judicial decree of annulment or dissolution becomes final and when application for the payments has been received.

(i) If it should be necessary to increase the reserves in the reserve fund or to create a new pension reserve fund as a result of the amendments in chapter 45, Laws of 1975-'76 2nd ex. sess., the amount of such increase in pension reserve in any such case shall be transferred to the reserve fund from the supplemental pension fund.

(3) If there is a child or children and no surviving spouse of the deceased worker or the surviving spouse is not eligible for benefits under this title, a sum equal to thirty-five percent of the wages of the deceased worker shall be paid monthly for one child and a sum equivalent to fifteen percent of such wage shall be paid monthly for each additional child, the total of such sum to be divided among such children, share and

share alike: PROVIDED, That benefits under this subsection or subsection (4) of this section shall not exceed the lesser of sixty-five percent of the wages of the deceased worker at the time of his or her death or the applicable percentage of the average monthly wage in the state as defined in RCW 51.08.018, as follows:

AFTER	PERCENTAGE
June 30, 1993	105%
June 30, 1994	110%
June 30, 1995	115%
June 30, 1996	120%

(4) In the event a surviving spouse receiving monthly payments dies, the child or children of the deceased worker shall receive the same payment as provided in subsection (3) of this section.

(5) If the worker leaves no surviving spouse or child, but leaves a dependent or dependents, a monthly payment shall be made to each dependent equal to fifty percent of the average monthly support actually received by such dependent from the worker during the twelve months next preceding the occurrence of the injury, but the total payment to all dependents in any case shall not exceed the lesser of sixty-five percent of the wages of the deceased worker at the time of his or her death or the applicable percentage of the average monthly wage in the state as defined in RCW 51.08.018 as follows:

AFTER	PERCENTAGE
June 30, 1993	105%
June 30, 1994	110%
June 30, 1995	115%
June 30, 1996	120%

If any dependent is under the age of eighteen years at the time of the occurrence of the injury, the payment to such dependent shall cease when such dependent reaches the age of eighteen years except such payments shall continue until the dependent reaches age twenty-three while permanently enrolled at a full time course in an accredited school. The payment to any dependent shall cease if and when, under the same circumstances, the necessity creating the dependency would have ceased if the injury had not happened.

(6) For claims filed prior to July 1, 1986, if the injured worker dies during the period of permanent total disability, whatever the cause of death, leaving a surviving spouse, or child, or children, the surviving spouse or child or children shall receive benefits as if death resulted from the injury as provided in subsections (2) through (4) of this section. Upon remarriage or death of such surviving spouse, the payments to such child or children shall be made as provided in subsection (2) of this section when the surviving spouse of a deceased worker remarries.

(7) For claims filed on or after July 1, 1986, every worker who becomes eligible for permanent total disability benefits shall elect an option as provided in RCW 51.32.067. [2007 c 284 § 1; 1995 c 199 § 6; 1993 c 521 § 1; 1991 c 88 § 2; 1988 c 161 § 2; 1986 c 58 § 3; 1982 c 63 § 18; 1977 ex.s. c 350 § 42; 1975-'76 2nd ex.s. c 45 § 2; 1975 1st ex.s. c 179 § 1; 1973 1st ex.s. c 154 § 96; 1972 ex.s. c 43 § 19; 1971 ex.s. c 289 § 7; 1965 ex.s. c 122 § 1; 1961 c 274 § 1; 1961 c 23 § 51.32.050. Prior: 1957 c 70 § 30; 1951 c 115 § 1; prior:

1949 c 219 § 1, part; 1947 c 246 § 1, part; 1929 c 132 § 2, part; 1927 c 310 § 4, part; 1923 c 136 § 2, part; 1919 c 131 § 4, part; 1917 c 28 § 1, part; 1913 c 148 § 1, part; 1911 c 74 § 5, part; Rem. Supp. 1949 § 7679, part.]

Effective date—2007 c 284: "This act takes effect July 1, 2008." [2007 c 284 § 4.]

Severability—1995 c 199: See note following RCW 51.12.120.

Effective date—1993 c 521: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and shall take effect July 1, 1993." [1993 c 521 § 4.]

Benefit increases—Application to certain retrospective rating agreements—1988 c 161: "The increases in benefits in RCW 51.32.050, 51.32.060, 51.32.090, and 51.32.180, contained in chapter 161, Laws of 1988 do not affect a retrospective rating agreement entered into by any employer with the department before July 1, 1988." [1988 c 161 § 15.]

Effective dates—1988 c 161 §§ 1, 2, 3, 4, and 6: "Section 4 of this act shall take effect on June 30, 1989. Sections 1, 2, 3, and 6 of this act shall take effect on July 1, 1988." [1988 c 161 § 17.]

Effective date—1986 c 58 §§ 2 and 3: See note following RCW 51.32.080.

Effective dates—Implementation—1982 c 63: See note following RCW 51.32.095.

Legislative intent—1975 1st ex.s. c 179: "The legislative intent of chapter 179, Laws of 1975 1st ex. sess. (2nd SSB No. 2241) was in part to offer surviving spouses of eligible workmen two options upon remarriage; such options to be available to any otherwise eligible surviving spouse regardless of the date of death of the injured workman. Accordingly this 1976 amendatory act is required to clarify that intent." [1975-'76 2nd ex.s. c 45 § 1.]

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

51.32.060 Permanent total disability compensation—Personal attendant. (Effective July 1, 2008.) (1) When the supervisor of industrial insurance shall determine that permanent total disability results from the injury, the worker shall receive monthly during the period of such disability:

(a) If married at the time of injury, sixty-five percent of his or her wages.

(b) If married with one child at the time of injury, sixty-seven percent of his or her wages.

(c) If married with two children at the time of injury, sixty-nine percent of his or her wages.

(d) If married with three children at the time of injury, seventy-one percent of his or her wages.

(e) If married with four children at the time of injury, seventy-three percent of his or her wages.

(f) If married with five or more children at the time of injury, seventy-five percent of his or her wages.

(g) If unmarried at the time of the injury, sixty percent of his or her wages.

(h) If unmarried with one child at the time of injury, sixty-two percent of his or her wages.

(i) If unmarried with two children at the time of injury, sixty-four percent of his or her wages.

(j) If unmarried with three children at the time of injury, sixty-six percent of his or her wages.

(k) If unmarried with four children at the time of injury, sixty-eight percent of his or her wages.

(l) If unmarried with five or more children at the time of injury, seventy percent of his or her wages.

(2) For any period of time where both husband and wife are entitled to compensation as temporarily or totally disabled workers, only that spouse having the higher wages of

the two shall be entitled to claim their child or children for compensation purposes.

(3) In case of permanent total disability, if the character of the injury is such as to render the worker so physically helpless as to require the hiring of the services of an attendant, the department shall make monthly payments to such attendant for such services as long as such requirement continues, but such payments shall not obtain or be operative while the worker is receiving care under or pursuant to the provisions of chapter 51.36 RCW and RCW 51.04.105.

(4) Should any further accident result in the permanent total disability of an injured worker, he or she shall receive the pension to which he or she would be entitled, notwithstanding the payment of a lump sum for his or her prior injury.

(5) In no event shall the monthly payments provided in this section:

(a) Exceed the applicable percentage of the average monthly wage in the state as computed under the provisions of RCW 51.08.018 as follows:

AFTER	PERCENTAGE
June 30, 1993	105%
June 30, 1994	110%
June 30, 1995	115%
June 30, 1996	120%

(b) For dates of injury or disease manifestation after July 1, 2008, be less than fifteen percent of the average monthly wage in the state as computed under RCW 51.08.018 plus an additional ten dollars per month if a worker is married and an additional ten dollars per month for each child of the worker up to a maximum of five children. However, if the monthly payment computed under this subsection (5)(b) is greater than one hundred percent of the wages of the worker as determined under RCW 51.08.178, the monthly payment due to the worker shall be equal to the greater of the monthly wages of the worker or the minimum benefit set forth in this section on June 30, 2008.

The limitations under this subsection shall not apply to the payments provided for in subsection (3) of this section.

(6) In the case of new or reopened claims, if the supervisor of industrial insurance determines that, at the time of filing or reopening, the worker is voluntarily retired and is no longer attached to the workforce, benefits shall not be paid under this section.

(7) The benefits provided by this section are subject to modification under RCW 51.32.067. [2007 c 284 § 2; 1993 c 521 § 2; 1988 c 161 § 1. Prior: 1986 c 59 § 1; 1986 c 58 § 5; 1983 c 3 § 159; 1977 ex.s. c 350 § 44; 1975 1st ex.s. c 224 § 9; 1973 c 147 § 1; 1972 ex.s. c 43 § 20; 1971 ex.s. c 289 § 8; 1965 ex.s. c 122 § 2; 1961 c 274 § 2; 1961 c 23 § 51.32.060; prior: 1957 c 70 § 31; 1951 c 115 § 2; prior: 1949 c 219 § 1, part; 1947 c 246 § 1, part; 1929 c 132 § 2, part; 1927 c 310 § 4, part; 1923 c 136 § 2, part; 1919 c 131 § 4, part; 1917 c 28 § 1, part; 1913 c 148 § 1, part; 1911 c 74 § 5, part; Rem. Supp. 1949 § 7679, part.]

Effective date—2007 c 284: See note following RCW 51.32.050.

Effective date—1993 c 521: See note following RCW 51.32.050.

Benefit increases—Application to certain retrospective rating agreements—Effective dates—1988 c 161: See notes following RCW 51.32.050.

Effective date—1975 1st ex.s. c 224: See note following RCW 51.04.110.

51.32.080 Permanent partial disability—Specified—Unspecified, rules for classification—Injury after permanent partial disability. (1)(a) Until July 1, 1993, for the permanent partial disabilities here specifically described, the injured worker shall receive compensation as follows:

LOSS BY AMPUTATION

Of leg above the knee joint with short thigh stump (3" or less below the tuberosity of ischium)	\$54,000.00
Of leg at or above knee joint with functional stump	48,600.00
Of leg below knee joint	43,200.00
Of leg at ankle (Syme)	37,800.00
Of foot at mid-metatarsals	18,900.00
Of great toe with resection of metatarsal bone	11,340.00
Of great toe at metatarsophalangeal joint	6,804.00
Of great toe at interphalangeal joint	3,600.00
Of lesser toe (2nd to 5th) with resection of metatarsal bone	4,140.00
Of lesser toe at metatarsophalangeal joint	2,016.00
Of lesser toe at proximal interphalangeal joint	1,494.00
Of lesser toe at distal interphalangeal joint	378.00
Of arm at or above the deltoid insertion or by disarticulation at the shoulder	54,000.00
Of arm at any point from below the deltoid insertion to below the elbow joint at the insertion of the biceps tendon	51,300.00
Of arm at any point from below the elbow joint distal to the insertion of the biceps tendon to and including mid-metacarpal amputation of the hand	48,600.00
Of all fingers except the thumb at metacarpophalangeal joints	29,160.00
Of thumb at metacarpophalangeal joint or with resection of carpometacarpal bone	19,440.00
Of thumb at interphalangeal joint	9,720.00
Of index finger at metacarpophalangeal joint or with resection of metacarpal bone	12,150.00
Of index finger at proximal interphalangeal joint	9,720.00
Of index finger at distal interphalangeal joint	5,346.00
Of middle finger at metacarpophalangeal joint or with resection of metacarpal bone	9,720.00
Of middle finger at proximal interphalangeal joint	7,776.00
Of middle finger at distal interphalangeal joint	4,374.00

Of ring finger at metacarpophalangeal joint or with resection of metacarpal bone	4,860.00
Of ring finger at proximal interphalangeal joint	3,888.00
Of ring finger at distal interphalangeal joint	2,430.00
Of little finger at metacarpophalangeal joint or with resection of metacarpal bone	2,430.00
Of little finger at proximal interphalangeal joint	1,944.00
Of little finger at distal interphalangeal joint	972.00
MISCELLANEOUS	
Loss of one eye by enucleation	21,600.00
Loss of central visual acuity in one eye	18,000.00
Complete loss of hearing in both ears	43,200.00
Complete loss of hearing in one ear	7,200.00

(b) Beginning on July 1, 1993, compensation under this subsection shall be computed as follows:

(i) Beginning on July 1, 1993, the compensation amounts for the specified disabilities listed in (a) of this subsection shall be increased by thirty-two percent; and

(ii) Beginning on July 1, 1994, and each July 1 thereafter, the compensation amounts for the specified disabilities listed in (a) of this subsection, as adjusted under (b)(i) of this subsection, shall be readjusted to reflect the percentage change in the consumer price index, calculated as follows: The index for the calendar year preceding the year in which the July calculation is made, to be known as "calendar year A," is divided by the index for the calendar year preceding calendar year A, and the resulting ratio is multiplied by the compensation amount in effect on June 30 immediately preceding the July 1st on which the respective calculation is made. For the purposes of this subsection, "index" means the same as the definition in RCW 2.12.037(1).

(2) Compensation for amputation of a member or part thereof at a site other than those specified in subsection (1) of this section, and for loss of central visual acuity and loss of hearing other than complete, shall be in proportion to that which such other amputation or partial loss of visual acuity or hearing most closely resembles and approximates. Compensation shall be calculated based on the adjusted schedule of compensation in effect for the respective time period as prescribed in subsection (1) of this section.

(3)(a) Compensation for any other permanent partial disability not involving amputation shall be in the proportion which the extent of such other disability, called unspecified disability, shall bear to the disabilities specified in subsection (1) of this section, which most closely resembles and approximates in degree of disability such other disability, and compensation for any other unspecified permanent partial disability shall be in an amount as measured and compared to total bodily impairment. To reduce litigation and establish more certainty and uniformity in the rating of unspecified permanent partial disabilities, the department shall enact rules having the force of law classifying such disabilities in the proportion which the department shall determine such disabilities reasonably bear to total bodily impairment. In

enacting such rules, the department shall give consideration to, but need not necessarily adopt, any nationally recognized medical standards or guides for determining various bodily impairments.

(b) Until July 1, 1993, for purposes of calculating monetary benefits under (a) of this subsection, the amount payable for total bodily impairment shall be deemed to be ninety thousand dollars. Beginning on July 1, 1993, for purposes of calculating monetary benefits under (a) of this subsection, the amount payable for total bodily impairment shall be adjusted as follows:

(i) Beginning on July 1, 1993, the amount payable for total bodily impairment under this section shall be increased to one hundred eighteen thousand eight hundred dollars; and

(ii) Beginning on July 1, 1994, and each July 1 thereafter, the amount payable for total bodily impairment prescribed in (b)(i) of this subsection shall be adjusted as provided in subsection (1)(b)(ii) of this section.

(c) Until July 1, 1993, the total compensation for all unspecified permanent partial disabilities resulting from the same injury shall not exceed the sum of ninety thousand dollars. Beginning on July 1, 1993, total compensation for all unspecified permanent partial disabilities resulting from the same injury shall not exceed a sum calculated as follows:

(i) Beginning on July 1, 1993, the sum shall be increased to one hundred eighteen thousand eight hundred dollars; and

(ii) Beginning on July 1, 1994, and each July 1 thereafter, the sum prescribed in (b)(i) of this subsection shall be adjusted as provided in subsection (1)(b)(ii) of this section.

(4) If permanent partial disability compensation is followed by permanent total disability compensation, any portion of the permanent partial disability compensation which exceeds the amount that would have been paid the injured worker if permanent total disability compensation had been paid in the first instance shall be, at the choosing of the injured worker, either: (a) Deducted from the worker's monthly pension benefits in an amount not to exceed twenty-five percent of the monthly amount due from the department or self-insurer or one-sixth of the total overpayment, whichever is less; or (b) deducted from the pension reserve of such injured worker and his or her monthly compensation payments shall be reduced accordingly.

(5) Should a worker receive an injury to a member or part of his or her body already, from whatever cause, permanently partially disabled, resulting in the amputation thereof or in an aggravation or increase in such permanent partial disability but not resulting in the permanent total disability of such worker, his or her compensation for such partial disability shall be adjudged with regard to the previous disability of the injured member or part and the degree or extent of the aggravation or increase of disability thereof.

(6) When the compensation provided for in subsections (1) through (3) of this section exceeds three times the average monthly wage in the state as computed under the provisions of RCW 51.08.018, payment shall be made in monthly payments in accordance with the schedule of temporary total disability payments set forth in RCW 51.32.090 until such compensation is paid to the injured worker in full, except that the first monthly payment shall be in an amount equal to three times the average monthly wage in the state as computed under the provisions of RCW 51.08.018, and interest shall be

paid at the rate of eight percent on the unpaid balance of such compensation commencing with the second monthly payment. However, upon application of the injured worker or survivor the monthly payment may be converted, in whole or in part, into a lump sum payment, in which event the monthly payment shall cease in whole or in part. Such conversion may be made only upon written application of the injured worker or survivor to the department and shall rest in the discretion of the department depending upon the merits of each individual application. Upon the death of a worker all unpaid installments accrued shall be paid according to the payment schedule established prior to the death of the worker to the widow or widower, or if there is no widow or widower surviving, to the dependent children of such claimant, and if there are no such dependent children, then to such other dependents as defined by this title.

(7) Awards payable under this section are governed by the schedule in effect on the date of injury. [2007 c 172 § 1; 1993 c 520 § 1; 1988 c 161 § 6; 1986 c 58 § 2; 1982 1st ex.s. c 20 § 2; 1979 c 104 § 1; 1977 ex.s. c 350 § 46; 1972 ex.s. c 43 § 21; 1971 ex.s. c 289 § 10; 1965 ex.s. c 165 § 1; 1961 c 274 § 3; 1961 c 23 § 51.32.080. Prior: 1957 c 70 § 32; prior: 1951 c 115 § 4; 1949 c 219 § 1, part; 1947 c 246 § 1, part; 1929 c 132 § 2, part; 1927 c 310 § 4, part; 1923 c 136 § 2, part; 1919 c 131 § 4, part; 1917 c 28 § 1, part; 1913 c 148 § 1, part; 1911 c 74 § 5, part; Rem. Supp. 1949 § 7679, part.]

Application—2007 c 172: "This act applies to all pension orders issued on or after July 22, 2007." [2007 c 172 § 2.]

Effective date—1993 c 520: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and shall take effect immediately [May 18, 1993]." [1993 c 520 § 2.]

Effective dates—1988 c 161: See note following RCW 51.32.050.

Effective date—1986 c 58 §§ 2 and 3: "Sections 2 and 3 of this act shall take effect on July 1, 1986." [1986 c 58 § 7.]

Effective date—1982 1st ex.s. c 20: See note following RCW 51.32.075.

51.32.090 Temporary total disability—Partial restoration of earning power—Return to available work—When employer continues wages—Limitations. (Effective until July 1, 2008.) (1) When the total disability is only temporary, the schedule of payments contained in RCW 51.32.060 (1) and (2) shall apply, so long as the total disability continues.

(2) Any compensation payable under this section for children not in the custody of the injured worker as of the date of injury shall be payable only to such person as actually is providing the support for such child or children pursuant to the order of a court of record providing for support of such child or children.

(3)(a) As soon as recovery is so complete that the present earning power of the worker, at any kind of work, is restored to that existing at the time of the occurrence of the injury, the payments shall cease. If and so long as the present earning power is only partially restored, the payments shall:

(i) For claims for injuries that occurred before May 7, 1993, continue in the proportion which the new earning power shall bear to the old; or

(ii) For claims for injuries occurring on or after May 7, 1993, equal eighty percent of the actual difference between

the worker's present wages and earning power at the time of injury, but: (A) The total of these payments and the worker's present wages may not exceed one hundred fifty percent of the average monthly wage in the state as computed under RCW 51.08.018; (B) the payments may not exceed one hundred percent of the entitlement as computed under subsection (1) of this section; and (C) the payments may not be less than the worker would have received if (a)(i) of this subsection had been applicable to the worker's claim.

(b) No compensation shall be payable under this subsection (3) unless the loss of earning power shall exceed five percent.

(c) The prior closure of the claim or the receipt of permanent partial disability benefits shall not affect the rate at which loss of earning power benefits are calculated upon reopening the claim.

(4)(a) Whenever the employer of injury requests that a worker who is entitled to temporary total disability under this chapter be certified by a physician as able to perform available work other than his or her usual work, the employer shall furnish to the physician, with a copy to the worker, a statement describing the work available with the employer of injury in terms that will enable the physician to relate the physical activities of the job to the worker's disability. The physician shall then determine whether the worker is physically able to perform the work described. The worker's temporary total disability payments shall continue until the worker is released by his or her physician for the work, and begins the work with the employer of injury. If the work thereafter comes to an end before the worker's recovery is sufficient in the judgment of his or her physician to permit him or her to return to his or her usual job, or to perform other available work offered by the employer of injury, the worker's temporary total disability payments shall be resumed. Should the available work described, once undertaken by the worker, impede his or her recovery to the extent that in the judgment of his or her physician he or she should not continue to work, the worker's temporary total disability payments shall be resumed when the worker ceases such work.

(b) Once the worker returns to work under the terms of this subsection (4), he or she shall not be assigned by the employer to work other than the available work described without the worker's written consent, or without prior review and approval by the worker's physician.

(c) If the worker returns to work under this subsection (4), any employee health and welfare benefits that the worker was receiving at the time of injury shall continue or be resumed at the level provided at the time of injury. Such benefits shall not be continued or resumed if to do so is inconsistent with the terms of the benefit program, or with the terms of the collective bargaining agreement currently in force.

(d) In the event of any dispute as to the worker's ability to perform the available work offered by the employer, the department shall make the final determination.

(5) No worker shall receive compensation for or during the day on which injury was received or the three days following the same, unless his or her disability shall continue for a period of fourteen consecutive calendar days from date of injury: PROVIDED, That attempts to return to work in the first fourteen days following the injury shall not serve to

break the continuity of the period of disability if the disability continues fourteen days after the injury occurs.

(6) Should a worker suffer a temporary total disability and should his or her employer at the time of the injury continue to pay him or her the wages which he or she was earning at the time of such injury, such injured worker shall not receive any payment provided in subsection (1) of this section during the period his or her employer shall so pay such wages: PROVIDED, That holiday pay, vacation pay, sick leave, or other similar benefits shall not be deemed to be payments by the employer for the purposes of this subsection.

(7) In no event shall the monthly payments provided in this section exceed the applicable percentage of the average monthly wage in the state as computed under the provisions of RCW 51.08.018 as follows:

AFTER	PERCENTAGE
June 30, 1993	105%
June 30, 1994	110%
June 30, 1995	115%
June 30, 1996	120%

(8) If the supervisor of industrial insurance determines that the worker is voluntarily retired and is no longer attached to the workforce, benefits shall not be paid under this section. [2007 c 190 § 1. Prior: 1993 c 521 § 3; 1993 c 299 § 1; 1993 c 271 § 1; 1988 c 161 § 4; prior: 1988 c 161 § 3; 1986 c 59 § 3; (1986 c 59 § 2 expired June 30, 1989); prior: 1985 c 462 § 6; 1980 c 129 § 1; 1977 ex.s. c 350 § 47; 1975 1st ex.s. c 235 § 1; 1972 ex.s. c 43 § 22; 1971 ex.s. c 289 § 11; 1965 ex.s. c 122 § 3; 1961 c 274 § 4; 1961 c 23 § 51.32.090; prior: 1957 c 70 § 33; 1955 c 74 § 8; prior: 1951 c 115 § 3; 1949 c 219 § 1, part; 1947 c 246 § 1, part; 1929 c 132 § 2, part; 1927 c 310 § 4, part; 1923 c 136 § 2, part; 1919 c 131 § 4, part; 1917 c 28 § 1, part; 1913 c 148 § 1, part; 1911 c 74 § 5, part; Rem. Supp. 1949 § 7679, part.]

Effective date—1993 c 521: See note following RCW 51.32.050.

Effective date—1993 c 299: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and shall take effect July 1, 1993." [1993 c 299 § 2.]

Effective date—1993 c 271: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and shall take effect immediately [May 7, 1993]." [1993 c 271 § 2.]

Benefit increases—Application to certain retrospective rating agreements—Effective dates—1988 c 161: See notes following RCW 51.32.050.

Expiration date—1986 c 59 § 2; Effective dates—1986 c 59 §§ 3, 5: "Section 2 of this act shall expire on June 30, 1989. Section 3 of this act shall take effect on June 30, 1989. Section 5 of this act shall take effect on July 1, 1986." [1986 c 59 § 6.]

Program and fiscal review—1985 c 462: See note following RCW 41.04.500.

51.32.090 Temporary total disability—Partial restoration of earning power—Return to available work—When employer continues wages—Limitations. (Effective July 1, 2008.) (1) When the total disability is only temporary, the schedule of payments contained in RCW 51.32.060 (1) and (2) shall apply, so long as the total disability continues.

(2) Any compensation payable under this section for children not in the custody of the injured worker as of the date of injury shall be payable only to such person as actually is providing the support for such child or children pursuant to the order of a court of record providing for support of such child or children.

(3)(a) As soon as recovery is so complete that the present earning power of the worker, at any kind of work, is restored to that existing at the time of the occurrence of the injury, the payments shall cease. If and so long as the present earning power is only partially restored, the payments shall:

(i) For claims for injuries that occurred before May 7, 1993, continue in the proportion which the new earning power shall bear to the old; or

(ii) For claims for injuries occurring on or after May 7, 1993, equal eighty percent of the actual difference between the worker's present wages and earning power at the time of injury, but: (A) The total of these payments and the worker's present wages may not exceed one hundred fifty percent of the average monthly wage in the state as computed under RCW 51.08.018; (B) the payments may not exceed one hundred percent of the entitlement as computed under subsection (1) of this section; and (C) the payments may not be less than the worker would have received if (a)(i) of this subsection had been applicable to the worker's claim.

(b) No compensation shall be payable under this subsection (3) unless the loss of earning power shall exceed five percent.

(c) The prior closure of the claim or the receipt of permanent partial disability benefits shall not affect the rate at which loss of earning power benefits are calculated upon reopening the claim.

(4)(a) Whenever the employer of injury requests that a worker who is entitled to temporary total disability under this chapter be certified by a physician as able to perform available work other than his or her usual work, the employer shall furnish to the physician, with a copy to the worker, a statement describing the work available with the employer of injury in terms that will enable the physician to relate the physical activities of the job to the worker's disability. The physician shall then determine whether the worker is physically able to perform the work described. The worker's temporary total disability payments shall continue until the worker is released by his or her physician for the work, and begins the work with the employer of injury. If the work thereafter comes to an end before the worker's recovery is sufficient in the judgment of his or her physician to permit him or her to return to his or her usual job, or to perform other available work offered by the employer of injury, the worker's temporary total disability payments shall be resumed. Should the available work described, once undertaken by the worker, impede his or her recovery to the extent that in the judgment of his or her physician he or she should not continue to work, the worker's temporary total disability payments shall be resumed when the worker ceases such work.

(b) Once the worker returns to work under the terms of this subsection (4), he or she shall not be assigned by the employer to work other than the available work described without the worker's written consent, or without prior review and approval by the worker's physician.

(c) If the worker returns to work under this subsection (4), any employee health and welfare benefits that the worker was receiving at the time of injury shall continue or be resumed at the level provided at the time of injury. Such benefits shall not be continued or resumed if to do so is inconsistent with the terms of the benefit program, or with the terms of the collective bargaining agreement currently in force.

(d) In the event of any dispute as to the worker's ability to perform the available work offered by the employer, the department shall make the final determination.

(5) No worker shall receive compensation for or during the day on which injury was received or the three days following the same, unless his or her disability shall continue for a period of fourteen consecutive calendar days from date of injury: PROVIDED, That attempts to return to work in the first fourteen days following the injury shall not serve to break the continuity of the period of disability if the disability continues fourteen days after the injury occurs.

(6) Should a worker suffer a temporary total disability and should his or her employer at the time of the injury continue to pay him or her the wages which he or she was earning at the time of such injury, such injured worker shall not receive any payment provided in subsection (1) of this section during the period his or her employer shall so pay such wages: PROVIDED, That holiday pay, vacation pay, sick leave, or other similar benefits shall not be deemed to be payments by the employer for the purposes of this subsection.

(7) In no event shall the monthly payments provided in this section:

(a) Exceed the applicable percentage of the average monthly wage in the state as computed under the provisions of RCW 51.08.018 as follows:

AFTER	PERCENTAGE
June 30, 1993	105%
June 30, 1994	110%
June 30, 1995	115%
June 30, 1996	120%

(b) For dates of injury or disease manifestation after July 1, 2008, be less than fifteen percent of the average monthly wage in the state as computed under RCW 51.08.018 plus an additional ten dollars per month if the worker is married and an additional ten dollars per month for each child of the worker up to a maximum of five children. However, if the monthly payment computed under this subsection (7)(b) is greater than one hundred percent of the wages of the worker as determined under RCW 51.08.178, the monthly payment due to the worker shall be equal to the greater of the monthly wages of the worker or the minimum benefit set forth in this section on June 30, 2008.

(8) If the supervisor of industrial insurance determines that the worker is voluntarily retired and is no longer attached to the workforce, benefits shall not be paid under this section. [2007 c 284 § 3; 2007 c 190 § 1. Prior: 1993 c 521 § 3; 1993 c 299 § 1; 1993 c 271 § 1; 1988 c 161 § 4; prior: 1988 c 161 § 3; 1986 c 59 § 3; (1986 c 59 § 2 expired June 30, 1989); prior: 1985 c 462 § 6; 1980 c 129 § 1; 1977 ex.s. c 350 § 47; 1975 1st ex.s. c 235 § 1; 1972 ex.s. c 43 § 22; 1971 ex.s. c 289 § 11; 1965 ex.s. c 122 § 3; 1961 c 274 § 4; 1961 c 23 § 51.32.090; prior: 1957 c 70 § 33; 1955 c 74 § 8; prior: 1951

c 115 § 3; 1949 c 219 § 1, part; 1947 c 246 § 1, part; 1929 c 132 § 2, part; 1927 c 310 § 4, part; 1923 c 136 § 2, part; 1919 c 131 § 4, part; 1917 c 28 § 1, part; 1913 c 148 § 1, part; 1911 c 74 § 5, part; Rem. Supp. 1949 § 7679, part.]

Reviser's note: This section was amended by 2007 c 190 § 1 and by 2007 c 284 § 3, each without reference to the other. Both amendments are incorporated in the publication of this section under RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

Effective date—2007 c 284: See note following RCW 51.32.050.

Effective date—1993 c 521: See note following RCW 51.32.050.

Effective date—1993 c 299: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and shall take effect July 1, 1993." [1993 c 299 § 2.]

Effective date—1993 c 271: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and shall take effect immediately [May 7, 1993]." [1993 c 271 § 2.]

Benefit increases—Application to certain retrospective rating agreements—Effective dates—1988 c 161: See notes following RCW 51.32.050.

Expiration date—1986 c 59 § 2; Effective dates—1986 c 59 §§ 3, 5: "Section 2 of this act shall expire on June 30, 1989. Section 3 of this act shall take effect on June 30, 1989. Section 5 of this act shall take effect on July 1, 1986." [1986 c 59 § 6.]

Program and fiscal review—1985 c 462: See note following RCW 41.04.500.

51.32.095 Vocational rehabilitation services—Benefits—Priorities—Allowable costs—Performance criteria. (2007 c 72 § 1 effective January 1, 2008, until June 30, 2013.)

(1) One of the primary purposes of this title is to enable the injured worker to become employable at gainful employment. To this end, the department or self-insurers shall utilize the services of individuals and organizations, public or private, whose experience, training, and interests in vocational rehabilitation and retraining qualify them to lend expert assistance to the supervisor of industrial insurance in such programs of vocational rehabilitation as may be reasonable to make the worker employable consistent with his or her physical and mental status. Where, after evaluation and recommendation by such individuals or organizations and prior to final evaluation of the worker's permanent disability and in the sole opinion of the supervisor or supervisor's designee, whether or not medical treatment has been concluded, vocational rehabilitation is both necessary and likely to enable the injured worker to become employable at gainful employment, the supervisor or supervisor's designee may, in his or her sole discretion, pay or, if the employer is a self-insurer, direct the self-insurer to pay the cost as provided in subsection (3) of this section or RCW 51.32.099, as appropriate. An injured worker may not participate in vocational rehabilitation under this section or RCW 51.32.099 if such participation would result in a payment of benefits as described in RCW 51.32.240(5), and any benefits so paid shall be recovered according to the terms of that section.

(2) When in the sole discretion of the supervisor or the supervisor's designee vocational rehabilitation is both necessary and likely to make the worker employable at gainful employment, then the following order of priorities shall be used:

- (a) Return to the previous job with the same employer;

(b) Modification of the previous job with the same employer including transitional return to work;

(c) A new job with the same employer in keeping with any limitations or restrictions;

(d) Modification of a new job with the same employer including transitional return to work;

(e) Modification of the previous job with a new employer;

(f) A new job with a new employer or self-employment based upon transferable skills;

(g) Modification of a new job with a new employer;

(h) A new job with a new employer or self-employment involving on-the-job training;

(i) Short-term retraining and job placement.

(3)(a) For vocational plans approved prior to July 1, 1999, costs for vocational rehabilitation benefits allowed by the supervisor or supervisor's designee under subsection (1) of this section may include the cost of books, tuition, fees, supplies, equipment, transportation, child or dependent care, and other necessary expenses for any such worker in an amount not to exceed three thousand dollars in any fifty-two week period except as authorized by *RCW 51.60.060, and the cost of continuing the temporary total disability compensation under RCW 51.32.090 while the worker is actively and successfully undergoing a formal program of vocational rehabilitation.

(b) When the department has approved a vocational plan for a worker between July 1, 1999, through December 31, 2007, costs for vocational rehabilitation benefits allowed by the supervisor or supervisor's designee under subsection (1) of this section may include the cost of books, tuition, fees, supplies, equipment, child or dependent care, and other necessary expenses for any such worker in an amount not to exceed four thousand dollars in any fifty-two week period except as authorized by *RCW 51.60.060, and the cost of transportation and continuing the temporary total disability compensation under RCW 51.32.090 while the worker is actively and successfully undergoing a formal program of vocational rehabilitation.

(c) The expenses allowed under (a) or (b) of this subsection may include training fees for on-the-job training and the cost of furnishing tools and other equipment necessary for self-employment or reemployment. However, compensation or payment of retraining with job placement expenses under (a) or (b) of this subsection may not be authorized for a period of more than fifty-two weeks, except that such period may, in the sole discretion of the supervisor after his or her review, be extended for an additional fifty-two weeks or portion thereof by written order of the supervisor.

(d) In cases where the worker is required to reside away from his or her customary residence, the reasonable cost of board and lodging shall also be paid.

(e) Costs paid under this subsection shall be chargeable to the employer's cost experience or shall be paid by the self-insurer as the case may be.

(4) In addition to the vocational rehabilitation expenditures provided for under subsection (3) of this section and RCW 51.32.099, an additional five thousand dollars may, upon authorization of the supervisor or the supervisor's designee, be expended for: (a) Accommodations for an injured worker that are medically necessary for the worker to partic-

ipate in an approved retraining plan; and (b) accommodations necessary to perform the essential functions of an occupation in which an injured worker is seeking employment, consistent with the retraining plan or the recommendations of a vocational evaluation. The injured worker's attending physician must verify the necessity of the modifications or accommodations. The total expenditures authorized in this subsection and the expenditures authorized under RCW 51.32.250 shall not exceed five thousand dollars.

(5) When the department has approved a vocational plan for a worker prior to January 1, 2008, regardless of whether the worker has begun participating in the approved plan, costs for vocational rehabilitation benefits allowed by the supervisor or supervisor's designee under subsection (1) of this section are limited to those provided under subsections (3) and (4) of this section.

For vocational plans approved for a worker between January 1, 2008, through June 30, 2013, total vocational costs allowed by the supervisor or supervisor's designee under subsection (1) of this section shall be limited to those provided under the pilot program established in RCW 51.32.099, and vocational rehabilitation services shall conform to the requirements in RCW 51.32.099.

(6) The department shall establish criteria to monitor the quality and effectiveness of rehabilitation services provided by the individuals and organizations used under subsection (1) of this section and under RCW 51.32.099. The state fund shall make referrals for vocational rehabilitation services based on these performance criteria.

(7) The department shall engage in, where feasible and cost-effective, a cooperative program with the state employment security department to provide job placement services under this section and RCW 51.32.099.

(8) The benefits in this section and RCW 51.32.099 shall be provided for the injured workers of self-insured employers. Self-insurers shall report both benefits provided and benefits denied under this section and RCW 51.32.099 in the manner prescribed by the department by rule adopted under chapter 34.05 RCW. The director may, in his or her sole discretion and upon his or her own initiative or at any time that a dispute arises under this section or RCW 51.32.099, promptly make such inquiries as circumstances require and take such other action as he or she considers will properly determine the matter and protect the rights of the parties.

(9) Except as otherwise provided in this section or RCW 51.32.099, the benefits provided for in this section and RCW 51.32.099 are available to any otherwise eligible worker regardless of the date of industrial injury. However, claims shall not be reopened solely for vocational rehabilitation purposes. [2007 c 72 § 1; 1999 c 110 § 1. Prior: 1996 c 151 § 1; 1996 c 59 § 1; 1988 c 161 § 9; 1985 c 339 § 2; 1983 c 70 § 2; 1982 c 63 § 11; 1980 c 14 § 10. Prior: 1977 ex.s. c 350 § 48; 1977 ex.s. c 323 § 16; 1972 ex.s. c 43 § 23; 1971 ex.s. c 289 § 12.]

*Reviser's note: RCW 51.60.060 expired June 30, 1999, pursuant to 1994 c 29 § 8.

Implementation—Effective date—Expiration date—2007 c 72: See notes following RCW 51.32.099.

Effective date—1999 c 110 § 1: "Section 1 of this act is necessary for the immediate preservation of the public peace, health, or safety, or support

of the state government and its existing public institutions, and takes effect July 1, 1999." [1999 c 110 § 3.]

Legislative finding—1985 c 339: "The legislature finds that the vocational rehabilitation program created by chapter 63, Laws of 1982, has failed to assist injured workers to return to suitable gainful employment without undue loss of time from work and has increased costs of industrial insurance for employers and employees alike. The legislature further finds that the administrative structure established within the industrial insurance division of the department of labor and industries to develop and oversee the provision of vocational rehabilitation services has not provided efficient delivery of vocational rehabilitation services. The legislature finds that restructuring the state's vocational rehabilitation program under the department of labor and industries is necessary." [1985 c 339 § 1.]

Severability—1985 c 339: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1985 c 339 § 6.]

Severability—1983 c 70: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1983 c 70 § 5.]

Effective dates—Implementation—1982 c 63: "Section 4 of this act is necessary for the immediate preservation of the public peace, health, and safety, the support of the state government and its existing public institutions, and shall take effect immediately [March 26, 1982]. All other sections of this act shall take effect on January 1, 1983. The director of the department of labor and industries is authorized to immediately take such steps as are necessary to insure that this act is implemented on its effective dates." [1982 c 63 § 26.]

Severability—Effective date—1977 ex.s. c 323: See notes following RCW 51.04.040.

51.32.099 Vocational rehabilitation pilot program—Vocational plans. (Effective January 1, 2008, until June 30, 2013.) (1)(a) The legislature intends to create improved vocational outcomes for Washington state injured workers and employers through legislative and regulatory change under a pilot program for the period of January 1, 2008, through June 30, 2013. This pilot vocational system is intended to allow opportunities for eligible workers to participate in meaningful retraining in high demand occupations, improve successful return to work and achieve positive outcomes for workers, reduce the incidence of repeat vocational services, increase accountability and responsibility, and improve cost predictability. To facilitate the study and evaluation of the results of the proposed changes, the department shall establish the temporary funding of certain state fund vocational costs through the medical aid account to ensure the appropriate assessments to employers for the costs of their claims for vocational services in accordance with RCW 51.32.0991.

(b) An independent review and study of the effects of the pilot program shall be conducted to determine whether it has achieved the appropriate outcomes at reasonable cost to the system. The review shall include, at a minimum, a report on the department's performance with regard to the provision of vocational services, the skills acquired by workers who receive retraining services, the types of training programs approved, whether the workers are employed, at what jobs and wages after completion of the training program and at various times subsequent to their claim closure, the number and demographics of workers who choose the option provided in subsection (4)(b) of this section, and their employment and earnings status at various times subsequent to claim closure. The department may adopt rules, in collaboration

with the subcommittee created under (c)(iii) of this subsection, to further define the scope and elements of the required study. Reports of the independent researcher are due on December 1, 2010, December 1, 2011, and December 1, 2012.

(c) In implementing the pilot program, the department shall:

(i) Establish a vocational initiative project that includes participation by the department as a partner with WorkSource, the established state system that administers the federal workforce investment act of 1998. As a partner, the department shall place vocational professional full-time employees at pilot WorkSource locations; refer some workers for vocational services to these vocational professionals; and work with employers in work source pilot areas to market the benefits of on-the-job training programs and with community colleges to reserve slots in high demand programs. These on-the-job training programs and community college slots may be considered by both department and private sector vocational professionals for vocational plan development. The department will also assist stakeholders in developing additional vocational training programs in various industries, including but not limited to agriculture and construction. These programs will expand the choices available to injured workers in developing their vocational training plans with the assistance of vocational professionals.

(ii) Develop and maintain a register of state fund and self-insured workers who have been retrained or have selected any of the vocational options described in this section for at least the duration of the pilot program.

(iii) Create a vocational rehabilitation subcommittee made up of members appointed by the director for at least the duration of the pilot program. This subcommittee shall provide the business and labor partnership needed to maintain focus on the intent of the pilot program, as described in this section, and provide consistency and transparency to the development of rules and policies. The subcommittee shall report to the director at least annually and recommend to the director and the legislature any additional statutory changes needed, which may include extension of the pilot period. The subcommittee shall provide input and oversight with the department concerning the study required under (b) of this subsection. The subcommittee shall provide recommendations for additional changes or incentives for injured workers to return to work with their employer of injury.

(iv) The department shall develop an annual report concerning Washington's workers' compensation vocational rehabilitation system to the legislature and to the subcommittee by December 1, 2009, and annually thereafter with the final report due by December 1, 2012. The annual report shall include the number of workers who have participated in more than one vocational training plan beginning with plans approved on January 1, 2008, and in which industries those workers were employed. The final report shall include the department's assessment and recommendations for further legislative action, in collaboration with the subcommittee.

(2)(a) For the purposes of this section, the day the worker commences vocational plan development means the date the department or self-insurer notifies the worker of his or her eligibility for plan development services.

(b) When vocational rehabilitation is both necessary and likely to make the worker employable at gainful employment, he or she shall be provided with services necessary to develop a vocational plan that, if completed, would render the worker employable. The vocational professional assigned to the claim shall, at the initial meeting with the worker, fully inform the worker of the return-to-work priorities set forth in RCW 51.32.095(2) and of his or her rights and responsibilities under the workers' compensation vocational system. The department shall provide tools to the vocational professional for communicating this and other information required by RCW 51.32.095 and this section to the worker.

(c) On the date the worker commences vocational plan development, the department shall also inform the employer in writing of the employer's right to make a valid return-to-work offer during the first fifteen days following the commencement of vocational plan development. To be valid, the offer must be for bona fide employment with the employer of injury, consistent with the worker's documented physical and mental restrictions as provided by the worker's health care provider. When the employer makes a valid return-to-work offer, the vocational plan development services and temporary total disability compensation shall be terminated effective [on] the starting date for the job without regard to whether the worker accepts the return-to-work offer. Following the fifteen-day period, the employer may still provide, and the worker may accept, any valid return-to-work offer. The worker's acceptance of such an offer shall result in the termination of vocational plan development or implementation services and temporary total disability compensation effective the day the employment begins.

(3)(a) All vocational plans must contain an accountability agreement signed by the worker detailing expectations regarding progress, attendance, and other factors influencing successful participation in the plan. Failure to abide by the agreed expectations shall result in suspension of vocational benefits pursuant to RCW 51.32.110.

(b) Any formal education included as part of the vocational plan must be for an accredited or licensed program or other program approved by the department. The department shall develop rules that provide criteria for the approval of nonaccredited or unlicensed programs.

(c) The vocational plan for an individual worker must be completed and submitted to the department within ninety days of the day the worker commences vocational plan development. The department may extend the ninety days for good cause. Criteria for good cause shall be provided in rule. The frequency and reasons for good cause extensions shall be reported to the subcommittee created under subsection (1)(c)(iii) of this section.

(d) Costs for the vocational plan may include books, tuition, fees, supplies, equipment, child or dependent care, training fees for on-the-job training, the cost of furnishing tools and other equipment necessary for self-employment or reemployment, and other necessary expenses in an amount not to exceed twelve thousand dollars. This amount shall be adjusted effective July 1 of each year for vocational plans or retraining benefits available under subsection (4)(b) of this section approved on or after this date but before June 30 of the next year based on the average percentage change in

tuition for the next fall quarter for all Washington state community colleges.

(e) The duration of the vocational plan shall not exceed two years from the date the plan is implemented. The worker shall receive temporary total disability compensation under RCW 51.32.090 and the cost of transportation while he or she is actively and successfully participating in a vocational plan.

(f) If the worker is required to reside away from his or her customary residence, the reasonable cost of board and lodging shall also be paid.

(4) Vocational plan development services shall be completed within ninety days of commencing. During vocational plan development the worker shall, with the assistance of a vocational professional, participate in vocational counseling and occupational exploration to include, but not be limited to, identifying possible job goals, training needs, resources, and expenses, consistent with the worker's physical and mental status. A vocational rehabilitation plan shall be developed by the worker and the vocational professional and submitted to the department or self-insurer. Following this submission, the worker shall elect one of the following options:

(a) Option 1: The department or self-insurer implements and the worker participates in the vocational plan developed by the vocational professional and approved by the worker and the department or self-insurer. For state fund claims, the department must review and approve the vocational plan before implementation may begin. If the department takes no action within fifteen days, the plan is deemed approved. The worker may, within fifteen days of approval of the plan by the department, elect option 2.

(i) Following successful completion of the vocational plan, any subsequent assessment of whether vocational rehabilitation is both necessary and likely to enable the injured worker to become employable at gainful employment under RCW 51.32.095(1) shall include consideration of transferable skills obtained in the vocational plan.

(ii) If a vocational plan is successfully completed on a claim which is thereafter reopened as provided in RCW 51.32.160, the cost and duration available for any subsequent vocational plan is limited to that in subsection (3)(d) and (e) of this section, less that previously expended.

(b) Option 2: The worker declines further vocational services under the claim and receives an amount equal to six months of temporary total disability compensation under RCW 51.32.090. The award is payable in biweekly payments in accordance with the schedule of temporary total disability payments, until such award is paid in full. These payments shall not include interest on the unpaid balance. However, upon application by the worker, and at the discretion of the department, the compensation may be converted to a lump sum payment. The vocational costs defined in subsection (3)(d) of this section shall remain available to the worker, upon application to the department or self-insurer, for a period of five years. The vocational costs shall, if expended, be available for programs or courses at any accredited or licensed institution or program from a list of those approved by the department for tuition, books, fees, supplies, equipment, and tools, without department or self-insurer oversight. The department shall issue an order as provided in RCW 51.52.050 confirming the option 2 election, setting a

payment schedule, and terminating temporary total disability benefits. The department shall thereafter close the claim.

(i) If within five years from the date the option 2 order becomes final, the worker is subsequently injured or suffers an occupational disease or reopens the claim as provided in RCW 51.32.160, and vocational rehabilitation is found both necessary and likely to enable the injured worker to become employable at gainful employment under RCW 51.32.095(1), the duration of any vocational plan under subsection (3)(e) of this section shall not exceed eighteen months.

(ii) If the available vocational costs are utilized by the worker, any subsequent assessment of whether vocational rehabilitation is both necessary and likely to enable the injured worker to become employable at gainful employment under RCW 51.32.095(1) shall include consideration of the transferable skills obtained.

(iii) If the available vocational costs are utilized by the worker and the claim is thereafter reopened as provided in RCW 51.32.160, the cost available for any vocational plan is limited to that in subsection (3)(d) of this section less that previously expended.

(iv) Option 2 may only be elected once per worker.

(c) The director, in his or her sole discretion, may provide the worker vocational assistance not to exceed that in subsection (3) of this section, without regard to the worker's prior option selection or benefits expended, where vocational assistance would prevent permanent total disability under RCW 51.32.060.

(5)(a) As used in this section, "vocational plan interruption" means an occurrence which disrupts the plan to the extent the employability goal is no longer attainable. "Vocational plan interruption" does not include institutionally scheduled breaks in educational programs, occasional absence due to illness, or modifications to the plan which will allow it to be completed within the cost and time provisions of subsection (3)(d) and (e) of this section.

(b) When a vocational plan interruption is beyond the control of the worker, the department or self-insurer shall recommence plan development. If necessary to complete vocational services, the cost and duration of the plan may include credit for that expended prior to the interruption. A vocational plan interruption is considered outside the control of the worker when it is due to the closure of the accredited institution, when it is due to a death in the worker's immediate family, or when documented changes in the worker's accepted medical conditions prevent further participation in the vocational plan.

(c) When a vocational plan interruption is the result of the worker's actions, the worker's entitlement to benefits shall be suspended in accordance with RCW 51.32.110. If plan development or implementation is recommenced, the cost and duration of the plan shall not include credit for that expended prior to the interruption. A vocational plan interruption is considered a result of the worker's actions when it is due to the failure to meet attendance expectations set by the training or educational institution, failure to achieve passing grades or acceptable performance review, unaccepted or postinjury conditions that prevent further participation in the vocational plan, or the worker's failure to abide by the

accountability agreement per subsection (3)(a) of this section. [2007 c 72 § 2.]

Implementation—2007 c 72: "The department of labor and industries shall adopt rules necessary to implement this act." [2007 c 72 § 4.]

Effective date—2007 c 72: "This act takes effect January 1, 2008." [2007 c 72 § 5.]

Expiration date—2007 c 72: "This act expires June 30, 2013." [2007 c 72 § 6.]

51.32.0991 Vocational services and plans—Costs—Medical aid fund expenses. (Effective January 1, 2008, until June 30, 2013.) (1) Costs paid for vocational services and plans shall be chargeable to the employer's cost experience or shall be paid by the self-insurer, as the case may be. For state fund vocational plans implemented on or after January 1, 2008, the costs may be paid from the medical aid fund at the sole discretion of the director under the following circumstances:

(a) The worker previously participated in a vocational plan or selected a worker option as described in RCW 51.32.099(4);

(b) The worker's prior vocational plan or selected option was based on an approved plan or option on or after January 1, 2008;

(c) For state fund employers, the date of injury or disease manifestation of the subsequent claim is within the period of time used to calculate their experience factor;

(d) The subsequent claim is for an injury or occupational disease that resulted from employment and work-related activities beyond the worker's documented restrictions.

(2) The vocational plan costs payable from the medical aid fund shall include the costs of temporary total disability benefits, except those payable from the supplemental pension fund, from the date the vocational plan is implemented to the date the worker completes the plan or ceases participation. The vocational costs paid from the medical aid fund shall not be charged to the state fund employer's cost experience.

(3) For the duration of the vocational pilot program, all expenses to the medical aid fund resulting from the director's discretionary decisions as provided in subsection (1) of this section shall be separately documented as a medical aid fund expenditure and reported to the vocational rehabilitation subcommittee and the legislature annually. This report shall include the number of claims for which relief to the state fund employer was provided and the average cost per claim. A report to the vocational rehabilitation subcommittee and the legislature shall also be made annually including the number of claims and average cost per claim reported by self-insured employers for claims meeting the requirements in subsection (1)(a), (b), and (d) of this section. [2007 c 72 § 3.]

Implementation—Effective date—Expiration date—2007 c 72: See notes following RCW 51.32.099.

51.32.185 Occupational diseases—Presumption of occupational disease for firefighters—Limitations—Exception—Rules. (1) In the case of firefighters as defined in RCW 41.26.030(4) (a), (b), and (c) who are covered under Title 51 RCW and firefighters, including supervisors, employed on a full-time, fully compensated basis as a firefighter of a private sector employer's fire department that includes over fifty such firefighters, there shall exist a prima

facie presumption that: (a) Respiratory disease; (b) any heart problems, experienced within seventy-two hours of exposure to smoke, fumes, or toxic substances, or experienced within twenty-four hours of strenuous physical exertion due to fire-fighting activities; (c) cancer; and (d) infectious diseases are occupational diseases under RCW 51.08.140. This presumption of occupational disease may be rebutted by a preponderance of the evidence. Such evidence may include, but is not limited to, use of tobacco products, physical fitness and weight, lifestyle, hereditary factors, and exposure from other employment or nonemployment activities.

(2) The presumptions established in subsection (1) of this section shall be extended to an applicable member following termination of service for a period of three calendar months for each year of requisite service, but may not extend more than sixty months following the last date of employment.

(3) The presumption established in subsection (1)(c) of this section shall only apply to any active or former firefighter who has cancer that develops or manifests itself after the firefighter has served at least ten years and who was given a qualifying medical examination upon becoming a firefighter that showed no evidence of cancer. The presumption within subsection (1)(c) of this section shall only apply to prostate cancer diagnosed prior to the age of fifty, primary brain cancer, malignant melanoma, leukemia, non-Hodgkin's lymphoma, bladder cancer, ureter cancer, colorectal cancer, multiple myeloma, testicular cancer, and kidney cancer.

(4) The presumption established in subsection (1)(d) of this section shall be extended to any firefighter who has contracted any of the following infectious diseases: Human immunodeficiency virus/acquired immunodeficiency syndrome, all strains of hepatitis, meningococcal meningitis, or mycobacterium tuberculosis.

(5) Beginning July 1, 2003, this section does not apply to a firefighter who develops a heart or lung condition and who is a regular user of tobacco products or who has a history of tobacco use. The department, using existing medical research, shall define in rule the extent of tobacco use that shall exclude a firefighter from the provisions of this section.

(6) For purposes of this section, "firefighting activities" means fire suppression, fire prevention, emergency medical services, rescue operations, hazardous materials response, aircraft rescue, and training and other assigned duties related to emergency response.

(7)(a) When a determination involving the presumption established in this section is appealed to the board of industrial insurance appeals and the final decision allows the claim for benefits, the board of industrial insurance appeals shall order that all reasonable costs of the appeal, including attorney fees and witness fees, be paid to the firefighter or his or her beneficiary by the opposing party.

(b) When a determination involving the presumption established in this section is appealed to any court and the final decision allows the claim for benefits, the court shall order that all reasonable costs of the appeal, including attorney fees and witness fees, be paid to the firefighter or his or her beneficiary by the opposing party.

(c) When reasonable costs of the appeal must be paid by the department under this section in a state fund case, the costs shall be paid from the accident fund and charged to the

costs of the claim. [2007 c 490 § 2; 2002 c 337 § 2; 1987 c 515 § 2.]

Legislative findings—1987 c 515: "The legislature finds that the employment of firefighters exposes them to smoke, fumes, and toxic or chemical substances. The legislature recognizes that firefighters as a class have a higher rate of respiratory disease than the general public. The legislature therefore finds that respiratory disease should be presumed to be occupationally related for industrial insurance purposes for firefighters." [1987 c 515 § 1.]

51.32.220 Reduction in total disability compensation—Limitations—Notice—Waiver—Adjustment for retroactive reduction in federal social security disability benefit—Restrictions. (1) For persons receiving compensation for temporary or permanent total disability pursuant to the provisions of this chapter, such compensation shall be reduced by an amount equal to the benefits payable under the federal old-age, survivors, and disability insurance act as now or hereafter amended not to exceed the amount of the reduction established pursuant to 42 U.S.C. Sec. 424a. However, such reduction shall not apply when the combined compensation provided pursuant to this chapter and the federal old-age, survivors, and disability insurance act is less than the total benefits to which the federal reduction would apply, pursuant to 42 U.S.C. 424a. Where any person described in this section refuses to authorize the release of information concerning the amount of benefits payable under said federal act the department's estimate of said amount shall be deemed to be correct unless and until the actual amount is established and no adjustment shall be made for any period of time covered by any such refusal.

(2) Any reduction under subsection (1) of this section shall be effective the month following the month in which the department or self-insurer is notified by the federal social security administration that the person is receiving disability benefits under the federal old-age, survivors, and disability insurance act. PROVIDED, That in the event of an overpayment of benefits the department or self-insurer may not recover more than the overpayments for the six months immediately preceding the date the department or self-insurer notifies the worker that an overpayment has occurred: PROVIDED FURTHER, That upon determining that there has been an overpayment, the department or self-insurer shall immediately notify the person who received the overpayment that he or she shall be required to make repayment pursuant to this section and RCW 51.32.230.

(3) Recovery of any overpayment must be taken from future temporary or permanent total disability benefits or permanent partial disability benefits provided by this title. In the case of temporary or permanent total disability benefits, the recovery shall not exceed twenty-five percent of the monthly amount due from the department or self-insurer or one-sixth of the total overpayment, whichever is the lesser.

(4) No reduction may be made unless the worker receives notice of the reduction prior to the month in which the reduction is made.

(5) In no event shall the reduction reduce total benefits to less than the greater amount the worker may be entitled to under this title or the federal old-age, survivors, and disability insurance act.

(6) The director, pursuant to rules adopted in accordance with the procedures provided in the administrative procedure

act, chapter 34.05 RCW, may exercise his or her discretion to waive, in whole or in part, the amount of any overpayment where the recovery would be against equity and good conscience.

(7) Subsection (1) of this section applies to:

(a) Workers under the age of sixty-two whose effective entitlement to total disability compensation begins before January 2, 1983;

(b) Workers under the age of sixty-five whose effective entitlement to total disability compensation begins after January 1, 1983; and

(c) Workers who will become sixty-five years of age on or after June 10, 2004.

(8)(a) If the federal social security administration makes a retroactive reduction in the federal social security disability benefit entitlement of a worker for periods of temporary total, temporary partial, or total permanent disability for which the department or self-insurer also reduced the worker's benefit amounts under this section, the department or self-insurer, as the case may be, shall make adjustments in the calculation of benefits and pay the additional benefits to the worker as appropriate. However, the department or self-insurer shall not make changes in the calculation or pay additional benefits unless the worker submits a written request, along with documentation satisfactory to the director of an overpayment assessment by the social security administration, to the department or self-insurer, as the case may be.

(b) Additional benefits paid under this subsection:

(i) Are paid without interest and without regard to whether the worker's claim under this title is closed; and

(ii) Do not affect the status or the date of the claim's closure.

(c) This subsection does not apply to requests on claims for which a determination on the request has been made and is not subject to further appeal. [2007 c 255 § 1; 2005 c 198 § 1; 2004 c 92 § 1; 1982 c 63 § 19; 1979 ex.s. c 231 § 1; 1979 ex.s. c 151 § 1; 1977 ex.s. c 323 § 19; 1975 1st ex.s. c 286 § 3.]

Effective dates—Implementation—1982 c 63: See note following RCW 51.32.095.

Applicability—1979 ex.s. c 231: "This 1979 act applies to all cases in which notification of the first reduction in compensation pursuant to RCW 51.32.220 is mailed after June 15, 1979, regardless of when the basis, authority, or cause for such reduction may have arisen. To such extent, this 1979 act applies retrospectively, but in all other respects it applies prospectively." [1979 ex.s. c 231 § 2.]

Severability—1979 ex.s. c 231: "If any provision of this 1979 act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1979 ex.s. c 231 § 3.]

Applicability—1979 ex.s. c 151: "This 1979 act applies to all cases in which notification of the first reduction in compensation pursuant to RCW 51.32.220 is mailed after May 10, 1979, regardless of when the basis, authority, or cause for such reduction may have arisen. To such extent, this 1979 act applies retrospectively, but in all other respects it applies prospectively." [1979 ex.s. c 151 § 3.]

Severability—1979 ex.s. c 151: "If any provision of this 1979 act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1979 ex.s. c 151 § 4.]

Severability—Effective date—1977 ex.s. c 323: See notes following RCW 51.04.040.

[2007 RCW Supp—page 744]

Chapter 51.36 RCW

MEDICAL AID

Sections

51.36.010	Extent and duration. (<i>Effective January 1, 2008.</i>)
51.36.140	Industrial insurance medical advisory committee—Duties—Membership.
51.36.150	Industrial insurance chiropractic advisory committee—Duties—Membership.

51.36.010 Extent and duration. (*Effective January 1, 2008.*) Upon the occurrence of any injury to a worker entitled to compensation under the provisions of this title, he or she shall receive proper and necessary medical and surgical services at the hands of a physician of his or her own choice, if conveniently located, and proper and necessary hospital care and services during the period of his or her disability from such injury. The department for state fund claims shall pay, in accordance with the department's fee schedule, for any alleged injury for which a worker files a claim, any initial prescription drugs provided in relation to that initial visit, without regard to whether the worker's claim for benefits is allowed. In all accepted claims, treatment shall be limited in point of duration as follows:

In the case of permanent partial disability, not to extend beyond the date when compensation shall be awarded him or her, except when the worker returned to work before permanent partial disability award is made, in such case not to extend beyond the time when monthly allowances to him or her shall cease; in case of temporary disability not to extend beyond the time when monthly allowances to him or her shall cease: PROVIDED, That after any injured worker has returned to his or her work his or her medical and surgical treatment may be continued if, and so long as, such continuation is deemed necessary by the supervisor of industrial insurance to be necessary to his or her more complete recovery; in case of a permanent total disability not to extend beyond the date on which a lump sum settlement is made with him or her or he or she is placed upon the permanent pension roll: PROVIDED, HOWEVER, That the supervisor of industrial insurance, solely in his or her discretion, may authorize continued medical and surgical treatment for conditions previously accepted by the department when such medical and surgical treatment is deemed necessary by the supervisor of industrial insurance to protect such worker's life or provide for the administration of medical and therapeutic measures including payment of prescription medications, but not including those controlled substances currently scheduled by the state board of pharmacy as Schedule I, II, III, or IV substances under chapter 69.50 RCW, which are necessary to alleviate continuing pain which results from the industrial injury. In order to authorize such continued treatment the written order of the supervisor of industrial insurance issued in advance of the continuation shall be necessary.

The supervisor of industrial insurance, the supervisor's designee, or a self-insurer, in his or her sole discretion, may authorize inoculation or other immunological treatment in cases in which a work-related activity has resulted in probable exposure of the worker to a potential infectious occupational disease. Authorization of such treatment does not bind the department or self-insurer in any adjudication of a claim by the same worker or the worker's beneficiary for an occu-

pational disease. [2007 c 134 § 1; 1986 c 58 § 6; 1977 ex.s. c 350 § 56; 1975 1st ex.s. c 234 § 1; 1971 ex.s. c 289 § 50; 1965 ex.s. c 166 § 2; 1961 c 23 § 51.36.010. Prior: 1959 c 256 § 2; prior: 1943 c 186 § 2, part; 1923 c 136 § 9, part; 1921 c 182 § 11, part; 1919 c 129 § 2, part; 1917 c 28 § 5, part; Rem. Supp. 1943 § 7714, part.]

Report to legislature—2007 c 134: "By December 1, 2009, the department of labor and industries must report to the senate labor, commerce, research and development committee and the house of representatives commerce and labor committee, or successor committees, on the implementation of this act." [2007 c 134 § 2.]

Effective date—2007 c 134: "This act takes effect January 1, 2008." [2007 c 134 § 3.]

Effective dates—Severability—1971 ex.s. c 289: See RCW 51.98.060 and 51.98.070.

51.36.140 Industrial insurance medical advisory committee—Duties—Membership. (1) The department shall establish an industrial insurance medical advisory committee. The industrial insurance medical advisory committee shall advise the department on matters related to the provision of safe, effective, and cost-effective treatments for injured workers, including but not limited to the development of practice guidelines and coverage criteria, review of coverage decisions and technology assessments, review of medical programs, and review of rules pertaining to health care issues. The industrial insurance medical advisory committee may provide peer review and advise and assist the department in the resolution of controversies, disputes, and problems between the department and the providers of medical care. The industrial insurance medical advisory committee must consider the best available scientific evidence and expert opinion of committee members. The department may hire any expert or service or create an ad hoc committee, group, or subcommittee it deems necessary to fulfill the purposes of the industrial insurance medical advisory committee. In addition, the industrial insurance medical advisory committee may consult nationally recognized experts in evidence-based health care on particularly controversial issues.

(2) The industrial insurance medical advisory committee is composed of up to fourteen members appointed by the director. The members must not include any department employees. The director shall select twelve members from the nominations provided by statewide clinical groups, specialties, and associations, including but not limited to the following: Family or general practice, orthopedics, neurology, neurosurgery, general surgery, physical medicine and rehabilitation, psychiatry, internal medicine, osteopathic, pain management, and occupational medicine. At least two members must be physicians who are recognized for expertise in evidence-based medicine. The director may choose up to two additional members, not necessarily from the nominations submitted, who have expertise in occupational medicine.

(3) The industrial insurance medical advisory committee shall choose its chair from among its membership.

(4) The members of the industrial insurance medical advisory committee, including hired experts and any ad hoc group or subcommittee: (a) Are immune from civil liability for any official acts performed in good faith to further the purposes of the industrial insurance medical advisory committee; and (b) may be compensated for participation in the work of the industrial insurance medical advisory committee

in accordance with a personal services contract to be executed after appointment and before commencement of activities related to the work of the industrial insurance medical advisory committee.

(5) The members of the industrial insurance medical advisory committee shall disclose all potential financial conflicts of interest including contracts with or employment by a manufacturer, provider, or vendor of health technologies, drugs, medical devices, diagnostic tools, or other medical services during their term or for eighteen months before their appointment. As a condition of appointment, each person must agree to the terms and conditions regarding conflicts of interest as determined by the director.

(6) The industrial insurance medical advisory committee shall meet at the times and places designated by the director and hold meetings during the year as necessary to provide advice to the director. Meetings of the industrial insurance medical advisory committee are subject to chapter 42.30 RCW, the open public meetings act.

(7) The industrial insurance medical advisory committee shall coordinate with the state health technology assessment program and state prescription drug program as necessary. As provided by RCW 70.14.100 and 70.14.050, the decisions of the state health technology assessment program and those of the state prescription drug program hold greater weight than decisions made by the department's industrial insurance medical advisory committee under Title 51 RCW.

(8) Neither the industrial insurance medical advisory committee nor any group is an agency for purposes of chapter 34.05 RCW.

(9) The department shall provide administrative support to the industrial insurance medical advisory committee and adopt rules to carry out the purposes of this section.

(10) The chair and ranking minority member of the house of representatives commerce and labor committee or the chair and ranking minority member of the senate labor, commerce, research and development committee, or successor committees, may request that the industrial insurance medical advisory committee review a medical issue related to industrial insurance and provide a written report to the house of representatives commerce and labor committee and the senate labor, commerce, research and development committee, or successor committees. The industrial insurance medical advisory committee is not required to act on the request.

(11) The workers' compensation advisory committee may request that the industrial insurance medical advisory committee consider specific medical issues that have arisen multiple times during the work of the workers' compensation advisory committee. The industrial insurance medical advisory committee is not required to act on the request. [2007 c 282 § 1.]

Report to legislature—2007 c 282: "The director, the industrial insurance medical advisory committee, and the industrial insurance chiropractic advisory committee shall report to the appropriate committees of the legislature on the following:

(1) A summary of the types of issues reviewed by the industrial insurance medical advisory committee and the industrial insurance chiropractic advisory committee and decisions in each matter;

(2) Whether the industrial insurance medical advisory committee or the industrial insurance chiropractic advisory committee became involved in the resolution of any disputes or controversies and the results of those disputes or controversies as a result of the involvement of the industrial insurance medical advisory committee or the industrial insurance chiropractic advisory

committee;

(3) The extent to which the industrial insurance medical advisory committee and the industrial insurance chiropractic advisory committee conducted any peer reviews and the results of those reviews;

(4) The extent of any practice guidelines or coverage criteria developed by the industrial insurance medical advisory committee or the industrial insurance chiropractic advisory committee and the success of those developments; and

(5) The extent to which the industrial insurance medical advisory committee and the industrial insurance chiropractic advisory committee provided advice on coverage decisions and technology assessments.

The report is due no later than June 30, 2011, and must contain a recommendation about whether the industrial insurance medical advisory committee and the industrial insurance chiropractic advisory committee should continue as originally configured or whether any changes are needed." [2007 c 282 § 3.]

51.36.150 Industrial insurance chiropractic advisory committee—Duties—Membership. (1) The department shall establish an industrial insurance chiropractic advisory committee. The industrial insurance chiropractic advisory committee shall advise the department on matters related to the provision of safe, effective, and cost-effective chiropractic treatments for injured workers. The industrial insurance chiropractic advisory committee may provide peer review and advise and assist the department in the resolution of controversies, disputes, and problems between the department and the providers of chiropractic care.

(2) The industrial insurance chiropractic advisory committee is composed of up to nine members appointed by the director. The members must not include any department employees. The director must consider nominations from recognized statewide chiropractic groups such as the Washington state chiropractic association. At least two members must be chiropractors who are recognized for expertise in evidence-based practice or occupational health.

(3) The industrial insurance chiropractic advisory committee shall choose its chair from among its membership.

(4) The members of the industrial insurance chiropractic advisory committee and any ad hoc group or subcommittee: (a) Are immune from civil liability for any official acts performed in good faith to further the purposes of the industrial insurance chiropractic advisory committee; and (b) may be compensated for participation in the work of the industrial insurance chiropractic advisory committee in accordance with a personal services contract to be executed after appointment and before commencement of activities related to the work of the industrial insurance chiropractic advisory committee.

(5) The members of the industrial insurance chiropractic advisory committee shall disclose all potential financial conflicts of interest including contracts with or employment by a manufacturer, provider, or vendor of health technologies, drugs, medical devices, diagnostic tools, or other medical services during their term or for eighteen months before their appointment. As a condition of appointment, each person must agree to the terms and conditions regarding conflicts of interest as determined by the director.

(6) The industrial insurance chiropractic advisory committee shall meet at the times and places designated by the director and hold meetings during the year as necessary to provide advice to the director. Meetings of the industrial insurance chiropractic advisory committee are subject to chapter 42.30 RCW, the open public meetings act.

[2007 RCW Supp—page 746]

(7) The industrial insurance chiropractic advisory committee shall coordinate with the state health technology assessment program and state prescription drug program as necessary. As provided by RCW 70.14.100 and 70.14.050, the decisions of the state health technology assessment program and those of the state prescription drug program hold greater weight than decisions made by the department's industrial insurance chiropractic advisory committee under Title 51 RCW.

(8) Neither the industrial insurance chiropractic advisory committee nor any group is an agency for purposes of chapter 34.05 RCW.

(9) The department shall provide administrative support to the industrial insurance chiropractic advisory committee and adopt rules to carry out the purposes of this section.

(10) The chair and ranking minority member of the house of representatives commerce and labor committee or the chair and ranking minority member of the senate labor, commerce, research and development committee, or successor committees, may request that the industrial insurance chiropractic advisory committee review a medical issue related to industrial insurance and provide a written report to the house of representatives commerce and labor committee and the senate labor, commerce, research and development committee, or successor committees. The industrial insurance chiropractic advisory committee is not required to act on the request.

(11) The workers' compensation advisory committee may request that the industrial insurance chiropractic advisory committee consider specific medical issues that have arisen multiple times during the work of the workers' compensation advisory committee. The industrial insurance chiropractic advisory committee is not required to act on the request. [2007 c 282 § 2.]

Report to legislature—2007 c 282: See note following RCW 51.36.140.

Chapter 51.44 RCW FUNDS

Sections

51.44.033	Supplemental pension fund.
51.44.150	Assessments upon self-insurers for administration costs.

51.44.033 Supplemental pension fund. There shall be, in the office of the state treasurer, a fund to be known and designated as the "supplemental pension fund". The director shall be the administrator thereof. The fund shall be used for the sole purposes of making the additional payments therefrom prescribed in this title and the loans therefrom authorized in RCW 49.86.190. [2007 c 357 § 23; 1975 1st ex.s. c 224 § 16; 1971 ex.s. c 289 § 18.]

Joint legislative task force—2007 c 357: See note following RCW 49.86.005.

Effective date—1975 1st ex.s. c 224: See note following RCW 51.04.110.

Effective dates—Severability—1971 ex.s. c 289: See RCW 51.98.060 and 51.98.070.

51.44.150 Assessments upon self-insurers for administration costs. The director shall impose and collect assess-

ments each fiscal year upon all self-insurers in the amount of the estimated costs of administering their portion of this title during such fiscal year. These assessments shall also include the assessments for the ombudsman's office provided for in RCW 51.14.390. The time and manner of imposing and collecting assessments due the department shall be set forth in regulations promulgated by the director in accordance with chapter 34.05 RCW. [2007 c 281 § 11; 1971 ex.s. c 289 § 59.]

Effective dates—Severability—1971 ex.s. c 289: See RCW 51.98.060 and 51.98.070.

**Chapter 51.52 RCW
APPEALS**

Sections

- 51.52.120 Attorney's fee before department or board—Unlawful attorney's fees.
- 51.52.130 Attorney and witness fees in court appeal.

51.52.120 Attorney's fee before department or board—Unlawful attorney's fees. (1) It shall be unlawful for an attorney engaged in the representation of any worker or beneficiary to charge for services in the department any fee in excess of a reasonable fee, of not more than thirty percent of the increase in the award secured by the attorney's services. Such reasonable fee shall be fixed by the director or the director's designee for services performed by an attorney for such worker or beneficiary, if written application therefor is made by the attorney, worker, or beneficiary within one year from the date the final decision and order of the department is communicated to the party making the application.

(2) If, on appeal to the board, the order, decision, or award of the department is reversed or modified and additional relief is granted to a worker or beneficiary, or in cases where a party other than the worker or beneficiary is the appealing party and the worker's or beneficiary's right to relief is sustained by the board, the board shall fix a reasonable fee for the services of his or her attorney in proceedings before the board if written application therefor is made by the attorney, worker, or beneficiary within one year from the date the final decision and order of the board is communicated to the party making the application. In fixing the amount of such attorney's fee, the board shall take into consideration the fee allowed, if any, by the director, for services before the department, and the board may review the fee fixed by the director. Any attorney's fee set by the department or the board may be reviewed by the superior court upon application of such attorney, worker, or beneficiary. The department or self-insured employer, as the case may be, shall be served a copy of the application and shall be entitled to appear and take part in the proceedings. Where the board, pursuant to this section, fixes the attorney's fee, it shall be unlawful for an attorney to charge or receive any fee for services before the board in excess of that fee fixed by the board.

(3) In an appeal to the board involving the presumption established under RCW 51.32.185, the attorney's fee shall be payable as set forth under RCW 51.32.185.

(4) Any person who violates this section is guilty of a misdemeanor. [2007 c 490 § 3; 2003 c 53 § 285; 1990 c 15 § 1; 1982 c 63 § 22; 1977 ex.s. c 350 § 81; 1965 ex.s. c 63 § 1;

1961 c 23 § 51.52.120. Prior: 1951 c 225 § 16; prior: 1947 c 246 § 3; Rem. Supp. 1947 § 7679-3.]

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

Effective dates—Implementation—1982 c 63: See note following RCW 51.32.095.

51.52.130 Attorney and witness fees in court appeal.

(1) If, on appeal to the superior or appellate court from the decision and order of the board, said decision and order is reversed or modified and additional relief is granted to a worker or beneficiary, or in cases where a party other than the worker or beneficiary is the appealing party and the worker's or beneficiary's right to relief is sustained, a reasonable fee for the services of the worker's or beneficiary's attorney shall be fixed by the court. In fixing the fee the court shall take into consideration the fee or fees, if any, fixed by the director and the board for such attorney's services before the department and the board. If the court finds that the fee fixed by the director or by the board is inadequate for services performed before the department or board, or if the director or the board has fixed no fee for such services, then the court shall fix a fee for the attorney's services before the department, or the board, as the case may be, in addition to the fee fixed for the services in the court. If in a worker or beneficiary appeal the decision and order of the board is reversed or modified and if the accident fund or medical aid fund is affected by the litigation, or if in an appeal by the department or employer the worker or beneficiary's right to relief is sustained, or in an appeal by a worker involving a state fund employer with twenty-five employees or less, in which the department does not appear and defend, and the board order in favor of the employer is sustained, the attorney's fee fixed by the court, for services before the court only, and the fees of medical and other witnesses and the costs shall be payable out of the administrative fund of the department. In the case of self-insured employers, the attorney fees fixed by the court, for services before the court only, and the fees of medical and other witnesses and the costs shall be payable directly by the self-insured employer.

(2) In an appeal to the superior or appellate court involving the presumption established under RCW 51.32.185, the attorney's fee shall be payable as set forth under RCW 51.32.185. [2007 c 490 § 4; 1993 c 122 § 1; 1982 c 63 § 23; 1977 ex.s. c 350 § 82; 1961 c 23 § 51.52.130. Prior: 1957 c 70 § 63; 1951 c 225 § 17; prior: 1949 c 219 § 6, part; 1943 c 280 § 1, part; 1931 c 90 § 1, part; 1929 c 132 § 6, part; 1927 c 310 § 8, part; 1911 c 74 § 20, part; Rem. Supp. 1949 § 7697, part.]

Effective dates—Implementation—1982 c 63: See note following RCW 51.32.095.

Title 52

FIRE PROTECTION DISTRICTS

Chapters

52.14 Commissioners.

Chapter 52.14 RCW COMMISSIONERS

Sections

52.14.010 Number—Qualifications—Insurance—Compensation and expenses—Service as volunteer firefighter.

52.14.010 Number—Qualifications—Insurance—Compensation and expenses—Service as volunteer firefighter. The affairs of the district shall be managed by a board of fire commissioners composed of three registered voters residing in the district except as provided in RCW 52.14.015 and 52.14.020. Each member shall each receive ninety dollars per day or portion thereof, not to exceed eight thousand six hundred forty dollars per year, for time spent in actual attendance at official meetings of the board or in performance of other services or duties on behalf of the district.

In addition, they shall receive necessary expenses incurred in attending meetings of the board or when otherwise engaged in district business, and shall be entitled to receive the same insurance available to all firefighters of the district: PROVIDED, That the premiums for such insurance, except liability insurance, shall be paid by the individual commissioners who elect to receive it.

Any commissioner may waive all or any portion of his or her compensation payable under this section as to any month or months during his or her term of office, by a written waiver filed with the secretary as provided in this section. The waiver, to be effective, must be filed any time after the commissioner's election and prior to the date on which the compensation would otherwise be paid. The waiver shall specify the month or period of months for which it is made.

The board shall fix the compensation to be paid the secretary and all other agents and employees of the district. The board may, by resolution adopted by unanimous vote, authorize any of its members to serve as volunteer firefighters without compensation. A commissioner actually serving as a volunteer firefighter may enjoy the rights and benefits of a volunteer firefighter.

The dollar thresholds established in this section must be adjusted for inflation by the office of financial management every five years, beginning July 1, 2008, based upon changes in the consumer price index during that time period. "Consumer price index" means, for any calendar year, that year's annual average consumer price index, for Washington state, for wage earners and clerical workers, all items, compiled by the bureau of labor and statistics, United States department of labor. If the bureau of labor and statistics develops more than one consumer price index for areas within the state, the index covering the greatest number of people, covering areas exclusively within the boundaries of the state, and including all items shall be used for the adjustments for inflation in this section. The office of financial management must calculate the new dollar threshold and transmit it to the office of the code reviser for publication in the Washington State Register at least one month before the new dollar threshold is to take effect.

A person holding office as commissioner for two or more special purpose districts shall receive only that per diem compensation authorized for one of his or her commissioner positions as compensation for attending an official meeting

or conducting official services or duties while representing more than one of his or her districts. However, such commissioner may receive additional per diem compensation if approved by resolution of all boards of the affected commissions. [2007 c 469 § 2; 1998 c 121 § 2; 1994 c 223 § 48; 1985 c 330 § 2; 1980 c 27 § 1; 1979 ex.s. c 126 § 31; 1973 c 86 § 1; 1971 ex.s. c 242 § 2; 1969 ex.s. c 67 § 1; 1967 c 51 § 1; 1965 c 112 § 1; 1959 c 237 § 4; 1957 c 238 § 1; 1945 c 162 § 3; 1939 c 34 § 22; Rem. Supp. 1945 § 5654-122. Formerly RCW 52.12.010.]

Purpose—1979 ex.s. c 126: See RCW 29A.20.040(1).

Terms of commissioners: RCW 52.14.060.

Title 53 PORT DISTRICTS

Chapters

53.08 Powers.

53.12 Commissioners—Elections.

Chapter 53.08 RCW POWERS

Sections

53.08.040 Improvement of lands for industrial and commercial purposes—Providing sewer and water utilities—Providing pollution control facilities.

53.08.255 Tourism promotion and tourism-related facilities authorized.

53.08.040 Improvement of lands for industrial and commercial purposes—Providing sewer and water utilities—Providing pollution control facilities. (1) A district may improve its lands by dredging, filling, bulkheading, providing waterways or otherwise developing such lands for industrial and commercial purposes. A district may also acquire, construct, install, improve, and operate sewer and water utilities to serve its own property and other property owners under terms, conditions, and rates to be fixed and approved by the port commission. A district may also acquire, by purchase, construction, lease, or in any other manner, and may maintain and operate other facilities for the control or elimination of air, water, or other pollution, including, but not limited to, facilities for the treatment and/or disposal of industrial wastes, and may make such facilities available to others under terms, conditions and rates to be fixed and approved by the port commission. Such conditions and rates shall be sufficient to reimburse the port for all costs, including reasonable amortization of capital outlays caused by or incidental to providing such other pollution control facilities. However, no part of such costs of providing any pollution control facility to others shall be paid out of any tax revenues of the port and no port shall enter into an agreement or contract to provide sewer and/or water utilities or pollution control facilities if substantially similar utilities or facilities are available from another source (or sources) which is able and willing to provide such utilities or facilities on a reasonable and nondiscriminatory basis unless such other source (or sources) consents thereto.

(2) In the event that a port elects to make such other pollution control facilities available to others, it shall do so by

lease, lease purchase agreement, or other agreement binding such user to pay for the use of said facilities for the full term of the revenue bonds issued by the port for the acquisition of said facilities, and said payments shall at least fully reimburse the port for all principal and interest paid by it on said bonds and for all operating or other costs, if any, incurred by the port in connection with said facilities. However, where there is more than one user of any such facilities, each user shall be responsible for its pro rata share of such costs and payment of principal and interest. Any port intending to provide pollution control facilities to others shall first survey the port district to ascertain the potential users of such facilities and the extent of their needs. The port shall conduct a public hearing upon the proposal and shall give each potential user an opportunity to participate in the use of such facilities upon equal terms and conditions.

(3) "Pollution control facility," as used in this section and RCW 53.08.041, does not include air quality improvement equipment that provides emission reductions for engines, vehicles, and vessels. [2007 c 348 § 103; 1989 c 298 § 1; 1972 ex.s. c 54 § 1; 1967 c 131 § 1; 1955 c 65 § 5. Prior: 1943 c 166 § 2, part; 1921 c 183 § 1, part; 1917 c 125 § 1, part; 1913 c 62 § 4, part; 1911 c 92 § 4, part; Rem. Supp. 1943 § 9692, part.]

Findings—Part headings not law—2007 c 348: See RCW 43.325.005 and 43.325.903.

Severability—1972 ex.s. c 54: "If any provision of this 1972 amendatory act or the application thereof to any person or circumstance, is held invalid, such invalidity shall not affect other provisions or applications of the act which can be given effect without the invalid provision or application, and to this end the provisions of this 1972 amendatory act are declared to be severable." [1972 ex.s. c 54 § 5.]

Assessments and charges against state lands: Chapter 79.44 RCW.

53.08.255 Tourism promotion and tourism-related facilities authorized. (1) Any port district in this state, acting through its commission, has power to expend moneys and conduct promotion of resources and facilities in the district or general area by advertising, publicizing, or otherwise distributing information to attract visitors and encourage tourist expansion.

(2)(a) Any port district is authorized either individually or jointly with any other municipality, or person, or any combination thereof, to acquire and to operate tourism-related facilities.

(b) When exercising the authority granted under (a) of this subsection, a port district may exercise any of the powers granted to a municipality under RCW 67.28.120, 67.28.130 through 67.28.170, and 67.28.220, but may not exercise powers granted to municipalities under RCW 67.28.180 and 67.28.181 or other powers granted to municipalities under chapter 67.28 RCW. The definitions contained in RCW 67.28.080 apply to the exercise of authority by a port district under (a) of this subsection, and for that purpose the term "municipality" includes a port district.

(c) Port districts may not use this section as the authority for the exercise of the power of eminent domain. [2007 c 476 § 1; 1984 c 122 § 10.]

Chapter 53.12 RCW

COMMISSIONERS—ELECTIONS

Sections

53.12.260 Compensation.

53.12.260 Compensation. (1) Each commissioner of a port district shall receive ninety dollars per day or portion thereof spent (a) in actual attendance at official meetings of the port district commission, or (b) in performance of other official services or duties on behalf of the district. The total per diem compensation of a port commissioner shall not exceed eight thousand six hundred forty dollars in a year, or ten thousand eight hundred dollars in any year for a port district with gross operating income of twenty-five million or more in the preceding calendar year.

(2) Port commissioners shall receive additional compensation as follows: (a) Each commissioner of a port district with gross operating revenues of twenty-five million dollars or more in the preceding calendar year shall receive a salary of five hundred dollars per month; and (b) each commissioner of a port district with gross operating revenues of from one million dollars to less than twenty-five million dollars in the preceding calendar year shall receive a salary of two hundred dollars per month.

(3) In lieu of the compensation specified in this section, a port commission may set compensation to be paid to commissioners.

(4) For any commissioner who has not elected to become a member of public employees retirement system before May 1, 1975, the compensation provided pursuant to this section shall not be considered salary for purposes of the provisions of any retirement system created pursuant to the general laws of this state nor shall attendance at such meetings or other service on behalf of the district constitute service as defined in RCW 41.40.010(9): PROVIDED, That in the case of a port district when commissioners are receiving compensation and contributing to the public employees retirement system, these benefits shall continue in full force and effect notwithstanding the provisions of RCW 53.12.260 and 53.12.265.

The dollar thresholds established in this section must be adjusted for inflation by the office of financial management every five years, beginning July 1, 2008, based upon changes in the consumer price index during that time period. "Consumer price index" means, for any calendar year, that year's annual average consumer price index, for Washington state, for wage earners and clerical workers, all items, compiled by the bureau of labor and statistics, United States department of labor. If the bureau of labor and statistics develops more than one consumer price index for areas within the state, the index covering the greatest number of people, covering areas exclusively within the boundaries of the state, and including all items shall be used for the adjustments for inflation in this section. The office of financial management must calculate the new dollar threshold and transmit it to the office of the code reviser for publication in the Washington State Register at least one month before the new dollar threshold is to take effect.

A person holding office as commissioner for two or more special purpose districts shall receive only that per diem compensation authorized for one of his or her commissioner

positions as compensation for attending an official meeting or conducting official services or duties while representing more than one of his or her districts. However, such commissioner may receive additional per diem compensation if approved by resolution of all boards of the affected commissions. [2007 c 469 § 3; 1998 c 121 § 3; 1992 c 146 § 12; 1985 c 330 § 3; 1975 1st ex.s. c 187 § 1.]

Title 54

PUBLIC UTILITY DISTRICTS

Chapters

54.04 General provisions.

54.12 Commissioners.

54.16 Powers.

54.52 Voluntary contributions to assist low-income customers.

Chapter 54.04 RCW

GENERAL PROVISIONS

Sections

54.04.190 Production and distribution of biodiesel, ethanol, and ethanol blend fuels—Crop purchase contracts for dedicated energy crops.

54.04.190 Production and distribution of biodiesel, ethanol, and ethanol blend fuels—Crop purchase contracts for dedicated energy crops. In addition to any other authority provided by law, public utility districts are authorized to produce and distribute biodiesel, ethanol, and ethanol blend fuels, including entering into crop purchase contracts for a dedicated energy crop for the purpose of generating electricity or producing biodiesel produced from Washington feedstocks, cellulosic ethanol, and cellulosic ethanol blend fuels for use in internal operations of the electric utility and for sale or distribution. [2007 c 348 § 210.]

Findings—Part headings not law—2007 c 348: See RCW 43.325.005 and 43.325.903.

Chapter 54.12 RCW

COMMISSIONERS

Sections

54.12.080 Compensation and expenses—Group insurance.

54.12.080 Compensation and expenses—Group insurance. (1) Commissioners of public utility districts are eligible to receive salaries as follows:

(a) Each public utility district commissioner of a district operating utility properties shall receive a salary of one thousand dollars per month during a calendar year if the district received total gross revenue of over fifteen million dollars during the fiscal year ending June 30th before the calendar year. However, the board of commissioners of such a public utility district may pass a resolution increasing the rate of salary up to thirteen hundred dollars per month.

(b) Each public utility district commissioner of a district operating utility properties shall receive a salary of seven hundred dollars per month during a calendar year if the dis-

trict received total gross revenue of from two million dollars to fifteen million dollars during the fiscal year ending June 30th before the calendar year. However, the board of commissioners of such a public utility district may pass a resolution increasing the rate of salary up to nine hundred dollars per month.

(c) Commissioners of other districts shall serve without salary. However, the board of commissioners of such a public utility district may pass a resolution providing for salaries not exceeding four hundred dollars per month for each commissioner.

(2) In addition to salary, all districts may provide by resolution for the payment of per diem compensation to each commissioner at a rate not exceeding ninety dollars for each day or portion thereof spent in actual attendance at official meetings of the district commission or in performance of other official services or duties on behalf of the district, to include meetings of the commission of his or her district or meetings attended by one or more commissioners of two or more districts called to consider business common to them, but such compensation paid during any one year to a commissioner shall not exceed twelve thousand six hundred dollars. Per diem compensation shall not be paid for services of a ministerial or professional nature.

(3) Any commissioner may waive all or any portion of his or her compensation payable under this section as to any month or months during his or her term of office, by a written waiver filed with the district as provided in this section. The waiver, to be effective, must be filed any time after the commissioner's election and prior to the date on which the compensation would otherwise be paid. The waiver shall specify the month or period of months for which it is made.

(4) Each district commissioner shall be reimbursed for reasonable expenses actually incurred in connection with such business and meetings, including his or her subsistence and lodging and travel while away from his or her place of residence.

(5) Any district providing group insurance for its employees, covering them, their immediate family, and dependents, may provide insurance for its commissioner with the same coverage.

The dollar thresholds established in this section must be adjusted for inflation by the office of financial management every five years, beginning July 1, 2008, based upon changes in the consumer price index during that time period. "Consumer price index" means, for any calendar year, that year's annual average consumer price index, for Washington state, for wage earners and clerical workers, all items, compiled by the bureau of labor and statistics, United States department of labor. If the bureau of labor and statistics develops more than one consumer price index for areas within the state, the index covering the greatest number of people, covering areas exclusively within the boundaries of the state, and including all items shall be used for the adjustments for inflation in this section. The office of financial management must calculate the new dollar threshold and transmit it to the office of the code reviser for publication in the Washington State Register at least one month before the new dollar threshold is to take effect.

A person holding office as commissioner for two or more special purpose districts shall receive only that per diem

compensation authorized for one of his or her commissioner positions as compensation for attending an official meeting or conducting official services or duties while representing more than one of his or her districts. However, such commissioner may receive additional per diem compensation if approved by resolution of all boards of the affected commissions. [2007 c 469 § 4; 1998 c 121 § 4; 1997 c 28 § 1; 1985 c 330 § 4; 1977 ex.s. c 157 § 1; 1969 c 106 § 5; 1967 c 161 § 1; 1957 c 140 § 2; 1955 c 124 § 5; 1951 c 207 § 4. Prior: (i) 1931 c 1 § 8, part; RRS § 11612, part. (ii) 1941 c 245 § 6; Rem. Supp. 1941 § 11616-5.]

Construction—Severability—1969 c 106: See notes following RCW 54.08.041.

Group employee insurance: RCW 54.04.050.

Hospitalization and medical insurance not deemed additional compensation: RCW 41.04.190.

Chapter 54.16 RCW POWERS

Sections

54.16.390 Environmental mitigation activities.

54.16.390 Environmental mitigation activities. (1) A public utility district may develop and make publicly available a plan for the district to reduce its greenhouse gases emissions or achieve no-net emissions from all sources of greenhouse gases that the district owns, leases, uses, contracts for, or otherwise controls.

(2) A public utility district may, as part of its utility operation, mitigate the environmental impacts, such as greenhouse gases emissions, of its operation and any power purchases. Mitigation may include, but is not limited to, those greenhouse gases mitigation mechanisms recognized by independent, qualified organizations with proven experience in emissions mitigation activities. Mitigation mechanisms may include the purchase, trade, and banking of greenhouse gases offsets or credits. If a state greenhouse gases registry is established, a public utility district that has purchased, traded, or banked greenhouse gases mitigation mechanisms under this section shall receive credit in the registry. [2007 c 349 § 4.]

Finding—Intent—2007 c 349 § 4: "The legislature finds and declares that greenhouse gases offset contracts, credits, and other greenhouse gases mitigation efforts are a recognized utility purpose that confers a direct benefit on the utility's ratepayers. The legislature declares that section 4 of this act is intended to reverse the result of *Okeson v. City of Seattle* (January 18, 2007), by expressly granting public utility districts the statutory authority to engage in mitigation activities to offset their utility's impact on the environment." [2007 c 349 § 3.]

Chapter 54.52 RCW VOLUNTARY CONTRIBUTIONS TO ASSIST LOW-INCOME CUSTOMERS

Sections

54.52.010 Voluntary contributions to assist low-income residential customers—Administration.

54.52.020 Disbursal of contributions—Quarterly report.

54.52.010 Voluntary contributions to assist low-income residential customers—Administration. A public

utility district may include along with, or as part of its regular customer billings, a request for voluntary contributions to assist qualified low-income residential customers of the district in paying their electricity bills. All funds received by the district in response to such requests shall be (1) transmitted (a) to the grantee of the department of community, trade, and economic development which administers federally funded energy assistance programs for the state in the district's service area or (b) to a charitable organization within the district's service area; or (2) retained by the district. All such funds shall be used solely to supplement assistance to low-income residential customers of the district in paying their electricity bills. The grantee, charitable organization, or district is responsible to determine which of the district's customers are qualified for low-income assistance and the amount of assistance to be provided to those who are qualified. [2007 c 132 § 1; 1995 c 399 § 145; 1985 c 6 § 20; 1984 c 59 § 1.]

54.52.020 Disbursal of contributions—Quarterly report. All assistance provided under this chapter shall be disbursed by the grantee, charitable organization, or district. When applicable, the public utility district will be paid on behalf of the customer by the grantee or the charitable organization. When direct vendor payment is not feasible, a check will be issued jointly payable to the customer and the public utility district. The availability of funds for assistance to a district's low-income customers as a result of voluntary contributions shall not reduce the amount of assistance for which the district's customers are eligible under the federally funded energy assistance programs administered by the grantee of the department of community, trade, and economic development within the district's service area. When applicable, the grantee or charitable organization shall provide the district with a quarterly report on January 15th, April 15th, July 15th, and October 15th which includes information concerning the total amount of funds received from the district, the names of all recipients of assistance from these funds, the amount received by each recipient, and the amount of funds received from the district currently on hand and available for future low-income assistance. [2007 c 132 § 2; 1995 c 399 § 146; 1985 c 6 § 21; 1984 c 59 § 2.]

Title 57

WATER-SEWER DISTRICTS

Chapters

57.08 Powers.

57.12 Officers and elections.

57.24 Annexation of territory.

Chapter 57.08 RCW

POWERS

Sections

57.08.005 Powers.

57.08.120 Lease of real property—Notice, hearing—Performance bond or security.

57.08.005 Powers. A district shall have the following powers:

(1) To acquire by purchase or condemnation, or both, all lands, property and property rights, and all water and water rights, both within and without the district, necessary for its purposes. The right of eminent domain shall be exercised in the same manner and by the same procedure as provided for cities and towns, insofar as consistent with this title, except that all assessment or reassessment rolls to be prepared and filed by eminent domain commissioners or commissioners appointed by the court shall be prepared and filed by the district, and the duties devolving upon the city treasurer are imposed upon the county treasurer;

(2) To lease real or personal property necessary for its purposes for a term of years for which that leased property may reasonably be needed;

(3) To construct, condemn and purchase, add to, maintain, and supply waterworks to furnish the district and inhabitants thereof and any other persons, both within and without the district, with an ample supply of water for all uses and purposes public and private with full authority to regulate and control the use, content, distribution, and price thereof in such a manner as is not in conflict with general law and may construct, acquire, or own buildings and other necessary district facilities. Where a customer connected to the district's system uses the water on an intermittent or transient basis, a district may charge for providing water service to such a customer, regardless of the amount of water, if any, used by the customer. District waterworks may include facilities which result in combined water supply and electric generation, if the electricity generated thereby is a byproduct of the water supply system. That electricity may be used by the district or sold to any entity authorized by law to use or distribute electricity. Electricity is deemed a byproduct when the electrical generation is subordinate to the primary purpose of water supply. For such purposes, a district may take, condemn and purchase, acquire, and retain water from any public or navigable lake, river or watercourse, or any underflowing water, and by means of aqueducts or pipeline conduct the same throughout the district and any city or town therein and carry it along and upon public highways, roads, and streets, within and without such district. For the purpose of constructing or laying aqueducts or pipelines, dams, or waterworks or other necessary structures in storing and retaining water or for any other lawful purpose such district may occupy the beds and shores up to the high water mark of any such lake, river, or other watercourse, and may acquire by purchase or condemnation such property or property rights or privileges as may be necessary to protect its water supply from pollution. For the purposes of waterworks which include facilities for the generation of electricity as a byproduct, nothing in this section may be construed to authorize a district to condemn electric generating, transmission, or distribution rights or facilities of entities authorized by law to distribute electricity, or to acquire such rights or facilities without the consent of the owner;

(4) To purchase and take water from any municipal corporation, private person, or entity. A district contiguous to Canada may contract with a Canadian corporation for the purchase of water and for the construction, purchase, maintenance, and supply of waterworks to furnish the district and

inhabitants thereof and residents of Canada with an ample supply of water under the terms approved by the board of commissioners;

(5) To construct, condemn and purchase, add to, maintain, and operate systems of sewers for the purpose of furnishing the district, the inhabitants thereof, and persons outside the district with an adequate system of sewers for all uses and purposes, public and private, including but not limited to on-site sewage disposal facilities, approved septic tanks or approved septic tank systems, on-site sanitary sewerage systems, inspection services and maintenance services for private and public on-site systems, point and nonpoint water pollution monitoring programs that are directly related to the sewerage facilities and programs operated by a district, other facilities, programs, and systems for the collection, interception, treatment, and disposal of wastewater, and for the control of pollution from wastewater with full authority to regulate the use and operation thereof and the service rates to be charged. Under this chapter, after July 1, 1998, any requirements for pumping the septic tank of an on-site sewage system should be based, among other things, on actual measurement of accumulation of sludge and scum by a trained inspector, trained owner's agent, or trained owner. Training must occur in a program approved by the state board of health or by a local health officer. Sewage facilities may include facilities which result in combined sewage disposal or treatment and electric or methane gas generation, except that the electricity or methane gas generated thereby is a byproduct of the system of sewers. Such electricity or methane gas may be used by the district or sold to any entity authorized by law to distribute electricity or methane gas. Electricity and methane gas are deemed byproducts when the electrical or methane gas generation is subordinate to the primary purpose of sewage disposal or treatment. The district may also sell surplus methane gas, which may be produced as a byproduct. For such purposes a district may conduct sewage throughout the district and throughout other political subdivisions within the district, and construct and lay sewer pipe along and upon public highways, roads, and streets, within and without the district, and condemn and purchase or acquire land and rights of way necessary for such sewer pipe. A district may erect sewage treatment plants within or without the district, and may acquire, by purchase or condemnation, properties or privileges necessary to be had to protect any lakes, rivers, or watercourses and also other areas of land from pollution from its sewers or its sewage treatment plant. For the purposes of sewage facilities which include facilities that result in combined sewage disposal or treatment and electric generation where the electric generation is a byproduct, nothing in this section may be construed to authorize a district to condemn electric generating, transmission, or distribution rights or facilities of entities authorized by law to distribute electricity, or to acquire such rights or facilities without the consent of the owners;

(6)(a) To construct, condemn and purchase, add to, maintain, and operate systems of drainage for the benefit and use of the district, the inhabitants thereof, and persons outside the district with an adequate system of drainage, including but not limited to facilities and systems for the collection, interception, treatment, and disposal of storm or surface waters, and for the protection, preservation, and rehabilita-

tion of surface and underground waters, and drainage facilities for public highways, streets, and roads, with full authority to regulate the use and operation thereof and, except as provided in (b) of this subsection, the service rates to be charged.

(b) The rate a district may charge under this section for storm or surface water sewer systems or the portion of the rate allocable to the storm or surface water sewer system of combined sanitary sewage and storm or surface water sewer systems shall be reduced by a minimum of ten percent for any new or remodeled commercial building that utilizes a permissive rainwater harvesting system. Rainwater harvesting systems shall be properly sized to utilize the available roof surface of the building. The jurisdiction shall consider rate reductions in excess of ten percent dependent upon the amount of rainwater harvested.

(c) Drainage facilities may include natural systems. Drainage facilities may include facilities which result in combined drainage facilities and electric generation, except that the electricity generated thereby is a byproduct of the drainage system. Such electricity may be used by the district or sold to any entity authorized by law to distribute electricity. Electricity is deemed a byproduct when the electrical generation is subordinate to the primary purpose of drainage collection, disposal, and treatment. For such purposes, a district may conduct storm or surface water throughout the district and throughout other political subdivisions within the district, construct and lay drainage pipe and culverts along and upon public highways, roads, and streets, within and without the district, and condemn and purchase or acquire land and rights of way necessary for such drainage systems. A district may provide or erect facilities and improvements for the treatment and disposal of storm or surface water within or without the district, and may acquire, by purchase or condemnation, properties or privileges necessary to be had to protect any lakes, rivers, or watercourses and also other areas of land from pollution from storm or surface waters. For the purposes of drainage facilities which include facilities that also generate electricity as a byproduct, nothing in this section may be construed to authorize a district to condemn electric generating, transmission, or distribution rights or facilities of entities authorized by law to distribute electricity, or to acquire such rights or facilities without the consent of the owners;

(7) To construct, condemn, acquire, and own buildings and other necessary district facilities;

(8) To compel all property owners within the district located within an area served by the district's system of sewers to connect their private drain and sewer systems with the district's system under such penalty as the commissioners shall prescribe by resolution. The district may for such purpose enter upon private property and connect the private drains or sewers with the district system and the cost thereof shall be charged against the property owner and shall be a lien upon property served;

(9) Where a district contains within its borders, abuts, or is located adjacent to any lake, stream, ground water as defined by RCW 90.44.035, or other waterway within the state of Washington, to provide for the reduction, minimization, or elimination of pollutants from those waters in accordance with the district's comprehensive plan, and to issue

general obligation bonds, revenue bonds, local improvement district bonds, or utility local improvement bonds for the purpose of paying all or any part of the cost of reducing, minimizing, or eliminating the pollutants from these waters;

(10) Subject to subsection (6) of this section, to fix rates and charges for water, sewer, and drain service supplied and to charge property owners seeking to connect to the district's systems, as a condition to granting the right to so connect, in addition to the cost of the connection, such reasonable connection charge as the board of commissioners shall determine to be proper in order that those property owners shall bear their equitable share of the cost of the system. For the purposes of calculating a connection charge, the board of commissioners shall determine the pro rata share of the cost of existing facilities and facilities planned for construction within the next ten years and contained in an adopted comprehensive plan and other costs borne by the district which are directly attributable to the improvements required by property owners seeking to connect to the system. The cost of existing facilities shall not include those portions of the system which have been donated or which have been paid for by grants. The connection charge may include interest charges applied from the date of construction of the system until the connection, or for a period not to exceed ten years, whichever is shorter, at a rate commensurate with the rate of interest applicable to the district at the time of construction or major rehabilitation of the system, or at the time of installation of the lines to which the property owner is seeking to connect. In lieu of requiring the installation of permanent local facilities not planned for construction by the district, a district may permit connection to the water and/or sewer systems through temporary facilities installed at the property owner's expense, provided the property owner pays a connection charge consistent with the provisions of this chapter and agrees, in the future, to connect to permanent facilities when they are installed; or a district may permit connection to the water and/or sewer systems through temporary facilities and collect from property owners so connecting a proportionate share of the estimated cost of future local facilities needed to serve the property, as determined by the district. The amount collected, including interest at a rate commensurate with the rate of interest applicable to the district at the time of construction of the temporary facilities, shall be held for contribution to the construction of the permanent local facilities by other developers or the district. The amount collected shall be deemed full satisfaction of the proportionate share of the actual cost of construction of the permanent local facilities. If the permanent local facilities are not constructed within fifteen years of the date of payment, the amount collected, including any accrued interest, shall be returned to the property owner, according to the records of the county auditor on the date of return. If the amount collected is returned to the property owner, and permanent local facilities capable of serving the property are constructed thereafter, the property owner at the time of construction of such permanent local facilities shall pay a proportionate share of the cost of such permanent local facilities, in addition to reasonable connection charges and other charges authorized by this section. A district may permit payment of the cost of connection and the reasonable connection charge to be paid with interest in installments over a period not exceeding fifteen years. The

county treasurer may charge and collect a fee of three dollars for each year for the treasurer's services. Those fees shall be a charge to be included as part of each annual installment, and shall be credited to the county current expense fund by the county treasurer. Revenues from connection charges excluding permit fees are to be considered payments in aid of construction as defined by department of revenue rule. Rates or charges for on-site inspection and maintenance services may not be imposed under this chapter on the development, construction, or reconstruction of property.

Before adopting on-site inspection and maintenance utility services, or incorporating residences into an on-site inspection and maintenance or sewer utility under this chapter, notification must be provided, prior to the applicable public hearing, to all residences within the proposed service area that have on-site systems permitted by the local health officer. The notice must clearly state that the residence is within the proposed service area and must provide information on estimated rates or charges that may be imposed for the service.

A water-sewer district shall not provide on-site sewage system inspection, pumping services, or other maintenance or repair services under this section using water-sewer district employees unless the on-site system is connected by a publicly owned collection system to the water-sewer district's sewerage system, and the on-site system represents the first step in the sewage disposal process.

Except as otherwise provided in RCW 90.03.525, any public entity and public property, including the state of Washington and state property, shall be subject to rates and charges for sewer, water, storm water control, drainage, and street lighting facilities to the same extent private persons and private property are subject to those rates and charges that are imposed by districts. In setting those rates and charges, consideration may be made of in-kind services, such as stream improvements or donation of property;

(11) To contract with individuals, associations and corporations, the state of Washington, and the United States;

(12) To employ such persons as are needed to carry out the district's purposes and fix salaries and any bond requirements for those employees;

(13) To contract for the provision of engineering, legal, and other professional services as in the board of commissioner's discretion is necessary in carrying out their duties;

(14) To sue and be sued;

(15) To loan and borrow funds and to issue bonds and instruments evidencing indebtedness under chapter 57.20 RCW and other applicable laws;

(16) To transfer funds, real or personal property, property interests, or services subject to RCW 57.08.015;

(17) To levy taxes in accordance with this chapter and chapters 57.04 and 57.20 RCW;

(18) To provide for making local improvements and to levy and collect special assessments on property benefitted thereby, and for paying for the same or any portion thereof in accordance with chapter 57.16 RCW;

(19) To establish street lighting systems under RCW 57.08.060;

(20) To exercise such other powers as are granted to water-sewer districts by this title or other applicable laws; and

(21) To exercise any of the powers granted to cities and counties with respect to the acquisition, construction, maintenance, operation of, and fixing rates and charges for waterworks and systems of sewerage and drainage. [2007 c 31 § 8; 2004 c 202 § 1; 2003 c 394 § 5; 1999 c 153 § 2; 1997 c 447 § 16; 1996 c 230 § 301.]

Part headings not law—1999 c 153: See note following RCW 57.04.050.

Finding—Purpose—1997 c 447: See note following RCW 70.05.074.

Part headings not law—Effective date—1996 c 230: See notes following RCW 57.02.001.

57.08.120 Lease of real property—Notice, hearing—Performance bond or security. A district may lease out real property which it owns or in which it has an interest and which is not immediately necessary for its purposes upon such terms as the board of commissioners deems proper. No such lease shall be made until the district has first caused notice thereof to be published twice in a newspaper in general circulation in the district, the first publication to be at least fifteen days and the second at least seven days prior to the making of such lease. The notice shall describe the property, the lessee, and the lease payments. A hearing shall be held pursuant to the terms of the notice, at which time any and all persons who may be interested shall have the right to appear and to be heard.

No such lease shall be made unless secured by a bond conditioned on the performance of the terms of the lease, with surety satisfactory to the commissioners and with a penalty of not less than one-sixth of the term of the lease or for one year's rental, whichever is greater.

No such lease shall be made for a term longer than fifty years. In cases involving leases of more than five years, the commissioners may provide for or stipulate to acceptance of a bond conditioned on the performance of a part of the term for five years or more whenever it is further provided that the lessee must procure and deliver to the commissioners renewal bonds with like terms and conditions no more than two years prior nor less than one year prior to the expiration of such bond during the entire term of the lease. However, no such bond shall be construed to secure the furnishing of any other bond by the same surety or indemnity company. The board of commissioners may require a reasonable security deposit in lieu of a bond on leased property owned by a district.

The commissioners may accept as surety on any bond required by this section an approved surety company, or may accept in lieu thereof a secured interest in property of a value at least twice the amount of the bond required, conditioned further that in the event the commissioners determine that the value of the bond security has become or is about to become impaired, additional security shall be required from the lessee.

The authority granted under this section shall not be exercised by the board of commissioners unless the property is declared by resolution of the board of commissioners to be property for which there is a future need by the district and for the use of which provision is made in the comprehensive plan of the district as the same may be amended from time to time. [2007 c 31 § 9; 1996 c 230 § 319; 1991 c 82 § 6; 1967 ex.s. c 135 § 1.]

Part headings not law—Effective date—1996 c 230: See notes following RCW 57.02.001.

Chapter 57.12 RCW OFFICERS AND ELECTIONS

Sections

57.12.010	Commissioners—President and secretary—Compensation.
57.12.035	Commissioners—Void in candidacy, fewer than one hundred residents in district.

57.12.010 Commissioners—President and secretary—Compensation. The governing body of a district shall be a board of commissioners consisting of three members, or five or seven members as provided in RCW 57.12.015. The board shall annually elect one of its members as president and another as secretary.

The board shall by resolution adopt rules governing the transaction of its business and shall adopt an official seal. All proceedings shall be by resolution recorded in a book kept for that purpose which shall be a public record.

A district shall provide by resolution for the payment of compensation to each of its commissioners at a rate of ninety dollars for each day or portion thereof spent in actual attendance at official meetings of the district commission, or in performance of other official services or duties on behalf of the district. However the compensation for each commissioner shall not exceed eight thousand six hundred forty dollars per year. In addition, the secretary may be paid a reasonable sum for clerical services.

Any commissioner may waive all or any portion of his or her compensation payable under this section as to any month or months during the commissioner's term of office, by a written waiver filed with the district at any time after the commissioner's election and prior to the date on which the compensation would otherwise be paid. The waiver shall specify the month or period of months for which it is made.

No commissioner shall be employed full time by the district. A commissioner shall be reimbursed for reasonable expenses actually incurred in connection with district business, including subsistence and lodging while away from the commissioner's place of residence and mileage for use of a privately-owned vehicle at the mileage rate authorized in RCW 43.03.060.

The dollar thresholds established in this section must be adjusted for inflation by the office of financial management every five years, beginning July 1, 2008, based upon changes in the consumer price index during that time period. "Consumer price index" means, for any calendar year, that year's annual average consumer price index, for Washington state, for wage earners and clerical workers, all items, compiled by the bureau of labor and statistics, United States department of labor. If the bureau of labor and statistics develops more than one consumer price index for areas within the state, the index covering the greatest number of people, covering areas exclusively within the boundaries of the state, and including all items shall be used for the adjustments for inflation in this section. The office of financial management must calculate the new dollar threshold and transmit it to the office of the code reviser for publication in the Washington State Register

at least one month before the new dollar threshold is to take effect.

A person holding office as commissioner for two or more special purpose districts shall receive only that per diem compensation authorized for one of his or her commissioner positions as compensation for attending an official meeting or conducting official services or duties while representing more than one of his or her districts. However, such commissioner may receive additional per diem compensation if approved by resolution of all boards of the affected commissions. [2007 c 469 § 5; 2001 c 63 § 1; 1998 c 121 § 5; 1996 c 230 § 401; 1985 c 330 § 6; 1980 c 92 § 2; 1975 1st ex.s. c 116 § 1; 1969 ex.s. c 148 § 8; 1959 c 108 § 5; 1959 c 18 § 1; 1945 c 50 § 2; 1929 c 114 § 7; Rem. Supp. 1945 § 11585. Cf. 1913 c 161 § 7.]

Part headings not law—Effective date—1996 c 230: See notes following RCW 57.02.001.

Severability—1969 ex.s. c 148: "If any provision of this act, or its application to any person or circumstance is held invalid, the remainder of the act, or the application of the provision to other persons or circumstances is not affected." [1969 ex.s. c 148 § 9.]

57.12.035 Commissioners—Void in candidacy, fewer than one hundred residents in district. If the district has fewer than one hundred residents, and if the filing period is reopened for a district commissioner under RCW 29A.24.171 or 29A.24.181 due to a void in candidacy, any person who is a qualified elector of the state of Washington and who holds title or evidence of title to land in the district may file as a candidate for and serve as a district commissioner. [2007 c 383 § 1.]

Chapter 57.24 RCW ANNEXATION OF TERRITORY

Sections

57.24.230	Annexation of territory within cities—Authorized—Process.
57.24.240	Annexation of territory within cities—Hearing procedure—Election notice.
57.24.250	Annexation of territory within cities—Election.
57.24.260	Annexation of territory within cities—Alternative method.

57.24.230 Annexation of territory within cities—Authorized—Process. (1) If a district acquires either water facilities or sewer facilities, or both from a city, and the district and the city within which the facilities are located enter into an agreement stating that the district will seek annexation of territory within that city, the district commissioners may initiate a process for the annexation of such territory.

(2) The annexation process shall commence upon the adoption of a resolution by the commissioners calling for the question of annexation to be submitted to the voters of the territory proposed for annexation and setting forth the boundaries thereof. The resolution must be filed with the county legislative authority of each county in which the territory proposed for annexation is located.

(3) Upon receipt of the resolution, the county legislative authority shall cause a hearing to be held as provided in RCW 57.24.240. [2007 c 31 § 1.]

57.24.240 Annexation of territory within cities—Hearing procedure—Election notice. (1) If a resolution

calling for an annexation election as provided in RCW 57.24.230 is presented for hearing, the legislative authority of each county in which the territory proposed for annexation is located shall hear the resolution or may adjourn and reconvene the hearing as deemed necessary for its purposes. The hearing, however, may not exceed four weeks in duration. Any person, firm, or corporation may appear before the legislative authority or authorities and make objections to the proposed boundary lines or to annexation of the territory described in the resolution.

(2) Upon a final hearing, each county legislative authority may make changes to the proposed boundary lines within the county as it deems proper and shall formally establish and define the boundaries. Each legislative authority also shall find whether the proposed annexation will be conducive to the public health, welfare, and convenience and whether it will be of special benefit to the land included within the boundaries of the proposed annexation. No lands that will not, in the judgment of the legislative authority, benefit by inclusion therein, may be included within the boundaries of the territory as established and defined. The legislative authority may not include within the territory proposed for annexation any territory outside of the boundary lines described in the resolution adopted by the district under RCW 57.24.230(2).

(3) Upon the entry of the findings of the final hearing, each county legislative authority, if it finds the proposed annexation satisfies the requirements of subsection (2) of this section, shall give notice of a special election to be held within the boundaries of the territory proposed for annexation for the purpose of determining whether the same shall be annexed to the district. The notice shall:

(a) Describe the boundaries established by the legislative authority;

(b) State the name of the district to which the territory is proposed to be annexed;

(c) Be published in a newspaper of general circulation in the territory proposed for annexation at least once a week for a minimum of two successive weeks prior to the election;

(d) Be posted for the same period in at least four public places within the boundaries of the territory proposed for annexation; and

(e) Designate the places within the territory proposed for annexation where the election shall be held.

(4) The proposition to the voters shall be expressed on ballots containing the words:

For Annexation to District or
Against Annexation to District

The county legislative authority shall name the persons to act as judges at that election. [2007 c 31 § 2.]

57.24.250 Annexation of territory within cities—Election. (1) The annexation election shall be held on the date designated in the notice and shall be conducted in accordance with the general election laws of the state. Qualified voters residing within the territory proposed for annexation shall be permitted to vote at the election.

(2) If the majority of the votes cast upon the question of such election are for annexation, the territory concerned shall

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immediately be deemed annexed to the district and the same shall then forthwith be a part of the district, the same as though originally included in that district. [2007 c 31 § 3.]

57.24.260 Annexation of territory within cities—Alternative method. The method of annexation provided for in RCW 57.24.230 through 57.24.250 is an alternative method and is additional to other methods provided for in this chapter. [2007 c 31 § 4.]

Title 59

LANDLORD AND TENANT

Chapters

59.12 Forcible entry and forcible and unlawful detainer.

59.18 Residential landlord-tenant act.

59.22 Office of mobile home affairs—Resident-owned mobile home parks.

59.30 Manufactured/mobile home communities—Dispute resolution and registration.

Chapter 59.12 RCW

FORCIBLE ENTRY AND FORCIBLE AND UNLAWFUL DETAINER

Sections

59.12.110 Modification of bond.

59.12.110 Modification of bond. The plaintiff or defendant at any time, upon two days' notice to the adverse party, may apply to the court or any judge thereof for an order raising or lowering the amount of any bond in this chapter provided for. Either party may, upon like notice, apply to the court or any judge thereof for an order requiring additional or other surety or sureties upon any such bond. Upon the hearing or any application made under the provisions of this section evidence may be given. The judge after hearing any such application shall make such an order as shall be just in the premises. The bondspersons may be required to be present at such hearing if so required in the notice thereof, and shall answer under oath all questions that may be asked them touching their qualifications as bondspersons, and in the event the bondspersons shall fail or refuse to appear at such hearing and so answer such questions the bond shall be stricken. In the event the court shall order a new or additional bond to be furnished by defendant, and the same shall not be given within twenty-four hours, the court shall order the sheriff to forthwith execute the writ. In the event the defendant shall file a second or additional bond and it shall also be found insufficient after hearing, as above provided, the right to retain the premises by bond shall be lost and the sheriff shall forthwith put the plaintiff in possession of the premises. [2007 c 218 § 77; 1905 c 86 § 4; 1891 c 96 § 12; RRS § 821. Prior: 1890 p 78 § 11.]

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

Chapter 59.18 RCW

RESIDENTIAL LANDLORD-TENANT ACT

Sections

59.18.600 Rental to offenders—Limitation on liability.

59.18.600 Rental to offenders—Limitation on liability. A landlord who rents to an offender is not liable for civil damages arising from the criminal conduct of the tenant. In order for a landlord to be protected from liability as provided under this section, a landlord must:

(1) Disclose to residents of the property that he or she rents or has a policy of renting to offenders; and

(2) Take steps to report or halt criminal activity if the landlord has actual knowledge of criminal activity on the landlord's premises. [2007 c 483 § 602.]

Finding—Intent—2007 c 483: "The legislature finds that, in order to improve the safety of our communities, more housing needs to be made available to offenders returning to the community. The legislature intends to increase the housing available to offenders by providing that landlords who rent to offenders shall be immune from civil liability for damages that may result from the criminal conduct of the tenant." [2007 c 483 § 601.]

Findings—Part headings not law—Severability—2007 c 483: See RCW 72.78.005, 72.78.900, and 72.78.901.

Chapter 59.22 RCW

OFFICE OF MOBILE HOME AFFAIRS—RESIDENT-OWNED MOBILE HOME PARKS

Sections

59.22.050 Office of mobile home affairs—Duties.
59.22.070 Manufactured housing account.

59.22.050 Office of mobile home affairs—Duties. (1) In order to provide general assistance to mobile home resident organizations, park owners, and landlords and tenants, the department shall establish an office of mobile home affairs.

This office will provide an ombudsman service to mobile home park owners and mobile home tenants with respect to problems and disputes between park owners and park residents and to provide technical assistance to resident organizations or persons in the process of forming a resident organization pursuant to chapter 59.22 RCW. The office will keep records of its activities in this area.

(2) The office shall administer the mobile home relocation assistance program established in chapter 59.21 RCW, including verifying the eligibility of tenants for relocation assistance. [2007 c 432 § 9; 1991 c 327 § 3; (2005 c 429 § 9 expired December 31, 2005); 1989 c 294 § 1; 1988 c 280 § 2.]

Registration assessments—2005 c 429: "Any amount assessed under section 7(2), chapter 429, Laws of 2005 that remains uncollected on December 31, 2005, shall be collected under the terms of section 7, chapter 429, Laws of 2005 as it existed before December 31, 2005." [2005 c 429 § 10.]

Effective date—2005 c 429: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately [May 13, 2005]." [2005 c 429 § 11.]

Expiration date—2005 c 429: "Except for sections 10 and 13 of this act, this act expires December 31, 2005." [2005 c 429 § 12.]

Registration assessments—2005 c 429: "Beginning in January 2006, the state treasurer shall transfer any funds remaining in the manufactured/mobile home investigations account under section 8, chapter 429, Laws of 2005 to the mobile home affairs account under RCW 59.22.070 for

the purposes under RCW 59.22.050. All funds collected by the department under section 10, chapter 429, Laws of 2005 shall be transferred to the state treasurer for deposit into the mobile home affairs account." [2005 c 429 § 13.]

59.22.070 Manufactured housing account. There is created in the custody of the state treasurer a special account known as the manufactured housing account.

Disbursements from this special account shall be as follows:

(1) For the two-year period beginning July 1, 1988, forty thousand dollars, or so much thereof as may be necessary for costs incurred in registering landlords and collecting fees, and thereafter five thousand dollars per year for that purpose.

(2) All remaining amounts shall be remitted to the department for the purpose of implementing RCW 59.22.050, except those funds needed to implement the state administrative agency function and manufactured home installation training and certification program under chapter 43.22A RCW, as well as all appropriated and nonappropriated funds related to department of labor and industries functions. [2007 c 432 § 10; 1995 c 399 § 156; 1989 c 201 § 8; 1988 c 280 § 5.]

Chapter 59.30 RCW

MANUFACTURED/MOBILE HOME COMMUNITIES—DISPUTE RESOLUTION AND REGISTRATION

Sections

59.30.010 Findings—Purpose—Intent.
59.30.020 Definitions.
59.30.030 Dispute resolution program—Purpose—Attorney general duties.
59.30.040 Dispute resolution program—Complaint process.
59.30.050 Registration process, fees.
59.30.060 Database.
59.30.070 Manufactured/mobile home dispute resolution program account.
59.30.080 Immunity from suit.

59.30.010 Findings—Purpose—Intent. (1) The legislature finds that there are factors unique to the relationship between a manufactured/mobile home tenant and a manufactured/mobile home community landlord. Once occupancy has commenced, the difficulty and expense in moving and relocating a manufactured/mobile home can affect the operation of market forces and lead to an inequality of the bargaining position of the parties. Once occupancy has commenced, a tenant may be subject to violations of the manufactured/mobile home landlord-tenant act without an adequate remedy at law. This chapter is created for the purpose of protecting the public, fostering fair and honest competition, and regulating the factors unique to the relationship between the manufactured/mobile home tenant and the manufactured/mobile home community landlord.

(2) The legislature finds that taking legal action against a manufactured/mobile home community landlord for violations of the manufactured/mobile home landlord-tenant act can be a costly and lengthy process, and that many people cannot afford to pursue a court process to vindicate statutory rights. Manufactured/mobile home community landlords will also benefit by having access to a process that resolves disputes quickly and efficiently.

(3)(a) Therefore, it is the intent of the legislature to provide an equitable as well as a less costly and more efficient way for manufactured/mobile home tenants and manufactured/mobile home community landlords to resolve disputes, and to provide a mechanism for state authorities to quickly locate manufactured/mobile home community landlords.

(b) The legislature intends to authorize the department of licensing to register manufactured/mobile home communities and collect a registration fee.

(c) The legislature intends to authorize the attorney general to:

(i) Produce and distribute educational materials regarding the manufactured/mobile home landlord-tenant act and the manufactured/mobile home dispute resolution program created in RCW 59.30.030;

(ii) Administer the dispute resolution program by taking complaints, conducting investigations, making determinations, issuing fines and other penalties, and participating in administrative dispute resolutions, when necessary, when there are alleged violations of the manufactured/mobile home landlord-tenant act; and

(iii) Collect and annually report upon data related to disputes and violations, and make recommendations on modifying chapter 59.20 RCW, to the appropriate committees of the legislature. [2007 c 431 § 1.]

Implementation—2007 c 431: "The attorney general may take the necessary steps to ensure that this act is implemented on its effective date." [2007 c 431 § 12.]

59.30.020 Definitions. For purposes of this chapter:

(1) "Complainant" means a landlord, community owner, or tenant, who has a complaint alleging a violation of chapter 59.20 RCW;

(2) "Department" means the department of licensing;

(3) "Director" means the director of licensing;

(4) "Landlord" or "community owner" means the owner of a mobile home park or a manufactured housing community and includes the agents of a landlord;

(5) "Manufactured home" means a single-family dwelling built according to the United States department of housing and urban development manufactured home construction and safety standards act, which is a national preemptive building code. A manufactured home also: (a) Includes plumbing, heating, air conditioning, and electrical systems; (b) is built on a permanent chassis; and (c) can be transported in one or more sections with each section at least eight feet wide and forty feet long when transported, or when installed on the site is three hundred twenty square feet or greater;

(6) "Mobile home" means a factory-built dwelling built prior to June 15, 1976, to standards other than the United States department of housing and urban development code, and acceptable under applicable state codes in effect at the time of construction or introduction of the home into the state. Mobile homes have not been built since the introduction of the United States department of housing and urban development manufactured home construction and safety act;

(7) "Manufactured/mobile home" means either a manufactured home or a mobile home;

(8) "Manufactured/mobile home lot" means a portion of a manufactured/mobile home community designated as the location of one mobile home, manufactured home, or park

model and its accessory buildings, and intended for the exclusive use as a primary residence by the occupants of that mobile home, manufactured home, or park model;

(9) "Mobile home park," "manufactured housing community," or "manufactured/mobile home community" means any real property that is rented or held out for rent to others for the placement of two or more mobile homes, manufactured homes, park models, or recreational vehicles for the primary purpose of production of income, except where the real property is rented or held out for rent for seasonal recreational purposes only and is not used for year-round occupancy;

(10) "Owner" means one or more persons, jointly or severally, in whom is vested:

(a) All or part of the legal title to the real property; or

(b) All or part of the beneficial ownership, and a right to present use and enjoyment of the real property;

(11) "Park model" means a recreational vehicle intended for permanent or semipermanent installation and is used as a permanent residence;

(12) "Recreational vehicle" means a travel trailer, motor home, truck camper, or camping trailer that is primarily used as a permanent residence located in a mobile home park or manufactured housing community;

(13) "Respondent" means a landlord, community owner, or tenant, alleged to have committed [a] violation of chapter 59.20 RCW;

(14) "Tenant" means any person, except a transient as defined in RCW 59.20.030, who rents a mobile home lot. [2007 c 431 § 2.]

Implementation—2007 c 431: See note following RCW 59.30.010.

59.30.030 Dispute resolution program—Purpose—Attorney general duties. (1) The attorney general shall administer a manufactured/mobile home dispute resolution program.

(2) The purpose of the manufactured/mobile home dispute resolution program is to provide manufactured/mobile home community landlords and tenants with a cost-effective and time-efficient process to resolve disputes regarding alleged violations of the manufactured/mobile home landlord-tenant act.

(3) The attorney general under the manufactured/mobile home dispute resolution program shall:

(a) Produce educational materials regarding chapter 59.20 RCW and the manufactured/mobile home dispute resolution program, including a notice in a format that a landlord can reasonably post in a manufactured/mobile home community that summarizes tenant rights and responsibilities, includes information on how to file a complaint with the attorney general, and includes a toll-free telephone number and web site address that landlords and tenants can use to seek additional information and communicate complaints;

(b) Distribute the educational materials described in (a) of this subsection to all known landlords and information alerting landlords that:

(i) All landlords must post the notice provided by the attorney general that summarizes tenant rights and responsibilities and includes information on how to file complaints, in a clearly visible location in all common areas of manufac-

tured/mobile home communities, including in each clubhouse;

(ii) The attorney general may visually confirm that the notice is appropriately posted; and

(iii) The attorney general may issue a fine or other penalty if the attorney general discovers that the landlord has not appropriately posted the notice or that the landlord has not maintained the posted notice so that it is clearly visible to tenants;

(c) Distribute the educational materials described in (a) of this subsection to any complainants and respondents, as requested;

(d) Perform dispute resolution activities, including investigations, negotiations, determinations of violations, and imposition of fines or other penalties as described in RCW 59.30.040;

(e) Create and maintain a database of manufactured/mobile home communities that have had complaints filed against them. For each manufactured/mobile home community in the database, the following information must be contained, at a minimum:

(i) The number of complaints received;

(ii) The nature and extent of the complaints received;

(iii) The violation of law complained of; and

(iv) The manufactured/mobile home dispute resolution program outcomes for each complaint;

(f) Provide an annual report to the appropriate committees of the legislature on the data collected under this section, including program performance measures and recommendations regarding how the manufactured/mobile home dispute resolution program may be improved, by December 31st, beginning in 2007.

(4) The manufactured/mobile home dispute resolution program, including all of the duties of the attorney general under the program as described in this section, shall be funded by the collection of fines, other penalties, and fees deposited into the manufactured/mobile home dispute resolution program account created in RCW 59.30.070, and all other sources directed to the manufactured/mobile home dispute resolution program. [2007 c 431 § 3.]

Implementation—2007 c 431: See note following RCW 59.30.010.

59.30.040 Dispute resolution program—Complaint process. (1) An aggrieved party has the right to file a complaint with the attorney general alleging a violation of chapter 59.20 RCW.

(2) Upon receiving a complaint under this chapter, the attorney general must:

(a) Inform the complainant of any notification requirements under RCW 59.20.080 for tenant violations or RCW 59.20.200 for landlord violations and encourage the complainant to appropriately notify the respondent of the complaint; and

(b) If a statutory time period is applicable, inform the complainant of the time frame that the respondent has to remedy the complaint under RCW 59.20.080 for tenant violations or RCW 59.20.200 for landlord violations.

(3) After receiving a complaint under this chapter, the attorney general shall initiate the manufactured/mobile home dispute resolution program by investigating the alleged viola-

tions at its discretion and, if appropriate, facilitating negotiations between the complainant and the respondent.

(4)(a) Complainants and respondents shall cooperate with the attorney general in the course of an investigation by (i) responding to subpoenas issued by the attorney general, which may consist of providing access to papers or other documents, and (ii) providing access to the manufactured/mobile home facilities relevant to the investigation. Complainants and respondents must respond to attorney general subpoenas within thirty days.

(b) Failure to cooperate with the attorney general in the course of an investigation is a violation of this chapter.

(5) If after an investigation the attorney general determines that an agreement cannot be negotiated between the parties, the attorney general shall make a written determination on whether a violation of chapter 59.20 RCW has occurred.

(a) If the attorney general finds by a written determination that a violation of chapter 59.20 RCW has occurred, the attorney general shall deliver a written notice of violation to the respondent who committed the violation by certified mail. The notice of violation must specify the violation, the corrective action required, the time within which the corrective action must be taken, the penalties including fines, other penalties, and actions that will result if corrective action is not taken within the specified time period, and the process for contesting the determination, fines, penalties, and other actions included in the notice of violation through an administrative hearing. The attorney general must deliver to the complainant a copy of the notice of violation by certified mail.

(b) If the attorney general finds by a written determination that a violation of chapter 59.20 RCW has not occurred, the attorney general shall deliver a written notice of nonviolation to both the complainant and the respondent by certified mail. The notice of nonviolation must include the process for contesting the determination included in the notice of nonviolation through an administrative hearing.

(6) Corrective action must take place within fifteen business days of the respondent's receipt of a notice of violation, except as required otherwise by the attorney general, unless the respondent has submitted a timely request for an administrative hearing to contest the notice of violation as required under subsection (8) of this section. If a respondent, which includes either a landlord or a tenant, fails to take corrective action within the required time period and the attorney general has not received a timely request for an administrative hearing, the attorney general may impose a fine, up to a maximum of two hundred fifty dollars per violation per day, for each day that a violation remains uncorrected. The attorney general must consider the severity and duration of the violation and the violation's impact on other community residents when determining the appropriate amount of a fine or the appropriate penalty to impose on a respondent. If the respondent shows upon timely application to the attorney general that a good faith effort to comply with the corrective action requirements of the notice of violation has been made and that the corrective action has not been completed because of mitigating factors beyond the respondent's control, the attorney general may delay the imposition of a fine or penalty.

(7) The attorney general may issue an order requiring the respondent, or its assignee or agent, to cease and desist from an unlawful practice and take affirmative actions that in the judgment of the attorney general will carry out the purposes of this chapter. The affirmative actions may include, but are not limited to, the following:

(a) Refunds of rent increases, improper fees, charges, and assessments collected in violation of this chapter;

(b) Filing and utilization of documents that correct a statutory or rule violation; and

(c) Reasonable action necessary to correct a statutory or rule violation.

(8) A complainant or respondent may request an administrative hearing before an administrative law judge under chapter 34.05 RCW to contest:

(a) A notice of violation issued under subsection (5)(a) of this section or a notice of nonviolation issued under subsection (5)(b) of this section;

(b) A fine or other penalty imposed under subsection (6) of this section; or

(c) An order to cease and desist or an order to take affirmative actions under subsection (7) of this section.

The complainant or respondent must request an administrative hearing within fifteen business days of receipt of a notice of violation, notice of nonviolation, fine, other penalty, order, or action. If an administrative hearing is not requested within this time period, the notice of violation, notice of nonviolation, fine, other penalty, order, or action constitutes a final order of the attorney general and is not subject to review by any court or agency.

(9) If an administrative hearing is initiated, the respondent and complainant shall each bear the cost of his or her own legal expenses.

(10) The administrative law judge appointed under chapter 34.12 RCW shall:

(a) Hear and receive pertinent evidence and testimony;

(b) Decide whether the evidence supports the attorney general finding by a preponderance of the evidence; and

(c) Enter an appropriate order within thirty days after the close of the hearing and immediately mail copies of the order to the affected parties.

The order of the administrative law judge constitutes the final agency order of the attorney general and may be appealed to the superior court under chapter 34.05 RCW.

(11) When the attorney general imposes a fine, refund, or other penalty against a respondent, the respondent may not seek any recovery or reimbursement of the fine, refund, or other penalty from a complainant or from other manufactured/mobile home tenants.

(12) All receipts from the imposition of fines or other penalties collected under this section other than those due to a complainant must be deposited into the manufactured/mobile home dispute resolution program account created in RCW 59.30.070.

(13) This section is not exclusive and does not limit the right of landlords or tenants to take legal action against another party as provided in chapter 59.20 RCW or otherwise. Exhaustion of the administrative remedy provided in this chapter is not required before a landlord or tenants may bring a legal action. This section does not apply to unlawful detainer actions initiated under RCW 59.20.080 prior to the

filing and service of an unlawful detainer court action; however, a tenant is not precluded from seeking relief under this chapter if the complaint claims the notice of termination violates RCW 59.20.080 prior to the filing and service of an unlawful detainer action. [2007 c 431 § 4.]

Implementation—2007 c 431: See note following RCW 59.30.010.

59.30.050 Registration process, fees. (1) The department shall annually register all manufactured/mobile home communities. Each community must be registered separately. The department must deliver by certified mail registration notifications to all known manufactured/mobile home community landlords. Registration information packets must include:

(a) Registration forms; and

(b) Registration assessment information, including registration due dates and late fees, and the collections procedures, liens, and charging costs to tenants.

(2) To apply for registration, the landlord of a manufactured/mobile home community must file with the department an application for registration on a form provided by the department and must pay a registration fee as described in subsection (3) of this section. The department may require the submission of information necessary to assist in identifying and locating a manufactured/mobile home community and other information that may be useful to the state, which must include, at a minimum:

(a) The names and addresses of the owners of the manufactured/mobile home community;

(b) The name and address of the manufactured/mobile home community;

(c) The name and address of the landlord and manager of the manufactured/mobile home community;

(d) The number of lots within the manufactured/mobile home community that are subject to chapter 59.20 RCW; and

(e) The addresses of each manufactured/mobile home lot within the manufactured/mobile home community that is subject to chapter 59.20 RCW.

(3) Each manufactured/mobile home community landlord shall pay to the department:

(a) A one-time master application fee for the first year of registration and, in subsequent years, an annual master renewal application fee, as provided in RCW 19.02.075; and

(b) An annual registration assessment of ten dollars for each manufactured/mobile home that is subject to chapter 59.20 RCW within a manufactured/mobile home community. Manufactured/mobile home community landlords may charge a maximum of five dollars of this assessment to tenants. Nine dollars of the registration assessment for each manufactured/mobile home shall be deposited into the manufactured/mobile home dispute resolution program account created in RCW 59.30.070 to fund the costs associated with the manufactured/mobile home dispute resolution program. The remaining one dollar shall be deposited into the master license fund created in RCW 19.02.210. The annual registration assessment must be reviewed once each biennium by the department and the attorney general and may be adjusted to reasonably relate to the cost of administering this chapter. The registration assessment may not exceed ten dollars, but if the assessment is reduced, the portion allocated to the manu-

factured/mobile home dispute resolution program account and the master license fund shall be adjusted proportionately.

(4) Initial registrations of mobile/manufactured housing communities must be filed with the department before November 1, 2007, or within three months of the availability of mobile home lots for rent within the community. The manufactured/mobile home community is subject to a delinquency fee of two hundred fifty dollars for late initial registrations. The delinquency fee shall be deposited in the master license fund. Renewal registrations that are not renewed by the expiration date as assigned by the department are subject to delinquency fees under RCW 19.02.085.

(5) Thirty days after sending late fee notices to a non-complying landlord, the department may refer the past due account to a collection agency. If there is no response from a noncomplying landlord after sixty days in collections, the department may file an action to enforce payment of unpaid registration assessments and late fees in the superior court for Thurston county or in the county in which the manufactured/mobile home community is located. If the department prevails, the manufactured/mobile home community landlord shall pay the department's costs, including reasonable attorneys' fees, for the enforcement proceedings.

(6) Registration is effective on the date determined by the department, and the department shall issue a registration number to each registered manufactured/mobile home community. The department must provide an expiration date, assigned by the department, to each manufactured/mobile home community who registers. [2007 c 431 § 6.]

Implementation—2007 c 431: See note following RCW 59.30.010.

59.30.060 Database. The department must have the capability to compile, update, and maintain the most accurate database possible of all the manufactured/mobile home communities in the state, which must include all of the information collected under RCW 59.30.050, except for the addresses of each manufactured/mobile home lot within the manufactured/mobile home community that is subject to chapter 59.20 RCW, which must be made available to the attorney general and the department of community, trade, and economic development in a format to be determined by a collaborative agreement between the department of licensing and the attorney general. [2007 c 431 § 7.]

Implementation—2007 c 431: See note following RCW 59.30.010.

59.30.070 Manufactured/mobile home dispute resolution program account. The manufactured/mobile home dispute resolution program account is created in the custody of the state treasurer. All receipts from sources directed to the manufactured/mobile home dispute resolution program must be deposited in the account. Expenditures from the account may be used only for the costs associated with administering the manufactured/mobile home dispute resolution program. Only the attorney general or the attorney general's designee may authorize expenditures from the account. The account is subject to allotment procedures under chapter 43.88 RCW, but an appropriation is not required for expenditures. [2007 c 431 § 8.]

Implementation—2007 c 431: See note following RCW 59.30.010.

59.30.080 Immunity from suit. The attorney general, director, or individuals acting on behalf of the attorney general or director are immune from suit in any action, civil or criminal, based upon any disciplinary actions or other official acts performed in the course of their duties under this chapter, except their intentional or willful misconduct. [2007 c 431 § 5.]

Implementation—2007 c 431: See note following RCW 59.30.010.

Title 60

LIENS

Chapters

60.28 Lien for labor, materials, taxes on public works.

Chapter 60.28 RCW

LIEN FOR LABOR, MATERIALS, TAXES ON PUBLIC WORKS

Sections

60.28.010	Retained percentage—Labor and material lien created—Bond in lieu of retained funds—Termination before completion—Chapter deemed exclusive—Release of ferry contract payments—Projects of farmers home administration.
60.28.011	Retained percentage—Labor and material lien created—Bond in lieu of retained funds—Termination before completion—Chapter deemed exclusive—Release of ferry contract payments—Projects of farmers home administration—General contractor/construction manager procedure—Definitions.
60.28.020	Excess over lien claims to contractor.
60.28.021	Excess over lien claims paid to contractor.
60.28.051	Duties of disbursing officer upon completion of contract.

60.28.010 Retained percentage—Labor and material lien created—Bond in lieu of retained funds—Termination before completion—Chapter deemed exclusive—Release of ferry contract payments—Projects of farmers home administration. (1) Contracts for public improvements or work, other than for professional services, by the state, or any county, city, town, district, board, or other public body, herein referred to as "public body", shall provide, and there shall be reserved by the public body from the moneys earned by the contractor on estimates during the progress of the improvement or work, a sum not to exceed five percent, said sum to be retained by the state, county, city, town, district, board, or other public body, as a trust fund for the protection and payment of any person or persons, mechanic, subcontractor or material supplier who shall perform any labor upon such contract or the doing of said work, and all persons who shall supply such person or persons or subcontractors with provisions and supplies for the carrying on of such work, and the state with respect to taxes imposed pursuant to Title 82 RCW which may be due from such contractor. Every person performing labor or furnishing supplies toward the completion of said improvement or work shall have a lien upon said moneys so reserved: PROVIDED, That such notice of the lien of such claimant shall be given in the manner and within the time provided in RCW 39.08.030 as now existing and in accordance with any amendments that may hereafter be made thereto: PROVIDED FURTHER, That the board, council, commission, trustees, officer or body acting for the state, county or municipality or other public body; (a)

at any time after fifty percent of the original contract work has been completed, if it finds that satisfactory progress is being made, may make any of the partial payments which would otherwise be subsequently made in full; but in no event shall the amount to be retained be reduced to less than five percent of the amount of the moneys earned by the contractor: PROVIDED, That the contractor may request that retainage be reduced to one hundred percent of the value of the work remaining on the project; and (b) thirty days after completion and acceptance of all contract work other than landscaping, may release and pay in full the amounts retained during the performance of the contract (other than continuing retention of five percent of the moneys earned for landscaping) subject to the provisions of RCW 60.28.020.

(2) The moneys reserved under the provisions of subsection (1) of this section, at the option of the contractor, shall be:

(a) Retained in a fund by the public body until thirty days following the final acceptance of said improvement or work as completed;

(b) Deposited by the public body in an interest bearing account in a bank, mutual savings bank, or savings and loan association, not subject to withdrawal until after the final acceptance of said improvement or work as completed, or until agreed to by both parties: PROVIDED, That interest on such account shall be paid to the contractor;

(c) Placed in escrow with a bank or trust company by the public body until thirty days following the final acceptance of said improvement or work as completed. When the moneys reserved are to be placed in escrow, the public body shall issue a check representing the sum of the moneys reserved payable to the bank or trust company and the contractor jointly. Such check shall be converted into bonds and securities chosen by the contractor and approved by the public body and such bonds and securities shall be held in escrow. Interest on such bonds and securities shall be paid to the contractor as the said interest accrues.

(3) The contractor or subcontractor may withhold payment of not more than five percent from the moneys earned by any subcontractor or sub-subcontractor or supplier contracted with by the contractor to provide labor, materials, or equipment to the public project. Whenever the contractor or subcontractor reserves funds earned by a subcontractor or sub-subcontractor or supplier, the contractor or subcontractor shall pay interest to the subcontractor or sub-subcontractor or supplier at a rate equal to that received by the contractor or subcontractor from reserved funds.

(4) With the consent of the public body the contractor may submit a bond for all or any portion of the amount of funds retained by the public body in a form acceptable to the public body. Such bond and any proceeds therefrom shall be made subject to all claims and liens and in the same manner and priority as set forth for retained percentages in this chapter. The public body shall release the bonded portion of the retained funds to the contractor within thirty days of accepting the bond from the contractor. Whenever a public body accepts a bond in lieu of retained funds from a contractor, the contractor shall accept like bonds from any subcontractors or suppliers from which the contractor has retained funds. The contractor shall then release the funds retained from the subcontractor or supplier to the subcontractor or supplier within

thirty days of accepting the bond from the subcontractor or supplier.

(5) If the public body administering a contract, after a substantial portion of the work has been completed, finds that an unreasonable delay will occur in the completion of the remaining portion of the contract for any reason not the result of a breach thereof, it may, if the contractor agrees, delete from the contract the remaining work and accept as final the improvement at the stage of completion then attained and make payment in proportion to the amount of the work accomplished and in such case any amounts retained and accumulated under this section shall be held for a period of thirty days following such acceptance. In the event that the work shall have been terminated before final completion as provided in this section, the public body may thereafter enter into a new contract with the same contractor to perform the remaining work or improvement for an amount equal to or less than the cost of the remaining work as was provided for in the original contract without advertisement or bid. The provisions of this chapter 60.28 RCW shall be deemed exclusive and shall supersede all provisions and regulations in conflict herewith.

(6) Whenever the department of transportation has contracted for the construction of two or more ferry vessels, thirty days after completion and final acceptance of each ferry vessel, the department may release and pay in full the amounts retained in connection with the construction of such vessel subject to the provisions of RCW 60.28.020: PROVIDED, That the department of transportation may at its discretion condition the release of funds retained in connection with the completed ferry upon the contractor delivering a good and sufficient bond with two or more sureties, or with a surety company, in the amount of the retained funds to be released to the contractor, conditioned that no taxes shall be certified or claims filed for work on such ferry after a period of thirty days following final acceptance of such ferry; and if such taxes are certified or claims filed, recovery may be had on such bond by the department of revenue and the material suppliers and laborers filing claims.

(7) Contracts on projects funded in whole or in part by farmers home administration and subject to farmers home administration regulations shall not be subject to subsections (1) through (6) of this section. [2007 c 218 § 91; 1986 c 181 § 6; 1984 c 146 § 1; 1982 c 170 § 1; 1981 c 260 § 14. Prior: 1977 ex.s. c 205 § 1; 1977 ex.s. c 166 § 5; 1975 1st ex.s. c 104 § 1; 1970 ex.s. c 38 § 1; 1969 ex.s. c 151 § 1; 1963 c 238 § 1; 1955 c 236 § 1; 1921 c 166 § 1; RRS § 10320.]

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

Application—1992 c 233: See RCW 39.04.901.

Severability—1977 ex.s. c 166: See note following RCW 39.08.030.

60.28.011 Retained percentage—Labor and material lien created—Bond in lieu of retained funds—Termination before completion—Chapter deemed exclusive—Release of ferry contract payments—Projects of farmers home administration—General contractor/construction manager procedure—Definitions. (1) Public improvement contracts shall provide, and public bodies shall reserve, a contract retainage not to exceed five percent of the moneys earned by the contractor as a trust fund for the protection and

payment of: (a) The claims of any person arising under the contract; and (b) the state with respect to taxes imposed pursuant to Title 82 RCW which may be due from such contractor.

(2) Every person performing labor or furnishing supplies toward the completion of a public improvement contract shall have a lien upon moneys reserved by a public body under the provisions of a public improvement contract. However, the notice of the lien of the claimant shall be given within forty-five days of completion of the contract work, and in the manner provided in RCW 39.08.030.

(3) The contractor at any time may request the contract retainage be reduced to one hundred percent of the value of the work remaining on the project.

(a) After completion of all contract work other than landscaping, the contractor may request that the public body release and pay in full the amounts retained during the performance of the contract, and sixty days thereafter the public body must release and pay in full the amounts retained (other than continuing retention of five percent of the moneys earned for landscaping) subject to the provisions of chapters 39.12 and 60.28 RCW.

(b) Sixty days after completion of all contract work the public body must release and pay in full the amounts retained during the performance of the contract subject to the provisions of chapters 39.12 and 60.28 RCW.

(4) The moneys reserved by a public body under the provisions of a public improvement contract, at the option of the contractor, shall be:

(a) Retained in a fund by the public body;

(b) Deposited by the public body in an interest bearing account in a bank, mutual savings bank, or savings and loan association. Interest on moneys reserved by a public body under the provision of a public improvement contract shall be paid to the contractor;

(c) Placed in escrow with a bank or trust company by the public body. When the moneys reserved are placed in escrow, the public body shall issue a check representing the sum of the moneys reserved payable to the bank or trust company and the contractor jointly. This check shall be converted into bonds and securities chosen by the contractor and approved by the public body and the bonds and securities shall be held in escrow. Interest on the bonds and securities shall be paid to the contractor as the interest accrues.

(5) The contractor or subcontractor may withhold payment of not more than five percent from the moneys earned by any subcontractor or sub-subcontractor or supplier contracted with by the contractor to provide labor, materials, or equipment to the public project. Whenever the contractor or subcontractor reserves funds earned by a subcontractor or sub-subcontractor or supplier, the contractor or subcontractor shall pay interest to the subcontractor or sub-subcontractor or supplier at a rate equal to that received by the contractor or subcontractor from reserved funds.

(6) A contractor may submit a bond for all or any portion of the contract retainage in a form acceptable to the public body and from a bonding company meeting standards established by the public body. The public body shall accept a bond meeting these requirements unless the public body can demonstrate good cause for refusing to accept it. This bond and any proceeds therefrom are subject to all claims and liens

and in the same manner and priority as set forth for retained percentages in this chapter. The public body shall release the bonded portion of the retained funds to the contractor within thirty days of accepting the bond from the contractor. Whenever a public body accepts a bond in lieu of retained funds from a contractor, the contractor shall accept like bonds from any subcontractors or suppliers from which the contractor has retained funds. The contractor shall then release the funds retained from the subcontractor or supplier to the subcontractor or supplier within thirty days of accepting the bond from the subcontractor or supplier.

(7) If the public body administering a contract, after a substantial portion of the work has been completed, finds that an unreasonable delay will occur in the completion of the remaining portion of the contract for any reason not the result of a breach thereof, it may, if the contractor agrees, delete from the contract the remaining work and accept as final the improvement at the stage of completion then attained and make payment in proportion to the amount of the work accomplished and in this case any amounts retained and accumulated under this section shall be held for a period of sixty days following the completion. In the event that the work is terminated before final completion as provided in this section, the public body may thereafter enter into a new contract with the same contractor to perform the remaining work or improvement for an amount equal to or less than the cost of the remaining work as was provided for in the original contract without advertisement or bid. The provisions of this chapter are exclusive and shall supersede all provisions and regulations in conflict herewith.

(8) Whenever the department of transportation has contracted for the construction of two or more ferry vessels, sixty days after completion of all contract work on each ferry vessel, the department must release and pay in full the amounts retained in connection with the construction of the vessel subject to the provisions of RCW 60.28.020 and chapter 39.12 RCW. However, the department of transportation may at its discretion condition the release of funds retained in connection with the completed ferry upon the contractor delivering a good and sufficient bond with two or more sureties, or with a surety company, in the amount of the retained funds to be released to the contractor, conditioned that no taxes shall be certified or claims filed for work on the ferry after a period of sixty days following completion of the ferry; and if taxes are certified or claims filed, recovery may be had on the bond by the department of revenue and the material suppliers and laborers filing claims.

(9) Except as provided in subsection (1) of this section, reservation by a public body for any purpose from the moneys earned by a contractor by fulfilling its responsibilities under public improvement contracts is prohibited.

(10) Contracts on projects funded in whole or in part by farmers home administration and subject to farmers home administration regulations are not subject to subsections (1) through (9) of this section.

(11) This subsection applies only to a public body that has contracted for the construction of a facility using the general contractor/construction manager procedure, as defined under RCW 39.10.210. If the work performed by a subcontractor on the project has been completed within the first half of the time provided in the general contractor/construction

manager contract for completing the work, the public body may accept the completion of the subcontract. The public body must give public notice of this acceptance. After a forty-five day period for giving notice of liens, and compliance with the retainage release procedures in RCW 60.28.021, the public body may release that portion of the retained funds associated with the subcontract. Claims against the retained funds after the forty-five day period are not valid.

(12) Unless the context clearly requires otherwise, the definitions in this subsection apply throughout this section.

(a) "Contract retainage" means an amount reserved by a public body from the moneys earned by a person under a public improvement contract.

(b) "Person" means a person or persons, mechanic, subcontractor, or material person who performs labor or provides materials for a public improvement contract, and any other person who supplies the person with provisions or supplies for the carrying on of a public improvement contract.

(c) "Public body" means the state, or a county, city, town, district, board, or other public body.

(d) "Public improvement contract" means a contract for public improvements or work, other than for professional services, or a work order as defined in RCW 39.10.210. [2007 c 494 § 504; 2007 c 218 § 92; 2003 c 301 § 7; 2000 c 185 § 1; 1994 c 101 § 1; 1992 c 223 § 2.]

Reviser's note: This section was amended by 2007 c 218 § 92 and by 2007 c 494 § 504, each without reference to the other. Both amendments are incorporated in the publication of this section under RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

Part headings and captions not law—Effective dates—Severability—2007 c 494: See RCW 39.10.903 through 39.10.905.

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

Effective date—1992 c 223: See note following RCW 39.76.011.

Waiver of rights, construction—Application—1992 c 223: See RCW 39.04.900 and 39.04.901.

60.28.020 Excess over lien claims to contractor. After the expiration of the thirty day period, and after receipt of the department of revenue's certificate, and the public body is satisfied that the taxes certified as due or to become due by the department of revenue are discharged, and the claims of material suppliers and laborers who have filed their claims, together with a sum sufficient to defray the cost of foreclosing the liens of such claims, and to pay attorneys' fees, have been paid, the public body shall pay to the contractor the fund retained by it or release to the contractor the securities and bonds held in escrow.

If such taxes have not been discharged or the claims, expenses, and fees have not been paid, the public body shall either retain in its fund, or in an interest bearing account, or retain in escrow, at the option of the contractor, an amount equal to such unpaid taxes and unpaid claims together with a sum sufficient to defray the costs and attorney fees incurred in foreclosing the lien of such claims, and shall pay, or release from escrow, the remainder to the contractor. [2007 c 218 § 93; 1975 1st ex.s. c 104 § 2; 1970 ex.s. c 38 § 2; 1967 ex.s. c 26 § 23; 1955 c 236 § 2; 1921 c 166 § 2; RRS § 10321.]

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

Application—1992 c 223: See RCW 39.04.901.

Effective date—1967 ex.s. c 26: See note following RCW 82.01.050.

60.28.021 Excess over lien claims paid to contractor.

After the expiration of the forty-five day period for giving notice of lien provided in RCW 60.28.011(2), and after receipt of the department of revenue's certificate, and the public body is satisfied that the taxes certified as due or to become due by the department of revenue are discharged, and the claims of material suppliers and laborers who have filed their claims, together with a sum sufficient to defray the cost of foreclosing the liens of such claims, and to pay attorneys' fees, have been paid, the public body may withhold from the remaining retained amounts for claims the public body may have against the contractor and shall pay the balance, if any, to the contractor the fund retained by it or release to the contractor the securities and bonds held in escrow.

If such taxes have not been discharged or the claims, expenses, and fees have not been paid, the public body shall either retain in its fund, or in an interest bearing account, or retain in escrow, at the option of the contractor, an amount equal to such unpaid taxes and unpaid claims together with a sum sufficient to defray the costs and attorney fees incurred in foreclosing the lien of such claims, and shall pay, or release from escrow, the remainder to the contractor. [2007 c 218 § 94; 1992 c 223 § 3.]

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

Effective date—1992 c 223: See note following RCW 39.76.011.

Waiver of rights, construction—Application—1992 c 223: See RCW 39.04.900 and 39.04.901.

60.28.051 Duties of disbursing officer upon completion of contract. Upon completion of a contract, the state, county, or other municipal officer charged with the duty of disbursing or authorizing disbursement or payment of such contracts shall forthwith notify the department of revenue of the completion of contracts over thirty-five thousand dollars. Such officer shall not make any payment from the retained percentage fund or release any retained percentage escrow account to any person, until he or she has received from the department of revenue a certificate that all taxes, increases, and penalties due from the contractor, and all taxes due and to become due with respect to such contract have been paid in full or that they are, in the department's opinion, readily collectible without recourse to the state's lien on the retained percentage. [2007 c 210 § 2; 1992 c 223 § 4.]

Effective date—1992 c 223: See note following RCW 39.76.011.

Waiver of rights, construction—Application—1992 c 223: See RCW 39.04.900 and 39.04.901.

Title 63

PERSONAL PROPERTY

Chapters

63.29 Uniform unclaimed property act.

63.32 Unclaimed property in hands of city police.

63.35 Unclaimed property in hands of state patrol.

63.40 Unclaimed property in hands of sheriff.

Chapter 63.29 RCW

UNIFORM UNCLAIMED PROPERTY ACT

Sections

- 63.29.130 Property held by courts and public agencies—When abandoned—Overpayments.

63.29.130 Property held by courts and public agencies—When abandoned—Overpayments. Intangible property held for the owner by a court, state or other government, governmental subdivision or agency, public corporation, public authority, or the United States or any instrumentality of the United States that remains unclaimed by the owner for more than two years after becoming payable or distributable is presumed abandoned. However, courts may retain overpayments made in connection with any litigation, including traffic, criminal, and noncriminal matters, in an amount less than or equal to ten dollars. These overpayments shall be remitted by the clerk of the court to the local treasurer for deposit in the local current expense fund. [2007 c 183 § 1; 1993 c 498 § 2; 1983 c 179 § 13.]

Chapter 63.32 RCW

UNCLAIMED PROPERTY IN HANDS OF CITY POLICE

Sections

- 63.32.050 Donation of unclaimed personal property to nonprofit charitable organizations.

63.32.050 Donation of unclaimed personal property to nonprofit charitable organizations. In addition to any other method of disposition of unclaimed property provided under this chapter, the police authorities of a city or town may donate unclaimed personal property to nonprofit charitable organizations. A nonprofit charitable organization receiving personal property donated under this section must use the property, or its proceeds, to benefit needy persons. Such organization must qualify for tax-exempt status under 26 U.S.C. Sec. 501(c)(3) of the federal internal revenue code. [2007 c 219 § 1; 1987 c 182 § 1.]

Severability—1987 c 182: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1987 c 182 § 3.]

Chapter 63.35 RCW

UNCLAIMED PROPERTY IN HANDS OF STATE PATROL

Sections

- 63.35.065 Donation of unclaimed personal property to nonprofit charitable organizations.

63.35.065 Donation of unclaimed personal property to nonprofit charitable organizations. In addition to any other method of disposition of unclaimed property provided under this chapter, the state patrol may donate unclaimed personal property to nonprofit charitable organizations. A nonprofit charitable organization receiving personal property donated under this section must use the property, or its proceeds, to benefit needy persons. Such organization must

qualify for tax-exempt status under 26 U.S.C. Sec. 501(c)(3) of the federal internal revenue code. [2007 c 219 § 2.]

Chapter 63.40 RCW

UNCLAIMED PROPERTY IN HANDS OF SHERIFF

Sections

- 63.40.060 Donation of unclaimed personal property to nonprofit charitable organizations.

63.40.060 Donation of unclaimed personal property to nonprofit charitable organizations. In addition to any other method of disposition of unclaimed property provided under this chapter, the county sheriff may donate unclaimed personal property to nonprofit charitable organizations. A nonprofit charitable organization receiving personal property donated under this section must use the property, or its proceeds, to benefit needy persons. Such organization must qualify for tax-exempt status under 26 U.S.C. Sec. 501(c)(3) of the federal internal revenue code. [2007 c 219 § 3; 1987 c 182 § 2.]

Severability—1987 c 182: See note following RCW 63.32.050.

Title 64

REAL PROPERTY AND CONVEYANCES

Chapters

- 64.06 Residential real property transfers—Seller's disclosures.**
64.70 Uniform environmental covenants act.

Chapter 64.06 RCW

RESIDENTIAL REAL PROPERTY TRANSFERS—SELLER'S DISCLOSURES

Sections

- 64.06.005 Definitions.
 64.06.010 Application—Exceptions for certain transfers of residential real property.
 64.06.015 Unimproved residential real property—Seller's duty—Format of disclosure statement—Minimum information.
 64.06.020 Improved residential real property—Seller's duty—Format of disclosure statement—Minimum information.

64.06.005 Definitions. The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

(1) "Improved residential real property" means:

(a) Real property consisting of, or improved by, one to four residential dwelling units;

(b) A residential condominium as defined in RCW 64.34.020(9), unless the sale is subject to the public offering statement requirement in the Washington condominium act, chapter 64.34 RCW;

(c) A residential timeshare, as defined in RCW 64.36.010(11), unless subject to written disclosure under the Washington timeshare act, chapter 64.36 RCW; or

(d) A mobile or manufactured home, as defined in RCW 43.22.335 or 46.04.302, that is personal property.

(2) "Residential real property" means both improved and unimproved residential real property.

(3) "Seller disclosure statement" means the form to be completed by the seller of residential real property as prescribed by this chapter.

(4) "Unimproved residential real property" means property zoned for residential use that is not improved by residential dwelling units, a residential condominium, a residential timeshare, or a mobile or manufactured home. [2007 c 107 § 2; 2002 c 268 § 8; 1994 c 200 § 1.]

Findings—Intent—2007 c 107: See note following RCW 64.06.015.

Purpose—Finding—Effective dates—2002 c 268: See notes following RCW 43.22.434.

64.06.010 Application—Exceptions for certain transfers of residential real property. This chapter does not apply to the following transfers of residential real property:

- (1) A foreclosure or deed-in-lieu of foreclosure;
(2) A gift or other transfer to a parent, spouse, or child of a transferor or child of any parent or spouse of a transferor;
(3) A transfer between spouses in connection with a marital dissolution;
(4) A transfer where a buyer had an ownership interest in the property within two years of the date of the transfer including, but not limited to, an ownership interest as a partner in a partnership, a limited partner in a limited partnership, a shareholder in a corporation, a leasehold interest, or transfers to and from a facilitator pursuant to a tax deferred exchange;
(5) A transfer of an interest that is less than fee simple, except that the transfer of a vendee's interest under a real estate contract is subject to the requirements of this chapter;
(6) A transfer made by the personal representative of the estate of the decedent or by a trustee in bankruptcy; and
(7) A transfer in which the buyer has expressly waived the receipt of the seller disclosure statement. However, if the answer to any of the questions in the section entitled "Environmental" would be "yes," the buyer may not waive the receipt of the "Environmental" section of the seller disclosure statement. [2007 c 107 § 3; 1994 c 200 § 2.]

Findings—Intent—2007 c 107: See note following RCW 64.06.015.

64.06.015 Unimproved residential real property—Seller's duty—Format of disclosure statement—Minimum information. (1) In a transaction for the sale of unimproved residential real property, the seller shall, unless the buyer has expressly waived the right to receive the disclosure statement under RCW 64.06.010, or unless the transfer is otherwise exempt under RCW 64.06.010, deliver to the buyer a completed seller disclosure statement in the following format and that contains, at a minimum, the following information:

INSTRUCTIONS TO THE SELLER

Please complete the following form. Do not leave any spaces blank. If the question clearly does not apply to the property write "NA." If the answer is "yes" to any * items, please explain on attached sheets. Please refer to the line number(s) of the question(s) when you provide your explanation(s). For your protection you must date and sign each page of this disclosure statement and each attachment. Delivery of the disclosure statement must occur not later than five business days, unless otherwise agreed, after mutual acceptance of a written contract to purchase between a buyer and a seller.

NOTICE TO THE BUYER

THE FOLLOWING DISCLOSURES ARE MADE BY SELLER ABOUT THE CONDITION OF THE PROPERTY LOCATED AT. . . . ("THE PROPERTY"), OR AS LEGALLY DESCRIBED ON ATTACHED EXHIBIT A.

SELLER MAKES THE FOLLOWING DISCLOSURES OF EXISTING MATERIAL FACTS OR MATERIAL DEFECTS TO BUYER BASED ON SELLER'S ACTUAL KNOWLEDGE OF THE PROPERTY AT THE TIME SELLER COMPLETES THIS DISCLOSURE STATEMENT. UNLESS YOU AND SELLER OTHERWISE AGREE IN WRITING, YOU HAVE THREE BUSINESS DAYS FROM THE DAY SELLER OR SELLER'S AGENT DELIVERS THIS DISCLOSURE STATEMENT TO YOU TO RESCIND THE AGREEMENT BY DELIVERING A SEPARATELY SIGNED WRITTEN STATEMENT OF RESCISSION TO SELLER OR SELLER'S AGENT. IF THE SELLER DOES NOT GIVE YOU A COMPLETED DISCLOSURE STATEMENT, THEN YOU MAY WAIVE THE RIGHT TO RESCIND PRIOR TO OR AFTER THE TIME YOU ENTER INTO A SALE AGREEMENT.

THE FOLLOWING ARE DISCLOSURES MADE BY SELLER AND ARE NOT THE REPRESENTATIONS OF ANY REAL ESTATE LICENSEE OR OTHER PARTY. THIS INFORMATION IS FOR DISCLOSURE ONLY AND IS NOT INTENDED TO BE A PART OF ANY WRITTEN AGREEMENT BETWEEN BUYER AND SELLER.

FOR A MORE COMPREHENSIVE EXAMINATION OF THE SPECIFIC CONDITION OF THIS PROPERTY YOU ARE ADVISED TO OBTAIN AND PAY FOR THE SERVICES OF QUALIFIED EXPERTS TO INSPECT THE PROPERTY, WHICH MAY INCLUDE, WITHOUT LIMITATION, ARCHITECTS, ENGINEERS, LAND SURVEYORS, PLUMBERS, ELECTRICIANS, ROOFERS, BUILDING INSPECTORS, ON-SITE WASTEWATER TREATMENT INSPECTORS, OR STRUCTURAL PEST INSPECTORS. THE PROSPECTIVE BUYER AND SELLER MAY WISH TO OBTAIN PROFESSIONAL ADVICE OR INSPECTIONS OF THE PROPERTY OR TO PROVIDE APPROPRIATE PROVISIONS IN A CONTRACT BETWEEN THEM WITH RESPECT TO ANY ADVICE, INSPECTION, DEFECTS OR WARRANTIES.

Seller . . . is/ . . . is not occupying the property.

I. SELLER'S DISCLOSURES:

If you answer "Yes" to a question with an asterisk (), please explain your answer and attach documents, if available and not otherwise publicly recorded. If necessary, use an attached sheet.

- 1. TITLE
A. Do you have legal authority to sell the property? If no, please explain.
*B. Is title to the property subject to any of the following?
(1) First right of refusal
(2) Option
(3) Lease or rental agreement
(4) Life estate?
*C. Are there any encroachments, boundary agreements, or boundary disputes?
*D. Is there a private road or easement agreement for access to the property?

<input type="checkbox"/> Yes	<input type="checkbox"/> No	<input type="checkbox"/> Don't know	*E. Are there any rights-of-way, easements, or access limitations that may affect the Buyer's use of the property?	<input type="checkbox"/> Yes	<input type="checkbox"/> No	<input type="checkbox"/> Don't know	A. The property is served by: <input type="checkbox"/> Public sewer system <input type="checkbox"/> On-site sewage system (including pipes, tanks, drainfields, and all other component parts) <input type="checkbox"/> Other disposal system, please describe:
<input type="checkbox"/> Yes	<input type="checkbox"/> No	<input type="checkbox"/> Don't know	*F. Are there any written agreements for joint maintenance of an easement or right-of-way?				B. Is the property subject to any sewage system fees or charges in addition to those covered in your regularly billed sewer or on-site sewage system maintenance service?
<input type="checkbox"/> Yes	<input type="checkbox"/> No	<input type="checkbox"/> Don't know	*G. Is there any study, survey project, or notice that would adversely affect the property?	<input type="checkbox"/> Yes	<input type="checkbox"/> No	<input type="checkbox"/> Don't know	C. If the property is connected to an on-site sewage system: *(1) Was a permit issued for its construction? *(2) Was it approved by the local health department or district following its construction? (3) Is the septic system a pressurized system? (4) Is the septic system a gravity system? *(5) Have there been any changes or repairs to the on-site sewage system? (6) Is the on-site sewage system, including the drainfield, located entirely within the boundaries of the property? If no, please explain: (7) Does the on-site sewage system require monitoring and maintenance services more frequently than once a year? If yes, please explain:
<input type="checkbox"/> Yes	<input type="checkbox"/> No	<input type="checkbox"/> Don't know	*H. Are there any pending or existing assessments against the property?				4. ELECTRICAL/GAS
<input type="checkbox"/> Yes	<input type="checkbox"/> No	<input type="checkbox"/> Don't know	*I. Are there any zoning violations, non-conforming uses, or any unusual restrictions on the property that would affect future construction or remodeling?	<input type="checkbox"/> Yes	<input type="checkbox"/> No	<input type="checkbox"/> Don't know	A. Is the property served by natural gas? B. Is there a connection charge for gas? C. Is the property served by electricity? D. Is there a connection charge for electricity? E. Are there any electrical problems on the property? If yes, please explain:
<input type="checkbox"/> Yes	<input type="checkbox"/> No	<input type="checkbox"/> Don't know	*J. Is there a boundary survey for the property?	<input type="checkbox"/> Yes	<input type="checkbox"/> No	<input type="checkbox"/> Don't know	5. FLOODING
<input type="checkbox"/> Yes	<input type="checkbox"/> No	<input type="checkbox"/> Don't know	*K. Are there any covenants, conditions, or restrictions which affect the property?	<input type="checkbox"/> Yes	<input type="checkbox"/> No	<input type="checkbox"/> Don't know	A. Are there any flooding, standing water, or drainage problems on the property or affecting access to the property? If yes, please explain: B. Is the property located in a government designated flood zone or floodplain? 6. SOIL STABILITY
<input type="checkbox"/> Yes	<input type="checkbox"/> No	<input type="checkbox"/> Don't know	2. WATER				A. Are there any settlement, earth movement, slides, or similar soil problems on the property? If yes, please explain: B. Does any part of the property contain fill dirt, waste, or other fill material? If yes, please explain:
<input type="checkbox"/> Yes	<input type="checkbox"/> No	<input type="checkbox"/> Don't know	A. Household Water	<input type="checkbox"/> Yes	<input type="checkbox"/> No	<input type="checkbox"/> Don't know	7. ENVIRONMENTAL
			(1) Does the property have potable water supply?	<input type="checkbox"/> Yes	<input type="checkbox"/> No	<input type="checkbox"/> Don't know	*A. Have there been any drainage problems on the property? *B. Does the property contain fill material? *C. Is there any material damage to the property from fire, wind, floods, beach movements, earthquake, expansive soils, or landslides? D. Are there any shorelines, wetlands, floodplains, or critical areas on the property? *E. Are there any substances, materials, or products on the property that may be environmental concerns, such as asbestos, formaldehyde, radon gas, lead-based paint, fuel or chemical storage tanks, or contaminated soil or water? *F. Has the property been used for commercial or industrial purposes? *G. Is there any soil or groundwater contamination?
			(2) If yes, the source of water for the property is:	<input type="checkbox"/> Yes	<input type="checkbox"/> No	<input type="checkbox"/> Don't know	
			<input type="checkbox"/> Private or publicly owned water system	<input type="checkbox"/> Yes	<input type="checkbox"/> No	<input type="checkbox"/> Don't know	
			<input type="checkbox"/> Private well serving only the property				
			* <input type="checkbox"/> Other water system				
<input type="checkbox"/> Yes	<input type="checkbox"/> No	<input type="checkbox"/> Don't know	*If shared, are there any written agreements?	<input type="checkbox"/> Yes	<input type="checkbox"/> No	<input type="checkbox"/> Don't know	
<input type="checkbox"/> Yes	<input type="checkbox"/> No	<input type="checkbox"/> Don't know	*(3) Is there an easement (recorded or unrecorded) for access to and/or maintenance of the water source?				
<input type="checkbox"/> Yes	<input type="checkbox"/> No	<input type="checkbox"/> Don't know	*(4) Are there any known problems or repairs needed?	<input type="checkbox"/> Yes	<input type="checkbox"/> No	<input type="checkbox"/> Don't know	
<input type="checkbox"/> Yes	<input type="checkbox"/> No	<input type="checkbox"/> Don't know	(5) Is there a connection or hook-up charge payable before the property can be connected to the water main?	<input type="checkbox"/> Yes	<input type="checkbox"/> No	<input type="checkbox"/> Don't know	
<input type="checkbox"/> Yes	<input type="checkbox"/> No	<input type="checkbox"/> Don't know	(6) Have you obtained a certificate of water availability from the water purveyor serving the property? (If yes, please attach a copy.)	<input type="checkbox"/> Yes	<input type="checkbox"/> No	<input type="checkbox"/> Don't know	
<input type="checkbox"/> Yes	<input type="checkbox"/> No	<input type="checkbox"/> Don't know	(7) Is there a water right permit, certificate, or claim associated with household water supply for the property? (If yes, please attach a copy.)	<input type="checkbox"/> Yes	<input type="checkbox"/> No	<input type="checkbox"/> Don't know	
<input type="checkbox"/> Yes	<input type="checkbox"/> No	<input type="checkbox"/> Don't know	(a) If yes, has the water right permit, certificate, or claim been assigned, transferred, or changed?	<input type="checkbox"/> Yes	<input type="checkbox"/> No	<input type="checkbox"/> Don't know	
			(b) If yes, has all or any portion of the water right not been used for five or more successive years? (If yes, please explain.)	<input type="checkbox"/> Yes	<input type="checkbox"/> No	<input type="checkbox"/> Don't know	
<input type="checkbox"/> Yes	<input type="checkbox"/> No	<input type="checkbox"/> Don't know	(c) If no or don't know, is the water withdrawn from the water source less than 5,000 gallons a day?	<input type="checkbox"/> Yes	<input type="checkbox"/> No	<input type="checkbox"/> Don't know	
<input type="checkbox"/> Yes	<input type="checkbox"/> No	<input type="checkbox"/> Don't know	*(8) Are there any defects in the operation of the water system (e.g., pipes, tank, pump, etc.)?	<input type="checkbox"/> Yes	<input type="checkbox"/> No	<input type="checkbox"/> Don't know	
<input type="checkbox"/> Yes	<input type="checkbox"/> No	<input type="checkbox"/> Don't know	B. Irrigation Water				
<input type="checkbox"/> Yes	<input type="checkbox"/> No	<input type="checkbox"/> Don't know	(1) Are there any irrigation water rights for the property, such as a water right permit, certificate, or claim? (If yes, please attach a copy.)	<input type="checkbox"/> Yes	<input type="checkbox"/> No	<input type="checkbox"/> Don't know	
<input type="checkbox"/> Yes	<input type="checkbox"/> No	<input type="checkbox"/> Don't know	(a) If yes, has all or any portion of the water right not been used for five or more successive years?	<input type="checkbox"/> Yes	<input type="checkbox"/> No	<input type="checkbox"/> Don't know	
<input type="checkbox"/> Yes	<input type="checkbox"/> No	<input type="checkbox"/> Don't know	(b) If yes, has the water right permit, certificate, or claim been assigned, transferred, or changed?	<input type="checkbox"/> Yes	<input type="checkbox"/> No	<input type="checkbox"/> Don't know	
<input type="checkbox"/> Yes	<input type="checkbox"/> No	<input type="checkbox"/> Don't know	(2) Does the property receive irrigation water from a ditch company, irrigation district, or other entity? If so, please identify the entity that supplies irrigation water to the property:	<input type="checkbox"/> Yes	<input type="checkbox"/> No	<input type="checkbox"/> Don't know	
<input type="checkbox"/> Yes	<input type="checkbox"/> No	<input type="checkbox"/> Don't know	C. Outdoor Sprinkler System				
<input type="checkbox"/> Yes	<input type="checkbox"/> No	<input type="checkbox"/> Don't know	(1) Is there an outdoor sprinkler system for the property?	<input type="checkbox"/> Yes	<input type="checkbox"/> No	<input type="checkbox"/> Don't know	
<input type="checkbox"/> Yes	<input type="checkbox"/> No	<input type="checkbox"/> Don't know	(2) If yes, are there any defects in the system?	<input type="checkbox"/> Yes	<input type="checkbox"/> No	<input type="checkbox"/> Don't know	
<input type="checkbox"/> Yes	<input type="checkbox"/> No	<input type="checkbox"/> Don't know	*(3) If yes, is the sprinkler system connected to irrigation water?				
			3. SEWER/SEPTIC SYSTEM				

- Yes No Don't know *H. Are there transmission poles, transformers, or other utility equipment installed, maintained, or buried on the property?
- Yes No Don't know *I. Has the property been used as a legal or illegal dumping site?
- Yes No Don't know *J. Has the property been used as an illegal drug manufacturing site?
- Yes No Don't know *K. Are there any radio towers in the area that may cause interference with telephone reception?
- Yes No Don't know **8. HOMEOWNERS' ASSOCIATION/COMMON INTERESTS**
A. Is there a homeowners' association? Name of association:
- Yes No Don't know B. Are there regular periodic assessments: \$. . . per Month Year Other
- Yes No Don't know *C. Are there any pending special assessments?
- Yes No Don't know *D. Are there any shared "common areas" or any joint maintenance agreements (facilities such as walls, fences, landscaping, pools, tennis courts, walkways, or other areas co-owned in undivided interest with others)?
- Yes No Don't know **9. OTHER FACTS**
A. Are there any disagreements, disputes, encroachments, or legal actions concerning the property? If yes, please explain:
- Yes No Don't know B. Does the property have any plants or wildlife that are designated as species or [of] concern, or listed as threatened or endangered by the government?
- Yes No Don't know C. Is the property classified or designated as forest land or open space? If so, specify:
- Yes No Don't know D. Do you have a forest management plan? If yes, attach.
- Yes No Don't know E. Have any development-related permit applications been submitted to any government agencies? If so, specify:

10. FULL DISCLOSURE BY SELLERS

- Yes No Don't know A. Other conditions or defects:
*Are there any other existing material defects affecting the property that a prospective buyer should know about?
- B. Verification:
The foregoing answers and attached explanations (if any) are complete and correct to the best of my/our knowledge and I/we have received a copy hereof. I/we authorize all of my/our real estate licensees, if any, to deliver a copy of this disclosure statement to other real estate licensees and all prospective buyers of the property.

DATE SELLER SELLER
NOTICE TO BUYER

INFORMATION REGARDING REGISTERED SEX OFFENDERS MAY BE OBTAINED FROM LOCAL LAW ENFORCEMENT AGENCIES. THIS NOTICE IS INTENDED ONLY TO INFORM YOU OF WHERE TO OBTAIN THIS INFORMATION AND IS NOT AN INDICATION OF THE PRESENCE OF REGISTERED SEX OFFENDERS.

II. BUYER'S ACKNOWLEDGMENT

- A. Buyer hereby acknowledges that: Buyer has a duty to pay diligent attention to any material defects that are known to Buyer or can be known to Buyer by utilizing diligent attention and observation.
- B. The disclosures set forth in this statement and in any amendments to this statement are made only by the Seller and not by any real estate licensee or other party.
- C. Buyer acknowledges that, pursuant to RCW 64.06.050(2), real estate licensees are not liable for inaccurate information provided by Seller, except to the extent that real estate licensees know of such inaccurate information.

- D. This information is for disclosure only and is not intended to be a part of the written agreement between the Buyer and Seller.
- E. Buyer (which term includes all persons signing the "Buyer's acceptance" portion of this disclosure statement below) has received a copy of this Disclosure Statement (including attachments, if any) bearing Seller's signature.

DISCLOSURES CONTAINED IN THIS DISCLOSURE STATEMENT ARE PROVIDED BY SELLER BASED ON SELLER'S ACTUAL KNOWLEDGE OF THE PROPERTY AT THE TIME SELLER COMPLETES THIS DISCLOSURE STATEMENT. UNLESS BUYER AND SELLER OTHERWISE AGREE IN WRITING, BUYER SHALL HAVE THREE BUSINESS DAYS FROM THE DAY SELLER OR SELLER'S AGENT DELIVERS THIS DISCLOSURE STATEMENT TO RESCIND THE AGREEMENT BY DELIVERING A SEPARATELY SIGNED WRITTEN STATEMENT OF RESCISSION TO SELLER OR SELLER'S AGENT. YOU MAY WAIVE THE RIGHT TO RESCIND PRIOR TO OR AFTER THE TIME YOU ENTER INTO A SALE AGREEMENT.

BUYER HEREBY ACKNOWLEDGES RECEIPT OF A COPY OF THIS DISCLOSURE STATEMENT AND ACKNOWLEDGES THAT THE DISCLOSURES MADE HEREIN ARE THOSE OF THE SELLER ONLY, AND NOT OF ANY REAL ESTATE LICENSEE OR OTHER PARTY.

DATE BUYER BUYER

(2) The seller disclosure statement shall be for disclosure only, and shall not be considered part of any written agreement between the buyer and seller of residential property. The seller disclosure statement shall be only a disclosure made by the seller, and not any real estate licensee involved in the transaction, and shall not be construed as a warranty of any kind by the seller or any real estate licensee involved in the transaction. [2007 c 107 § 5.]

Findings—Intent—2007 c 107: "(1) The legislature finds that:

- (a) Some purchasers of residential property have been financially ruined, and their health threatened, by the discovery of toxic materials buried or otherwise hidden on the property, that was not disclosed by the seller who had actual knowledge of the presence of such materials before the sale;
 - (b) Current law exempts some sellers from legal responsibility to disclose what they know about the presence of toxic materials on unimproved property they are selling for residential purposes; and
 - (c) Seller disclosure statements provide information of fundamental importance to a buyer to help the buyer determine whether the property has health and safety characteristics suitable for residential use and whether the buyer can financially afford the clean-up costs and related legal costs.
- (2) The legislature intends that:
- (a) Purchasers of unimproved property intended to be used for residential purposes be entitled to receive from the seller information known by the seller about toxic materials on or buried in the property;
 - (b) There be no legal exemptions from such disclosure in the interests of fairness and transparency in residential property sales transactions; and
 - (c) Separate residential property sales disclosure forms be used for improved and unimproved property, to assist with transparency in property transactions." [2007 c 107 § 1.]

64.06.020 Improved residential real property—Seller's duty—Format of disclosure statement—Minimum information. (1) In a transaction for the sale of improved residential real property, the seller shall, unless the buyer has expressly waived the right to receive the disclosure statement under RCW 64.06.010, or unless the transfer is otherwise exempt under RCW 64.06.010, deliver to the buyer a

completed seller disclosure statement in the following format and that contains, at a minimum, the following information:

INSTRUCTIONS TO THE SELLER

Please complete the following form. Do not leave any spaces blank. If the question clearly does not apply to the property write "NA." If the answer is "yes" to any * items, please explain on attached sheets. Please refer to the line number(s) of the question(s) when you provide your explanation(s). For your protection you must date and sign each page of this disclosure statement and each attachment. Delivery of the disclosure statement must occur not later than five business days, unless otherwise agreed, after mutual acceptance of a written contract to purchase between a buyer and a seller.

NOTICE TO THE BUYER

THE FOLLOWING DISCLOSURES ARE MADE BY SELLER ABOUT THE CONDITION OF THE PROPERTY LOCATED AT..... ("THE PROPERTY"), OR AS LEGALLY DESCRIBED ON ATTACHED EXHIBIT A.

SELLER MAKES THE FOLLOWING DISCLOSURES OF EXISTING MATERIAL FACTS OR MATERIAL DEFECTS TO BUYER BASED ON SELLER'S ACTUAL KNOWLEDGE OF THE PROPERTY AT THE TIME SELLER COMPLETES THIS DISCLOSURE STATEMENT. UNLESS YOU AND SELLER OTHERWISE AGREE IN WRITING, YOU HAVE THREE BUSINESS DAYS FROM THE DAY SELLER OR SELLER'S AGENT DELIVERS THIS DISCLOSURE STATEMENT TO YOU TO RESCIND THE AGREEMENT BY DELIVERING A SEPARATELY SIGNED WRITTEN STATEMENT OF RESCISSION TO SELLER OR SELLER'S AGENT. IF THE SELLER DOES NOT GIVE YOU A COMPLETED DISCLOSURE STATEMENT, THEN YOU MAY WAIVE THE RIGHT TO RESCIND PRIOR TO OR AFTER THE TIME YOU ENTER INTO A SALE AGREEMENT.

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FOR A MORE COMPREHENSIVE EXAMINATION OF THE SPECIFIC CONDITION OF THIS PROPERTY YOU ARE ADVISED TO OBTAIN AND PAY FOR THE SERVICES OF QUALIFIED EXPERTS TO INSPECT THE PROPERTY, WHICH MAY INCLUDE, WITHOUT LIMITATION, ARCHITECTS, ENGINEERS, LAND SURVEYORS, PLUMBERS, ELECTRICIANS, ROOFERS, BUILDING INSPECTORS, ON-SITE WASTEWATER TREATMENT INSPECTORS, OR STRUCTURAL PEST INSPECTORS. THE PROSPECTIVE BUYER AND SELLER MAY WISH TO OBTAIN PROFESSIONAL ADVICE OR INSPECTIONS OF THE PROPERTY OR TO PROVIDE APPROPRIATE PROVISIONS IN A CONTRACT BETWEEN THEM WITH RESPECT TO ANY ADVICE, INSPECTION, DEFECTS OR WARRANTIES.

Seller . . . is/ . . . is not occupying the property.

I. SELLER'S DISCLOSURES:

If you answer "Yes" to a question with an asterisk (), please explain your answer and attach documents, if available and not otherwise publicly recorded. If necessary, use an attached sheet.

- [] Yes [] No [] Don't know
[] Yes [] No [] Don't know
[] Yes [] No [] Don't know
[] Yes [] No [] Don't know
[] Yes [] No [] Don't know
[] Yes [] No [] Don't know
[] Yes [] No [] Don't know
[] Yes [] No [] Don't know
[] Yes [] No [] Don't know
[] Yes [] No [] Don't know

1. TITLE

- A. Do you have legal authority to sell the property? If no, please explain.
*B. Is title to the property subject to any of the following?
(1) First right of refusal
(2) Option
(3) Lease or rental agreement
(4) Life estate?
*C. Are there any encroachments, boundary agreements, or boundary disputes?
*D. Is there a private road or easement agreement for access to the property?
*E. Are there any rights-of-way, easements, or access limitations that may affect the Buyer's use of the property?
*F. Are there any written agreements for joint maintenance of an easement or right-of-way?
*G. Is there any study, survey project, or notice that would adversely affect the property?
*H. Are there any pending or existing assessments against the property?
*I. Are there any zoning violations, nonconforming uses, or any unusual restrictions on the property that would affect future construction or remodeling?
*J. Is there a boundary survey for the property?
*K. Are there any covenants, conditions, or restrictions which affect the property?

2. WATER

- A. Household Water
(1) The source of water for the property is:
[] Private or publicly owned water system
[] Private well serving only the subject property
*[] Other water system
*If shared, are there any written agreements?
*(2) Is there an easement (recorded or unrecorded) for access to and/or maintenance of the water source?
*(3) Are there any known problems or repairs needed?
(4) During your ownership, has the source provided an adequate year-round supply of potable water? If no, please explain.
*(5) Are there any water treatment systems for the property? If yes, are they []Leased []Owned
*(6) Are there any water rights for the property associated with its domestic water supply, such as a water right permit, certificate, or claim?
(a) If yes, has the water right permit, certificate, or claim been assigned, transferred, or changed?
(b) If yes, has all or any portion of the water right not been used for five or more successive years? (If yes, please explain.)
B. Irrigation Water
(1) Are there any irrigation water rights for the property, such as a water right permit, certificate, or claim?
*(a) If yes, has all or any portion of the water right not been used for five or more successive years?
*(b) If so, is the certificate available? (If yes, please attach a copy.)

Yes No Don't know

(c) If so, has the water right permit, certificate, or claim been assigned, transferred, or changed? If so, explain:

Yes No Don't know

D. Do you know the age of the house? If yes, year of original construction:

Yes No Don't know

(2) Does the property receive irrigation water from a ditch company, irrigation district, or other entity? If so, please identify the entity that supplies water to the property:

Yes No Don't know

*E. Has there been any settling, slippage, or sliding of the property or its improvements?

Yes No Don't know

*F. Are there any defects with the following: (If yes, please check applicable items and explain.)

Yes No Don't know

C. Outdoor Sprinkler System (1) Is there an outdoor sprinkler system for the property?

- Foundations
 Chimneys
 Doors
 Ceilings
 Pools
 Sidewalks
 Garage Floors
 Other

- Decks
 Interior Walls
 Windows
 Slab Floors
 Hot Tub
 Outbuildings
 Walkways
 Wood Stoves

- Exterior Walls
 Fire Alarm
 Patio
 Driveways
 Sauna
 Fireplaces
 Siding

Yes No Don't know

(2) If yes, are there any defects in the system?

Yes No Don't know

*(3) If yes, is the sprinkler system connected to irrigation water?

Yes No Don't know

*G. Was a structural pest or "whole house" inspection done? If yes, when and by whom was the inspection completed?

3. SEWER/ON-SITE SEWAGE SYSTEM

A. The property is served by:
 Public sewer system,
 On-site sewage system (including pipes, tanks, drainfields, and all other component parts)
 Other disposal system, please describe:

Yes No Don't know

H. During your ownership, has the property had any wood destroying organism or pest infestation?

Yes No Don't know

B. If public sewer system service is available to the property, is the house connected to the sewer main? If no, please explain.

Yes No Don't know

I. Is the attic insulated?

Yes No Don't know

J. Is the basement insulated?

Yes No Don't know

C. Is the property subject to any sewage system fees or charges in addition to those covered in your regularly billed sewer or on-site sewage system maintenance service?

Yes No Don't know

5. SYSTEMS AND FIXTURES

*A. If any of the following systems or fixtures are included with the transfer, are there any defects? If yes, please explain.

Yes No Don't know

D. If the property is connected to an on-site sewage system:

Yes No Don't know

Electrical system, including wiring, switches, outlets, and service
Plumbing system, including pipes, faucets, fixtures, and toilets

*(1) Was a permit issued for its construction, and was it approved by the local health department or district following its construction?
(2) When was it last pumped:

Yes No Don't know

Hot water tank
Garbage disposal
Appliances
Sump pump
Heating and cooling systems
Security system

Yes No Don't know

*(3) Are there any defects in the operation of the on-site sewage system?

Yes No Don't know

[] Owned [] Leased
Other

Yes No Don't know

*B. If any of the following fixtures or property is included with the transfer, are they leased? (If yes, please attach copy of lease.)

Yes No Don't know

Security system
Tanks (type):
Satellite dish
Other:

Yes No Don't know

(4) When was it last inspected?

Yes No Don't know

(5) For how many bedrooms was the on-site sewage system approved?

Yes No Don't know

6. HOMEOWNERS' ASSOCIATION/Common Interests

Yes No Don't know

E. Are all plumbing fixtures, including laundry drain, connected to the sewer/on-site sewage system? If no, please explain:

Yes No Don't know

A. Is there a Homeowners' Association? Name of Association

Yes No Don't know

*F. Have there been any changes or repairs to the on-site sewage system?

Yes No Don't know

B. Are there regular periodic assessments:

Yes No Don't know

G. Is the on-site sewage system, including the drainfield, located entirely within the boundaries of the property? If no, please explain.

Yes No Don't know

\$. . . per [] Month [] Year

Yes No Don't know

H. Does the on-site sewage system require monitoring and maintenance services more frequently than once a year? If yes, please explain.

Yes No Don't know

[] Other

Yes No Don't know

*C. Are there any pending special assessments?

NOTICE: IF THIS RESIDENTIAL REAL PROPERTY DISCLOSURE STATEMENT IS BEING COMPLETED FOR NEW CONSTRUCTION WHICH HAS NEVER BEEN OCCUPIED, THE SELLER IS NOT REQUIRED TO COMPLETE THE QUESTIONS LISTED IN ITEM 4. STRUCTURAL OR ITEM 5. SYSTEMS AND FIXTURES

Yes No Don't know

4. STRUCTURAL

*A. Has the roof leaked?

Yes No Don't know

*D. Are there any shared "common areas" or any joint maintenance agreements (facilities such as walls, fences, landscaping, pools, tennis courts, walkways, or other areas co-owned in undivided interest with others)?

Yes No Don't know

*B. Has the basement flooded or leaked?

Yes No Don't know

7. ENVIRONMENTAL

Yes No Don't know

*C. Have there been any conversions, additions, or remodeling?

Yes No Don't know

*A. Have there been any drainage problems on the property?

Yes No Don't know

*(1) If yes, were all building permits obtained?

Yes No Don't know

*B. Does the property contain fill material?

Yes No Don't know

*(2) If yes, were all final inspections obtained?

Yes No Don't know

*C. Is there any material damage to the property from fire, wind, floods, beach movements, earthquake, expansive soils, or landslides?

Yes No Don't know

D. Are there any shorelines, wetlands, floodplains, or critical areas on the property?

Yes No Don't know

*E. Are there any substances, materials, or products on the property that may be environmental concerns, such as asbestos, formaldehyde, radon gas, lead-based paint, fuel or chemical storage tanks, or contaminated soil or water?

- Yes No Don't know *F. Has the property been used for commercial or industrial purposes?
- Yes No Don't know *G. Is there any soil or groundwater contamination?
- Yes No Don't know *H. Are there transmission poles, transformers, or other utility equipment installed, maintained, or buried on the property?
- Yes No Don't know *I. Has the property been used as a legal or illegal dumping site?
- Yes No Don't know *J. Has the property been used as an illegal drug manufacturing site?
- Yes No Don't know *K. Are there any radio towers in the area that may cause interference with telephone reception?

8. MANUFACTURED AND MOBILE HOMES

If the property includes a manufactured or mobile home,

- Yes No Don't know *A. Did you make any alterations to the home? If yes, please describe the alterations:
- Yes No Don't know *B. Did any previous owner make any alterations to the home? If yes, please describe the alterations:
- Yes No Don't know *C. If alterations were made, were permits or variances for these alterations obtained?

9. FULL DISCLOSURE BY SELLERS

A. Other conditions or defects:

- Yes No Don't know *Are there any other existing material defects affecting the property that a prospective buyer should know about?

B. Verification:

The foregoing answers and attached explanations (if any) are complete and correct to the best of my/our knowledge and I/we have received a copy hereof. I/we authorize all of my/our real estate licensees, if any, to deliver a copy of this disclosure statement to other real estate licensees and all prospective buyers of the property.

DATE SELLER SELLER

NOTICE TO THE BUYER

INFORMATION REGARDING REGISTERED SEX OFFENDERS MAY BE OBTAINED FROM LOCAL LAW ENFORCEMENT AGENCIES. THIS NOTICE IS INTENDED ONLY TO INFORM YOU OF WHERE TO OBTAIN THIS INFORMATION AND IS NOT AN INDICATION OF THE PRESENCE OF REGISTERED SEX OFFENDERS.

II. BUYER'S ACKNOWLEDGMENT

- A. Buyer hereby acknowledges that: Buyer has a duty to pay diligent attention to any material defects that are known to Buyer or can be known to Buyer by utilizing diligent attention and observation.
- B. The disclosures set forth in this statement and in any amendments to this statement are made only by the Seller and not by any real estate licensee or other party.
- C. Buyer acknowledges that, pursuant to RCW 64.06.050(2), real estate licensees are not liable for inaccurate information provided by Seller, except to the extent that real estate licensees know of such inaccurate information.
- D. This information is for disclosure only and is not intended to be a part of the written agreement between the Buyer and Seller.
- E. Buyer (which term includes all persons signing the "Buyer's acceptance" portion of this disclosure statement below) has received a copy of this Disclosure Statement (including attachments, if any) bearing Seller's signature.

DISCLOSURES CONTAINED IN THIS DISCLOSURE STATEMENT ARE PROVIDED BY SELLER BASED ON SELLER'S ACTUAL KNOWLEDGE OF THE PROPERTY AT THE TIME SELLER COMPLETES THIS DISCLOSURE STATEMENT. UNLESS BUYER AND SELLER OTHERWISE AGREE IN WRITING, BUYER SHALL HAVE THREE BUSINESS DAYS FROM THE DAY SELLER OR SELLER'S AGENT DELIVERS THIS DISCLOSURE STATEMENT TO RESCIND THE AGREEMENT BY DELIVERING A SEPARATELY SIGNED WRITTEN STATEMENT OF RESCISSION TO SELLER

OR SELLER'S AGENT. YOU MAY WAIVE THE RIGHT TO RESCIND PRIOR TO OR AFTER THE TIME YOU ENTER INTO A SALE AGREEMENT.

BUYER HEREBY ACKNOWLEDGES RECEIPT OF A COPY OF THIS DISCLOSURE STATEMENT AND ACKNOWLEDGES THAT THE DISCLOSURES MADE HEREIN ARE THOSE OF THE SELLER ONLY, AND NOT OF ANY REAL ESTATE LICENSEE OR OTHER PARTY.

DATE BUYER BUYER

(2) If the disclosure statement is being completed for new construction which has never been occupied, the disclosure statement is not required to contain and the seller is not required to complete the questions listed in item 4. Structural or item 5. Systems and Fixtures.

(3) The seller disclosure statement shall be for disclosure only, and shall not be considered part of any written agreement between the buyer and seller of residential property. The seller disclosure statement shall be only a disclosure made by the seller, and not any real estate licensee involved in the transaction, and shall not be construed as a warranty of any kind by the seller or any real estate licensee involved in the transaction. [2007 c 107 § 4; 2004 c 114 § 1; 2003 c 200 § 1; 1996 c 301 § 2; 1994 c 200 § 3.]

Findings—Intent—2007 c 107: See note following RCW 64.06.015.

Application—Effective date—2004 c 114: See notes following RCW 64.06.021.

Effective date—1996 c 301 § 2: "Section 2 of this act shall take effect July 1, 1996." [1996 c 301 § 7.]

Chapter 64.70 RCW

UNIFORM ENVIRONMENTAL COVENANTS ACT

Sections

- 64.70.005 Findings—National uniform legislation.
- 64.70.010 Short title.
- 64.70.015 Application—Construction—2007 c 104.
- 64.70.020 Definitions.
- 64.70.030 Interests in real property—Subordination.
- 64.70.040 Covenants—Contents—Agency discretion—Local land use consideration.
- 64.70.050 Covenants—Enforceability.
- 64.70.060 Use of real property—Chapter application.
- 64.70.070 Covenants—Providing copies.
- 64.70.080 Covenants—Recording and priority of interests.
- 64.70.090 Covenant—Duration—Court action.
- 64.70.100 Covenant—Amendment or termination by consent.
- 64.70.110 Violations—Civil actions—Regulatory authority under chapter—Liability.
- 64.70.120 Covenants—Registry—Information contained.
- 64.70.130 Electronic signatures in global and national commerce act.
- 64.70.900 Severability—2007 c 104.

64.70.005 Findings—National uniform legislation.

The legislature finds that the national conference of commissioners on uniform state laws has developed uniform legislation called the uniform environmental covenants act. The act ensures that environmental covenants, recorded use restrictions negotiated in connection with hazardous waste site cleanups, and other environmental response projects are legally valid and enforceable. The uniform environmental covenants act achieves this objective by providing clear statutory standards that override court-made doctrines that do not fit such cleanup and reuse contexts. The legislature further finds that nothing in this chapter will amend or modify any

local or state laws that determine when environmental covenants are required, when a particular contaminated site must be cleaned up, or the standards for a cleanup.

Adoption of the uniform environmental covenants act in Washington will provide all participants in a cleanup with greater confidence that environmental covenants and other institutional controls will be effective over the life of the cleanup. This will facilitate cleanups of many sites and assist in the recycling of urban brownfield properties into new economic uses for the benefit of the citizens of Washington.

This chapter adopts most provisions of the uniform legislation while making modifications to integrate the uniform environmental covenants act with Washington's environmental cleanup programs. [2007 c 104 § 1.]

64.70.010 Short title. This chapter may be cited as the uniform environmental covenants act. [2007 c 104 § 2.]

64.70.015 Application—Construction—2007 c 104. In applying and construing this uniform act, consideration must be given to the need to promote uniformity of the law with respect to its subject matter among states that enact it. [2007 c 104 § 14.]

64.70.020 Definitions. The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

(1) "Activity or use limitations" means restrictions or obligations created under this chapter with respect to real property.

(2) "Agency" means either the department of ecology or the United States environmental protection agency, whichever determines or approves the environmental response project pursuant to which the environmental covenant is created.

(3)(a) "Common interest community" means a condominium, cooperative, or other real property with respect to which a person, by virtue of the person's ownership of a parcel of real property, is obligated to pay property taxes or insurance premiums, or for maintenance, or improvement of other real property described in a recorded covenant that creates the common interest community.

(b) "Common interest community" includes but is not limited to:

(i) An association of apartment owners as defined in RCW 64.32.010;

(ii) A unit owners' association as defined in RCW 64.34.020 and organized under RCW 64.34.300;

(iii) A master association as provided in RCW 64.34.276;

(iv) A subassociation as provided in RCW 64.34.278; and

(v) A homeowners' association as defined in RCW 64.38.010.

(4) "Environmental covenant" means a servitude arising under an environmental response project that imposes activity or use limitations.

(5) "Environmental response project" means a plan or work performed for environmental remediation of real property and conducted:

(a) Under a federal or state program governing environmental remediation of real property, including chapters 43.21C, 64.44, 70.95, 70.98, 70.105, 70.105D, 90.48, and 90.52 RCW;

(b) Incident to closure of a solid or hazardous waste management unit, if the closure is conducted with approval of an agency; or

(c) Under the state voluntary clean-up program authorized under chapter 70.105D RCW.

(6) "Holder" means the grantee of an environmental covenant as specified in RCW 64.70.030(1).

(7) "Person" means an individual, corporation, business trust, estate, trust, partnership, limited liability company, association, joint venture, public corporation, government, governmental subdivision, agency, or instrumentality, or any other legal or commercial entity.

(8) "Record," used as a noun, means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form.

(9) "State" means a state of the United States, the District of Columbia, Puerto Rico, the United States Virgin Islands, or any territory or insular possession subject to the jurisdiction of the United States. [2007 c 104 § 3.]

64.70.030 Interests in real property—Subordination.

(1) Any person, including a person that owns an interest in the real property, the agency, or a municipality or other unit of local government, may be a holder. An environmental covenant may identify more than one holder. The interest of a holder is an interest in real property.

(2) A right of an agency under this chapter or under an environmental covenant, other than a right as a holder, is not an interest in real property.

(3) An agency is bound by any obligation it assumes in an environmental covenant, but an agency does not assume obligations merely by signing an environmental covenant. Any other person that signs an environmental covenant is bound by the obligations the person assumes in the covenant, but signing the covenant does not change obligations, rights, or protections granted or imposed under law other than this chapter except as provided in the covenant.

(4) The following rules apply to interests in real property in existence at the time an environmental covenant is created or amended:

(a) An interest that has priority under other law is not affected by an environmental covenant unless the person that owns the interest subordinates that interest to the covenant.

(b) This chapter does not require a person that owns a prior interest to subordinate that interest to an environmental covenant or to agree to be bound by the covenant.

(c) A subordination agreement may be contained in an environmental covenant covering real property or in a separate record. If the environmental covenant covers commonly owned property in a common interest community, the record may be signed by any person authorized by the governing board of the owners' association.

(d) An agreement by a person to subordinate a prior interest to an environmental covenant affects the priority of that person's interest but does not by itself impose any affirmative obligation on the person with respect to the environmental covenant. [2007 c 104 § 4.]

64.70.040 Covenants—Contents—Agency discretion—Local land use consideration. (1) An environmental covenant must:

- (a) State that the instrument is an environmental covenant executed pursuant to this chapter;
- (b) Contain a legally sufficient description of the real property subject to the covenant;
- (c) Describe with specificity the activity or use limitations on the real property;
- (d) Identify every holder;
- (e) Be signed by the agency, every holder, and unless waived by the agency every owner of the fee simple of the real property subject to the covenant; and
- (f) Identify the name and location of any administrative record for the environmental response project reflected in the environmental covenant.

(2) In addition to the information required by subsection (1) of this section, an environmental covenant may contain other information, restrictions, and requirements agreed to by the persons who signed it, including any:

- (a) Requirements for notice following transfer of a specified interest in, or concerning proposed changes in use of, applications for building permits for, or proposals for any site work affecting the contamination on, the property subject to the covenant;
- (b) Requirements for periodic reporting describing compliance with the covenant;
- (c) Rights of access to the property granted in connection with implementation or enforcement of the covenant;
- (d) Narrative descriptions of the contamination and remedy, including the contaminants of concern, the pathways of exposure, limits on exposure, and the location and extent of the contamination;
- (e) Limitations on amendment or termination of the covenant in addition to those contained in RCW 64.70.090 and 64.70.100;
- (f) Rights of the holder in addition to its right to enforce the covenant pursuant to RCW 64.70.110;
- (g) Other information, restrictions, or requirements required by the agency, including the department of ecology under the authority of chapter 70.105D RCW.

(3) In addition to other conditions for its approval of an environmental covenant, the agency may require those persons specified by the agency who have interests in the real property to sign the covenant.

(4) The agency may also require notice and opportunity to comment upon an environmental covenant as part of public participation efforts related to the environmental response project.

(5) The agency shall consult with local land use planning authorities in the development of the land use or activity restrictions in the environmental covenant. The agency shall consider potential redevelopment and revitalization opportunities and obtain information regarding present and proposed land and resource uses, and consider comprehensive land use plan and zoning provisions applicable to the real property to be subject to the environmental covenant. [2007 c 104 § 5.]

64.70.050 Covenants—Enforceability. (1) An environmental covenant that complies with this chapter runs with the land.

(2) An environmental covenant that is otherwise effective is valid and enforceable even if:

- (a) It is not appurtenant to an interest in real property;
- (b) It can be or has been assigned to a person other than the original holder;
- (c) It is not of a character that has been recognized traditionally at common law;
- (d) It imposes a negative burden;
- (e) It imposes an affirmative obligation on a person having an interest in the real property or on the holder;
- (f) The benefit or burden does not touch or concern real property;
- (g) There is no privity of estate or contract;
- (h) The holder dies, ceases to exist, resigns, or is replaced; or
- (i) The owner of an interest subject to the environmental covenant and the holder are the same person.

(3) An instrument that creates restrictions or obligations with respect to real property that would qualify as activity or use limitations except for the fact that the instrument was recorded before July 22, 2007, is not invalid or unenforceable because of any of the limitations on enforcement of interests described in subsection (2) of this section or because it was identified as an easement, servitude, deed restriction, or other interest. This chapter does not apply in any other respect to such an instrument.

(4) This chapter does not invalidate or render unenforceable any interest, whether designated as an environmental covenant or other interest, that is otherwise enforceable under the law of this state. [2007 c 104 § 6.]

64.70.060 Use of real property—Chapter application. This chapter does not authorize a use of real property that is otherwise prohibited by zoning, by law other than this chapter regulating use of real property, or by a recorded instrument that has priority over the environmental covenant. An environmental covenant may prohibit or restrict uses of real property that are authorized by zoning or by law other than this chapter. [2007 c 104 § 7.]

64.70.070 Covenants—Providing copies. (1) A copy of an environmental covenant shall be provided by the persons and in the manner required by the agency to:

- (a) Each person that signed the covenant;
- (b) Each person holding a recorded interest in the real property subject to the covenant;
- (c) Each person in possession of the real property subject to the covenant at the time the covenant is executed;
- (d) Each municipality or other unit of local government in which real property subject to the covenant is located;
- (e) The department of ecology; and
- (f) Any other person the agency requires.

(2) The validity of an environmental covenant is not affected by failure to provide a copy of the covenant as required under this section.

(3) If the agency has not designated the persons to provide a copy of an environmental covenant, the grantor shall be responsible for providing a copy of an environmental covenant as required under subsection (1) of this section. [2007 c 104 § 8.]

64.70.080 Covenants—Recording and priority of interests. (1) An environmental covenant and any amendment or termination of the covenant must be recorded in every county in which any portion of the real property subject to the covenant is located. For purposes of indexing, a holder shall be treated as a grantee.

(2) Except as otherwise provided in RCW 64.70.090(3), an environmental covenant is subject to the laws of this state governing recording and priority of interests in real property. [2007 c 104 § 9.]

64.70.090 Covenant—Duration—Court action. (1) An environmental covenant is perpetual unless it is:

(a) By its terms limited to a specific duration or terminated by the occurrence of a specific event;

(b) Terminated by consent pursuant to RCW 64.70.100;

(c) Terminated pursuant to subsection (2) of this section;

(d) Terminated by foreclosure of an interest that has priority over the environmental covenant; or

(e) Terminated or modified in an eminent domain proceeding, but only if:

(i) The agency that signed the covenant is a party to the proceeding;

(ii) All persons identified in RCW 64.70.100 (1) and (2) are given notice of the pendency of the proceeding; and

(iii) The court determines, after hearing, that the termination or modification will not adversely affect human health or the environment.

(2) If the agency that signed an environmental covenant has determined that the intended benefits of the covenant can no longer be realized, a court, under the doctrine of changed circumstances, in an action in which all persons identified in RCW 64.70.100 (1) and (2) have been given notice, may terminate the covenant or reduce its burden on the real property subject to the covenant.

(3) Except as otherwise provided in subsections (1) and (2) of this section, an environmental covenant may not be extinguished, limited, or impaired through issuance of a tax deed, foreclosure of a tax lien, or application of the doctrine of adverse possession, prescription, abandonment, waiver, lack of enforcement, or acquiescence, or a similar doctrine.

(4) An environmental covenant may not be extinguished, limited, or impaired by the extinguishment of a mineral interest under chapter 78.22 RCW. [2007 c 104 § 10.]

64.70.100 Covenant—Amendment or termination by consent. (1) An environmental covenant may be amended or terminated by consent only if the amendment or termination is signed by:

(a) The agency;

(b) Unless waived by the agency, the current owner of the fee simple of the real property subject to the covenant;

(c) Each person that originally signed the covenant, unless the person waived in a signed record the right to consent or a court finds that the person no longer exists or cannot be located or identified with the exercise of reasonable diligence; and

(d) Except as otherwise provided in subsection (4)(b) of this section, the holder.

(2) If an interest in real property is subject to an environmental covenant, the interest is not affected by an amendment

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of the covenant unless the current owner of the interest consents to the amendment or has waived in a signed record the right to consent to amendments.

(3) Except for an assignment undertaken pursuant to a governmental reorganization, assignment of an environmental covenant to a new holder is an amendment.

(4) Except as otherwise provided in an environmental covenant:

(a) A holder may not assign its interest without consent of the other parties;

(b) A holder may be removed and replaced by agreement of the other parties specified in subsection (1) of this section; and

(c) A court of competent jurisdiction may fill a vacancy in the position of holder. [2007 c 104 § 11.]

64.70.110 Violations—Civil actions—Regulatory authority under chapter—Liability. (1) A civil action for injunctive or other equitable relief for violation of an environmental covenant may be maintained by:

(a) A party to the covenant;

(b) The agency or, if it is not the agency, the department of ecology;

(c) Any person to whom the covenant expressly grants power to enforce;

(d) A person whose interest in the real property or whose collateral or liability may be affected by the alleged violation of the covenant; and

(e) A municipality or other unit of local government in which the real property subject to the covenant is located.

(2) This chapter does not limit the regulatory authority of the agency or the department of ecology under law other than this chapter with respect to an environmental response project.

(3) A person is not responsible for or subject to liability for environmental remediation solely because it has the right to enforce an environmental covenant. [2007 c 104 § 12.]

64.70.120 Covenants—Registry—Information contained. (1) The department of ecology shall establish and maintain a registry that contains information identifying all environmental covenants established under this chapter and any amendment or termination of those covenants, including the county where the covenant is recorded and the recording number. The registry may also contain any other information concerning environmental covenants and the real property subject to them that the department of ecology considers appropriate. The registry is a public record for purposes of chapter 42.56 RCW, but the department shall maintain electronic access to the registry without requiring a public records request for any information included in the registry.

(2) Failure to include information or inclusion of inaccurate information concerning an environmental covenant in the registry does not invalidate or limit the application or enforceability of the covenant. [2007 c 104 § 13.]

64.70.130 Electronic signatures in global and national commerce act. This chapter modifies, limits, or supersedes the federal electronic signatures in global and national commerce act (15 U.S.C. Sec. 7001 et seq.) but does

not modify, limit, or supersede section 101 of that act (15 U.S.C. Sec. 7001(a)) or authorize electronic delivery of any of the notices described in section 103 of that act (15 U.S.C. Sec. 7003(b)). [2007 c 104 § 15.]

64.70.900 Severability—2007 c 104. If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected. [2007 c 104 § 21.]

Title 65

RECORDING, REGISTRATION, AND LEGAL PUBLICATION

Chapters

65.16 Legal publications.

Chapter 65.16 RCW

LEGAL PUBLICATIONS

Sections

65.16.130	Publication of official notices by radio or television—Restrictions.
65.16.140	Repealed.
65.16.150	Proof of publication by radio or television.

65.16.130 Publication of official notices by radio or television—Restrictions. Any official of the state or any of its political subdivisions who is required by law to publish any notice required by law may supplement publication thereof by radio or television broadcast or both when, in his or her judgment, the public interest will be served thereby: PROVIDED, That the time, place, and nature of such notice only be read or shown with no reference to any person by name then a candidate for political office, and that notices by political subdivisions may be made only by stations whose signal is received within the county of origin of the legal notice. [2007 c 103 § 1; 1961 c 85 § 1; 1951 c 119 § 1.]

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

65.16.150 Proof of publication by radio or television. Written documentation of proof of publication of legal notice or notice of event must be provided by the radio or television station broadcasting the notice. [2007 c 103 § 2; 1961 c 85 § 3; 1951 c 119 § 3.]

Title 66

ALCOHOLIC BEVERAGE CONTROL

Chapters

66.04	Definitions.
66.08	Liquor control board—General provisions.
66.20	Liquor permits.
66.24	Licenses—Stamp taxes.
66.28	Miscellaneous regulatory provisions.
66.44	Enforcement—Penalties.

Chapter 66.04 RCW

DEFINITIONS

Sections

66.04.010	Definitions. (<i>Effective until July 1, 2008.</i>)
66.04.010	Definitions. (<i>Effective July 1, 2008.</i>)

66.04.010 Definitions. (*Effective until July 1, 2008.*)

In this title, unless the context otherwise requires:

(1) "Alcohol" is that substance known as ethyl alcohol, hydrated oxide of ethyl, or spirit of wine, which is commonly produced by the fermentation or distillation of grain, starch, molasses, or sugar, or other substances including all dilutions and mixtures of this substance. The term "alcohol" does not include alcohol in the possession of a manufacturer or distiller of alcohol fuel, as described in RCW 66.12.130, which is intended to be denatured and used as a fuel for use in motor vehicles, farm implements, and machines or implements of husbandry.

(2) "Authorized representative" means a person who:

(a) Is required to have a federal basic permit issued pursuant to the federal alcohol administration act, 27 U.S.C. Sec. 204;

(b) Has its business located in the United States outside of the state of Washington;

(c) Acquires ownership of beer or wine for transportation into and resale in the state of Washington; and which beer or wine is produced anywhere outside Washington by a brewery or winery which does not hold a certificate of approval issued by the board; and

(d) Is appointed by the brewery or winery referenced in (c) of this subsection as its exclusive authorized representative for marketing and selling its products within the United States in accordance with a written agreement between the authorized representative and such brewery or winery pursuant to this title. The board may waive the requirement for the written agreement of exclusivity in situations consistent with the normal marketing practices of certain products, such as classified growths.

(3) "Beer" means any malt beverage, flavored malt beverage, or malt liquor as these terms are defined in this chapter.

(4) "Beer distributor" means a person who buys beer from a domestic brewery, microbrewery, beer certificate of approval holder, or beer importers, or who acquires foreign produced beer from a source outside of the United States, for the purpose of selling the same pursuant to this title, or who represents such brewer or brewery as agent.

(5) "Beer importer" means a person or business within Washington who purchases beer from a beer certificate of approval holder or who acquires foreign produced beer from a source outside of the United States for the purpose of selling the same pursuant to this title.

(6) "Brewer" or "brewery" means any person engaged in the business of manufacturing beer and malt liquor. Brewer includes a brand owner of malt beverages who holds a brewer's notice with the federal bureau of alcohol, tobacco, and firearms at a location outside the state and whose malt beverage is contract-produced by a licensed in-state brewery, and who may exercise within the state, under a domestic

brewery license, only the privileges of storing, selling to licensed beer distributors, and exporting beer from the state.

(7) "Board" means the liquor control board, constituted under this title.

(8) "Club" means an organization of persons, incorporated or unincorporated, operated solely for fraternal, benevolent, educational, athletic or social purposes, and not for pecuniary gain.

(9) "Confection" means a preparation of sugar, honey, or other natural or artificial sweeteners in combination with chocolate, fruits, nuts, dairy products, or flavorings, in the form of bars, drops, or pieces.

(10) "Consume" includes the putting of liquor to any use, whether by drinking or otherwise.

(11) "Contract liquor store" means a business that sells liquor on behalf of the board through a contract with a contract liquor store manager.

(12) "Dentist" means a practitioner of dentistry duly and regularly licensed and engaged in the practice of his profession within the state pursuant to chapter 18.32 RCW.

(13) "Distiller" means a person engaged in the business of distilling spirits.

(14) "Domestic brewery" means a place where beer and malt liquor are manufactured or produced by a brewer within the state.

(15) "Domestic winery" means a place where wines are manufactured or produced within the state of Washington.

(16) "Druggist" means any person who holds a valid certificate and is a registered pharmacist and is duly and regularly engaged in carrying on the business of pharmaceutical chemistry pursuant to chapter 18.64 RCW.

(17) "Drug store" means a place whose principal business is, the sale of drugs, medicines and pharmaceutical preparations and maintains a regular prescription department and employs a registered pharmacist during all hours the drug store is open.

(18) "Employee" means any person employed by the board.

(19) "Flavored malt beverage" means:

(a) A malt beverage containing six percent or less alcohol by volume to which flavoring or other added nonbeverage ingredients are added that contain distilled spirits of not more than forty-nine percent of the beverage's overall alcohol content; or

(b) A malt beverage containing more than six percent alcohol by volume to which flavoring or other added nonbeverage ingredients are added that contain distilled spirits of not more than one and one-half percent of the beverage's overall alcohol content.

(20) "Fund" means 'liquor revolving fund.'

(21) "Hotel" means every building or other structure kept, used, maintained, advertised or held out to the public to be a place where food is served and sleeping accommodations are offered for pay to transient guests, in which twenty or more rooms are used for the sleeping accommodation of such transient guests and having one or more dining rooms where meals are served to such transient guests, such sleeping accommodations and dining rooms being conducted in the same building and buildings, in connection therewith, and such structure or structures being provided, in the judgment of the board, with adequate and sanitary kitchen and dining

room equipment and capacity, for preparing, cooking and serving suitable food for its guests: PROVIDED FURTHER, That in cities and towns of less than five thousand population, the board shall have authority to waive the provisions requiring twenty or more rooms.

(22) "Importer" means a person who buys distilled spirits from a distillery outside the state of Washington and imports such spirituous liquor into the state for sale to the board or for export.

(23) "Imprisonment" means confinement in the county jail.

(24) "Liquor" includes the four varieties of liquor herein defined (alcohol, spirits, wine and beer), and all fermented, spirituous, vinous, or malt liquor, or combinations thereof, and mixed liquor, a part of which is fermented, spirituous, vinous or malt liquor, or otherwise intoxicating; and every liquid or solid or semisolid or other substance, patented or not, containing alcohol, spirits, wine or beer, and all drinks or drinkable liquids and all preparations or mixtures capable of human consumption, and any liquid, semisolid, solid, or other substance, which contains more than one percent of alcohol by weight shall be conclusively deemed to be intoxicating. Liquor does not include confections or food products that contain one percent or less of alcohol by weight.

(25) "Manufacturer" means a person engaged in the preparation of liquor for sale, in any form whatsoever.

(26) "Malt beverage" or "malt liquor" means any beverage such as beer, ale, lager beer, stout, and porter obtained by the alcoholic fermentation of an infusion or decoction of pure hops, or pure extract of hops and pure barley malt or other wholesome grain or cereal in pure water containing not more than eight percent of alcohol by weight, and not less than one-half of one percent of alcohol by volume. For the purposes of this title, any such beverage containing more than eight percent of alcohol by weight shall be referred to as "strong beer."

(27) "Package" means any container or receptacle used for holding liquor.

(28) "Passenger vessel" means any boat, ship, vessel, barge, or other floating craft of any kind carrying passengers for compensation.

(29) "Permit" means a permit for the purchase of liquor under this title.

(30) "Person" means an individual, copartnership, association, or corporation.

(31) "Physician" means a medical practitioner duly and regularly licensed and engaged in the practice of his profession within the state pursuant to chapter 18.71 RCW.

(32) "Prescription" means a memorandum signed by a physician and given by him to a patient for the obtaining of liquor pursuant to this title for medicinal purposes.

(33) "Public place" includes streets and alleys of incorporated cities and towns; state or county or township highways or roads; buildings and grounds used for school purposes; public dance halls and grounds adjacent thereto; those parts of establishments where beer may be sold under this title, soft drink establishments, public buildings, public meeting halls, lobbies, halls and dining rooms of hotels, restaurants, theatres, stores, garages and filling stations which are open to and are generally used by the public and to which the public is permitted to have unrestricted access; railroad trains, stages, and other public conveyances of all kinds and

character, and the depots and waiting rooms used in conjunction therewith which are open to unrestricted use and access by the public; publicly owned bathing beaches, parks, and/or playgrounds; and all other places of like or similar nature to which the general public has unrestricted right of access, and which are generally used by the public.

(34) "Regulations" means regulations made by the board under the powers conferred by this title.

(35) "Restaurant" means any establishment provided with special space and accommodations where, in consideration of payment, food, without lodgings, is habitually furnished to the public, not including drug stores and soda fountains.

(36) "Sale" and "sell" include exchange, barter, and traffic; and also include the selling or supplying or distributing, by any means whatsoever, of liquor, or of any liquid known or described as beer or by any name whatever commonly used to describe malt or brewed liquor or of wine, by any person to any person; and also include a sale or selling within the state to a foreign consignee or his agent in the state. "Sale" and "sell" shall not include the giving, at no charge, of a reasonable amount of liquor by a person not licensed by the board to a person not licensed by the board, for personal use only. "Sale" and "sell" also does not include a raffle authorized under RCW 9.46.0315: PROVIDED, That the non-profit organization conducting the raffle has obtained the appropriate permit from the board.

(37) "Soda fountain" means a place especially equipped with apparatus for the purpose of dispensing soft drinks, whether mixed or otherwise.

(38) "Spirits" means any beverage which contains alcohol obtained by distillation, except flavored malt beverages, but including wines exceeding twenty-four percent of alcohol by volume.

(39) "Store" means a state liquor store established under this title.

(40) "Tavern" means any establishment with special space and accommodation for sale by the glass and for consumption on the premises, of beer, as herein defined.

(41) "Winery" means a business conducted by any person for the manufacture of wine for sale, other than a domestic winery.

(42)(a) "Wine" means any alcoholic beverage obtained by fermentation of fruits (grapes, berries, apples, et cetera) or other agricultural product containing sugar, to which any saccharine substances may have been added before, during or after fermentation, and containing not more than twenty-four percent of alcohol by volume, including sweet wines fortified with wine spirits, such as port, sherry, muscatel and angelica, not exceeding twenty-four percent of alcohol by volume and not less than one-half of one percent of alcohol by volume. For purposes of this title, any beverage containing no more than fourteen percent of alcohol by volume when bottled or packaged by the manufacturer shall be referred to as "table wine," and any beverage containing alcohol in an amount more than fourteen percent by volume when bottled or packaged by the manufacturer shall be referred to as "fortified wine." However, "fortified wine" shall not include: (i) Wines that are both sealed or capped by cork closure and aged two years or more; and (ii) wines that contain more than fourteen percent alcohol by volume solely as a result of the

natural fermentation process and that have not been produced with the addition of wine spirits, brandy, or alcohol.

(b) This subsection shall not be interpreted to require that any wine be labeled with the designation "table wine" or "fortified wine."

(43) "Wine distributor" means a person who buys wine from a domestic winery, wine certificate of approval holder, or wine importer, or who acquires foreign produced wine from a source outside of the United States, for the purpose of selling the same not in violation of this title, or who represents such vintner or winery as agent.

(44) "Wine importer" means a person or business within Washington who purchases wine from a wine certificate of approval holder or who acquires foreign produced wine from a source outside of the United States for the purpose of selling the same pursuant to this title. [2007 c 226 § 1. Prior: 2006 c 225 § 1; 2006 c 101 § 1; 2005 c 151 § 1; 2004 c 160 § 1; 2000 c 142 § 1; 1997 c 321 § 37; 1991 c 192 § 1; 1987 c 386 § 3; 1984 c 78 § 5; 1982 c 39 § 1; 1981 1st ex.s. c 5 § 1; 1980 c 140 § 3; 1969 ex.s. c 21 § 13; 1935 c 158 § 1; 1933 ex.s. c 62 § 3; RRS § 7306-3. Formerly RCW 66.04.010 through 66.04.380.]

Effective date—2004 c 160: "This act takes effect January 1, 2005." [2004 c 160 § 20.]

Effective date—1997 c 321: See note following RCW 66.24.010.

Finding and declaration—Severability—1984 c 78: See notes following RCW 66.12.160.

Severability—1982 c 39: "If any provision of this amendatory act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1982 c 39 § 3.]

Severability—Effective date—1981 1st ex.s. c 5: See RCW 66.98.090 and 66.98.100.

Effective date—1969 ex.s. c 21: "The effective date of this 1969 amendatory act is July 1, 1969." [1969 ex.s. c 21 § 15.]

66.04.010 Definitions. (Effective July 1, 2008.) In this title, unless the context otherwise requires:

(1) "Alcohol" is that substance known as ethyl alcohol, hydrated oxide of ethyl, or spirit of wine, which is commonly produced by the fermentation or distillation of grain, starch, molasses, or sugar, or other substances including all dilutions and mixtures of this substance. The term "alcohol" does not include alcohol in the possession of a manufacturer or distiller of alcohol fuel, as described in RCW 66.12.130, which is intended to be denatured and used as a fuel for use in motor vehicles, farm implements, and machines or implements of husbandry.

(2) "Authorized representative" means a person who:

(a) Is required to have a federal basic permit issued pursuant to the federal alcohol administration act, 27 U.S.C. Sec. 204;

(b) Has its business located in the United States outside of the state of Washington;

(c) Acquires ownership of beer or wine for transportation into and resale in the state of Washington; and which beer or wine is produced anywhere outside Washington by a brewery or winery which does not hold a certificate of approval issued by the board; and

(d) Is appointed by the brewery or winery referenced in (c) of this subsection as its exclusive authorized representative for marketing and selling its products within the United

States in accordance with a written agreement between the authorized representative and such brewery or winery pursuant to this title. The board may waive the requirement for the written agreement of exclusivity in situations consistent with the normal marketing practices of certain products, such as classified growths.

(3) "Beer" means any malt beverage, flavored malt beverage, or malt liquor as these terms are defined in this chapter.

(4) "Beer distributor" means a person who buys beer from a domestic brewery, microbrewery, beer certificate of approval holder, or beer importers, or who acquires foreign produced beer from a source outside of the United States, for the purpose of selling the same pursuant to this title, or who represents such brewer or brewery as agent.

(5) "Beer importer" means a person or business within Washington who purchases beer from a beer certificate of approval holder or who acquires foreign produced beer from a source outside of the United States for the purpose of selling the same pursuant to this title.

(6) "Brewer" or "brewery" means any person engaged in the business of manufacturing beer and malt liquor. Brewer includes a brand owner of malt beverages who holds a brewer's notice with the federal bureau of alcohol, tobacco, and firearms at a location outside the state and whose malt beverage is contract-produced by a licensed in-state brewery, and who may exercise within the state, under a domestic brewery license, only the privileges of storing, selling to licensed beer distributors, and exporting beer from the state.

(7) "Board" means the liquor control board, constituted under this title.

(8) "Club" means an organization of persons, incorporated or unincorporated, operated solely for fraternal, benevolent, educational, athletic or social purposes, and not for pecuniary gain.

(9) "Confection" means a preparation of sugar, honey, or other natural or artificial sweeteners in combination with chocolate, fruits, nuts, dairy products, or flavorings, in the form of bars, drops, or pieces.

(10) "Consume" includes the putting of liquor to any use, whether by drinking or otherwise.

(11) "Contract liquor store" means a business that sells liquor on behalf of the board through a contract with a contract liquor store manager.

(12) "Dentist" means a practitioner of dentistry duly and regularly licensed and engaged in the practice of his profession within the state pursuant to chapter 18.32 RCW.

(13) "Distiller" means a person engaged in the business of distilling spirits.

(14) "Domestic brewery" means a place where beer and malt liquor are manufactured or produced by a brewer within the state.

(15) "Domestic winery" means a place where wines are manufactured or produced within the state of Washington.

(16) "Druggist" means any person who holds a valid certificate and is a registered pharmacist and is duly and regularly engaged in carrying on the business of pharmaceutical chemistry pursuant to chapter 18.64 RCW.

(17) "Drug store" means a place whose principal business is, the sale of drugs, medicines and pharmaceutical preparations and maintains a regular prescription department and

employs a registered pharmacist during all hours the drug store is open.

(18) "Employee" means any person employed by the board.

(19) "Flavored malt beverage" means:

(a) A malt beverage containing six percent or less alcohol by volume to which flavoring or other added nonbeverage ingredients are added that contain distilled spirits of not more than forty-nine percent of the beverage's overall alcohol content; or

(b) A malt beverage containing more than six percent alcohol by volume to which flavoring or other added nonbeverage ingredients are added that contain distilled spirits of not more than one and one-half percent of the beverage's overall alcohol content.

(20) "Fund" means 'liquor revolving fund.'

(21) "Hotel" means buildings, structures, and grounds, having facilities for preparing, cooking, and serving food, that are kept, used, maintained, advertised, or held out to the public to be a place where food is served and sleeping accommodations are offered for pay to transient guests, in which twenty or more rooms are used for the sleeping accommodation of such transient guests. The buildings, structures, and grounds must be located on adjacent property either owned or leased by the same person or persons.

(22) "Importer" means a person who buys distilled spirits from a distillery outside the state of Washington and imports such spirituous liquor into the state for sale to the board or for export.

(23) "Imprisonment" means confinement in the county jail.

(24) "Liquor" includes the four varieties of liquor herein defined (alcohol, spirits, wine and beer), and all fermented, spirituous, vinous, or malt liquor, or combinations thereof, and mixed liquor, a part of which is fermented, spirituous, vinous or malt liquor, or otherwise intoxicating; and every liquid or solid or semisolid or other substance, patented or not, containing alcohol, spirits, wine or beer, and all drinks or drinkable liquids and all preparations or mixtures capable of human consumption, and any liquid, semisolid, solid, or other substance, which contains more than one percent of alcohol by weight shall be conclusively deemed to be intoxicating. Liquor does not include confections or food products that contain one percent or less of alcohol by weight.

(25) "Manufacturer" means a person engaged in the preparation of liquor for sale, in any form whatsoever.

(26) "Malt beverage" or "malt liquor" means any beverage such as beer, ale, lager beer, stout, and porter obtained by the alcoholic fermentation of an infusion or decoction of pure hops, or pure extract of hops and pure barley malt or other wholesome grain or cereal in pure water containing not more than eight percent of alcohol by weight, and not less than one-half of one percent of alcohol by volume. For the purposes of this title, any such beverage containing more than eight percent of alcohol by weight shall be referred to as "strong beer."

(27) "Package" means any container or receptacle used for holding liquor.

(28) "Passenger vessel" means any boat, ship, vessel, barge, or other floating craft of any kind carrying passengers for compensation.

(29) "Permit" means a permit for the purchase of liquor under this title.

(30) "Person" means an individual, copartnership, association, or corporation.

(31) "Physician" means a medical practitioner duly and regularly licensed and engaged in the practice of his profession within the state pursuant to chapter 18.71 RCW.

(32) "Prescription" means a memorandum signed by a physician and given by him to a patient for the obtaining of liquor pursuant to this title for medicinal purposes.

(33) "Public place" includes streets and alleys of incorporated cities and towns; state or county or township highways or roads; buildings and grounds used for school purposes; public dance halls and grounds adjacent thereto; those parts of establishments where beer may be sold under this title, soft drink establishments, public buildings, public meeting halls, lobbies, halls and dining rooms of hotels, restaurants, theatres, stores, garages and filling stations which are open to and are generally used by the public and to which the public is permitted to have unrestricted access; railroad trains, stages, and other public conveyances of all kinds and character, and the depots and waiting rooms used in conjunction therewith which are open to unrestricted use and access by the public; publicly owned bathing beaches, parks, and/or playgrounds; and all other places of like or similar nature to which the general public has unrestricted right of access, and which are generally used by the public.

(34) "Regulations" means regulations made by the board under the powers conferred by this title.

(35) "Restaurant" means any establishment provided with special space and accommodations where, in consideration of payment, food, without lodgings, is habitually furnished to the public, not including drug stores and soda fountains.

(36) "Sale" and "sell" include exchange, barter, and traffic; and also include the selling or supplying or distributing, by any means whatsoever, of liquor, or of any liquid known or described as beer or by any name whatever commonly used to describe malt or brewed liquor or of wine, by any person to any person; and also include a sale or selling within the state to a foreign consignee or his agent in the state. "Sale" and "sell" shall not include the giving, at no charge, of a reasonable amount of liquor by a person not licensed by the board to a person not licensed by the board, for personal use only. "Sale" and "sell" also does not include a raffle authorized under RCW 9.46.0315: PROVIDED, That the non-profit organization conducting the raffle has obtained the appropriate permit from the board.

(37) "Soda fountain" means a place especially equipped with apparatus for the purpose of dispensing soft drinks, whether mixed or otherwise.

(38) "Spirits" means any beverage which contains alcohol obtained by distillation, except flavored malt beverages, but including wines exceeding twenty-four percent of alcohol by volume.

(39) "Store" means a state liquor store established under this title.

(40) "Tavern" means any establishment with special space and accommodation for sale by the glass and for consumption on the premises, of beer, as herein defined.

(41) "Winery" means a business conducted by any person for the manufacture of wine for sale, other than a domestic winery.

(42)(a) "Wine" means any alcoholic beverage obtained by fermentation of fruits (grapes, berries, apples, et cetera) or other agricultural product containing sugar, to which any saccharine substances may have been added before, during or after fermentation, and containing not more than twenty-four percent of alcohol by volume, including sweet wines fortified with wine spirits, such as port, sherry, muscatel and angelica, not exceeding twenty-four percent of alcohol by volume and not less than one-half of one percent of alcohol by volume. For purposes of this title, any beverage containing no more than fourteen percent of alcohol by volume when bottled or packaged by the manufacturer shall be referred to as "table wine," and any beverage containing alcohol in an amount more than fourteen percent by volume when bottled or packaged by the manufacturer shall be referred to as "fortified wine." However, "fortified wine" shall not include: (i) Wines that are both sealed or capped by cork closure and aged two years or more; and (ii) wines that contain more than fourteen percent alcohol by volume solely as a result of the natural fermentation process and that have not been produced with the addition of wine spirits, brandy, or alcohol.

(b) This subsection shall not be interpreted to require that any wine be labeled with the designation "table wine" or "fortified wine."

(43) "Wine distributor" means a person who buys wine from a domestic winery, wine certificate of approval holder, or wine importer, or who acquires foreign produced wine from a source outside of the United States, for the purpose of selling the same not in violation of this title, or who represents such vintner or winery as agent.

(44) "Wine importer" means a person or business within Washington who purchases wine from a wine certificate of approval holder or who acquires foreign produced wine from a source outside of the United States for the purpose of selling the same pursuant to this title. [2007 c 370 § 10; 2007 c 226 § 1. Prior: 2006 c 225 § 1; 2006 c 101 § 1; 2005 c 151 § 1; 2004 c 160 § 1; 2000 c 142 § 1; 1997 c 321 § 37; 1991 c 192 § 1; 1987 c 386 § 3; 1984 c 78 § 5; 1982 c 39 § 1; 1981 1st ex.s. c 5 § 1; 1980 c 140 § 3; 1969 ex.s. c 21 § 13; 1935 c 158 § 1; 1933 ex.s. c 62 § 3; RRS § 7306-3. Formerly RCW 66.04.010 through 66.04.380.]

Reviser's note: This section was amended by 2007 c 226 § 1 and by 2007 c 370 § 10, each without reference to the other. Both amendments are incorporated in the publication of this section under RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

Effective date—2007 c 370 §§ 10-20: "Sections 10 through 20 of this act take effect July 1, 2008." [2007 c 370 § 23.]

Effective date—2004 c 160: "This act takes effect January 1, 2005." [2004 c 160 § 20.]

Effective date—1997 c 321: See note following RCW 66.24.010.

Finding and declaration—Severability—1984 c 78: See notes following RCW 66.12.160.

Severability—1982 c 39: "If any provision of this amendatory act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1982 c 39 § 3.]

Severability—Effective date—1981 1st ex.s. c 5: See RCW 66.98.090 and 66.98.100.

Effective date—1969 ex.s. c 21: "The effective date of this 1969 amendatory act is July 1, 1969." [1969 ex.s. c 21 § 15.]

Chapter 66.08 RCW
LIQUOR CONTROL BOARD—
GENERAL PROVISIONS

Sections

- 66.08.145 Subpoena issuing authority.
66.08.150 Board's action as to permits and licenses—Administrative procedure act, applicability—Adjudicative proceeding—Opportunity for hearing—Summary suspension.
66.08.180 Liquor revolving fund—Distribution—Reserve for administration—Disbursement to universities and state agencies. (*Effective July 1, 2008.*)
66.08.220 Liquor revolving fund—Separate account—Distribution. (*Effective July 1, 2008.*)

66.08.145 Subpoena issuing authority. (1) The liquor control board may issue subpoenas in connection with any investigation, hearing, or proceeding for the production of books, records, and documents held under this chapter or chapters 70.155, 70.158, 82.24, and 82.26 RCW, and books and records of common carriers as defined in RCW 81.80.010, or vehicle rental agencies relating to the transportation or possession of cigarettes or other tobacco products.

(2) The liquor control board may designate individuals authorized to sign subpoenas.

(3) If any person is served a subpoena from the board for the production of records, documents, and books, and fails or refuses to obey the subpoena for the production of records, documents, and books when required to do so, the person is subject to proceedings for contempt, and the board may institute contempt of court proceedings in the superior court of Thurston county or in the county in which the person resides. [2007 c 221 § 1.]

66.08.150 Board's action as to permits and licenses—Administrative procedure act, applicability—Adjudicative proceeding—Opportunity for hearing—Summary suspension. The action, order, or decision of the board as to any denial of an application for the reissuance of a permit or license or as to any revocation, suspension, or modification of any permit or license shall be an adjudicative proceeding and subject to the applicable provisions of chapter 34.05 RCW.

(1) An opportunity for a hearing may be provided an applicant for the reissuance of a permit or license prior to the disposition of the application, and if no such opportunity for a prior hearing is provided then an opportunity for a hearing to reconsider the application must be provided the applicant.

(2) An opportunity for a hearing must be provided a permittee or licensee prior to a revocation or modification of any permit or license and, except as provided in subsection (4) of this section, prior to the suspension of any permit or license.

(3) No hearing shall be required until demanded by the applicant, permittee, or licensee.

(4) The board may summarily suspend a license or permit for a period of up to one hundred eighty days without a prior hearing if it finds that public health, safety, or welfare imperatively require emergency action, and it incorporates a finding to that effect in its order. Proceedings for revocation or other action must be promptly instituted and determined.

An administrative law judge may extend the summary suspension period for up to one calendar year in the event the proceedings for revocation or other action cannot be completed during the initial one hundred eighty day period due to actions by the licensee or permittee. The board's enforcement division shall complete a preliminary staff investigation of the violation before requesting an emergency suspension by the board. [2007 c 370 § 3; 2003 c 320 § 1; 1989 c 175 § 122; 1967 c 237 § 23; 1933 ex.s. c 62 § 62; RRS § 7306-62.]

Effective date—1989 c 175: See note following RCW 34.05.010.

66.08.180 Liquor revolving fund—Distribution—Reserve for administration—Disbursement to universities and state agencies. (*Effective July 1, 2008.*) Except as provided in RCW 66.24.290(1), moneys in the liquor revolving fund shall be distributed by the board at least once every three months in accordance with RCW 66.08.190, 66.08.200 and 66.08.210: PROVIDED, That the board shall reserve from distribution such amount not exceeding five hundred thousand dollars as may be necessary for the proper administration of this title.

(1) All license fees, penalties and forfeitures derived under chapter 13, Laws of 1935 from spirits, beer, and wine restaurant; spirits, beer, and wine private club; hotel; and sports entertainment facility licenses or spirits, beer, and wine restaurant; spirits, beer, and wine private club; and sports entertainment facility licensees shall every three months be disbursed by the board as follows:

(a) Three hundred thousand dollars per biennium, to the death investigations account for the state toxicology program pursuant to RCW 68.50.107; and

(b) Of the remaining funds:

(i) 6.06 percent to the University of Washington and 4.04 percent to Washington State University for alcoholism and drug abuse research and for the dissemination of such research; and

(ii) 89.9 percent to the general fund to be used by the department of social and health services solely to carry out the purposes of RCW 70.96A.050;

(2) The first fifty-five dollars per license fee provided in RCW 66.24.320 and 66.24.330 up to a maximum of one hundred fifty thousand dollars annually shall be disbursed every three months by the board to the general fund to be used for juvenile alcohol and drug prevention programs for kindergarten through third grade to be administered by the superintendent of public instruction;

(3) Twenty percent of the remaining total amount derived from license fees pursuant to RCW 66.24.320, 66.24.330, 66.24.350, and 66.24.360, shall be transferred to the general fund to be used by the department of social and health services solely to carry out the purposes of RCW 70.96A.050; and

(4) One-fourth cent per liter of the tax imposed by RCW 66.24.210 shall every three months be disbursed by the board to Washington State University solely for wine and wine grape research, extension programs related to wine and wine grape research, and resident instruction in both wine grape production and the processing aspects of the wine industry in accordance with RCW 28B.30.068. The director of financial management shall prescribe suitable accounting procedures

to ensure that the funds transferred to the general fund to be used by the department of social and health services and appropriated are separately accounted for. [2007 c 370 § 14; 2000 c 192 § 1. Prior: 1999 c 281 § 1; 1999 c 40 § 7; prior: 1997 c 451 § 3; 1997 c 321 § 57; 1995 c 398 § 16; 1987 c 458 § 10; 1986 c 87 § 1; 1981 1st ex.s. c 5 § 6; 1979 c 151 § 166; 1967 ex.s. c 75 § 1; 1965 ex.s. c 143 § 2; 1949 c 5 § 10; 1935 c 13 § 2; 1933 ex.s. c 62 § 77; Rem. Supp. 1949 § 7306-77. Formerly RCW 43.66.080.]

Effective date—2007 c 370 §§ 10-20: See note following RCW 66.04.010.

Effective date—1999 c 40: See note following RCW 43.103.010.

Effective date—1997 c 451: See note following RCW 66.24.290.

Effective date—1997 c 321: See note following RCW 66.24.010.

Severability—1987 c 458: See note following RCW 48.21.160.

Effective date—1986 c 87: "This act shall take effect July 1, 1987." [1986 c 87 § 3.]

Severability—Effective date—1981 1st ex.s. c 5: See RCW 66.98.090 and 66.98.100.

Effective date—1967 ex.s. c 75: "The effective date of this 1967 amendatory act is July 1, 1967." [1967 ex.s. c 75 § 8.]

Severability—1949 c 5: See RCW 66.98.080.

Distribution for state toxicological lab: RCW 68.50.107.

Wine grape industry, instruction relating to—Purpose—Administration: RCW 28B.30.067 and 28B.30.068.

66.08.220 Liquor revolving fund—Separate account—Distribution. (Effective July 1, 2008.) The board shall set aside in a separate account in the liquor revolving fund an amount equal to ten percent of its gross sales of liquor to spirits, beer, and wine restaurant; spirits, beer, and wine private club; hotel; and sports entertainment facility licensees collected from these licensees pursuant to the provisions of RCW 82.08.150, less the fifteen percent discount provided for in RCW 66.24.440; and the moneys in said separate account shall be distributed in accordance with the provisions of RCW 66.08.190, 66.08.200 and 66.08.210. No election unit in which the sale of liquor under spirits, beer, and wine restaurant; spirits, beer, and wine private club; and sports entertainment facility licenses is unlawful shall be entitled to share in the distribution of moneys from such separate account. [2007 c 370 § 15; 1999 c 281 § 2; 1949 c 5 § 11 (adding new section 78-A to 1933 ex.s. c 62); Rem. Supp. 1949 § 7306-78A. Formerly RCW 43.66.130.]

Effective date—2007 c 370 §§ 10-20: See note following RCW 66.04.010.

Severability—1949 c 5: See RCW 66.98.080.

Chapter 66.20 RCW LIQUOR PERMITS

Sections

66.20.010 Permits classified—Issuance—Fees. (*Effective July 1, 2008.*)
66.20.310 Alcohol servers—Permits—Requirements—Suspension, revocation—Violations—Exemptions. (*Effective July 1, 2008.*)

66.20.010 Permits classified—Issuance—Fees. (Effective July 1, 2008.) Upon application in the prescribed form being made to any employee authorized by the board to issue permits, accompanied by payment of the prescribed fee,

and upon the employee being satisfied that the applicant should be granted a permit under this title, the employee shall issue to the applicant under such regulations and at such fee as may be prescribed by the board a permit of the class applied for, as follows:

(1) Where the application is for a special permit by a physician or dentist, or by any person in charge of an institution regularly conducted as a hospital or sanatorium for the care of persons in ill health, or as a home devoted exclusively to the care of aged people, a special liquor purchase permit;

(2) Where the application is for a special permit by a person engaged within the state in mechanical or manufacturing business or in scientific pursuits requiring alcohol for use therein, or by any private individual, a special permit to purchase alcohol for the purpose named in the permit;

(3) Where the application is for a special permit to consume liquor at a banquet, at a specified date and place, a special permit to purchase liquor for consumption at such banquet, to such applicants as may be fixed by the board;

(4) Where the application is for a special permit to consume liquor on the premises of a business not licensed under this title, a special permit to purchase liquor for consumption thereon for such periods of time and to such applicants as may be fixed by the board;

(5) Where the application is for a special permit by a manufacturer to import or purchase within the state alcohol, malt, and other materials containing alcohol to be used in the manufacture of liquor, or other products, a special permit;

(6) Where the application is for a special permit by a person operating a drug store to purchase liquor at retail prices only, to be thereafter sold by such person on the prescription of a physician, a special liquor purchase permit;

(7) Where the application is for a special permit by an authorized representative of a military installation operated by or for any of the armed forces within the geographical boundaries of the state of Washington, a special permit to purchase liquor for use on such military installation at prices to be fixed by the board;

(8) Where the application is for a special permit by a manufacturer, importer, or distributor, or representative thereof, to serve liquor without charge to delegates and guests at a convention of a trade association composed of licensees of the board, when the said liquor is served in a hospitality room or from a booth in a board-approved suppliers' display room at the convention, and when the liquor so served is for consumption in the said hospitality room or display room during the convention, anything in Title 66 RCW to the contrary notwithstanding. Any such spirituous liquor shall be purchased from the board or a spirits, beer, and wine restaurant licensee and any such beer and wine shall be subject to the taxes imposed by RCW 66.24.290 and 66.24.210;

(9) Where the application is for a special permit by a manufacturer, importer, or distributor, or representative thereof, to donate liquor for a reception, breakfast, luncheon, or dinner for delegates and guests at a convention of a trade association composed of licensees of the board, when the liquor so donated is for consumption at the said reception, breakfast, luncheon, or dinner during the convention, anything in Title 66 RCW to the contrary notwithstanding. Any such spirituous liquor shall be purchased from the board or a spirits, beer, and wine restaurant licensee and any such beer

and wine shall be subject to the taxes imposed by RCW 66.24.290 and 66.24.210;

(10) Where the application is for a special permit by a manufacturer, importer, or distributor, or representative thereof, to donate and/or serve liquor without charge to delegates and guests at an international trade fair, show, or exposition held under the auspices of a federal, state, or local governmental entity or organized and promoted by a nonprofit organization, anything in Title 66 RCW to the contrary notwithstanding. Any such spirituous liquor shall be purchased from the board and any such beer or wine shall be subject to the taxes imposed by RCW 66.24.290 and 66.24.210;

(11) Where the application is for an annual special permit by a person operating a bed and breakfast lodging facility to donate or serve wine or beer without charge to overnight guests of the facility if the wine or beer is for consumption on the premises of the facility. "Bed and breakfast lodging facility," as used in this subsection, means a facility offering from one to eight lodging units and breakfast to travelers and guests. [2007 c 370 § 16; 1998 c 126 § 1; 1997 c 321 § 43; 1984 c 78 § 6; 1984 c 45 § 1; 1983 c 13 § 1; 1982 c 85 § 1; 1975-'76 2nd ex.s. c 62 § 2; 1959 c 111 § 2; 1951 2nd ex.s. c 13 § 1; 1933 ex.s. c 62 § 12; RRS § 7306-12.]

Effective date—2007 c 370 §§ 10-20: See note following RCW 66.04.010.

Effective date—1998 c 126: "This act takes effect July 1, 1998." [1998 c 126 § 17.]

Effective date—1997 c 321: See note following RCW 66.24.010.

Finding and declaration—Severability—1984 c 78: See notes following RCW 66.12.160.

66.20.310 Alcohol servers—Permits—Requirements—Suspension, revocation—Violations—Exemptions. (Effective July 1, 2008.) (1)(a) There shall be an alcohol server permit, known as a class 12 permit, for a manager or bartender selling or mixing alcohol, spirits, wines, or beer for consumption at an on-premises licensed facility.

(b) There shall be an alcohol server permit, known as a class 13 permit, for a person who only serves alcohol, spirits, wines, or beer for consumption at an on-premises licensed facility.

(c) As provided by rule by the board, a class 13 permit holder may be allowed to act as a bartender without holding a class 12 permit.

(2)(a) Effective January 1, 1997, except as provided in (d) of this subsection, every person employed, under contract or otherwise, by an annual retail liquor licensee holding a license as authorized by RCW 66.24.320, 66.24.330, 66.24.350, 66.24.400, 66.24.425, 66.24.450, 66.24.590, or 66.24.570, who as part of his or her employment participates in any manner in the sale or service of alcoholic beverages shall have issued to them a class 12 or class 13 permit.

(b) Every class 12 and class 13 permit issued shall be issued in the name of the applicant and no other person may use the permit of another permit holder. The holder shall present the permit upon request to inspection by a representative of the board or a peace officer. The class 12 or class 13 permit shall be valid for employment at any retail licensed premises described in (a) of this subsection.

(c) No licensee described in (a) of this subsection, except as provided in (d) of this subsection, may employ or accept

the services of any person without the person first having a valid class 12 or class 13 permit.

(d) Within sixty days of initial employment, every person whose duties include the compounding, sale, service, or handling of liquor shall have a class 12 or class 13 permit.

(e) No person may perform duties that include the sale or service of alcoholic beverages on a retail licensed premises without possessing a valid alcohol server permit.

(3) A permit issued by a training entity under this section is valid for employment at any retail licensed premises described in subsection (2)(a) of this section for a period of five years unless suspended by the board.

(4) The board may suspend or revoke an existing permit if any of the following occur:

(a) The applicant or permittee has been convicted of violating any of the state or local intoxicating liquor laws of this state or has been convicted at any time of a felony; or

(b) The permittee has performed or permitted any act that constitutes a violation of this title or of any rule of the board.

(5) The suspension or revocation of a permit under this section does not relieve a licensee from responsibility for any act of the employee or agent while employed upon the retail licensed premises. The board may, as appropriate, revoke or suspend either the permit of the employee who committed the violation or the license of the licensee upon whose premises the violation occurred, or both the permit and the license.

(6)(a) After January 1, 1997, it is a violation of this title for any retail licensee or agent of a retail licensee as described in subsection (2)(a) of this section to employ in the sale or service of alcoholic beverages, any person who does not have a valid alcohol server permit or whose permit has been revoked, suspended, or denied.

(b) It is a violation of this title for a person whose alcohol server permit has been denied, suspended, or revoked to accept employment in the sale or service of alcoholic beverages.

(7) Grocery stores licensed under RCW 66.24.360, the primary commercial activity of which is the sale of grocery products and for which the sale and service of beer and wine for on-premises consumption with food is incidental to the primary business, and employees of such establishments, are exempt from RCW 66.20.300 through 66.20.350. [2007 c 370 § 17; 1997 c 321 § 45. Prior: 1996 c 311 § 1; 1996 c 218 § 3; 1995 c 51 § 3.]

Effective date—2007 c 370 §§ 10-20: See note following RCW 66.04.010.

Effective date—1997 c 321: See note following RCW 66.24.010.

Findings—1995 c 51: See note following RCW 66.20.300.

Chapter 66.24 RCW LICENSES—STAMP TAXES

Sections

66.24.010	Licensure—Issuance—Conditions and restrictions—Limitations—Temporary licenses.
66.24.170	Domestic winery license—Winery as distributor and/or retailer of own wine—Off-premise samples—Domestic wine made into sparkling wine—Sales at qualifying farmers markets.
66.24.206	Out-of-state winery—Certificate of approval—Fee.

- 66.24.240 Domestic brewery's license—Fee—Distribution and/or retail—Contract-production—Sales at qualifying farmers markets. (*Expires June 30, 2008.*)
- 66.24.240 Domestic brewery's license—Fee. (*Effective June 30, 2008.*)
- 66.24.244 Microbrewery's license—Fee. (*Expires June 30, 2008.*)
- 66.24.244 Microbrewery's license—Fee. (*Effective June 30, 2008.*)
- 66.24.320 Beer and/or wine restaurant license—Containers—Fee—Caterer's endorsement.
- 66.24.360 Grocery store license—Fees—Restricted license—Determination of public interest—Inventory—Endorsements.
- 66.24.375 "Society or organization" defined for certain purposes.
- 66.24.400 Liquor by the drink, spirits, beer, and wine restaurant license—Liquor by the bottle for hotel or club guests—Removing unconsumed liquor, when (*as amended by 2007 c 53*).
- 66.24.400 Liquor by the drink, spirits, beer, and wine restaurant license—Liquor by the bottle for hotel or club guests—Removing unconsumed liquor, when (*as amended by 2007 c 370*). (*Effective July 1, 2008.*)
- 66.24.410 Liquor by the drink, spirits, beer, and wine restaurant license—Terms defined. (*Effective July 1, 2008.*)
- 66.24.420 Liquor by the drink, spirits, beer, and wine restaurant license—Schedule of fees—Location—Number of licenses—Caterer's endorsement. (*Effective until July 1, 2008.*)
- 66.24.420 Liquor by the drink, spirits, beer, and wine restaurant license—Schedule of fees—Location—Number of licenses—Caterer's endorsement. (*Effective July 1, 2008.*)
- 66.24.440 Liquor by the drink, spirits, beer, and wine restaurant, spirits, beer, and wine private club, hotel, and sports entertainment facility license—Purchase of liquor by licensees—Discount. (*Effective July 1, 2008.*)
- 66.24.570 Sports entertainment facility license—Fee—Caterer's endorsement—Financial arrangements—Reporting.
- 66.24.590 Hotel license—Fee—Limitations. (*Effective July 1, 2008.*)

66.24.010 License—Issuance—Conditions and restrictions—Limitations—Temporary licenses. (1)

Every license shall be issued in the name of the applicant, and the holder thereof shall not allow any other person to use the license.

(2) For the purpose of considering any application for a license, or the renewal of a license, the board may cause an inspection of the premises to be made, and may inquire into all matters in connection with the construction and operation of the premises. For the purpose of reviewing any application for a license and for considering the denial, suspension, revocation, or renewal or denial thereof, of any license, the liquor control board may consider any prior criminal conduct of the applicant including an administrative violation history record with the board and a criminal history record information check. The board may submit the criminal history record information check to the Washington state patrol and to the identification division of the federal bureau of investigation in order that these agencies may search their records for prior arrests and convictions of the individual or individuals who filled out the forms. The board shall require fingerprinting of any applicant whose criminal history record information check is submitted to the federal bureau of investigation. The provisions of RCW 9.95.240 and of chapter 9.96A RCW shall not apply to such cases. Subject to the provisions of this section, the board may, in its discretion, grant or deny the renewal or license applied for. Denial may be based on, without limitation, the existence of chronic illegal activity documented in objections submitted pursuant to subsections (8)(d) and (12) of this section. Authority to approve an uncontested or unopposed license may be granted by the board to any staff member the board designates in writing. Conditions for granting such authority shall be adopted by rule. No retail license of any kind may be issued to:

(a) A person doing business as a sole proprietor who has not resided in the state for at least one month prior to receiving a license, except in cases of licenses issued to dining places on railroads, boats, or aircraft;

(b) A copartnership, unless all of the members thereof are qualified to obtain a license, as provided in this section;

(c) A person whose place of business is conducted by a manager or agent, unless such manager or agent possesses the same qualifications required of the licensee;

(d) A corporation or a limited liability company, unless it was created under the laws of the state of Washington or holds a certificate of authority to transact business in the state of Washington.

(3)(a) The board may, in its discretion, subject to the provisions of RCW 66.08.150, suspend or cancel any license; and all rights of the licensee to keep or sell liquor thereunder shall be suspended or terminated, as the case may be.

(b) The board shall immediately suspend the license or certificate of a person who has been certified pursuant to RCW 74.20A.320 by the department of social and health services as a person who is not in compliance with a support order. If the person has continued to meet all other requirements for reinstatement during the suspension, reissuance of the license or certificate shall be automatic upon the board's receipt of a release issued by the department of social and health services stating that the licensee is in compliance with the order.

(c) The board may request the appointment of administrative law judges under chapter 34.12 RCW who shall have power to administer oaths, issue subpoenas for the attendance of witnesses and the production of papers, books, accounts, documents, and testimony, examine witnesses, and to receive testimony in any inquiry, investigation, hearing, or proceeding in any part of the state, under such rules and regulations as the board may adopt.

(d) Witnesses shall be allowed fees and mileage each way to and from any such inquiry, investigation, hearing, or proceeding at the rate authorized by RCW 34.05.446, as now or hereafter amended. Fees need not be paid in advance of appearance of witnesses to testify or to produce books, records, or other legal evidence.

(e) In case of disobedience of any person to comply with the order of the board or a subpoena issued by the board, or any of its members, or administrative law judges, or on the refusal of a witness to testify to any matter regarding which he or she may be lawfully interrogated, the judge of the superior court of the county in which the person resides, on application of any member of the board or administrative law judge, shall compel obedience by contempt proceedings, as in the case of disobedience of the requirements of a subpoena issued from said court or a refusal to testify therein.

(4) Upon receipt of notice of the suspension or cancellation of a license, the licensee shall forthwith deliver up the license to the board. Where the license has been suspended only, the board shall return the license to the licensee at the expiration or termination of the period of suspension. The board shall notify all vendors in the city or place where the licensee has its premises of the suspension or cancellation of the license; and no employee may allow or cause any liquor to be delivered to or for any person at the premises of that licensee.

(5)(a) At the time of the original issuance of a spirits, beer, and wine restaurant license, the board shall prorate the license fee charged to the new licensee according to the number of calendar quarters, or portion thereof, remaining until the first renewal of that license is required.

(b) Unless sooner canceled, every license issued by the board shall expire at midnight of the thirtieth day of June of the fiscal year for which it was issued. However, if the board deems it feasible and desirable to do so, it may establish, by rule pursuant to chapter 34.05 RCW, a system for staggering the annual renewal dates for any and all licenses authorized by this chapter. If such a system of staggered annual renewal dates is established by the board, the license fees provided by this chapter shall be appropriately prorated during the first year that the system is in effect.

(6) Every license issued under this section shall be subject to all conditions and restrictions imposed by this title or by rules adopted by the board. All conditions and restrictions imposed by the board in the issuance of an individual license shall be listed on the face of the individual license along with the trade name, address, and expiration date.

(7) Every licensee shall post and keep posted its license, or licenses, in a conspicuous place on the premises.

(8)(a) Unless (b) of this subsection applies, before the board issues a new or renewal license to an applicant it shall give notice of such application to the chief executive officer of the incorporated city or town, if the application is for a license within an incorporated city or town, or to the county legislative authority, if the application is for a license outside the boundaries of incorporated cities or towns.

(b) If the application for a special occasion license is for an event held during a county, district, or area fair as defined by RCW 15.76.120, and the county, district, or area fair is located on property owned by the county but located within an incorporated city or town, the county legislative authority shall be the entity notified by the board under (a) of this subsection. The board shall send a duplicate notice to the incorporated city or town within which the fair is located.

(c) The incorporated city or town through the official or employee selected by it, or the county legislative authority or the official or employee selected by it, shall have the right to file with the board within twenty days after date of transmittal of such notice, written objections against the applicant or against the premises for which the new or renewal license is asked. The board may extend the time period for submitting written objections.

(d) The written objections shall include a statement of all facts upon which such objections are based, and in case written objections are filed, the city or town or county legislative authority may request and the liquor control board may in its discretion hold a hearing subject to the applicable provisions of Title 34 RCW. If the board makes an initial decision to deny a license or renewal based on the written objections of an incorporated city or town or county legislative authority, the applicant may request a hearing subject to the applicable provisions of Title 34 RCW. If such a hearing is held at the request of the applicant, liquor control board representatives shall present and defend the board's initial decision to deny a license or renewal.

(e) Upon the granting of a license under this title the board shall send written notification to the chief executive

officer of the incorporated city or town in which the license is granted, or to the county legislative authority if the license is granted outside the boundaries of incorporated cities or towns. When the license is for a special occasion license for an event held during a county, district, or area fair as defined by RCW 15.76.120, and the county, district, or area fair is located on county-owned property but located within an incorporated city or town, the written notification shall be sent to both the incorporated city or town and the county legislative authority.

(9)(a) Before the board issues any license to any applicant, it shall give (i) due consideration to the location of the business to be conducted under such license with respect to the proximity of churches, schools, and public institutions and (ii) written notice, with receipt verification, of the application to public institutions identified by the board as appropriate to receive such notice, churches, and schools within five hundred feet of the premises to be licensed. The board shall issue no beer retailer license for either on-premises or off-premises consumption or wine retailer license for either on-premises or off-premises consumption or spirits, beer, and wine restaurant license covering any premises not now licensed, if such premises are within five hundred feet of the premises of any tax-supported public elementary or secondary school measured along the most direct route over or across established public walks, streets, or other public passageway from the main entrance of the school to the nearest public entrance of the premises proposed for license, and if, after receipt by the school of the notice as provided in this subsection, the board receives written objection, within twenty days after receiving such notice, from an official representative or representatives of the school within five hundred feet of said proposed licensed premises, indicating to the board that there is an objection to the issuance of such license because of proximity to a school. The board may extend the time period for submitting objections. For the purpose of this section, church shall mean a building erected for and used exclusively for religious worship and schooling or other activity in connection therewith. For the purpose of this section, public institution shall mean institutions of higher education, parks, community centers, libraries, and transit centers.

(b) No liquor license may be issued or reissued by the board to any motor sports facility or licensee operating within the motor sports facility unless the motor sports facility enforces a program reasonably calculated to prevent alcohol or alcoholic beverages not purchased within the facility from entering the facility and such program is approved by local law enforcement agencies.

(c) It is the intent under this subsection (9) that a retail license shall not be issued by the board where doing so would, in the judgment of the board, adversely affect a private school meeting the requirements for private schools under Title 28A RCW, which school is within five hundred feet of the proposed licensee. The board shall fully consider and give substantial weight to objections filed by private schools. If a license is issued despite the proximity of a private school, the board shall state in a letter addressed to the private school the board's reasons for issuing the license.

(10) The restrictions set forth in subsection (9) of this section shall not prohibit the board from authorizing the

assumption of existing licenses now located within the restricted area by other persons or licenses or relocations of existing licensed premises within the restricted area. In no case may the licensed premises be moved closer to a church or school than it was before the assumption or relocation.

(11)(a) Nothing in this section prohibits the board, in its discretion, from issuing a temporary retail or distributor license to an applicant to operate the retail or distributor premises during the period the application for the license is pending. The board may establish a fee for a temporary license by rule.

(b) A temporary license issued by the board under this section shall be for a period not to exceed sixty days. A temporary license may be extended at the discretion of the board for additional periods of sixty days upon payment of an additional fee and upon compliance with all conditions required in this section.

(c) Refusal by the board to issue or extend a temporary license shall not entitle the applicant to request a hearing. A temporary license may be canceled or suspended summarily at any time if the board determines that good cause for cancellation or suspension exists. RCW 66.08.130 applies to temporary licenses.

(d) Application for a temporary license shall be on such form as the board shall prescribe. If an application for a temporary license is withdrawn before issuance or is refused by the board, the fee which accompanied such application shall be refunded in full.

(12) In determining whether to grant or deny a license or renewal of any license, the board shall give substantial weight to objections from an incorporated city or town or county legislative authority based upon chronic illegal activity associated with the applicant's operations of the premises proposed to be licensed or the applicant's operation of any other licensed premises, or the conduct of the applicant's patrons inside or outside the licensed premises. "Chronic illegal activity" means (a) a pervasive pattern of activity that threatens the public health, safety, and welfare of the city, town, or county including, but not limited to, open container violations, assaults, disturbances, disorderly conduct, or other criminal law violations, or as documented in crime statistics, police reports, emergency medical response data, calls for service, field data, or similar records of a law enforcement agency for the city, town, county, or any other municipal corporation or any state agency; or (b) an unreasonably high number of citations for violations of RCW 46.61.502 associated with the applicant's or licensee's operation of any licensed premises as indicated by the reported statements given to law enforcement upon arrest. [2007 c 473 § 1; 2006 c 359 § 1; 2004 c 133 § 1; 2002 c 119 § 3; 1998 c 126 § 2. Prior: 1997 c 321 § 1; 1997 c 58 § 873; 1995 c 232 § 1; 1988 c 200 § 1; 1987 c 217 § 1; 1983 c 160 § 3; 1982 c 85 § 2; 1981 1st ex.s. c 5 § 10; 1981 c 67 § 31; 1974 ex.s. c 66 § 1; 1973 1st ex.s. c 209 § 10; 1971 c 70 § 1; 1969 ex.s. c 178 § 3; 1947 c 144 § 1; 1935 c 174 § 3; 1933 ex.s. c 62 § 27; Rem. Supp. 1947 § 7306-27. Formerly RCW 66.24.010, part and 66.24.020 through 66.24.100. FORMER PART OF SECTION: 1937 c 217 § 1 (23U) now codified as RCW 66.24.025.]

Effective date—1998 c 126: See note following RCW 66.20.010.

Effective date—1997 c 321: "This act takes effect July 1, 1998." [1997 c 321 § 64.]

Short title—Part headings, captions, table of contents not law—Exemptions and waivers from federal law—Conflict with federal requirements—Severability—1997 c 58: See RCW 74.08A.900 through 74.08A.904.

Effective dates—Intent—1997 c 58: See notes following RCW 74.20A.320.

Severability—Effective date—1981 1st ex.s. c 5: See RCW 66.98.090 and 66.98.100.

Effective dates—Severability—1981 c 67: See notes following RCW 34.12.010.

Severability—Effective date—1973 1st ex.s. c 209: See notes following RCW 66.08.070.

Effective date—1971 c 70: "The effective date of this 1971 amendatory act is July 1, 1971." [1971 c 70 § 4.]

66.24.170 Domestic winery license—Winery as distributor and/or retailer of own wine—Off-premise samples—Domestic wine made into sparkling wine—Sales at qualifying farmers markets. (1) There shall be a license for domestic wineries; fee to be computed only on the liters manufactured: Less than two hundred fifty thousand liters per year, one hundred dollars per year; and two hundred fifty thousand liters or more per year, four hundred dollars per year.

(2) The license allows for the manufacture of wine in Washington state from grapes or other agricultural products.

(3) Any domestic winery licensed under this section may also act as a retailer of wine of its own production. Any domestic winery licensed under this section may act as a distributor of its own production. Notwithstanding any language in this title to the contrary, a domestic winery may use a common carrier to deliver up to one hundred cases of its own production, in the aggregate, per month to licensed Washington retailers. A domestic winery may not arrange for any such common carrier shipments to licensed retailers of wine not of its own production. Except as provided in this section, any winery operating as a distributor and/or retailer under this subsection shall comply with the applicable laws and rules relating to distributors and/or retailers.

(4) A domestic winery licensed under this section, at locations separate from any of its production or manufacturing sites, may serve samples of its own products, with or without charge, and sell wine of its own production at retail for off-premise consumption, provided that: (a) Each additional location has been approved by the board under RCW 66.24.010; (b) the total number of additional locations does not exceed two; and (c) a winery may not act as a distributor at any such additional location. Each additional location is deemed to be part of the winery license for the purpose of this title. Nothing in this subsection shall be construed to prevent a domestic winery from holding multiple domestic winery licenses.

(5)(a) A domestic winery licensed under this section may apply to the board for an endorsement to sell wine of its own production at retail for off-premises consumption at a qualifying farmers market. The annual fee for this endorsement is seventy-five dollars. An endorsement issued pursuant to this subsection does not count toward the two additional retail locations limit specified in this section.

(b) For each month during which a domestic winery will sell wine at a qualifying farmers market, the winery must provide the board or its designee a list of the dates, times, and locations at which bottled wine may be offered for sale. This list must be received by the board before the winery may offer wine for sale at a qualifying farmers market.

(c) The wine sold at qualifying farmers markets must be made entirely from grapes grown in a recognized Washington appellation or from other agricultural products grown in this state.

(d) Each approved location in a qualifying farmers market is deemed to be part of the winery license for the purpose of this title. The approved locations under an endorsement granted under this subsection do not include the tasting or sampling privilege of a winery. The winery may not store wine at a farmers market beyond the hours that the winery offers bottled wine for sale. The winery may not act as a distributor from a farmers market location.

(e) Before a winery may sell bottled wine at a qualifying farmers market, the farmers market must apply to the board for authorization for any winery with an endorsement approved under this subsection to sell bottled wine at retail at the farmers market. This application shall include, at a minimum: (i) A map of the farmers market showing all booths, stalls, or other designated locations at which an approved winery may sell bottled wine; and (ii) the name and contact information for the on-site market managers who may be contacted by the board or its designee to verify the locations at which bottled wine may be sold. Before authorizing a qualifying farmers market to allow an approved winery to sell bottled wine at retail at its farmers market location, the board shall notify the persons or entities of such application for authorization pursuant to RCW 66.24.010 (8) and (9). An authorization granted under this subsection (5)(e) may be withdrawn by the board for any violation of this title or any rules adopted under this title.

(f) The board may adopt rules establishing the application and approval process under this section and such additional rules as may be necessary to implement this section.

(g) For the purposes of this subsection:

(i) "Qualifying farmers market" means an entity that sponsors a regular assembly of vendors at a defined location for the purpose of promoting the sale of agricultural products grown or produced in this state directly to the consumer under conditions that meet the following minimum requirements:

(A) There are at least five participating vendors who are farmers selling their own agricultural products;

(B) The total combined gross annual sales of vendors who are farmers exceeds the total combined gross annual sales of vendors who are processors or resellers;

(C) The total combined gross annual sales of vendors who are farmers, processors, or resellers exceeds the total combined gross annual sales of vendors who are not farmers, processors, or resellers;

(D) The sale of imported items and secondhand items by any vendor is prohibited; and

(E) No vendor is a franchisee.

(ii) "Farmer" means a natural person who sells, with or without processing, agricultural products that he or she raises

on land he or she owns or leases in this state or in another state's county that borders this state.

(iii) "Processor" means a natural person who sells processed food that he or she has personally prepared on land he or she owns or leases in this state or in another state's county that borders this state.

(iv) "Reseller" means a natural person who buys agricultural products from a farmer and resells the products directly to the consumer.

(6) Wine produced in Washington state by a domestic winery licensee may be shipped out-of-state for the purpose of making it into sparkling wine and then returned to such licensee for resale. Such wine shall be deemed wine manufactured in the state of Washington for the purposes of RCW 66.24.206, and shall not require a special license. [2007 c 16 § 2; 2006 c 302 § 1; 2003 c 44 § 1; 2000 c 141 § 1; 1997 c 321 § 3; 1991 c 192 § 2; 1982 c 85 § 4; 1981 1st ex.s. c 5 § 31; 1939 c 172 § 1 (23C); 1937 c 217 § 1 (23C) (adding new section 23-C to 1933 ex.s. c 62); RRS § 7306-23C. Formerly RCW 66.24.170, 66.24.180, and 66.24.190.]

Effective date—2006 c 302: "Except for sections 10 and 12 of this act, this act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect April 14, 2006." [2006 c 302 § 16.]

Effective date—1997 c 321: See note following RCW 66.24.010.

Severability—Effective date—1981 1st ex.s. c 5: See RCW 66.98.090 and 66.98.100.

66.24.206 Out-of-state winery—Certificate of approval—Fee. (1)(a) A United States winery located outside the state of Washington must hold a certificate of approval to allow sales and shipment of the certificate of approval holder's wine to licensed Washington wine distributors, importers, or retailers. A certificate of approval holder with a direct shipment endorsement may act as a distributor of its own production. Notwithstanding any language in this title to the contrary, a certificate of approval holder with a direct shipment endorsement may use a common carrier to deliver up to one hundred cases of its own production, in the aggregate, per month to licensed Washington retailers. A certificate of approval holder may not arrange for any such common carrier shipments to licensed retailers of wine not of its own production.

(b) Authorized representatives must hold a certificate of approval to allow sales and shipment of United States produced wine to licensed Washington wine distributors or importers.

(c) Authorized representatives must also hold a certificate of approval to allow sales and shipments of foreign produced wine to licensed Washington wine distributors or importers.

(2) The certificate of approval shall not be granted unless and until such winery or authorized representative shall have made a written agreement with the board to furnish to the board, on or before the twentieth day of each month, a report under oath, on a form to be prescribed by the board, showing the quantity of wine sold or delivered to each licensed wine distributor, importer, or retailer, during the preceding month, and shall further have agreed with the board, that such wineries, manufacturers, or authorized representatives, and all general sales corporations or agencies maintained by them, and

all of their trade representatives, shall and will faithfully comply with all laws of the state of Washington pertaining to the sale of intoxicating liquors and all rules and regulations of the Washington state liquor control board. A violation of the terms of this agreement will cause the board to take action to suspend or revoke such certificate.

(3) The fee for the certificate of approval and related endorsements, issued pursuant to the provisions of this title, shall be from time to time established by the board at a level that is sufficient to defray the costs of administering the certificate of approval program. The fee shall be fixed by rule by the board in accordance with the provisions of the administrative procedure act, chapter 34.05 RCW.

(4) Certificate of approval holders are deemed to have consented to the jurisdiction of Washington concerning enforcement of this chapter and all laws and rules related to the sale and shipment of wine. [2007 c 16 § 1; 2006 c 302 § 4; 2004 c 160 § 4; 1997 c 321 § 7; 1981 1st ex.s. c 5 § 34; 1973 1st ex.s. c 209 § 13; 1969 ex.s. c 21 § 10.]

Effective date—2006 c 302: See note following RCW 66.24.170.

Effective date—2004 c 160: See note following RCW 66.04.010.

Effective date—1997 c 321: See note following RCW 66.24.010.

Severability—Effective date—1981 1st ex.s. c 5: See RCW 66.98.090 and 66.98.100.

Severability—Effective date—1973 1st ex.s. c 209: See notes following RCW 66.08.070.

Effective date—1969 ex.s. c 21: See note following RCW 66.04.010.

66.24.240 Domestic brewery's license—Fee—Distribution and/or retail—Contract-production—Sales at qualifying farmers markets. (Expires June 30, 2008.) (1) There shall be a license for domestic breweries; fee to be two thousand dollars for production of sixty thousand barrels or more of malt liquor per year.

(2) Any domestic brewery, except for a brand owner of malt beverages under RCW 66.04.010(6), licensed under this section may also act as a retailer for beer of its own production. Any domestic brewery licensed under this section may act as a distributor for beer of its own production. Any domestic brewery operating as a distributor and/or retailer under this subsection shall comply with the applicable laws and rules relating to distributors and/or retailers. A domestic brewery holding a spirits, beer, and wine restaurant license may sell beer of its own production for off-premises consumption from its restaurant premises in kegs or in a sanitary container brought to the premises by the purchaser or furnished by the licensee and filled at the tap by the licensee at the time of sale.

(3) A domestic brewery may hold a retail license under this chapter. This retail license is separate from the brewery license. A brewery that holds a spirits, beer, and wine restaurant license or a beer and/or wine restaurant license shall hold the same privileges and endorsements as permitted under RCW 66.24.320 and 66.24.420.

(4) If the brewery licensee holds a separate license for a spirits, beer, and wine restaurant or a beer and/or wine restaurant operated on the brewery premises, the licensee may hold a second retail license for a spirits, beer, and wine restaurant or a beer and/or wine restaurant at a location separate from the brewery premises.

(5) Any domestic brewery licensed under this section may contract-produce beer for a brand owner of malt beverages defined under RCW 66.04.010(6), and this contract-production is not a sale for the purposes of RCW 66.28.170 and 66.28.180.

(6)(a) A domestic brewery licensed under this section and qualified for a reduced rate of taxation pursuant to RCW 66.24.290(3)(b) may apply to the board for an endorsement to sell bottled beer of its own production at retail for off-premises consumption at a qualifying farmers market. The annual fee for this endorsement is seventy-five dollars.

(b) For each month during which a domestic brewery will sell beer at a qualifying farmers market, the domestic brewery must provide the board or its designee a list of the dates, times, and locations at which bottled beer may be offered for sale. This list must be received by the board before the domestic brewery may offer beer for sale at a qualifying farmers market.

(c) The beer sold at qualifying farmers markets must be produced in Washington.

(d) Each approved location in a qualifying farmers market is deemed to be part of the domestic brewery license for the purpose of this title. The approved locations under an endorsement granted under this subsection do not include the tasting or sampling privilege of a domestic brewery. The domestic brewery may not store beer at a farmers market beyond the hours that the domestic brewery offers bottled beer for sale. The domestic brewery may not act as a distributor from a farmers market location.

(e) Before a domestic brewery may sell bottled beer at a qualifying farmers market, the farmers market must apply to the board for authorization for any domestic brewery with an endorsement approved under this subsection to sell bottled beer at retail at the farmers market. This application shall include, at a minimum: (i) A map of the farmers market showing all booths, stalls, or other designated locations at which an approved domestic brewery may sell bottled beer; and (ii) the name and contact information for the on-site market managers who may be contacted by the board or its designee to verify the locations at which bottled beer may be sold. Before authorizing a qualifying farmers market to allow an approved domestic brewery to sell bottled beer at retail at its farmers market location, the board shall notify the persons or entities of such application for authorization pursuant to RCW 66.24.010 (8) and (9). An authorization granted under this subsection (6)(e) may be withdrawn by the board for any violation of this title or any rules adopted under this title.

(f) The board may adopt rules establishing the application and approval process under this section and such additional rules as may be necessary to implement this section.

(g) For the purposes of this subsection:

(i) "Qualifying farmers market" means an entity that sponsors a regular assembly of vendors at a defined location for the purpose of promoting the sale of agricultural products grown or produced in this state directly to the consumer under conditions that meet the following minimum requirements:

(A) There are at least five participating vendors who are farmers selling their own agricultural products;

(B) The total combined gross annual sales of vendors who are farmers exceeds the total combined gross annual sales of vendors who are processors or resellers;

(C) The total combined gross annual sales of vendors who are farmers, processors, or resellers exceeds the total combined gross annual sales of vendors who are not farmers, processors, or resellers;

(D) The sale of imported items and secondhand items by any vendor is prohibited; and

(E) No vendor is a franchisee.

(ii) "Farmer" means a natural person who sells, with or without processing, agricultural products that he or she raises on land he or she owns or leases in this state or in another state's county that borders this state.

(iii) "Processor" means a natural person who sells processed food that he or she has personally prepared on land he or she owns or leases in this state or in another state's county that borders this state.

(iv) "Reseller" means a natural person who buys agricultural products from a farmer and resells the products directly to the consumer. [2007 c 370 § 6. Prior: 2006 c 302 § 2; 2006 c 44 § 1; 2003 c 154 § 1; 2000 c 142 § 2; 1997 c 321 § 11; 1985 c 226 § 1; 1982 c 85 § 5; 1981 1st ex.s. c 5 § 13; 1937 c 217 § 1 (23B) (adding new section 23-B to 1933 ex.s. c 62); RRS § 7306-23B.]

Expiration date—2007 c 370 §§ 4 and 6: See note following RCW 66.24.244.

Effective date—2006 c 302: See note following RCW 66.24.170.

Effective date—1997 c 321: See note following RCW 66.24.010.

Severability—Effective date—1981 1st ex.s. c 5: See RCW 66.98.090 and 66.98.100.

66.24.240 Domestic brewery's license—Fee. (Effective June 30, 2008.) (1) There shall be a license for domestic breweries; fee to be two thousand dollars for production of sixty thousand barrels or more of malt liquor per year.

(2) Any domestic brewery, except for a brand owner of malt beverages under RCW 66.04.010(6), licensed under this section may also act as a distributor and/or retailer for beer of its own production. Any domestic brewery operating as a distributor and/or retailer under this subsection shall comply with the applicable laws and rules relating to distributors and/or retailers. A domestic brewery holding a spirits, beer, and wine restaurant license may sell beer of its own production for off-premises consumption from its restaurant premises in kegs or in a sanitary container brought to the premises by the purchaser or furnished by the licensee and filled at the tap by the licensee at the time of sale.

(3) A domestic brewery may hold a retail license under this chapter. This retail license is separate from the brewery license. A brewery that holds a spirits, beer, and wine restaurant license or a beer and/or wine restaurant license shall hold the same privileges and endorsements as permitted under RCW 66.24.320 and 66.24.420.

(4) If the brewery licensee holds a separate license for a spirits, beer, and wine restaurant or a beer and/or wine restaurant operated on the brewery premises, the licensee may hold a second retail license for a spirits, beer, and wine restaurant or a beer and/or wine restaurant at a location separate from the brewery premises.

(5) Any domestic brewery licensed under this section may contract-produce beer for a brand owner of malt beverages defined under RCW 66.04.010(6), and this contract-production is not a sale for the purposes of RCW 66.28.170 and 66.28.180.

(6)(a) A domestic brewery licensed under this section and qualified for a reduced rate of taxation pursuant to RCW 66.24.290(3)(b) may apply to the board for an endorsement to sell bottled beer of its own production at retail for off-premises consumption at a qualifying farmers market. The annual fee for this endorsement is seventy-five dollars.

(b) For each month during which a domestic brewery will sell beer at a qualifying farmers market, the domestic brewery must provide the board or its designee a list of the dates, times, and locations at which bottled beer may be offered for sale. This list must be received by the board before the domestic brewery may offer beer for sale at a qualifying farmers market.

(c) The beer sold at qualifying farmers markets must be produced in Washington.

(d) Each approved location in a qualifying farmers market is deemed to be part of the domestic brewery license for the purpose of this title. The approved locations under an endorsement granted under this subsection do not include the tasting or sampling privilege of a domestic brewery. The domestic brewery may not store beer at a farmers market beyond the hours that the domestic brewery offers bottled beer for sale. The domestic brewery may not act as a distributor from a farmers market location.

(e) Before a domestic brewery may sell bottled beer at a qualifying farmers market, the farmers market must apply to the board for authorization for any domestic brewery with an endorsement approved under this subsection to sell bottled beer at retail at the farmers market. This application shall include, at a minimum: (i) A map of the farmers market showing all booths, stalls, or other designated locations at which an approved domestic brewery may sell bottled beer; and (ii) the name and contact information for the on-site market managers who may be contacted by the board or its designee to verify the locations at which bottled beer may be sold. Before authorizing a qualifying farmers market to allow an approved domestic brewery to sell bottled beer at retail at its farmers market location, the board shall notify the persons or entities of such application for authorization pursuant to RCW 66.24.010 (8) and (9). An authorization granted under this subsection (6)(e) may be withdrawn by the board for any violation of this title or any rules adopted under this title.

(f) The board may adopt rules establishing the application and approval process under this section and such additional rules as may be necessary to implement this section.

(g) For the purposes of this subsection:

(i) "Qualifying farmers market" means an entity that sponsors a regular assembly of vendors at a defined location for the purpose of promoting the sale of agricultural products grown or produced in this state directly to the consumer under conditions that meet the following minimum requirements:

(A) There are at least five participating vendors who are farmers selling their own agricultural products;

(B) The total combined gross annual sales of vendors who are farmers exceeds the total combined gross annual sales of vendors who are processors or resellers;

(C) The total combined gross annual sales of vendors who are farmers, processors, or resellers exceeds the total combined gross annual sales of vendors who are not farmers, processors, or resellers;

(D) The sale of imported items and secondhand items by any vendor is prohibited; and

(E) No vendor is a franchisee.

(ii) "Farmer" means a natural person who sells, with or without processing, agricultural products that he or she raises on land he or she owns or leases in this state or in another state's county that borders this state.

(iii) "Processor" means a natural person who sells processed food that he or she has personally prepared on land he or she owns or leases in this state or in another state's county that borders this state.

(iv) "Reseller" means a natural person who buys agricultural products from a farmer and resells the products directly to the consumer. [2007 c 370 § 7; 2006 c 44 § 1; 2003 c 154 § 1; 2000 c 142 § 2; 1997 c 321 § 11; 1985 c 226 § 1; 1982 c 85 § 5; 1981 1st ex.s. c 5 § 13; 1937 c 217 § 1 (23B) (adding new section 23-B to 1933 ex.s. c 62); RRS § 7306-23B.]

Effective date—2007 c 370 §§ 5 and 7: See note following RCW 66.24.244.

Effective date—1997 c 321: See note following RCW 66.24.010.

Severability—Effective date—1981 1st ex.s. c 5: See RCW 66.98.090 and 66.98.100.

66.24.244 Microbrewery's license—Fee. (Expires June 30, 2008.) (1) There shall be a license for microbreweries; fee to be one hundred dollars for production of less than sixty thousand barrels of malt liquor, including strong beer, per year.

(2) Any microbrewery licensed under this section may also act as a distributor and/or retailer for beer and strong beer of its own production. Any microbrewery licensed under this section may act as a distributor for beer of its own production. Strong beer may not be sold at a farmers market or under any endorsement which may authorize microbreweries to sell beer at farmers markets. Any microbrewery operating as a distributor and/or retailer under this subsection shall comply with the applicable laws and rules relating to distributors and/or retailers. A microbrewery holding a spirits, beer, and wine restaurant license may sell beer of its own production for off-premises consumption from its restaurant premises in kegs or in a sanitary container brought to the premises by the purchaser or furnished by the licensee and filled at the tap by the licensee at the time of sale.

(3) The board may issue a license allowing a microbrewery to operate a spirits, beer, and wine restaurant under RCW 66.24.420.

(4) The board may issue a license to a microbrewery allowing for on-premises consumption of beer, including strong beer, wine, or both of other manufacture if purchased from a Washington state-licensed distributor. The microbrewer must determine, at the time the license is issued, whether the licensed premises will be operated as a tavern with persons under twenty-one years of age not allowed as

provided for in RCW 66.24.330, or as a beer and/or wine restaurant as described in RCW 66.24.320.

(5) A microbrewery that holds a spirits, beer, and wine restaurant license or a beer and/or wine restaurant license shall hold the same privileges and endorsements as permitted under RCW 66.24.320 and 66.24.420.

(6) If the microbrewery licensee holds a separate license for a spirits, beer, and wine restaurant or a beer and/or wine restaurant, operated on the brewery premises, the licensee may hold a second retail license for a spirits, beer, and wine restaurant or a beer and/or wine restaurant, at a location separate from the licensed brewery premises.

(7)(a) A microbrewery licensed under this section may apply to the board for an endorsement to sell bottled beer of its own production at retail for off-premises consumption at a qualifying farmers market. The annual fee for this endorsement is seventy-five dollars.

(b) For each month during which a microbrewery will sell beer at a qualifying farmers market, the microbrewery must provide the board or its designee a list of the dates, times, and locations at which bottled beer may be offered for sale. This list must be received by the board before the microbrewery may offer beer for sale at a qualifying farmers market.

(c) The beer sold at qualifying farmers markets must be produced in Washington.

(d) Each approved location in a qualifying farmers market is deemed to be part of the microbrewery license for the purpose of this title. The approved locations under an endorsement granted under this subsection (7) do not constitute the tasting or sampling privilege of a microbrewery. The microbrewery may not store beer at a farmers market beyond the hours that the microbrewery offers bottled beer for sale. The microbrewery may not act as a distributor from a farmers market location.

(e) Before a microbrewery may sell bottled beer at a qualifying farmers market, the farmers market must apply to the board for authorization for any microbrewery with an endorsement approved under this subsection (7) to sell bottled beer at retail at the farmers market. This application shall include, at a minimum: (i) A map of the farmers market showing all booths, stalls, or other designated locations at which an approved microbrewery may sell bottled beer; and (ii) the name and contact information for the on-site market managers who may be contacted by the board or its designee to verify the locations at which bottled beer may be sold. Before authorizing a qualifying farmers market to allow an approved microbrewery to sell bottled beer at retail at its farmers market location, the board shall notify the persons or entities of the application for authorization pursuant to RCW 66.24.010 (8) and (9). An authorization granted under this subsection (7)(e) may be withdrawn by the board for any violation of this title or any rules adopted under this title.

(f) The board may adopt rules establishing the application and approval process under this section and any additional rules necessary to implement this section.

(g) For the purposes of this subsection (7):

(i) "Qualifying farmers market" means an entity that sponsors a regular assembly of vendors at a defined location for the purpose of promoting the sale of agricultural products grown or produced in this state directly to the consumer

under conditions that meet the following minimum requirements:

(A) There are at least five participating vendors who are farmers selling their own agricultural products;

(B) The total combined gross annual sales of vendors who are farmers exceeds the total combined gross annual sales of vendors who are processors or resellers;

(C) The total combined gross annual sales of vendors who are farmers, processors, or resellers exceeds the total combined gross annual sales of vendors who are not farmers, processors, or resellers;

(D) The sale of imported items and secondhand items by any vendor is prohibited; and

(E) No vendor is a franchisee.

(ii) "Farmer" means a natural person who sells, with or without processing, agricultural products that he or she raises on land he or she owns or leases in this state or in another state's county that borders this state.

(iii) "Processor" means a natural person who sells processed food that he or she has personally prepared on land he or she owns or leases in this state or in another state's county that borders this state.

(iv) "Reseller" means a natural person who buys agricultural products from a farmer and resells the products directly to the consumer. [2007 c 370 § 4; 2007 c 222 § 1. Prior: 2006 c 302 § 3; 2006 c 44 § 2; prior: 2003 c 167 § 1; 2003 c 154 § 2; 1998 c 126 § 3; 1997 c 321 § 12.]

Reviser's note: This section was amended by 2007 c 222 § 1 and by 2007 c 370 § 4, each without reference to the other. Both amendments are incorporated in the publication of this section under RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

Expiration date—2007 c 370 §§ 4 and 6: "Sections 4 and 6 of this act expire June 30, 2008." [2007 c 370 § 21.]

Expiration date—2007 c 222 § 1: "Section 1 of this act expires June 30, 2008." [2007 c 222 § 4.]

Effective date—2006 c 302: See note following RCW 66.24.170.

Effective date—2003 c 167: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect July 1, 2003." [2003 c 167 § 14.]

Report to legislature—2003 c 167: See note following RCW 66.24.250.

Effective date—1998 c 126: See note following RCW 66.20.010.

Effective date—1997 c 321: See note following RCW 66.24.010.

66.24.244 Microbrewery's license—Fee. (Effective June 30, 2008.) (1) There shall be a license for microbreweries; fee to be one hundred dollars for production of less than sixty thousand barrels of malt liquor, including strong beer, per year.

(2) Any microbrewery licensed under this section may also act as a distributor and/or retailer for beer and strong beer of its own production. Strong beer may not be sold at a farmers market or under any endorsement which may authorize microbreweries to sell beer at farmers markets. Any microbrewery operating as a distributor and/or retailer under this subsection shall comply with the applicable laws and rules relating to distributors and/or retailers. A microbrewery holding a spirits, beer, and wine restaurant license may sell beer of its own production for off-premises consumption from its restaurant premises in kegs or in a sanitary container

brought to the premises by the purchaser or furnished by the licensee and filled at the tap by the licensee at the time of sale.

(3) The board may issue a license allowing a microbrewery to operate a spirits, beer, and wine restaurant under RCW 66.24.420.

(4) The board may issue a license to a microbrewery allowing for on-premises consumption of beer, including strong beer, wine, or both of other manufacture if purchased from a Washington state-licensed distributor. The microbrewer must determine, at the time the license is issued, whether the licensed premises will be operated as a tavern with persons under twenty-one years of age not allowed as provided for in RCW 66.24.330, or as a beer and/or wine restaurant as described in RCW 66.24.320.

(5) A microbrewery that holds a spirits, beer, and wine restaurant license or a beer and/or wine restaurant license shall hold the same privileges and endorsements as permitted under RCW 66.24.320 and 66.24.420.

(6) If the microbrewery licensee holds a separate license for a spirits, beer, and wine restaurant or a beer and/or wine restaurant, operated on the brewery premises, the licensee may hold a second retail license for a spirits, beer, and wine restaurant or a beer and/or wine restaurant, at a location separate from the licensed brewery premises.

(7)(a) A microbrewery licensed under this section may apply to the board for an endorsement to sell bottled beer of its own production at retail for off-premises consumption at a qualifying farmers market. The annual fee for this endorsement is seventy-five dollars.

(b) For each month during which a microbrewery will sell beer at a qualifying farmers market, the microbrewery must provide the board or its designee a list of the dates, times, and locations at which bottled beer may be offered for sale. This list must be received by the board before the microbrewery may offer beer for sale at a qualifying farmers market.

(c) The beer sold at qualifying farmers markets must be produced in Washington.

(d) Each approved location in a qualifying farmers market is deemed to be part of the microbrewery license for the purpose of this title. The approved locations under an endorsement granted under this subsection (7) do not constitute the tasting or sampling privilege of a microbrewery. The microbrewery may not store beer at a farmers market beyond the hours that the microbrewery offers bottled beer for sale. The microbrewery may not act as a distributor from a farmers market location.

(e) Before a microbrewery may sell bottled beer at a qualifying farmers market, the farmers market must apply to the board for authorization for any microbrewery with an endorsement approved under this subsection (7) to sell bottled beer at retail at the farmers market. This application shall include, at a minimum: (i) A map of the farmers market showing all booths, stalls, or other designated locations at which an approved microbrewery may sell bottled beer; and (ii) the name and contact information for the on-site market managers who may be contacted by the board or its designee to verify the locations at which bottled beer may be sold. Before authorizing a qualifying farmers market to allow an approved microbrewery to sell bottled beer at retail at its farmers market location, the board shall notify the persons or

entities of the application for authorization pursuant to RCW 66.24.010 (8) and (9). An authorization granted under this subsection (7)(e) may be withdrawn by the board for any violation of this title or any rules adopted under this title.

(f) The board may adopt rules establishing the application and approval process under this section and any additional rules necessary to implement this section.

(g) For the purposes of this subsection (7):

(i) "Qualifying farmers market" means an entity that sponsors a regular assembly of vendors at a defined location for the purpose of promoting the sale of agricultural products grown or produced in this state directly to the consumer under conditions that meet the following minimum requirements:

(A) There are at least five participating vendors who are farmers selling their own agricultural products;

(B) The total combined gross annual sales of vendors who are farmers exceeds the total combined gross annual sales of vendors who are processors or resellers;

(C) The total combined gross annual sales of vendors who are farmers, processors, or resellers exceeds the total combined gross annual sales of vendors who are not farmers, processors, or resellers;

(D) The sale of imported items and secondhand items by any vendor is prohibited; and

(E) No vendor is a franchisee.

(ii) "Farmer" means a natural person who sells, with or without processing, agricultural products that he or she raises on land he or she owns or leases in this state or in another state's county that borders this state.

(iii) "Processor" means a natural person who sells processed food that he or she has personally prepared on land he or she owns or leases in this state or in another state's county that borders this state.

(iv) "Reseller" means a natural person who buys agricultural products from a farmer and resells the products directly to the consumer. [2007 c 370 § 5; 2007 c 222 § 2; 2006 c 44 § 2. Prior: 2003 c 167 § 1; 2003 c 154 § 2; 1998 c 126 § 3; 1997 c 321 § 12.]

Reviser's note: This section was amended by 2007 c 222 § 2 and by 2007 c 370 § 5, each without reference to the other. Both amendments are incorporated in the publication of this section under RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

Effective date—2007 c 370 §§ 5 and 7: "Sections 5 and 7 of this act take effect June 30, 2008." [2007 c 370 § 22.]

Effective date—2007 c 222 § 2: "Section 2 of this act takes effect June 30, 2008." [2007 c 222 § 5.]

Effective date—2003 c 167: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect July 1, 2003." [2003 c 167 § 14.]

Report to legislature—2003 c 167: See note following RCW 66.24.250.

Effective date—1998 c 126: See note following RCW 66.20.010.

Effective date—1997 c 321: See note following RCW 66.24.010.

66.24.320 Beer and/or wine restaurant license—Containers—Fee—Caterer's endorsement. There shall be a beer and/or wine restaurant license to sell beer, including strong beer, or wine, or both, at retail, for consumption on the premises. A patron of the licensee may remove from the pre-

mises, recorked or recapped in its original container, any portion of wine that was purchased for consumption with a meal.

(1) The annual fee shall be two hundred dollars for the beer license, two hundred dollars for the wine license, or four hundred dollars for a combination beer and wine license.

(2)(a) The board may issue a caterer's endorsement to this license to allow the licensee to remove from the liquor stocks at the licensed premises, only those types of liquor that are authorized under the on-premises license privileges for sale and service at event locations at a specified date and, except as provided in subsection (3) of this section, place not currently licensed by the board. If the event is open to the public, it must be sponsored by a society or organization as defined by RCW 66.24.375. If attendance at the event is limited to members or invited guests of the sponsoring individual, society, or organization, the requirement that the sponsor must be a society or organization as defined by RCW 66.24.375 is waived. Cost of the endorsement is three hundred fifty dollars.

(b) The holder of this license with [a] catering endorsement shall, if requested by the board, notify the board or its designee of the date, time, place, and location of any catered event. Upon request, the licensee shall provide to the board all necessary or requested information concerning the society or organization that will be holding the function at which the endorsed license will be utilized.

(c) The holder of this license with a caterer's endorsement may, under conditions established by the board, store liquor on the premises of another not licensed by the board so long as there is a written agreement between the licensee and the other party to provide for ongoing catering services, the agreement contains no exclusivity clauses regarding the alcoholic beverages to be served, and the agreement is filed with the board.

(d) The holder of this license with a caterer's endorsement may, under conditions established by the board, store liquor on other premises operated by the licensee so long as the other premises are owned or controlled by a leasehold interest by that licensee. A duplicate license may be issued for each additional premises. A license fee of twenty dollars shall be required for such duplicate licenses.

(3) Licensees under this section that hold a caterer's endorsement are allowed to use this endorsement on a domestic winery premises or on the premises of a passenger vessel and may store liquor at such premises under conditions established by the board under the following conditions:

(a) Agreements between the domestic winery or the passenger vessel, as the case may be, and the retail licensee shall be in writing, contain no exclusivity clauses regarding the alcoholic beverages to be served, and be filed with the board; and

(b) The domestic winery or passenger vessel, as the case may be, and the retail licensee shall be separately contracted and compensated by the persons sponsoring the event for their respective services.

(4) The holder of this license or its manager may furnish beer or wine to the licensee's employees free of charge as may be required for use in connection with instruction on beer and wine. The instruction may include the history, nature, values, and characteristics of beer or wine, the use of wine lists, and the methods of presenting, serving, storing,

and handling beer or wine. The beer and/or wine licensee must use the beer or wine it obtains under its license for the sampling as part of the instruction. The instruction must be given on the premises of the beer and/or wine licensee.

(5) If the license is issued to a person who contracts with the Washington state ferry system to provide food and alcohol service on a designated ferry route, the license shall cover any vessel assigned to the designated route. A separate license is required for each designated ferry route. [2007 c 370 § 9. Prior: 2006 c 362 § 1; 2006 c 101 § 2; 2005 c 152 § 1; 2004 c 62 § 2; prior: 2003 c 345 § 1; 2003 c 167 § 6; 1998 c 126 § 4; 1997 c 321 § 18; 1995 c 232 § 6; 1991 c 42 § 1; 1987 c 458 § 11; 1981 1st ex.s. c 5 § 37; 1977 ex.s. c 9 § 1; 1969 c 117 § 1; 1967 ex.s. c 75 § 2; 1941 c 220 § 1; 1937 c 217 § 1 (23M) (adding new section 23-M to 1933 ex.s. c 62); Rem. Supp. 1941 § 7306-23M.]

Effective date—2003 c 167: See note following RCW 66.24.244.

Report to legislature—2003 c 167: See note following RCW 66.24.250.

Effective date—1998 c 126: See note following RCW 66.20.010.

Effective date—1997 c 321: See note following RCW 66.24.010.

Severability—1987 c 458: See note following RCW 48.21.160.

Severability—Effective date—1981 1st ex.s. c 5: See RCW 66.98.090 and 66.98.100.

Effective date—1967 ex.s. c 75: See note following RCW 66.08.180.

66.24.360 Grocery store license—Fees—Restricted license—Determination of public interest—Inventory—Endorsements. There shall be a beer and/or wine retailer's license to be designated as a grocery store license to sell beer, strong beer, and/or wine at retail in bottles, cans, and original containers, not to be consumed upon the premises where sold, at any store other than the state liquor stores.

(1) Licensees obtaining a written endorsement from the board may also sell malt liquor in kegs or other containers capable of holding less than five and one-half gallons of liquid.

(2) The annual fee for the grocery store license is one hundred fifty dollars for each store.

(3) The board shall issue a restricted grocery store license authorizing the licensee to sell beer and only table wine, if the board finds upon issuance or renewal of the license that the sale of strong beer or fortified wine would be against the public interest. In determining the public interest, the board shall consider at least the following factors:

(a) The likelihood that the applicant will sell strong beer or fortified wine to persons who are intoxicated;

(b) Law enforcement problems in the vicinity of the applicant's establishment that may arise from persons purchasing strong beer or fortified wine at the establishment; and

(c) Whether the sale of strong beer or fortified wine would be detrimental to or inconsistent with a government-operated or funded alcohol treatment or detoxification program in the area.

If the board receives no evidence or objection that the sale of strong beer or fortified wine would be against the public interest, it shall issue or renew the license without restriction, as applicable. The burden of establishing that the sale of strong beer or fortified wine by the licensee would be against the public interest is on those persons objecting.

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(4) Licensees holding a grocery store license must maintain a minimum three thousand dollar inventory of food products for human consumption, not including pop, beer, strong beer, or wine.

(5) Upon approval by the board, the grocery store licensee may also receive an endorsement to permit the international export of beer, strong beer, and wine.

(a) Any beer, strong beer, or wine sold under this endorsement must have been purchased from a licensed beer or wine distributor licensed to do business within the state of Washington.

(b) Any beer, strong beer, and wine sold under this endorsement must be intended for consumption outside the state of Washington and the United States and appropriate records must be maintained by the licensee.

(c) A holder of this special endorsement to the grocery store license shall be considered not in violation of RCW 66.28.010.

(d) Any beer, strong beer, or wine sold under this license must be sold at a price no less than the acquisition price paid by the holder of the license.

(e) The annual cost of this endorsement is five hundred dollars and is in addition to the license fees paid by the licensee for a grocery store license.

(6) A grocery store licensee holding a snack bar license under RCW 66.24.350 may receive an endorsement to allow the sale of confections containing more than one percent but not more than ten percent alcohol by weight to persons twenty-one years of age or older. [2007 c 226 § 2; 2003 c 167 § 8; 1997 c 321 § 22; 1993 c 21 § 1; 1991 c 42 § 4; 1987 c 46 § 1; 1981 1st ex.s. c 5 § 41; 1967 ex.s. c 75 § 6; 1937 c 217 § 1 (23Q) (adding new section 23-Q to 1933 ex.s. c 62); RRS § 7306-23Q.]

Application to certain retailers—2003 c 167 §§ 8 and 9: "Sections 8 and 9 of this act apply to retailers who hold a restricted grocery store license or restricted beer and/or wine specialty shop license on or after July 1, 2003." [2003 c 167 § 12.]

Effective date—2003 c 167: See note following RCW 66.24.244.

Report to legislature—2003 c 167: See note following RCW 66.24.250.

Effective date—1997 c 321: See note following RCW 66.24.010.

Severability—Effective date—1981 1st ex.s. c 5: See RCW 66.98.090 and 66.98.100.

Effective date—1967 ex.s. c 75: See note following RCW 66.08.180.

Employees under eighteen allowed to handle beer or wine: RCW 66.44.340.

66.24.375 "Society or organization" defined for certain purposes. "Society or organization" as used in RCW 66.24.380 means a not-for-profit group organized and operated (1) solely for charitable, religious, social, political, educational, civic, fraternal, athletic, or benevolent purposes, or (2) as a local wine industry association registered under section 501(c)(6) of the internal revenue code as it exists on July 22, 2007. No portion of the profits from events sponsored by a not-for-profit group may be paid directly or indirectly to members, officers, directors, or trustees except for services performed for the organization. Any compensation paid to its officers and executives must be only for actual services and at levels comparable to the compensation for like positions within the state. A society or organization which is registered with the secretary of state or the federal internal revenue ser-

vice as a nonprofit organization shall submit such registration, upon request, as proof that it is a not-for-profit group. [2007 c 370 § 1; 1997 c 321 § 61; 1981 c 287 § 2.]

Effective date—1997 c 321: See note following RCW 66.24.010.

Effective date—1981 c 287: "This act is necessary for the immediate preservation of the public peace, health, and safety, the support of the state government and its existing public institutions, and shall take effect July 1, 1981." [1981 c 287 § 3.]

66.24.400 Liquor by the drink, spirits, beer, and wine restaurant license—Liquor by the bottle for hotel or club guests—Removing unconsumed liquor, when (as amended by 2007 c 53). (1) There shall be a retailer's license, to be known and designated as a spirits, beer, and wine restaurant license, to sell spirituous liquor by the individual glass, beer, and wine, at retail, for consumption on the premises, including mixed drinks and cocktails compounded or mixed on the premises only(~~(= PROVIDED, That)~~). However, a hotel, or club licensed under chapter 70.62 RCW with overnight sleeping accommodations, that is licensed under this section may sell liquor by the bottle to registered guests of the hotel or club for consumption in guest rooms, hospitality rooms, or at banquets in the hotel or club(~~(= PROVIDED FURTHER, That)~~). A patron of a bona fide hotel, restaurant, or club licensed under this section may remove from the premises recorked or recapped in its original container any portion of wine which was purchased for consumption with a meal, and registered guests who have purchased liquor from the hotel or club by the bottle may remove from the premises any unused portion of such liquor in its original container. Such license may be issued only to bona fide restaurants, hotels and clubs, and to dining, club and buffet cars on passenger trains, and to dining places on passenger boats and airplanes, and to dining places at civic centers with facilities for sports, entertainment, and conventions, and to such other establishments operated and maintained primarily for the benefit of tourists, vacationers and travelers as the board shall determine are qualified to have, and in the discretion of the board should have, a spirits, beer, and wine restaurant license under the provisions and limitations of this title.

(2) The board may issue an endorsement to the spirits, beer, and wine restaurant license that allows the holder of a spirits, beer, and wine restaurant license to sell for off-premises consumption wine vinted and bottled in the state of Washington and carrying a label exclusive to the license holder selling the wine. Spirits and beer may not be sold for off-premises consumption under this section, except as provided in subsection (4) of this section. The annual fee for the endorsement under this subsection is one hundred twenty dollars.

(3) The holder of a spirits, beer, and wine license or its manager may furnish beer, wine, or spirituous liquor to the licensee's employees free of charge as may be required for use in connection with instruction on beer, wine, or spirituous liquor. The instruction may include the history, nature, values, and characteristics of beer, wine, or spirituous liquor, the use of wine lists, and the methods of presenting, serving, storing, and handling beer, wine, and spirituous liquor. The spirits, beer, and wine restaurant licensee must use the beer, wine, or spirituous liquor it obtains under its license for the sampling as part of the instruction. The instruction must be given on the premises of the spirits, beer, and wine restaurant licensee.

(4) The board may issue an endorsement to the spirits, beer, and wine restaurant license that allows the holder of a spirits, beer, and wine restaurant license to sell for off-premises consumption malt liquor in kegs or other containers that are capable of holding four gallons or more of liquid and are registered in accordance with RCW 66.28.200. The annual fee for the endorsement under this subsection is one hundred twenty dollars. [2007 c 53 § 1; 2005 c 152 § 2; 2001 c 199 § 4; 1998 c 126 § 5; 1997 c 321 § 26; 1987 c 196 § 1; 1986 c 208 § 1; 1981 c 94 § 2; 1977 ex.s. c 9 § 4; 1971 ex.s. c 208 § 1; 1949 c 5 § 1 (adding new section 23-S-1 to 1933 ex.s. c 62); Rem. Supp. 1949 § 7306-23S-1.]

66.24.400 Liquor by the drink, spirits, beer, and wine restaurant license—Liquor by the bottle for hotel or club guests—Removing unconsumed liquor, when (as amended by 2007 c 370). (Effective July 1, 2008.) (1) There shall be a retailer's license, to be known and designated as a spirits, beer, and wine restaurant license, to sell spirituous liquor by the individual glass, beer, and wine, at retail, for consumption on the premises, including mixed drinks and cocktails compounded or mixed on the premises only(~~(= PROVIDED, That a hotel, or)~~). A club licensed under chapter 70.62 RCW with overnight sleeping accommodations, that is licensed under this section may sell liquor by the bottle to registered guests of the (~~hotel or~~)

club for consumption in guest rooms, hospitality rooms, or at banquets in the (~~hotel or~~) club(~~(= PROVIDED FURTHER, That)~~). A patron of a bona fide (~~hotel,~~) restaurant(~~(=)~~) or club licensed under this section may remove from the premises recorked or recapped in its original container any portion of wine which was purchased for consumption with a meal, and registered guests who have purchased liquor from the (~~hotel or~~) club by the bottle may remove from the premises any unused portion of such liquor in its original container. Such license may be issued only to bona fide restaurants(~~(= hotels)~~) and clubs, and to dining, club and buffet cars on passenger trains, and to dining places on passenger boats and airplanes, and to dining places at civic centers with facilities for sports, entertainment, and conventions, and to such other establishments operated and maintained primarily for the benefit of tourists, vacationers and travelers as the board shall determine are qualified to have, and in the discretion of the board should have, a spirits, beer, and wine restaurant license under the provisions and limitations of this title.

(2) The board may issue an endorsement to the spirits, beer, and wine restaurant license that allows the holder of a spirits, beer, and wine restaurant license to sell for off-premises consumption wine vinted and bottled in the state of Washington and carrying a label exclusive to the license holder selling the wine. Spirits and beer may not be sold for off-premises consumption under this section. The annual fee for the endorsement under this subsection is one hundred twenty dollars.

(3) The holder of a spirits, beer, and wine license or its manager may furnish beer, wine, or spirituous liquor to the licensee's employees free of charge as may be required for use in connection with instruction on beer, wine, or spirituous liquor. The instruction may include the history, nature, values, and characteristics of beer, wine, or spirituous liquor, the use of wine lists, and the methods of presenting, serving, storing, and handling beer, wine, and spirituous liquor. The spirits, beer, and wine restaurant licensee must use the beer, wine, or spirituous liquor it obtains under its license for the sampling as part of the instruction. The instruction must be given on the premises of the spirits, beer, and wine restaurant licensee. [2007 c 370 § 13; 2005 c 152 § 2; 2001 c 199 § 4; 1998 c 126 § 5; 1997 c 321 § 26; 1987 c 196 § 1; 1986 c 208 § 1; 1981 c 94 § 2; 1977 ex.s. c 9 § 4; 1971 ex.s. c 208 § 1; 1949 c 5 § 1 (adding new section 23-S-1 to 1933 ex.s. c 62); Rem. Supp. 1949 § 7306-23S-1.]

Reviser's note: RCW 66.24.400 was amended twice during the 2007 legislative session, each without reference to the other. For rule of construction concerning sections amended more than once during the same legislative session, see RCW 1.12.025.

Effective date—2007 c 370 §§ 10-20: See note following RCW 66.04.010.

Effective date—1998 c 126: See note following RCW 66.20.010.

Effective date—1997 c 321: See note following RCW 66.24.010.

Effective date—1986 c 208: "This act is necessary for the immediate preservation of the public peace, health, and safety, the support of state government and its existing public institutions, and shall take effect on May 1, 1986." [1986 c 208 § 2.]

Severability—1949 c 5: See RCW 66.98.080.

66.24.410 Liquor by the drink, spirits, beer, and wine restaurant license—Terms defined. (Effective July 1, 2008.) (1) "Spirituous liquor," as used in RCW 66.24.400 to 66.24.450, inclusive, means "liquor" as defined in RCW 66.04.010, except "wine" and "beer" sold as such.

(2) "Restaurant" as used in RCW 66.24.400 to 66.24.450, inclusive, means an establishment provided with special space and accommodations where, in consideration of payment, food, without lodgings, is habitually furnished to the public, not including drug stores and soda fountains: PROVIDED, That such establishments shall be approved by the board and that the board shall be satisfied that such establishment is maintained in a substantial manner as a place for preparing, cooking and serving of complete meals. The service of only fry orders or such food and victuals as sandwiches, hamburgers, or salads shall not be deemed in compliance with this definition.

(3) "Hotel," "clubs," "wine" and "beer" are used in RCW 66.24.400 to 66.24.450, inclusive, with the meaning given in

chapter 66.04 RCW. [2007 c 370 § 18; 1983 c 3 § 164; 1981 1st ex.s. c 5 § 17; 1969 ex.s. c 112 § 1; 1957 c 263 § 2. Prior: 1949 c 5 § 2, part (adding new section 23-S-2 to 1933 ex.s. c 62); Rem. Supp. 1949 § 7306-23S-2, part.]

Effective date—2007 c 370 §§ 10-20: See note following RCW 66.04.010.

Severability—Effective date—1981 1st ex.s. c 5: See RCW 66.98.090 and 66.98.100.

Severability—1949 c 5: See RCW 66.98.080.

66.24.420 Liquor by the drink, spirits, beer, and wine restaurant license—Schedule of fees—Location—Number of licenses—Caterer's endorsement. (Effective until July 1, 2008.) (1) The spirits, beer, and wine restaurant license shall be issued in accordance with the following schedule of annual fees:

(a) The annual fee for a spirits, beer, and wine restaurant license shall be graduated according to the dedicated dining area and type of service provided as follows:

Less than 50% dedicated dining area	\$2,000
50% or more dedicated dining area	\$1,600
Service bar only	\$1,000

(b) The annual fee for the license when issued to any other spirits, beer, and wine restaurant licensee outside of incorporated cities and towns shall be prorated according to the calendar quarters, or portion thereof, during which the licensee is open for business, except in case of suspension or revocation of the license.

(c) Where the license shall be issued to any corporation, association or person operating a bona fide restaurant in an airport terminal facility providing service to transient passengers with more than one place where liquor is to be dispensed and sold, such license shall be issued upon the payment of the annual fee, which shall be a master license and shall permit such sale within and from one such place. Such license may be extended to additional places on the premises at the discretion of the board and a duplicate license may be issued for each such additional place. The holder of a master license for a restaurant in an airport terminal facility must maintain in a substantial manner at least one place on the premises for preparing, cooking, and serving of complete meals, and such food service shall be available on request in other licensed places on the premises. An additional license fee of twenty-five percent of the annual master license fee shall be required for such duplicate licenses.

(d) Where the license shall be issued to any corporation, association, or person operating dining places at a publicly or privately owned civic or convention center with facilities for sports, entertainment, or conventions, or a combination thereof, with more than one place where liquor is to be dispensed and sold, such license shall be issued upon the payment of the annual fee, which shall be a master license and shall permit such sale within and from one such place. Such license may be extended to additional places on the premises at the discretion of the board and a duplicate license may be issued for each such additional place. The holder of a master license for a dining place at such a publicly or privately owned civic or convention center must maintain in a substantial manner at least one place on the premises for preparing, cooking, and serving of complete meals, and food service

shall be available on request in other licensed places on the premises. An additional license fee of ten dollars shall be required for such duplicate licenses.

(e) Where the license shall be issued to any corporation, association or person operating more than one building containing dining places at privately owned facilities which are open to the public and where there is a continuity of ownership of all adjacent property, such license shall be issued upon the payment of an annual fee which shall be a master license and shall permit such sale within and from one such place. Such license may be extended to the additional dining places on the property or, in the case of a spirits, beer, and wine restaurant licensed hotel, property owned or controlled by leasehold interest by that hotel for use as a conference or convention center or banquet facility open to the general public for special events in the same metropolitan area, at the discretion of the board and a duplicate license may be issued for each additional place. The holder of the master license for the dining place shall not offer alcoholic beverages for sale, service, and consumption at the additional place unless food service is available at both the location of the master license and the duplicate license. An additional license fee of twenty dollars shall be required for such duplicate licenses.

(2) The board, so far as in its judgment is reasonably possible, shall confine spirits, beer, and wine restaurant licenses to the business districts of cities and towns and other communities, and not grant such licenses in residential districts, nor within the immediate vicinity of schools, without being limited in the administration of this subsection to any specific distance requirements.

(3) The board shall have discretion to issue spirits, beer, and wine restaurant licenses outside of cities and towns in the state of Washington. The purpose of this subsection is to enable the board, in its discretion, to license in areas outside of cities and towns and other communities, establishments which are operated and maintained primarily for the benefit of tourists, vacationers and travelers, and also golf and country clubs, and common carriers operating dining, club and buffet cars, or boats.

(4) The total number of spirits, beer, and wine restaurant licenses issued in the state of Washington by the board, not including spirits, beer, and wine private club licenses, shall not in the aggregate at any time exceed one license for each one thousand three hundred of population in the state, determined according to the yearly population determination developed by the office of financial management pursuant to RCW 43.62.030.

(5) Notwithstanding the provisions of subsection (4) of this section, the board shall refuse a spirits, beer, and wine restaurant license to any applicant if in the opinion of the board the spirits, beer, and wine restaurant licenses already granted for the particular locality are adequate for the reasonable needs of the community.

(6)(a) The board may issue a caterer's endorsement to this license to allow the licensee to remove the liquor stocks at the licensed premises, for use as liquor for sale and service at event locations at a specified date and, except as provided in subsection (7) of this section, place not currently licensed by the board. If the event is open to the public, it must be sponsored by a society or organization as defined by RCW 66.24.375. If attendance at the event is limited to members or

invited guests of the sponsoring individual, society, or organization, the requirement that the sponsor must be a society or organization as defined by RCW 66.24.375 is waived. Cost of the endorsement is three hundred fifty dollars.

(b) The holder of this license with a catering endorsement shall, if requested by the board, notify the board or its designee of the date, time, place, and location of any catered event. Upon request, the licensee shall provide to the board all necessary or requested information concerning the society or organization that will be holding the function at which the endorsed license will be utilized.

(c) The holder of this license with a caterer's endorsement may, under conditions established by the board, store liquor on the premises of another not licensed by the board so long as there is a written agreement between the licensee and the other party to provide for ongoing catering services, the agreement contains no exclusivity clauses regarding the alcoholic beverages to be served, and the agreement is filed with the board.

(d) The holder of this license with a caterer's endorsement may, under conditions established by the board, store liquor on other premises operated by the licensee so long as the other premises are owned or controlled by a leasehold interest by that licensee. A duplicate license may be issued for each additional premises. A license fee of twenty dollars shall be required for such duplicate licenses.

(7) Licensees under this section that hold a caterer's endorsement are allowed to use this endorsement on a domestic winery premises or on the premises of a passenger vessel and may store liquor at such premises under conditions established by the board under the following conditions:

(a) Agreements between the domestic winery or passenger vessel, as the case may be, and the retail licensee shall be in writing, contain no exclusivity clauses regarding the alcoholic beverages to be served, and be filed with the board; and

(b) The domestic winery or passenger vessel, as the case may be, and the retail licensee shall be separately contracted and compensated by the persons sponsoring the event for their respective services. [2007 c 370 § 8. Prior: 2006 c 101 § 3; 2006 c 85 § 1; 2004 c 62 § 3; 2003 c 345 § 2; 1998 c 126 § 6; 1997 c 321 § 27; 1996 c 218 § 4; 1995 c 55 § 1; 1981 1st ex.s. c 5 § 45; 1979 c 87 § 1; 1977 ex.s. c 219 § 4; 1975 1st ex.s. c 245 § 1; 1971 ex.s. c 208 § 2; 1970 ex.s. c 13 § 2; prior: 1969 ex.s. c 178 § 6; 1969 ex.s. c 136 § 1; 1965 ex.s. c 143 § 3; 1949 c 5 § 3 (adding new section 23-S-3 to 1933 ex.s. c 62); Rem. Supp. 1949 § 7306-23S-3.]

Effective date—1998 c 126: See note following RCW 66.20.010.

Effective date—1997 c 321: See note following RCW 66.24.010.

Severability—Effective date—1981 1st ex.s. c 5: See RCW 66.98.090 and 66.98.100.

Severability—1949 c 5: See RCW 66.98.080.

66.24.420 Liquor by the drink, spirits, beer, and wine restaurant license—Schedule of fees—Location—Number of licenses—Caterer's endorsement. (Effective July 1, 2008.) (1) The spirits, beer, and wine restaurant license shall be issued in accordance with the following schedule of annual fees:

(a) The annual fee for a spirits, beer, and wine restaurant license shall be graduated according to the dedicated dining area and type of service provided as follows:

Less than 50% dedicated dining area	\$2,000
50% or more dedicated dining area	\$1,600
Service bar only	\$1,000

(b) The annual fee for the license when issued to any other spirits, beer, and wine restaurant licensee outside of incorporated cities and towns shall be prorated according to the calendar quarters, or portion thereof, during which the licensee is open for business, except in case of suspension or revocation of the license.

(c) Where the license shall be issued to any corporation, association or person operating a bona fide restaurant in an airport terminal facility providing service to transient passengers with more than one place where liquor is to be dispensed and sold, such license shall be issued upon the payment of the annual fee, which shall be a master license and shall permit such sale within and from one such place. Such license may be extended to additional places on the premises at the discretion of the board and a duplicate license may be issued for each such additional place. The holder of a master license for a restaurant in an airport terminal facility must maintain in a substantial manner at least one place on the premises for preparing, cooking, and serving of complete meals, and such food service shall be available on request in other licensed places on the premises. An additional license fee of twenty-five percent of the annual master license fee shall be required for such duplicate licenses.

(d) Where the license shall be issued to any corporation, association, or person operating dining places at a publicly or privately owned civic or convention center with facilities for sports, entertainment, or conventions, or a combination thereof, with more than one place where liquor is to be dispensed and sold, such license shall be issued upon the payment of the annual fee, which shall be a master license and shall permit such sale within and from one such place. Such license may be extended to additional places on the premises at the discretion of the board and a duplicate license may be issued for each such additional place. The holder of a master license for a dining place at such a publicly or privately owned civic or convention center must maintain in a substantial manner at least one place on the premises for preparing, cooking, and serving of complete meals, and food service shall be available on request in other licensed places on the premises. An additional license fee of ten dollars shall be required for such duplicate licenses.

(2) The board, so far as in its judgment is reasonably possible, shall confine spirits, beer, and wine restaurant licenses to the business districts of cities and towns and other communities, and not grant such licenses in residential districts, nor within the immediate vicinity of schools, without being limited in the administration of this subsection to any specific distance requirements.

(3) The board shall have discretion to issue spirits, beer, and wine restaurant licenses outside of cities and towns in the state of Washington. The purpose of this subsection is to enable the board, in its discretion, to license in areas outside of cities and towns and other communities, establishments

which are operated and maintained primarily for the benefit of tourists, vacationers and travelers, and also golf and country clubs, and common carriers operating dining, club and buffet cars, or boats.

(4) The total number of spirits, beer, and wine restaurant licenses issued in the state of Washington by the board, not including spirits, beer, and wine private club licenses, shall not in the aggregate at any time exceed one license for each one thousand three hundred of population in the state, determined according to the yearly population determination developed by the office of financial management pursuant to RCW 43.62.030.

(5) Notwithstanding the provisions of subsection (4) of this section, the board shall refuse a spirits, beer, and wine restaurant license to any applicant if in the opinion of the board the spirits, beer, and wine restaurant licenses already granted for the particular locality are adequate for the reasonable needs of the community.

(6)(a) The board may issue a caterer's endorsement to this license to allow the licensee to remove the liquor stocks at the licensed premises, for use as liquor for sale and service at event locations at a specified date and, except as provided in subsection (7) of this section, place not currently licensed by the board. If the event is open to the public, it must be sponsored by a society or organization as defined by RCW 66.24.375. If attendance at the event is limited to members or invited guests of the sponsoring individual, society, or organization, the requirement that the sponsor must be a society or organization as defined by RCW 66.24.375 is waived. Cost of the endorsement is three hundred fifty dollars.

(b) The holder of this license with a catering endorsement shall, if requested by the board, notify the board or its designee of the date, time, place, and location of any catered event. Upon request, the licensee shall provide to the board all necessary or requested information concerning the society or organization that will be holding the function at which the endorsed license will be utilized.

(c) The holder of this license with a caterer's endorsement may, under conditions established by the board, store liquor on the premises of another not licensed by the board so long as there is a written agreement between the licensee and the other party to provide for ongoing catering services, the agreement contains no exclusivity clauses regarding the alcoholic beverages to be served, and the agreement is filed with the board.

(d) The holder of this license with a caterer's endorsement may, under conditions established by the board, store liquor on other premises operated by the licensee so long as the other premises are owned or controlled by a leasehold interest by that licensee. A duplicate license may be issued for each additional premises. A license fee of twenty dollars shall be required for such duplicate licenses.

(7) Licensees under this section that hold a caterer's endorsement are allowed to use this endorsement on a domestic winery premises or on the premises of a passenger vessel and may store liquor at such premises under conditions established by the board under the following conditions:

(a) Agreements between the domestic winery or passenger vessel, as the case may be, and the retail licensee shall be in writing, contain no exclusivity clauses regarding the alcoholic beverages to be served, and be filed with the board; and

(b) The domestic winery or passenger vessel, as the case may be, and the retail licensee shall be separately contracted and compensated by the persons sponsoring the event for their respective services. [2007 c 370 § 19; 2007 c 370 § 8. Prior: 2006 c 101 § 3; 2006 c 85 § 1; 2004 c 62 § 3; 2003 c 345 § 2; 1998 c 126 § 6; 1997 c 321 § 27; 1996 c 218 § 4; 1995 c 55 § 1; 1981 1st ex.s. c 5 § 45; 1979 c 87 § 1; 1977 ex.s. c 219 § 4; 1975 1st ex.s. c 245 § 1; 1971 ex.s. c 208 § 2; 1970 ex.s. c 13 § 2; prior: 1969 ex.s. c 178 § 6; 1969 ex.s. c 136 § 1; 1965 ex.s. c 143 § 3; 1949 c 5 § 3 (adding new section 23-S-3 to 1933 ex.s. c 62); Rem. Supp. 1949 § 7306-23S-3.]

Reviser's note: This section was amended by 2007 c 370 § 8 and by 2007 c 370 § 19, each without reference to the other. Both amendments are incorporated in the publication of this section under RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

Effective date—2007 c 370 §§ 10-20: See note following RCW 66.04.010.

Effective date—1998 c 126: See note following RCW 66.20.010.

Effective date—1997 c 321: See note following RCW 66.24.010.

Severability—Effective date—1981 1st ex.s. c 5: See RCW 66.98.090 and 66.98.100.

Severability—1949 c 5: See RCW 66.98.080.

66.24.440 Liquor by the drink, spirits, beer, and wine restaurant, spirits, beer, and wine private club, hotel, and sports entertainment facility license—Purchase of liquor by licensees—Discount. (Effective July 1, 2008.) Each spirits, beer, and wine restaurant, spirits, beer, and wine private club, hotel, and sports entertainment facility licensee shall be entitled to purchase any spirituous liquor items salable under such license from the board at a discount of not less than fifteen percent from the retail price fixed by the board, together with all taxes. [2007 c 370 § 20; 1998 c 126 § 8; 1997 c 321 § 29; 1949 c 5 § 5 (adding new section 23-S-5 to 1933 ex.s. c 62); Rem. Supp. 1949 § 7306-23S-5.]

Effective date—2007 c 370 §§ 10-20: See note following RCW 66.04.010.

Effective date—1998 c 126: See note following RCW 66.20.010.

Effective date—1997 c 321: See note following RCW 66.24.010.

Severability—1949 c 5: See RCW 66.98.080.

66.24.570 Sports entertainment facility license—Fee—Caterer's endorsement—Financial arrangements—Reporting. (1) There is a license for sports entertainment facilities to be designated as a sports entertainment facility license to sell beer, wine, and spirits at retail, for consumption upon the premises only, the license to be issued to the entity providing food and beverage service at a sports entertainment facility as defined in this section. The cost of the license is two thousand five hundred dollars per annum.

(2) For purposes of this section, a sports entertainment facility includes a publicly or privately owned arena, coliseum, stadium, or facility where sporting events are presented for a price of admission. The facility does not have to be exclusively used for sporting events.

(3) The board may impose reasonable requirements upon a licensee under this section, such as requirements for the availability of food and victuals including but not limited to hamburgers, sandwiches, salads, or other snack food. The board may also restrict the type of events at a sports entertain-

ment facility at which beer, wine, and spirits may be served. When imposing conditions for a licensee, the board must consider the seating accommodations, eating facilities, and circulation patterns in such a facility, and other amenities available at a sports entertainment facility.

(4)(a) The board may issue a caterer's endorsement to the licensee under this section to allow the licensee to remove from the liquor stocks at the licensed premises, for use as liquor for sale and service at event locations at a specified date and place not currently licensed by the board. If the event is open to the public, it must be sponsored by a society or organization as defined by RCW 66.24.375. If attendance at the event is limited to members or invited guests of the sponsoring individual, society, or organization, the requirement that the sponsor must be a society or organization as defined by RCW 66.24.375 is waived. Cost of the endorsement is three hundred fifty dollars.

(b) The holder of this license with catering endorsement shall, if requested by the board, notify the board or its designee of the date, time, place, and location of any catered event. Upon request, the licensee shall provide to the board all necessary or requested information concerning the society or organization that will be holding the function at which the endorsed license will be utilized.

(5) The board may issue an endorsement to the beer, wine, and spirits sports entertainment facility license that allows the holder of a beer, wine, and spirits sports entertainment facility license to sell for off-premises consumption wine vinted and bottled in the state of Washington and carrying a label exclusive to the license holder selling the wine. Spirits and beer may not be sold for off-premises consumption under this section. The annual fee for the endorsement under this section is one hundred twenty dollars.

(6)(a) A licensee and an affiliated business may enter into arrangements with a manufacturer, importer, or distributor for brand advertising at the sports entertainment facility or promotion of events held at the sports entertainment facility, with a capacity of five thousand people or more. The financial arrangements providing for the brand advertising or promotion of events shall not be used as an inducement to purchase the products of the manufacturer, importer, or distributor entering into the arrangement nor shall it result in the exclusion of brands or products of other companies.

(b) The arrangements allowed under this subsection (6) are an exception to arrangements prohibited under RCW 66.28.010. The board shall monitor the impacts of these arrangements. The board may conduct audits of the licensee and the affiliated business to determine compliance with this subsection (6). Audits may include but are not limited to product selection at the facility; purchase patterns of the licensee; contracts with the liquor manufacturer, importer, or distributor; and the amount allocated or used for liquor advertising by the licensee, affiliated business, manufacturer, importer, or distributor under the arrangements.

(c) The board shall report to the appropriate committees of the legislature by December 30, 2008, and biennially thereafter, on the impacts of arrangements allowed between sports entertainment licensees and liquor manufacturers, importers, and distributors for brand advertising and promotion of events at the facility. [2007 c 369 § 2; 2003 c 345 § 3; 2001 c 199 § 5; 1997 c 321 § 36; 1996 c 218 § 1.]

Effective date—1997 c 321: See note following RCW 66.24.010.

66.24.590 Hotel license—Fee—Limitations. (*Effective July 1, 2008.*) (1) There shall be a retailer's license to be designated as a hotel license. No license may be issued to a hotel offering rooms to its guests on an hourly basis. Food service provided for room service, banquets or conferences, or restaurant operation under this license shall meet the requirements of rules adopted by the board.

(2) The hotel license authorizes the licensee to:

(a) Sell spiritous liquor, beer, and wine, by the individual glass, at retail, for consumption on the premises, including mixed drinks and cocktails compounded and mixed on the premises, at dining places in the hotel;

(b) Sell, at retail, from locked honor bars, in individual units, spirits not to exceed fifty milliliters, beer in individual units not to exceed twelve ounces, and wine in individual bottles not to exceed three hundred eighty-five milliliters, to registered guests of the hotel for consumption in guest rooms. The licensee shall require proof of age from the guest renting a guest room and requesting the use of an honor bar. The guest shall also execute an affidavit verifying that no one under twenty-one years of age shall have access to the spirits, beer, and wine in the honor bar;

(c) Provide without additional charge, to overnight guests, spirits, beer, and wine by the individual serving for on-premises consumption at a specified regular date, time, and place as may be fixed by the board. Self-service by attendees is prohibited;

(d) Sell beer, including strong beer, wine, or spirits, in the manufacturer's sealed container or by the individual drink to guests through room service, or through service to occupants of private residential units;

(e) Sell beer, including strong beer, or wine, in the manufacturer's sealed container at retail sales locations within the hotel premises;

(f) Sell for on or off-premises consumption, including through room service and service to occupants of private residential units managed by the hotel, wine carrying a label exclusive to the hotel license holder;

(g) Place in guest rooms at check-in, a complimentary bottle of beer, including strong beer, or wine in a manufacturer-sealed container, and make a reference to this service in promotional material.

(3) If all or any facilities for alcoholic beverage service and the preparation, cooking, and serving of food are operated under contract or joint venture agreement, the operator may hold a license separate from the license held by the operator of the hotel. Food and beverage inventory used in separate licensed operations at the hotel may not be shared and shall be separately owned and stored by the separate licensees.

(4) All spirits to be sold under this license must be purchased from the board.

(5) All on-premise alcoholic beverage service must be done by an alcohol server as defined in RCW 66.20.300 and must comply with RCW 66.20.310.

(6)(a) The hotel license allows the licensee to remove from the liquor stocks at the licensed premises, liquor for sale and service at event locations at a specified date and place not currently licensed by the board. If the event is open to the

public, it must be sponsored by a society or organization as defined by RCW 66.24.375. If attendance at the event is limited to members or invited guests of the sponsoring individual, society, or organization, the requirement that the sponsor must be a society or organization as defined by RCW 66.24.375 is waived.

(b) The holder of this license shall, if requested by the board, notify the board or its designee of the date, time, place, and location of any event. Upon request, the licensee shall provide to the board all necessary or requested information concerning the society or organization that will be holding the function at which the endorsed license will be utilized.

(c) Licensees may cater events on a domestic winery premises.

(7) The holder of this license or its manager may furnish spirits, beer, or wine to the licensee's employees who are twenty-one years of age or older free of charge as may be required for use in connection with instruction on spirits, beer, and wine. The instruction may include the history, nature, values, and characteristics of spirits, beer, or wine, the use of wine lists, and the methods of presenting, serving, storing, and handling spirits, beer, or wine. The licensee must use the beer or wine it obtains under its license for the sampling as part of the instruction. The instruction must be given on the premises of the licensee.

(8) Minors may be allowed in all areas of the hotel where alcohol may be consumed; however, the consumption must be incidental to the primary use of the area. These areas include, but are not limited to, tennis courts, hotel lobbies, and swimming pool areas. If an area is not a mixed use area, and is primarily used for alcohol service, the area must be designated and restricted to access by minors.

(9) The annual fee for this license is two thousand dollars.

(10) As used in this section, "hotel," "spirits," "beer," and "wine" have the meanings defined in RCW 66.24.410 and 66.04.010. [2007 c 370 § 11.]

Effective date—2007 c 370 §§ 10-20: See note following RCW 66.04.010.

Chapter 66.28 RCW

MISCELLANEOUS REGULATORY PROVISIONS

Sections

66.28.010	Manufacturers, importers, distributors, and authorized representatives barred from interest in retail business or location—Advances prohibited—"Financial interest" defined—Exceptions.
66.28.150	Breweries, microbreweries, wineries, distilleries, distributors, certificate of approval holders, and agents authorized to conduct courses of instruction on beer and wine.
66.28.180	Price modification by certain persons, firms, or corporations—Board notification and approval—Intent—Price posting—Price filing, contracts, memoranda.
66.28.200	Keg registration—Special endorsement for grocery store licensee—Requirements of seller.
66.28.220	Keg registration—Identification of containers—Rules—Fees—Sale in violation of rules unlawful.

66.28.010 Manufacturers, importers, distributors, and authorized representatives barred from interest in retail business or location—Advances prohibited—"Financial interest" defined—Exceptions. (1)(a) No manufacturer, importer, distributor, or authorized representative,

or person financially interested, directly or indirectly, in such business; whether resident or nonresident, shall have any financial interest, direct or indirect, in any licensed retail business, unless the retail business is owned by a corporation in which a manufacturer or importer has no direct stock ownership and there are no interlocking officers and directors, the retail license is held by a corporation that is not owned directly or indirectly by a manufacturer or importer, the sales of liquor are incidental to the primary activity of operating the property as a hotel, alcoholic beverages produced by the manufacturer or importer or their subsidiaries are not sold at the licensed premises, and the board reviews the ownership and proposed method of operation of all involved entities and determines that there will not be an unacceptable level of control or undue influence over the operation or the retail licensee; nor shall any manufacturer, importer, distributor, or authorized representative own any of the property upon which such licensed persons conduct their business; nor shall any such licensed person, under any arrangement whatsoever, conduct his or her business upon property in which any manufacturer, importer, distributor, or authorized representative has any interest unless title to that property is owned by a corporation in which a manufacturer has no direct stock ownership and there are no interlocking officers or directors, the retail license is held by a corporation that is not owned directly or indirectly by the manufacturer, the sales of liquor are incidental to the primary activity of operating the property either as a hotel or as an amphitheater offering live musical and similar live entertainment activities to the public, alcoholic beverages produced by the manufacturer or any of its subsidiaries are not sold at the licensed premises, and the board reviews the ownership and proposed method of operation of all involved entities and determines that there will not be an unacceptable level of control or undue influence over the operation of the retail licensee. Except as provided in subsection (3) of this section, no manufacturer, importer, distributor, or authorized representative shall advance moneys or moneys' worth to a licensed person under an arrangement, nor shall such licensed person receive, under an arrangement, an advance of moneys or moneys' worth. "Person" as used in this section only shall not include those state or federally chartered banks, state or federally chartered savings and loan associations, state or federally chartered mutual savings banks, or institutional investors which are not controlled directly or indirectly by a manufacturer, importer, distributor, or authorized representative as long as the bank, savings and loan association, or institutional investor does not influence or attempt to influence the purchasing practices of the retailer with respect to alcoholic beverages. Except as otherwise provided in this section, no manufacturer, importer, distributor, or authorized representative shall be eligible to receive or hold a retail license under this title, nor shall such manufacturer, importer, distributor, or authorized representative sell at retail any liquor as herein defined. A corporation granted an exemption under this subsection may use debt instruments issued in connection with financing construction or operations of its facilities.

(b) Nothing in this section shall prohibit a licensed domestic brewery or microbrewery from being licensed as a retailer pursuant to chapter 66.24 RCW for the purpose of selling beer or wine at retail on the brewery premises and at

one additional off-site retail only location and nothing in this section shall prohibit a domestic winery from being licensed as a retailer pursuant to chapter 66.24 RCW for the purpose of selling beer or wine at retail on the winery premises. Such beer and wine so sold at retail shall be subject to the taxes imposed by RCW 66.24.290 and 66.24.210 and to reporting and bonding requirements as prescribed by regulations adopted by the board pursuant to chapter 34.05 RCW, and beer and wine that is not produced by the brewery or winery shall be purchased from a licensed beer or wine distributor. Nothing in this section shall prohibit a microbrewery holding a beer and/or wine restaurant license under RCW 66.24.320 from holding the same privileges and endorsements attached to the beer and/or wine restaurant license.

(c) Nothing in this section shall prohibit a licensed distiller, domestic brewery, microbrewery, domestic winery, or a lessee of a licensed domestic brewer, microbrewery, or domestic winery, from being licensed as a spirits, beer, and wine restaurant pursuant to chapter 66.24 RCW for the purpose of selling liquor at a spirits, beer, and wine restaurant premises on the property on which the primary manufacturing facility of the licensed distiller, domestic brewer, microbrewery, or domestic winery is located or on contiguous property owned or leased by the licensed distiller, domestic brewer, microbrewery, or domestic winery as prescribed by rules adopted by the board pursuant to chapter 34.05 RCW. Nothing in this section shall prohibit a microbrewery holding a spirits, beer, and wine restaurant license under RCW 66.24.420 from holding the same privileges and endorsements attached to the spirits, beer, and wine restaurant license. This section does not prohibit a brewery or microbrewery holding a spirits, beer, and wine restaurant license or a beer and/or wine license under chapter 66.24 RCW operated on the premises of the brewery or microbrewery from holding a second retail only license at a location separate from the premises of the brewery or microbrewery.

(d) Nothing in this section prohibits retail licensees with a caterer's endorsement issued under RCW 66.24.320 or 66.24.420 from operating on a domestic winery premises.

(e) Nothing in this section prohibits an organization qualifying under RCW 66.24.375 formed for the purpose of constructing and operating a facility to promote Washington wines from holding retail licenses on the facility property or leasing all or any portion of such facility property to a retail licensee on the facility property if the members of the board of directors or officers of the board for the organization include officers, directors, owners, or employees of a licensed domestic winery. Financing for the construction of the facility must include both public and private money.

(f) Nothing in this section prohibits a bona fide charitable nonprofit society or association registered under section 501(c)(3) of the internal revenue code, or a local wine industry association registered under section 501(c)(6) of the internal revenue code as it exists on July 22, 2007, and having an officer, director, owner, or employee of a licensed domestic winery or a wine certificate of approval holder on its board of directors from holding a special occasion license under RCW 66.24.380.

(g)(i) Nothing in this section prohibits domestic wineries and retailers licensed under chapter 66.24 RCW from producing jointly or together with regional, state, or local wine

industry associations, brochures and materials promoting tourism in Washington state which contain information regarding retail licensees, domestic wineries, and their products.

(ii) Nothing in this section prohibits: (A) Domestic wineries, domestic breweries, microbreweries, and certificate of approval holders licensed under this chapter from listing on their internet web sites information related to retailers who sell or promote their products, including direct links to the retailers' internet web sites; and (B) retailers licensed under this chapter from listing on their internet web sites information related to domestic wineries, domestic breweries, microbreweries, and certificate of approval holders whose products those retailers sell or promote, including direct links to the domestic wineries', domestic breweries', microbreweries', and certificate of approval holders' web sites.

(h) Nothing in this section prohibits the performance of personal services offered from time to time by a domestic winery or certificate of approval holder licensed under RCW 66.24.206(1)(a) for or on behalf of a licensed retail business when the personal services are (i) conducted at a licensed premises, and (ii) intended to inform, educate, or enhance customers' knowledge or experience of the manufacturer's products. The performance of personal services may include participation and pouring at the premises of a retailer holding a spirits, beer, and wine restaurant license, a wine and/or beer restaurant license, or a specialty wine shop license; bottle signings; and other similar informational or educational activities. A domestic winery or certificate of approval holder is not obligated to perform any such personal services, and a retail licensee may not require a domestic winery or certificate of approval holder to conduct any personal service as a condition for selling any alcohol to the retail licensee. Except as provided in RCW 66.28.150, the cost of sampling may not be borne, directly or indirectly, by any liquor manufacturer, importer, or distributor. Nothing in this section prohibits domestic wineries and retail licensees from identifying the wineries on private labels authorized under RCW 66.24.400, 66.24.425, and 66.24.450.

(i) Until July 1, 2007, nothing in this section prohibits a nonprofit statewide organization of microbreweries formed for the purpose of promoting Washington's craft beer industry as a trade association registered as a 501(c) with the internal revenue service from holding a special occasion license to conduct up to six beer festivals.

(j) Nothing in this section shall prohibit a manufacturer, importer, or distributor from entering into an arrangement with any holder of a sports/entertainment facility license or an affiliated business for brand advertising at the licensed facility or promoting events held at the sports entertainment facility as authorized under RCW 66.24.570.

(2) Financial interest, direct or indirect, as used in this section, shall include any interest, whether by stock ownership, mortgage, lien, or through interlocking directors, or otherwise. Pursuant to rules promulgated by the board in accordance with chapter 34.05 RCW manufacturers, distributors, and importers may perform, and retailers may accept the service of building, rotating and restocking case displays and stock room inventories; rotating and rearranging can and bottle displays of their own products; provide point of sale material and brand signs; price case goods of their own brands;

and perform such similar normal business services as the board may by regulation prescribe.

(3)(a) This section does not prohibit a manufacturer, importer, or distributor from providing services to a special occasion licensee for: (i) Installation of draft beer dispensing equipment or advertising, (ii) advertising, pouring, or dispensing of beer or wine at a beer or wine tasting exhibition or judging event, or (iii) a special occasion licensee from receiving any such services as may be provided by a manufacturer, importer, or distributor. Nothing in this section shall prohibit a retail licensee, or any person financially interested, directly or indirectly, in such a retail licensee from having a financial interest, direct or indirect, in a business which provides, for a compensation commensurate in value to the services provided, bottling, canning or other services to a manufacturer, so long as the retail licensee or person interested therein has no direct financial interest in or control of said manufacturer.

(b) A person holding contractual rights to payment from selling a liquor distributor's business and transferring the license shall not be deemed to have a financial interest under this section if the person (i) lacks any ownership in or control of the distributor, (ii) is not employed by the distributor, and (iii) does not influence or attempt to influence liquor purchases by retail liquor licensees from the distributor.

(c) The board shall adopt such rules as are deemed necessary to carry out the purposes and provisions of subsections (1)(g) and (h) and (3)(a) of this section in accordance with the administrative procedure act, chapter 34.05 RCW.

(4) A license issued under RCW 66.24.395 does not constitute a retail license for the purposes of this section.

(5) A public house license issued under RCW 66.24.580 does not violate the provisions of this section as to a retailer having an interest directly or indirectly in a liquor-licensed manufacturer. [2007 c 370 § 2; 2007 c 369 § 1; 2007 c 222 § 3; 2007 c 217 § 1. Prior: 2006 c 330 § 28; 2006 c 92 § 1; 2006 c 43 § 1; prior: 2004 c 160 § 9; 2004 c 62 § 1; 2002 c 109 § 1; 2000 c 177 § 1; prior: 1998 c 127 § 1; 1998 c 126 § 11; 1997 c 321 § 46; prior: 1996 c 224 § 3; 1996 c 106 § 1; 1994 c 63 § 1; 1992 c 78 § 1; 1985 c 363 § 1; 1982 c 85 § 7; 1977 ex.s. c 219 § 2; 1975-'76 2nd ex.s. c 74 § 3; 1975 1st ex.s. c 173 § 6; 1937 c 217 § 6; 1935 c 174 § 14; 1933 ex.s. c 62 § 90; RRS § 7306-90; prior: 1909 c 84 § 1.]

Reviser's note: This section was amended by 2007 c 217 § 1, 2007 c 222 § 3, 2007 c 369 § 1, and by 2007 c 370 § 2, each without reference to the other. All amendments are incorporated in the publication of this section under RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

Construction—Severability—2006 c 330: See RCW 15.89.900 and 15.89.901.

Effective date—2004 c 160: See note following RCW 66.04.010.

Effective date—1998 c 127: "This act takes effect July 1, 1998." [1998 c 127 § 2.]

Effective date—1998 c 126: See note following RCW 66.20.010.

Effective date—1997 c 321: See note following RCW 66.24.010.

Intent—1996 c 224: See note following RCW 66.24.580.

Effective date—1975-'76 2nd ex.s. c 74: See note following RCW 66.24.310.

Severability—Effective date—1975 1st ex.s. c 173: See notes following RCW 66.08.050.

Giving away of liquor prohibited—Exceptions: RCW 66.28.040.

[2007 RCW Supp—page 800]

66.28.150 Breweries, microbreweries, wineries, distilleries, distributors, certificate of approval holders, and agents authorized to conduct courses of instruction on beer and wine. A domestic brewery, microbrewery, domestic winery, distillery, distributor, certificate of approval holder, or its licensed agent may, without charge, instruct licensees and their employees, or conduct courses of instruction for licensees and their employees, including chefs, on the subject of beer, wine, or spirituous liquor, including but not limited to, the history, nature, values, and characteristics of beer, wine, or spirituous liquor, the use of wine lists, and the methods of presenting, serving, storing, and handling beer, wine, or spirituous liquor, and what wines go well with different types of food. The domestic brewery, microbrewery, domestic winery, distillery, distributor, certificate of approval holder, or its licensed agent may furnish beer, wine, or spirituous liquor and such other equipment, materials, and utensils as may be required for use in connection with the instruction or courses of instruction. The instruction or courses of instruction may be given at the premises of the domestic brewery, microbrewery, domestic winery, distillery, or authorized representative holding a certificate of approval, at the premises of a retail licensee, or elsewhere within the state of Washington. [2007 c 217 § 2; 2004 c 160 § 14; 1997 c 39 § 2; 1982 1st ex.s. c 26 § 1.]

Effective date—2004 c 160: See note following RCW 66.04.010.

66.28.180 Price modification by certain persons, firms, or corporations—Board notification and approval—Intent—Price posting—Price filing, contracts, memoranda.

Expiration date—2006 c 302: "Sections 9 and 11 of this act expire July 1, 2006." [2007 c 9 § 1; 2006 c 302 § 14.]

66.28.200 Keg registration—Special endorsement for grocery store licensee—Requirements of seller. (1) Licensees holding a beer and/or wine restaurant or a tavern license in combination with an off-premises beer and wine retailer's license or licensees holding a spirits, beer, and wine restaurant license with an endorsement issued under RCW 66.24.400(4) may sell malt liquor in kegs or other containers capable of holding four gallons or more of liquid. Under a special endorsement from the board, a grocery store licensee may sell malt liquor in containers no larger than five and one-half gallons. The sale of any container holding four gallons or more must comply with the provisions of this section and RCW 66.28.210 through 66.28.240.

(2) Any person who sells or offers for sale the contents of kegs or other containers containing four gallons or more of malt liquor, or leases kegs or other containers that will hold four gallons of malt liquor, to consumers who are not licensed under chapter 66.24 RCW shall do the following for any transaction involving the container:

(a) Require the purchaser of the malt liquor to sign a declaration and receipt for the keg or other container or beverage in substantially the form provided in RCW 66.28.220;

(b) Require the purchaser to provide one piece of identification pursuant to RCW 66.16.040;

(c) Require the purchaser to sign a sworn statement, under penalty of perjury, that:

(i) The purchaser is of legal age to purchase, possess, or use malt liquor;

(ii) The purchaser will not allow any person under the age of twenty-one years to consume the beverage except as provided by RCW 66.44.270;

(iii) The purchaser will not remove, obliterate, or allow to be removed or obliterated, the identification required under RCW 66.28.220 to be affixed to the container;

(d) Require the purchaser to state the particular address where the malt liquor will be consumed, or the particular address where the keg or other container will be physically located; and

(e) Require the purchaser to maintain a copy of the declaration and receipt next to or adjacent to the keg or other container, in no event a distance greater than five feet, and visible without a physical barrier from the keg, during the time that the keg or other container is in the purchaser's possession or control.

(3) A violation of this section is a gross misdemeanor. [2007 c 53 § 2; 2003 c 53 § 296; 1998 c 126 § 13; 1997 c 321 § 38; 1993 c 21 § 2; 1989 c 271 § 229.]

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

Effective date—1998 c 126: See note following RCW 66.20.010.

Effective date—1997 c 321: See note following RCW 66.24.010.

Effective dates—1989 c 271: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and shall take effect immediately, except:

(1) Sections 502 and 504 of this act shall take effect June 1, 1989; and

(2) Sections 229 through 233, 501, 503, and 505 through 509 of this act shall take effect July 1, 1989." [1989 c 271 § 607.]

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

66.28.220 Keg registration—Identification of containers—Rules—Fees—Sale in violation of rules unlawful. (1) The board shall adopt rules requiring retail licensees to affix appropriate identification on all containers of four gallons or more of malt liquor for the purpose of tracing the purchasers of such containers. The rules may provide for identification to be done on a statewide basis or on the basis of smaller geographical areas.

(2) The board shall develop and make available forms for the declaration and receipt required by RCW 66.28.200. The board may charge spirits, beer, and wine restaurant licensees with an endorsement issued under RCW 66.24.400(4) and grocery store licensees for the costs of providing the forms and that money collected for the forms shall be deposited into the liquor revolving fund for use by the board, without further appropriation, to continue to administer the cost of the keg registration program.

(3) It is unlawful for any person to sell or offer for sale kegs or other containers containing four gallons or more of malt liquor to consumers who are not licensed under chapter 66.24 RCW if the kegs or containers are not identified in compliance with rules adopted by the board.

(4) A violation of this section is a gross misdemeanor. [2007 c 53 § 3; 2003 c 53 § 298; 1999 c 281 § 7; 1993 c 21 § 3; 1989 c 271 § 231.]

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

Effective dates—1989 c 271: See note following RCW 66.28.200.

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

Chapter 66.44 RCW

ENFORCEMENT—PENALTIES

Sections

66.44.310 Minors frequenting off-limits area—Misrepresentation of age—Penalty—Classification of licensees. (*Effective July 1, 2008.*)

66.44.310 Minors frequenting off-limits area—Misrepresentation of age—Penalty—Classification of licensees. (*Effective July 1, 2008.*) (1) Except as otherwise provided by RCW 66.44.316, 66.44.350, and 66.24.590, it shall be a misdemeanor:

(a) To serve or allow to remain in any area classified by the board as off-limits to any person under the age of twenty-one years;

(b) For any person under the age of twenty-one years to enter or remain in any area classified as off-limits to such a person, but persons under twenty-one years of age may pass through a restricted area in a facility holding a spirits, beer, and wine private club license;

(c) For any person under the age of twenty-one years to represent his or her age as being twenty-one or more years for the purpose of purchasing liquor or securing admission to, or remaining in any area classified by the board as off-limits to such a person.

(2) The Washington state liquor control board shall have the power and it shall be its duty to classify licensed premises or portions of licensed premises as off-limits to persons under the age of twenty-one years of age. [2007 c 370 § 12; 1998 c 126 § 14; 1997 c 321 § 53; 1994 c 201 § 8; 1981 1st ex.s. c 5 § 24; 1943 c 245 § 1 (adding new section 36-A to 1933 ex.s. c 62); Rem. Supp. 1943 § 7306-36A. Formerly RCW 66.24.130 and 66.44.310.]

Effective date—2007 c 370 §§ 10-20: See note following RCW 66.04.010.

Effective date—1998 c 126: See note following RCW 66.20.010.

Effective date—1997 c 321: See note following RCW 66.24.010.

Severability—Effective date—1981 1st ex.s. c 5: See RCW 66.98.090 and 66.98.100.

Minors, access to tobacco, role of liquor control board: Chapter 70.155 RCW.

Title 67

SPORTS AND RECREATION— CONVENTION FACILITIES

Chapters

67.16 Horse racing.

67.28 Public stadium, convention, arts, and tourism facilities.

67.40 Convention and trade facilities.

Chapter 67.16 RCW
HORSE RACING

Sections

- 67.16.200 Parimutuel wagering at satellite locations—Simulcasts.
67.16.260 Advance deposit wagering.

67.16.200 Parimutuel wagering at satellite locations—Simulcasts. (1) A class 1 racing association licensed by the commission to conduct a race meet may seek approval from the commission to conduct parimutuel wagering at a satellite location or locations within the state of Washington. In order to participate in parimutuel wagering at a satellite location or locations within the state of Washington, the holder of a class 1 racing association license must have conducted at least one full live racing season. All class 1 racing associations must hold a live race meet within each succeeding twelve-month period to maintain eligibility to continue to participate in parimutuel wagering at a satellite location or locations. The sale of parimutuel pools at satellite locations shall be conducted simultaneous to all parimutuel wagering activity conducted at the licensee's live racing facility in the state of Washington. The commission's authority to approve satellite wagering at a particular location is subject to the following limitations:

(a) The commission may approve only one satellite location in each county in the state; however, the commission may grant approval for more than one licensee to conduct wagering at each satellite location. A satellite location shall not be operated within twenty driving miles of any class 1 racing facility. For the purposes of this section, "driving miles" means miles measured by the most direct route as determined by the commission; and

(b) A licensee shall not conduct satellite wagering at any satellite location within sixty driving miles of any other racing facility conducting a live race meet.

(2) Subject to local zoning and other land use ordinances, the commission shall be the sole judge of whether approval to conduct wagering at a satellite location shall be granted.

(3) The licensee shall combine the parimutuel pools of the satellite location with those of the racing facility for the purpose of determining odds and computing payoffs. The amount wagered at the satellite location shall be combined with the amount wagered at the racing facility for the application of take out formulas and distribution as provided in RCW 67.16.102, 67.16.105, 67.16.170, and 67.16.175. A satellite extension of the licensee's racing facility shall be subject to the same application of the rules of racing as the licensee's racing facility.

(4) Upon written application to the commission, a class 1 racing association may be authorized to transmit simulcasts of live horse races conducted at its racetrack to locations outside of the state of Washington approved by the commission and in accordance with the interstate horse racing act of 1978 (15 U.S.C. Sec. 3001 to 3007) or any other applicable laws. The commission may permit parimutuel pools on the simulcast races to be combined in a common pool. A racing association that transmits simulcasts of its races to locations outside this state shall pay at least fifty percent of the fee that it receives for sale of the simulcast signal to the horsemen's

purse account for its live races after first deducting the actual cost of sending the signal out of state.

(5) Upon written application to the commission, a class 1 racing association may be authorized to transmit simulcasts of live horse races conducted at its racetrack to licensed racing associations located within the state of Washington and approved by the commission for the receipt of the simulcasts. The commission shall permit parimutuel pools on the simulcast races to be combined in a common pool. The fee for in-state, track-to-track simulcasts shall be five and one-half percent of the gross parimutuel receipts generated at the receiving location and payable to the sending racing association. A racing association that transmits simulcasts of its races to other licensed racing associations shall pay at least fifty percent of the fee that it receives for the simulcast signal to the horsemen's purse account for its live race meet after first deducting the actual cost of sending the simulcast signal. A racing association that receives races simulcast from class 1 racing associations within the state shall pay at least fifty percent of its share of the parimutuel receipts to the horsemen's purse account for its live race meet after first deducting the purchase price and the actual direct costs of importing the race.

(6) A class 1 racing association may be allowed to import simulcasts of horse races from out-of-state racing facilities. With the prior approval of the commission, the class 1 racing association may participate in a multijurisdictional common pool and may change its commission and breakage rates to achieve a common rate with other participants in the common pool.

(a) The class 1 racing association shall make written application with the commission for permission to import simulcast horse races for the purpose of parimutuel wagering. Subject to the terms of this section, the commission is the sole authority in determining whether to grant approval for an imported simulcast race.

(b) When open for parimutuel wagering, a class 1 racing association which imports simulcast races shall also conduct simulcast parimutuel wagering within its licensed racing enclosure on all races simulcast from other class 1 racing associations within the state of Washington.

(c) On any imported simulcast race, the class 1 racing association shall pay fifty percent of its share of the parimutuel receipts to the horsemen's purse account for its live race meet after first deducting the purchase price of the imported race and the actual costs of importing and offering the race.

(7) A licensed nonprofit racing association may be approved to import one simulcast race of regional or national interest on each live race day.

(8) For purposes of this section, a class 1 racing association is defined as a licensee approved by the commission to conduct during each twelve-month period at least forty days of live racing. If a live race day is canceled due to reasons directly attributable to acts of God, labor disruptions affecting live race days but not directly involving the licensee or its employees, or other circumstances that the commission decides are beyond the control of the class 1 racing association, then the canceled day counts toward the forty-day requirement. The commission may by rule increase the number of live racing days required to maintain class 1 racing

association status or make other rules necessary to implement this section.

(9) This section does not establish a new form of gaming in Washington or allow expanded gaming within the state beyond what has been previously authorized. Simulcast wagering has been allowed in Washington before April 19, 1997. Therefore, this section does not allow gaming of any nature or scope that was prohibited before April 19, 1997. This section is necessary to protect the Washington equine breeding and racing industries, and in particular those sectors of these industries that are dependent upon live horse racing. The purpose of this section is to protect these industries from adverse economic impacts and to promote fan attendance at class 1 racing facilities. Therefore, a licensed class 1 racing association may be approved to disseminate imported simulcast race card programs to satellite locations approved under this section, provided that the class 1 racing association has conducted at least forty live racing days with an average on-track handle on the live racing product of a minimum of one hundred fifty thousand dollars per day during the twelve months immediately preceding the application date. However, to promote the development of a new class 1 racing association facility and to meet the best interests of the Washington equine breeding and racing industries, the commission may by rule reduce the required minimum average on-track handle on the live racing product from one hundred fifty thousand dollars per day to thirty thousand dollars per day.

(10) A licensee conducting simulcasting under this section shall place signs in the licensee's gambling establishment under RCW 9.46.071. The informational signs concerning problem and compulsive gambling must include a toll-free telephone number for problem and pathological gamblers and be developed under RCW 9.46.071.

(11) Chapter 10, Laws of 2001 1st sp. sess. does not establish a new form of gaming in Washington or allow expanded gaming within the state beyond what has been previously authorized. Simulcast wagering has been allowed in Washington before August 23, 2001. Therefore, this section does not allow gaming of any nature or scope that was prohibited before August 23, 2001. Chapter 10, Laws of 2001 1st sp. sess. is necessary to protect the Washington equine breeding and racing industries, and in particular those sectors of these industries that are dependent upon live horse racing. The purpose of chapter 10, Laws of 2001 1st sp. sess. is to protect these industries from adverse economic impacts and to promote fan attendance at class 1 racing facilities. [2007 c 100 § 1; 2004 c 274 § 2; 2001 1st sp.s. c 10 § 2; 2000 c 223 § 1; 1997 c 87 § 4; 1991 c 270 § 10; 1987 c 347 § 1.]

Effective date—2007 c 100: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately [April 18, 2007]." [2007 c 100 § 2.]

Effective date—2004 c 274: See note following RCW 67.16.260.

Finding—Purpose—2001 1st sp.s. c 10: "The legislature finds that Washington's equine racing industry creates economic, environmental, and recreational impacts across the state affecting agriculture, horse breeding, the horse training industry, agricultural fairs and youth programs, and tourism and employment opportunities. The Washington equine industry has incurred a financial decline coinciding with increased competition from the gaming industry in the state and from the lack of a class 1 racing facility in western Washington from 1993 through 1995. This act is necessary to preserve, restore, and revitalize the equine breeding and racing industries and to preserve in Washington the economic and social impacts associated with

these industries. Preserving Washington's equine breeding and racing industries, and in particular those sectors of the industries that are dependent upon live horse racing, is in the public interest of the state. The purpose of this act is to preserve Washington's equine breeding and racing industries and to protect these industries from adverse economic impacts. This act does not establish a new form of gaming in Washington or allow expanded gaming within the state beyond what has been previously authorized. Simulcast wagering has been allowed in Washington before August 23, 2001. Therefore, this act does not allow gaming of any nature or scope that was prohibited before August 23, 2001." [2001 1st sp.s. c 10 § 1.]

Findings—Purpose—1997 c 87: "The legislature finds that Washington's equine racing industry creates economic, environmental, and recreational impacts across the state affecting agriculture, horse breeding, the horse training industry, agricultural fairs and youth programs, and tourism and employment opportunities. The Washington equine industry has incurred a financial decline coinciding with increased competition from the gaming industry in the state and from the lack of a class 1 racing facility in western Washington from 1993 through 1995. This act is necessary to preserve, restore, and revitalize the equine breeding and racing industries and to preserve in Washington the economic and social impacts associated with these industries. Preserving Washington's equine breeding and racing industries, and in particular those sectors of the industries that are dependent upon live horse racing, is in the public interest of the state. The purpose of this act is to preserve Washington's equine breeding and racing industries and to protect these industries from adverse economic impacts. This act does not establish a new form of gaming in Washington or allow expanded gaming within the state beyond what has been previously authorized. Simulcast wagering has been allowed in Washington before April 19, 1997. Therefore, this act does not allow gaming of any nature or scope that was prohibited before April 19, 1997." [1997 c 87 § 1.]

Report by joint legislative audit and review committee—1997 c 87: "(1) The joint legislative audit and review committee shall conduct an evaluation to determine the extent to which this act has achieved the following outcomes:

- (a) The extent to which purses at Emerald Downs, Playfair, and Yakima Meadows have increased as a result of the provisions of this act;
- (b) The extent to which attendance at Emerald Downs, Playfair, and Yakima Meadows has increased specifically as a result of the provisions of this act;
- (c) The extent to which the breeding of horses in this state has increased specifically related to the provisions of this act;
- (d) The extent to which the number of horses running at Emerald Downs, Playfair, and Yakima Meadows has increased specifically as a result of the provisions of this act;
- (e) The extent to which nonprofit racetracks in this state have benefited from this act including the removal of the cap on the nonprofit race meet purse fund; and
- (f) The extent to which Emerald Downs, Playfair, and Yakima Meadows are capable of remaining economically viable given the provisions of this act and the increase in competition for gambling or entertainment dollars.

(2) The joint legislative audit and review committee may provide recommendations to the legislature concerning modifications that could be made to existing state laws to improve the ability of this act to meet the above intended goals.

(3) The joint legislative audit and review committee shall complete a report on its finding by June 30, 2000. The report shall be provided to the appropriate committees of the legislature by December 1, 2000." [1997 c 87 § 5.]

Severability—1997 c 87: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1997 c 87 § 7.]

Effective date—1997 c 87: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately [April 19, 1997]." [1997 c 87 § 8.]

67.16.260 Advance deposit wagering. (1) The horse racing commission may authorize advance deposit wagering to be conducted by:

- (a) A licensed class 1 racing association operating a live horse racing facility; or

(b) The operator of an advance deposit wagering system accepting wagers pursuant to an agreement with a licensed class 1 racing association. The agreement between the operator and the class 1 racing association must be approved by the commission.

(2) An entity authorized to conduct advance deposit wagering under subsection (1) of this section:

(a) May accept advance deposit wagering for races conducted in this state under a class 1 license or races not conducted within this state on a schedule approved by the class 1 licensee. A system of advance deposit wagering located outside or within this state may not accept wagers from residents or other individuals located within this state, and residents or other individuals located within this state are prohibited from placing wagers through advance deposit wagering systems, except with an entity authorized to conduct advance deposit wagering under subsection (1) of this section;

(b) May not accept an account wager in an amount in excess of the funds on deposit in the advance deposit wagering account of the individual placing the wager;

(c) May not allow individuals under the age of twenty-one to open, own, or have access to an advance deposit wagering account;

(d) Must include a statement in all forms of advertising for advance deposit wagering that individuals under the age of twenty-one are not allowed to open, own, or have access to an advance deposit wagering account; and

(e) Must verify the identification, residence, and age of the advance deposit wagering account holder using methods and technologies approved by the commission.

(3) As used in this section, "advance deposit wagering" means a form of parimutuel wagering in which an individual deposits money in an account with an entity authorized by the commission to conduct advance deposit wagering and then the account funds are used to pay for parimutuel wagers made in person, by telephone, or through communication by other electronic means.

(4) In order to participate in advance deposit wagering, the holder of a class 1 racing association license must have conducted at least one full live racing season. All class 1 racing associations must complete a live race meet within each succeeding twelve-month period to maintain eligibility to continue participating in advance deposit wagering.

(5) When more than one class 1 racing association is participating in advance deposit wagering the moneys paid to the racing associations shall be allocated proportionate to the gross amount of all sources of parimutuel wagering during each twelve-month period derived from the associations' live race meets. This percentage must be calculated annually. Revenue derived from advance deposit wagers placed on races conducted by the class 1 racing association shall all be allocated to that association.

(6) The commission shall adopt rules regulating advance deposit wagering. [2007 c 209 § 1; 2004 c 274 § 1.]

Effective date—2004 c 274: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately [April 1, 2004]." [2004 c 274 § 4.]

Chapter 67.28 RCW

PUBLIC STADIUM, CONVENTION, ARTS, AND TOURISM FACILITIES

Sections

67.28.080	Definitions. (2007 c 497 § 1 expires June 30, 2013.)
67.28.180	Lodging tax authorized—Conditions.
67.28.1816	Lodging tax—Tourism promotion. (Expires June 30, 2013.)
67.28.225	Compliance with prevailing wages on public works provisions.

67.28.080 Definitions. (2007 c 497 § 1 expires June 30, 2013.) The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

(1) "Acquisition" includes, but is not limited to, siting, acquisition, design, construction, refurbishing, expansion, repair, and improvement, including paying or securing the payment of all or any portion of general obligation bonds, leases, revenue bonds, or other obligations issued or incurred for such purpose or purposes under this chapter.

(2) "Municipality" means any county, city or town of the state of Washington.

(3) "Operation" includes, but is not limited to, operation, management, and marketing.

(4) "Person" means the federal government or any agency thereof, the state or any agency, subdivision, taxing district or municipal corporation thereof other than county, city or town, any private corporation, partnership, association, or individual.

(5) "Tourism" means economic activity resulting from tourists, which may include sales of overnight lodging, meals, tours, gifts, or souvenirs.

(6) "Tourism promotion" means activities, operations, and expenditures designed to increase tourism, including but not limited to advertising, publicizing, or otherwise distributing information for the purpose of attracting and welcoming tourists; developing strategies to expand tourism; operating tourism promotion agencies; and funding the marketing of or the operation of special events and festivals designed to attract tourists.

(7) "Tourism-related facility" means real or tangible personal property with a usable life of three or more years, or constructed with volunteer labor that is: (a)(i) Owned by a public entity; (ii) owned by a nonprofit organization described under section 501(c)(3) of the federal internal revenue code of 1986, as amended; or (iii) owned by a nonprofit organization described under section 501(c)(6) of the federal internal revenue code of 1986, as amended, a business organization, destination marketing organization, main street organization, lodging association, or chamber of commerce and (b) used to support tourism, performing arts, or to accommodate tourist activities.

(8) "Tourist" means a person who travels from a place of residence to a different town, city, county, state, or country, for purposes of business, pleasure, recreation, education, arts, heritage, or culture.

(9) Amendments made in section 1, chapter 497, Laws of 2007 expire June 30, 2013. [2007 c 497 § 1; 1997 c 452 § 2; 1991 c 357 § 1; 1967 c 236 § 1.]

Intent—1997 c 452: "The intent of this act is to provide uniform standards for local option excise taxation of lodging." [1997 c 452 § 1.]

Severability—1997 c 452: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1997 c 452 § 24.]

Savings—1997 c 452: See note following RCW 67.28.181.

Effective date, application—1991 c 357: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and shall take effect after immediately [effect immediately (May 21, 1991)]. This act applies retroactively to all actions taken under chapter 67.28 RCW on or after January 1, 1990." [1991 c 357 § 5.]

Clarification of permitted use or purpose: 2000 c 256.

67.28.180 Lodging tax authorized—Conditions. (1) Subject to the conditions set forth in subsections (2) and (3) of this section, the legislative body of any county or any city, is authorized to levy and collect a special excise tax of not to exceed two percent on the sale of or charge made for the furnishing of lodging that is subject to tax under chapter 82.08 RCW.

(2) Any levy authorized by this section shall be subject to the following:

(a) Any county ordinance or resolution adopted pursuant to this section shall contain, in addition to all other provisions required to conform to this chapter, a provision allowing a credit against the county tax for the full amount of any city tax imposed pursuant to this section upon the same taxable event.

(b) In the event that any county has levied the tax authorized by this section and has, prior to June 26, 1975, either pledged the tax revenues for payment of principal and interest on city revenue or general obligation bonds authorized and issued pursuant to RCW 67.28.150 through 67.28.160 or has authorized and issued revenue or general obligation bonds pursuant to the provisions of RCW 67.28.150 through 67.28.160, such county shall be exempt from the provisions of (a) of this subsection, to the extent that the tax revenues are pledged for payment of principal and interest on bonds issued at any time pursuant to the provisions of RCW 67.28.150 through 67.28.160: PROVIDED, That so much of such pledged tax revenues, together with any investment earnings thereon, not immediately necessary for actual payment of principal and interest on such bonds may be used: (i) In any county with a population of one million or more, for repayment either of limited tax levy general obligation bonds or of any county fund or account from which a loan was made, the proceeds from the bonds or loan being used to pay for constructing, installing, improving, and equipping stadium capital improvement projects, and to pay for any engineering, planning, financial, legal and professional services incident to the development of such stadium capital improvement projects, regardless of the date the debt for such capital improvement projects was or may be incurred; (ii) in any county with a population of one million or more, for repayment or refinancing of bonded indebtedness incurred prior to January 1, 1997, for any purpose authorized by this section or relating to stadium repairs or rehabilitation, including but not limited to the cost of settling legal claims, reimbursing operating funds, interest payments on short-term loans, and any other purpose for which such debt has been incurred if the county has created a public stadium authority to develop a stadium and exhibition center under RCW 36.102.030; or

(iii) in other counties, for county-owned facilities for agricultural promotion until January 1, 2009, and thereafter for any purpose authorized in this chapter.

A county is exempt under this subsection with respect to city revenue or general obligation bonds issued after April 1, 1991, only if such bonds mature before January 1, 2013. If any county located east of the crest of the Cascade mountains has levied the tax authorized by this section and has, prior to June 26, 1975, pledged the tax revenue for payment of principal and interest on city revenue or general obligation bonds, the county is exempt under this subsection with respect to revenue or general obligation bonds issued after January 1, 2007, only if the bonds mature before January 1, 2021. Such a county may only use funds under this subsection (2)(b) for constructing or improving facilities authorized under this chapter, including county-owned facilities for agricultural promotion, and must perform an annual financial audit of organizations receiving funding on the use of the funds.

As used in this subsection (2)(b), "capital improvement projects" may include, but not be limited to a stadium restaurant facility, restroom facilities, artificial turf system, seating facilities, parking facilities and scoreboard and information system adjacent to or within a county owned stadium, together with equipment, utilities, accessories and appurtenances necessary thereto. The stadium restaurant authorized by this subsection (2)(b) shall be operated by a private concessionaire under a contract with the county.

(c)(i) No city within a county exempt under subsection (2)(b) of this section may levy the tax authorized by this section so long as said county is so exempt.

(ii) If bonds have been issued under RCW 43.99N.020 and any necessary property transfers have been made under RCW 36.102.100, no city within a county with a population of one million or more may levy the tax authorized by this section before January 1, 2021.

(iii) However, in the event that any city in a county described in (i) or (ii) of this subsection (2)(c) has levied the tax authorized by this section and has, prior to June 26, 1975, authorized and issued revenue or general obligation bonds pursuant to the provisions of RCW 67.28.150 through 67.28.160, such city may levy the tax so long as the tax revenues are pledged for payment of principal and interest on bonds issued at any time pursuant to the provisions of RCW 67.28.150 through 67.28.160.

(3) Any levy authorized by this section by a county that has levied the tax authorized by this section and has, prior to June 26, 1975, either pledged the tax revenues for payment of principal and interest on city revenue or general obligation bonds authorized and issued pursuant to RCW 67.28.150 through 67.28.160 or has authorized and issued revenue or general obligation bonds pursuant to the provisions of RCW 67.28.150 through 67.28.160 shall be subject to the following:

(a) Taxes collected under this section in any calendar year before 2013 in excess of five million three hundred thousand dollars shall only be used as follows:

(i) Seventy-five percent from January 1, 1992, through December 31, 2000, and seventy percent from January 1, 2001, through December 31, 2012, for art museums, cultural museums, heritage museums, the arts, and the performing arts. Moneys spent under this subsection (3)(a)(i) shall be

used for the purposes of this subsection (3)(a)(i) in all parts of the county.

(ii) Twenty-five percent from January 1, 1992, through December 31, 2000, and thirty percent from January 1, 2001, through December 31, 2012, for the following purposes and in a manner reflecting the following order of priority: Stadium purposes as authorized under subsection (2)(b) of this section; acquisition of open space lands; youth sports activities; and tourism promotion. If all or part of the debt on the stadium is refinanced, all revenues under this subsection (3)(a)(ii) shall be used to retire the debt.

(b) From January 1, 2013, through December 31, 2015, in a county with a population of one million or more, all revenues under this section shall be used to retire the debt on the stadium, or deposited in the stadium and exhibition center account under RCW 43.99N.060 after the debt on the stadium is retired.

(c) From January 1, 2016, through December 31, 2020, in a county with a population of one million or more, all revenues under this section shall be deposited in the stadium and exhibition center account under RCW 43.99N.060.

(d) At least seventy percent of moneys spent under (a)(i) of this subsection for the period January 1, 1992, through December 31, 2000, shall be used only for the purchase, design, construction, and remodeling of performing arts, visual arts, heritage, and cultural facilities, and for the purchase of fixed assets that will benefit art, heritage, and cultural organizations. For purposes of this subsection, fixed assets are tangible objects such as machinery and other equipment intended to be held or used for ten years or more. Moneys received under this subsection (3)(d) may be used for payment of principal and interest on bonds issued for capital projects. Qualifying organizations receiving moneys under this subsection (3)(d) must be financially stable and have at least the following:

- (i) A legally constituted and working board of directors;
- (ii) A record of artistic, heritage, or cultural accomplishments;
- (iii) Been in existence and operating for at least two years;
- (iv) Demonstrated ability to maintain net current liabilities at less than thirty percent of general operating expenses;
- (v) Demonstrated ability to sustain operational capacity subsequent to completion of projects or purchase of machinery and equipment; and
- (vi) Evidence that there has been independent financial review of the organization.

(e) At least forty percent of the revenues distributed pursuant to (a)(i) of this subsection for the period January 1, 2001, through December 31, 2012, shall be deposited in an account and shall be used to establish an endowment. Principal in the account shall remain permanent and irreducible. The earnings from investments of balances in the account may only be used for the purposes of (a)(i) of this subsection.

(f) School districts and schools shall not receive revenues distributed pursuant to (a)(i) of this subsection.

(g) Moneys distributed to art museums, cultural museums, heritage museums, the arts, and the performing arts, and moneys distributed for tourism promotion shall be in addition to and may not be used to replace or supplant any other funding by the legislative body of the county.

(h) As used in this section, "tourism promotion" includes activities intended to attract visitors for overnight stays, arts, heritage, and cultural events, and recreational, professional, and amateur sports events. Moneys allocated to tourism promotion in a class AA county shall be allocated to nonprofit organizations formed for the express purpose of tourism promotion in the county. Such organizations shall use moneys from the taxes to promote events in all parts of the class AA county.

(i) No taxes collected under this section may be used for the operation or maintenance of a public stadium that is financed directly or indirectly by bonds to which the tax is pledged. Expenditures for operation or maintenance include all expenditures other than expenditures that directly result in new fixed assets or that directly increase the capacity, life span, or operating economy of existing fixed assets.

(j) No ad valorem property taxes may be used for debt service on bonds issued for a public stadium that is financed by bonds to which the tax is pledged, unless the taxes collected under this section are or are projected to be insufficient to meet debt service requirements on such bonds.

(k) If a substantial part of the operation and management of a public stadium that is financed directly or indirectly by bonds to which the tax is pledged is performed by a nonpublic entity or if a public stadium is sold that is financed directly or indirectly by bonds to which the tax is pledged, any bonds to which the tax is pledged shall be retired. This subsection (3)(k) does not apply in respect to a public stadium under chapter 36.102 RCW transferred to, owned by, or constructed by a public facilities district under chapter 36.100 RCW or a stadium and exhibition center.

(l) The county shall not lease a public stadium that is financed directly or indirectly by bonds to which the tax is pledged to, or authorize the use of the public stadium by, a professional major league sports franchise unless the sports franchise gives the right of first refusal to purchase the sports franchise, upon its sale, to local government. This subsection (3)(l) does not apply to contracts in existence on April 1, 1986.

If a court of competent jurisdiction declares any provision of this subsection (3) invalid, then that invalid provision shall be null and void and the remainder of this section is not affected. [2007 c 189 § 1; 2002 c 178 § 2; 1997 c 220 § 501 (Referendum Bill No. 48, approved June 17, 1997); 1995 1st sp.s. c 14 § 10; 1995 c 386 § 8. Prior: 1991 c 363 § 139; 1991 c 336 § 1; 1987 c 483 § 1; 1986 c 104 § 1; 1985 c 272 § 1; 1975 1st ex.s. c 225 § 1; 1973 2nd ex.s. c 34 § 5; 1970 ex.s. c 89 § 1; 1967 c 236 § 11.]

Retroactive application—2002 c 178: "This act applies retroactively to events occurring on and after September 1, 2001." [2002 c 178 § 6.]

Effective date—2002 c 178: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately [March 27, 2002]." [2002 c 178 § 7.]

Referendum—Other legislation limited—Legislators' personal intent not indicated—Reimbursements for election—Voters' pamphlet, election requirements—1997 c 220: See RCW 36.102.800 through 36.102.803.

Part headings not law—Severability—1997 c 220: See RCW 36.102.900 and 36.102.901.

Severability—Effective dates—1995 1st sp.s. c 14: See notes following RCW 36.100.010.

Severability—Effective date—1995 c 386: See notes following RCW 67.40.130.

Effective date—1991 c 336: "This act shall take effect January 1, 1992." [1991 c 336 § 3.]

Purpose—Captions not law—1991 c 363: See notes following RCW 2.32.180.

Effective date—1986 c 104: "This act is necessary for the immediate preservation of the public peace, health, and safety, the support of the state government and its existing public institutions, and shall take effect April 1, 1986." [1986 c 104 § 2.]

Severability—1985 c 272: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1985 c 272 § 2.]

Contracts for marketing facility and services: RCW 67.40.120.

Lodging tax imposed in King county for state convention and trade center: RCW 67.40.090.

67.28.1816 Lodging tax—Tourism promotion. (Expires June 30, 2013.) (1) Lodging tax revenues under this chapter may be used, directly by local jurisdictions or indirectly through a convention and visitors bureau or destination marketing organization, for the marketing and operations of special events and festivals and to support the operations and capital expenditures of tourism-related facilities owned by nonprofit organizations described under [section] 501(c)(3) and [section] 501(c)(6) of the internal revenue code of 1986, as amended.

(2) Local jurisdictions that use the lodging tax revenues under this section must submit an annual economic impact report for these expenditures to the department of community, trade, and economic development beginning January 1, 2008. This economic impact report, at a minimum, must include: (a) The total revenue received under this chapter for each year; (b) the list of festivals, special events, or nonprofit 501(c)(3) or 501(c)(6) organizations that received funds under this chapter; (c) the amount of revenue expended on each festival, special event, or tourism-related facility owned by a nonprofit 501(c)(3) or 501(c)(6) organization; (d) the estimated number of tourists, persons traveling over fifty miles to the destination, persons remaining at the destination overnight, and lodging stays generated per festival, special event, or tourism-related facility owned by a nonprofit 501(c)(3) or 501(c)(6) organization; (e) an estimated increase in sales and use tax revenues attributable to the special event, festival, or tourism-related facility owned by a nonprofit 501(c)(3) or 501(c)(6) organization; and (f) any other measurements the local government finds that demonstrate the impact of the increased tourism attributable to the festival, special event, or tourism-related facility owned by a nonprofit 501(c)(3) or 501(c)(6) organization.

(3) The joint legislative audit and review committee must report to the legislature and the governor on the use and economic impact of lodging tax revenues by local jurisdictions since July 22, 2007, to support festivals, special events, and tourism-related facilities owned by a nonprofit organization under section 501(c)(3) or 501(c)(6) of the internal revenue code of 1986, as amended, and the economic impact generated by these festivals, events, and facilities. This report shall be due September 1, 2012.

(4) This section expires June 30, 2013. [2007 c 497 § 2.]

67.28.225 Compliance with prevailing wages on public works provisions. A port district and any municipality or other entity involved in a joint venture or project with a port district under this chapter shall comply with the provisions of chapter 39.12 RCW. However, nothing in this section should be interpreted as a legislative intent to expand the application of chapter 39.12 RCW. [2007 c 476 § 2.]

Chapter 67.40 RCW

CONVENTION AND TRADE FACILITIES

Sections

67.40.040 Deposit of proceeds in state convention and trade center account and appropriate subaccounts—Credit against future borrowings—Use.

67.40.040 Deposit of proceeds in state convention and trade center account and appropriate subaccounts—Credit against future borrowings—Use. (1) The proceeds from the sale of the bonds authorized in RCW 67.40.030, proceeds of the taxes imposed under RCW 67.40.090 and 67.40.130, and all other moneys received by the state convention and trade center from any public or private source which are intended to fund the acquisition, design, construction, expansion, exterior cleanup and repair of the Eagles building, conversion of various retail and other space to meeting rooms, purchase of the land and building known as the McKay Parcel, development of low-income housing, or renovation of the center, and those expenditures authorized under RCW 67.40.170 shall be deposited in the state convention and trade center account hereby created in the state treasury and in such subaccounts as are deemed appropriate by the directors of the corporation.

(2) Moneys in the account, including unanticipated revenues under RCW 43.79.270, shall be used exclusively for the following purposes in the following priority:

(a) For reimbursement of the state general fund under RCW 67.40.060;

(b) After appropriation by statute:

(i) For payment of expenses incurred in the issuance and sale of the bonds issued under RCW 67.40.030;

(ii) For expenditures authorized in RCW 67.40.170;

(iii) For acquisition, design, and construction of the state convention and trade center;

(iv) For debt service for the acquisition, design, and construction and retrofit of the museum of history and industry museum property or other future expansions of the convention center as approved by the legislature; and

(v) For reimbursement of any expenditures from the state general fund in support of the state convention and trade center; and

(c) For transfer to the state convention and trade center operations account.

(3) The corporation shall identify with specificity those facilities of the state convention and trade center that are to be financed with proceeds of general obligation bonds, the interest on which is intended to be excluded from gross income for federal income tax purposes. The corporation shall not permit the extent or manner of private business use of those bond-financed facilities to be inconsistent with treatment of

such bonds as governmental bonds under applicable provisions of the Internal Revenue Code of 1986, as amended.

(4) In order to ensure consistent treatment of bonds authorized under RCW 67.40.030 with applicable provisions of the Internal Revenue Code of 1986, as amended, and notwithstanding RCW 43.84.092, investment earnings on bond proceeds deposited in the state convention and trade center account in the state treasury shall be retained in the account, and shall be expended by the corporation for the purposes authorized under chapter 386, Laws of 1995 and in a manner consistent with applicable provisions of the Internal Revenue Code of 1986, as amended.

(5) Subject to the conditions in subsection (6) of this section, starting in fiscal year 2008, the state treasurer shall transfer:

(a) The sum of four million dollars, or as much as may be available pursuant to conditions set forth in this section, from the state convention and trade center account to the tourism enterprise account, with the maximum transfer being four million dollars per fiscal year; and

(b) The sum of five hundred thousand dollars, or as much as may be available pursuant to conditions set forth in this section, from the state convention and trade center account to the tourism development and promotion account, with the maximum transfer being five hundred thousand dollars per fiscal year.

(6)(a) Funds required for debt service payments and reserves for bonds issued under RCW 67.40.030; for debt service authorized under RCW 67.40.170; and for the issuance and sale of financial instruments associated with the acquisition, design, construction, and retrofit of the museum of history and industry museum property or for other future expansions of the center, as approved by the legislature, shall be maintained within the state convention and trade center account.

(b) No less than six million one hundred fifty thousand dollars per year shall be retained in the state convention and trade center account for funding capital maintenance as required by the center's long-term capital plan, facility enhancements, unanticipated replacements, and operating reserves for the convention center operation. This amount shall be escalated annually as follows:

(i) Four percent for annual inflation for capital maintenance, repairs, and replacement;

(ii) An additional two percent for enhancement to the facility; and

(iii) An additional three percent for growth in expenditure due to aging of the facility and the need to maintain an operating reserve.

(c) Sufficient funds shall be reserved within the state convention and trade center account to fund operating appropriations for the annual operation of the convention center. [2007 c 228 § 106; 2005 c 518 § 936; 2003 1st sp.s. c 25 § 929; 1995 c 386 § 13; 1991 sp.s. c 13 § 11; 1990 c 181 § 2; 1988 ex.s. c 1 § 4; 1987 1st ex.s. c 8 § 4; 1985 c 57 § 66; 1983 2nd ex.s. c 1 § 4; 1982 c 34 § 4.]

Part headings not law—2007 c 228: See RCW 43.336.900.

Severability—Effective date—2005 c 518: See notes following RCW 28A.305.210.

Severability—Effective date—2003 1st sp.s. c 25: See notes following RCW 19.28.351.

Severability—Effective date—1995 c 386: See notes following RCW 67.40.130.

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

Severability—1987 1st ex.s. c 8: See note following RCW 67.40.020.

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

Title 68

CEMETERIES, MORGUES, AND HUMAN REMAINS

Chapters

68.32 Title and rights to cemetery plots.

68.50 Human remains.

68.52 Public cemeteries and morgues.

Chapter 68.32 RCW

TITLE AND RIGHTS TO CEMETERY PLOTS

Sections

68.32.020	Vested right of spouse or state registered domestic partner.
68.32.030	Vested right—Termination.
68.32.040	Descent of title to plot or right of interment.
68.32.060	Family plot—Sale.
68.32.110	Order of interment—General.
68.32.130	Waiver of right of placement.

68.32.020 Vested right of spouse or state registered domestic partner. The spouse or state registered domestic partner, of an owner of any plot or right of interment containing more than one placement space has a vested right of placement in the plot and any person thereafter becoming the spouse or state registered domestic partner, of the owner has a vested right of placement in the plot if more than one space is unoccupied at the time the person becomes the spouse or state registered domestic partner, of the owner. [2007 c 156 § 15; 2005 c 365 § 92; 1943 c 247 § 89; Rem. Supp. 1943 § 3778-89.]

68.32.030 Vested right—Termination. No conveyance or other action of the owner without the written consent of the spouse or state registered domestic partner, of the owner divests the spouse or state registered domestic partner, of a vested right of placement. A final decree of divorce between them or certification of termination of the state registered domestic partnership terminates the vested right of placement unless otherwise provided in the decree. [2007 c 156 § 16; 2005 c 365 § 93; 1943 c 247 § 90; Rem. Supp. 1943 § 3778-90.]

68.32.040 Descent of title to plot or right of interment. If no placement is made in a plot or right of interment, which has been transferred by deed or certificate of ownership to an individual owner, the title descends to the surviving spouse or state registered domestic partner. If there is no surviving spouse or state registered domestic partner, the title descends to the heirs at law of the owner. Following death of the owner, if all remains previously placed are lawfully removed and the owner did not dispose of the plot or right of interment by specific devise or by a written declaration filed and recorded in the office of the cemetery authority, the title

descends to the surviving spouse or state registered domestic partner. If there is no surviving spouse or state registered domestic partner, the title descends to the heirs at law of the owner. [2007 c 156 § 17; 2005 c 365 § 94; 1979 c 21 § 15; 1943 c 247 § 91; Rem. Supp. 1943 § 3778-91.]

68.32.060 Family plot—Sale. Whenever an interment of the human remains of a member or of a relative of a member of the family of the record owner or of the remains of the record owner is made in a plot transferred by deed or certificate of ownership to an individual owner and both the owner and the surviving spouse or state registered domestic partner, if any, die with children then living without making disposition of the plot either by a specific devise, or by a written declaration filed and recorded in the office of the cemetery authority, the plot shall thereafter be held as a family plot and shall be subject to sale only upon agreement of the children of the owner living at the time of sale. [2007 c 156 § 18; 2005 c 365 § 96; 1979 c 21 § 16; 1943 c 247 § 98; Rem. Supp. 1943 § 3778-98.]

68.32.110 Order of interment—General. In a family plot one right of interment may be used for the owner's interment and one for the owner's surviving spouse or state registered domestic partner, if any. Any unoccupied spaces may then be used by the remaining parents and children of the deceased owner, if any, then to the spouse or state registered domestic partner of any child of the owner, then to the heirs at law of the owner, in the order of death. [2007 c 156 § 19; 2005 c 365 § 101; 1943 c 247 § 99; Rem. Supp. 1943 § 3778-99.]

68.32.130 Waiver of right of placement. Any surviving spouse, state registered domestic partner, parent, child, or heir having a right of placement in a family plot may waive such right in favor of any other relative, spouse, or state registered domestic partner of a relative of the deceased owner. Upon such a waiver, the remains of the person in whose favor the waiver is made may be placed in the plot. [2007 c 156 § 20; 2005 c 365 § 102; 1943 c 247 § 101; Rem. Supp. 1943 § 3778-101.]

Chapter 68.50 RCW HUMAN REMAINS

Sections

68.50.100	Dissection, when permitted—Autopsy of person under the age of three years.
68.50.101	Autopsy, post mortem—Who may authorize.
68.50.105	Autopsies, post mortems—Reports and records confidential—Exceptions.
68.50.160	Right to control disposition of remains—Liability of funeral establishment or cemetery authority—Liability for cost.
68.50.200	Permission to remove human remains.
68.50.320	Procedures for investigating missing persons—Availability of files.
68.50.550	Anatomical gifts—By person other than decedent.

68.50.100 Dissection, when permitted—Autopsy of person under the age of three years. (1) The right to dissect a dead body shall be limited to cases specially provided by statute or by the direction or will of the deceased; cases where a coroner is authorized to hold an inquest upon the body, and

then only as he or she may authorize dissection; and cases where the spouse, state registered domestic partner, or next of kin charged by law with the duty of burial shall authorize dissection for the purpose of ascertaining the cause of death, and then only to the extent so authorized: PROVIDED, That the coroner, in his or her discretion, may make or cause to be made by a competent pathologist, toxicologist, or physician, an autopsy or postmortem in any case in which the coroner has jurisdiction of a body: PROVIDED, FURTHER, That the coroner may with the approval of the University of Washington and with the consent of a parent or guardian deliver any body of a deceased person under the age of three years over which he or she has jurisdiction to the University of Washington medical school for the purpose of having an autopsy made to determine the cause of death.

(2) Every person who shall make, cause, or procure to be made any dissection of a body, except as provided in this section, is guilty of a gross misdemeanor. [2007 c 156 § 21; 2003 c 53 § 307; 1963 c 178 § 2; 1953 c 188 § 2; 1909 c 249 § 237; RRS § 2489. Formerly RCW 68.08.100.]

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

68.50.101 Autopsy, post mortem—Who may authorize. Autopsy or post mortem may be performed in any case where authorization has been given by a member of one of the following classes of persons in the following order of priority:

- (1) The surviving spouse or state registered domestic partner;
- (2) Any child of the decedent who is eighteen years of age or older;
- (3) One of the parents of the decedent;
- (4) Any adult brother or sister of the decedent;
- (5) A person who was guardian of the decedent at the time of death;
- (6) Any other person or agency authorized or under an obligation to dispose of the remains of the decedent. The chief official of any such agency shall designate one or more persons to execute authorizations pursuant to the provisions of this section.

If the person seeking authority to perform an autopsy or post mortem makes reasonable efforts to locate and secure authorization from a competent person in the first or succeeding class and finds no such person available, authorization may be given by any person in the next class, in the order of descending priority. However, no person under this section shall have the power to authorize an autopsy or post mortem if a person of higher priority under this section has refused such authorization: PROVIDED, That this section shall not affect autopsies performed pursuant to RCW 68.50.010 or 68.50.103. [2007 c 156 § 22; 1987 c 331 § 57; 1977 c 79 § 1; 1953 c 188 § 11. Formerly RCW 68.08.101.]

68.50.105 Autopsies, post mortems—Reports and records confidential—Exceptions. Reports and records of autopsies or post mortems shall be confidential, except that the following persons may examine and obtain copies of any such report or record: The personal representative of the decedent as defined in RCW 11.02.005, any family member, the attending physician or advanced registered nurse practi-

tioner, the prosecuting attorney or law enforcement agencies having jurisdiction, public health officials, or to the department of labor and industries in cases in which it has an interest under RCW 68.50.103.

The coroner, the medical examiner, or the attending physician shall, upon request, meet with the family of the decedent to discuss the findings of the autopsy or post mortem. For the purposes of this section, the term "family" means the surviving spouse, state registered domestic partner, or any child, parent, grandparent, grandchild, brother, or sister of the decedent, or any person who was guardian of the decedent at the time of death. [2007 c 439 § 1; 2007 c 156 § 23; 1987 c 331 § 58; 1985 c 300 § 1; 1977 c 79 § 2; 1953 c 188 § 9. Formerly RCW 68.08.105.]

Reviser's note: This section was amended by 2007 c 156 § 23 and by 2007 c 439 § 1, each without reference to the other. Both amendments are incorporated in the publication of this section under RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

68.50.160 Right to control disposition of remains—Liability of funeral establishment or cemetery authority—Liability for cost. (1) A person has the right to control the disposition of his or her own remains without the predeath or postdeath consent of another person. A valid written document expressing the decedent's wishes regarding the place or method of disposition of his or her remains, signed by the decedent in the presence of a witness, is sufficient legal authorization for the procedures to be accomplished.

(2) Prearrangements that are prepaid, or filed with a licensed funeral establishment or cemetery authority, under RCW 18.39.280 through 18.39.345 and chapter 68.46 RCW are not subject to cancellation or substantial revision by survivors. Absent actual knowledge of contrary legal authorization under this section, a licensed funeral establishment or cemetery authority shall not be held criminally nor civilly liable for acting upon such prearrangements.

(3) If the decedent has not made a prearrangement as set forth in subsection (2) of this section or the costs of executing the decedent's wishes regarding the disposition of the decedent's remains exceeds a reasonable amount or directions have not been given by the decedent, the right to control the disposition of the remains of a deceased person vests in, and the duty of disposition and the liability for the reasonable cost of preparation, care, and disposition of such remains devolves upon the following in the order named:

- (a) The surviving spouse or state registered domestic partner.
- (b) The surviving adult children of the decedent.
- (c) The surviving parents of the decedent.
- (d) The surviving siblings of the decedent.
- (e) A person acting as a representative of the decedent under the signed authorization of the decedent.

(4) If a cemetery authority as defined in RCW 68.04.190 or a funeral establishment licensed under chapter 18.39 RCW has made a good faith effort to locate the person cited in subsection (3)(a) through (e) of this section or the legal representative of the decedent's estate, the cemetery authority or funeral establishment shall have the right to rely on an authority to bury or cremate the human remains, executed by the most responsible party available, and the cemetery authority or funeral establishment may not be held criminally

or civilly liable for burying or cremating the human remains. In the event any government agency provides the funds for the disposition of any human remains and the government agency elects to provide funds for cremation only, the cemetery authority or funeral establishment may not be held criminally or civilly liable for cremating the human remains.

(5) The liability for the reasonable cost of preparation, care, and disposition devolves jointly and severally upon all kin of the decedent in the same degree of kindred, in the order listed in subsection (3) of this section, and upon the estate of the decedent. [2007 c 156 § 24; 2005 c 365 § 141; 1993 c 297 § 1; 1992 c 108 § 1; 1943 c 247 § 29; Rem. Supp. 1943 § 3778-29. Formerly RCW 68.08.160.]

Disposal of remains of indigent persons: RCW 36.39.030.

Order of payment of debts of estate: RCW 11.76.110.

68.50.200 Permission to remove human remains.

Human remains may be removed from a plot in a cemetery with the consent of the cemetery authority and the written consent of one of the following in the order named:

- (1) The surviving spouse or state registered domestic partner.
- (2) The surviving children of the decedent.
- (3) The surviving parents of the decedent.
- (4) The surviving brothers or sisters of the decedent.

If the required consent cannot be obtained, permission by the superior court of the county where the cemetery is situated is sufficient: PROVIDED, That the permission shall not violate the terms of a written contract or the rules and regulations of the cemetery authority. [2007 c 156 § 25; 2005 c 365 § 144; 1943 c 247 § 33; Rem. Supp. 1943 § 3778-33. Formerly RCW 68.08.200.]

68.50.320 Procedures for investigating missing persons—Availability of files. When a person reported missing has not been found within thirty days of the report, or at any time the investigating agency suspects criminal activity to be the basis of the victim being missing, the sheriff, chief of police, county coroner or county medical examiner, or other law enforcement authority initiating and conducting the investigation for the missing person shall: (1) File a missing person's report with the Washington state patrol missing and unidentified persons unit; (2) initiate the collection of DNA samples from the known missing person and their family members for nuclear and mitochondrial DNA testing along with the necessary consent forms; and (3) ask the missing person's family or next of kin to give written consent to contact the dentist or dentists of the missing person and request the person's dental records.

The missing person's dentist or dentists shall provide diagnostic quality copies of the missing person's dental records or original dental records to the sheriff, chief of police, county coroner or county medical examiner, or other law enforcement authority, when presented with the written consent from the missing person's family or next of kin or with a statement from the sheriff, chief of police, county coroner or county medical examiner, or other law enforcement authority that the missing person's family or next of kin could not be located in the exercise of due diligence or that the missing person's family or next of kin refuse to consent to the

release of the missing person's dental records and there is reason to believe that the missing person's family or next of kin may have been involved in the missing person's disappearance.

As soon as possible after collecting the DNA samples, the sheriff, chief of police, or other law enforcement authority shall submit the DNA samples to the appropriate laboratory. Dental records shall be submitted as soon as possible to the Washington state patrol missing and unidentified persons unit.

The descriptive information from missing person's reports and dental data submitted to the Washington state patrol missing and unidentified persons unit shall be recorded and maintained by the Washington state patrol missing and unidentified persons unit in the applicable dedicated missing person's databases.

When a person reported missing has been found, the sheriff, chief of police, coroner or medical examiner, or other law enforcement authority shall report such information to the Washington state patrol.

The dental identification system shall maintain a file of information regarding persons reported to it as missing. The file shall contain the information referred to in this section and such other information as the Washington state patrol finds relevant to assist in the location of a missing person.

The files of the dental identification system shall, upon request, be made available to law enforcement agencies attempting to locate missing persons. [2007 c 10 § 5. Prior: 2006 c 235 § 4; 2006 c 102 § 6; 2001 c 223 § 1; 1984 c 17 § 18; 1983 1st ex.s. c 16 § 16. Formerly RCW 68.08.355.]

Intent—2007 c 10: See note following RCW 43.103.110.

Purpose—Effective date—2006 c 235: See notes following RCW 70.02.050.

Finding—Intent—2006 c 102: See note following RCW 36.28A.100.

Severability—Effective date—1983 1st ex.s. c 16: See RCW 43.103.900 and 43.103.901.

Missing children clearinghouse and hot line: Chapter 13.60 RCW.

68.50.550 Anatomical gifts—By person other than decedent. (1) A member of the following classes of persons, in the order of priority listed, absent contrary instructions by the decedent, may make an anatomical gift of all or a part of the decedent's body for an authorized purpose, unless the decedent, at the time of death, had made an unrevoked refusal to make that anatomical gift:

(a) The appointed guardian of the person of the decedent at the time of death;

(b) The individual, if any, to whom the decedent had given a durable power of attorney that encompassed the authority to make health care decisions;

(c) The spouse or state registered domestic partner, of the decedent;

(d) A son or daughter of the decedent who is at least eighteen years of age;

(e) Either parent of the decedent;

(f) A brother or sister of the decedent who is at least eighteen years of age;

(g) A grandparent of the decedent.

(2) An anatomical gift may not be made by a person listed in subsection (1) of this section if:

(a) A person in a prior class is available at the time of death to make an anatomical gift;

(b) The person proposing to make an anatomical gift knows of a refusal or contrary indications by the decedent; or

(c) The person proposing to make an anatomical gift knows of an objection to making an anatomical gift by a member of the person's class or a prior class.

(3) An anatomical gift by a person authorized under subsection (1) of this section must be made by (a) a document of gift signed by the person or (b) the person's telegraphic, recorded telephonic, or other recorded message, or other form of communication from the person that is contemporaneously reduced to writing and signed by the recipient of the communication.

(4) An anatomical gift by a person authorized under subsection (1) of this section may be revoked by a member of the same or a prior class if, before procedures have begun for the removal of a part from the body of the decedent, the physician, surgeon, technician, or enucleator removing the part knows of the revocation.

(5) A failure to make an anatomical gift under subsection (1) of this section is not an objection to the making of an anatomical gift. [2007 c 156 § 26; 1993 c 228 § 4.]

Chapter 68.52 RCW

PUBLIC CEMETERIES AND MORGUES

Sections

68.52.220 District commissioners—Compensation—Election.

68.52.220 District commissioners—Compensation—Election. The affairs of the district shall be managed by a board of cemetery district commissioners composed of three members. The board may provide, by resolution passed by the commissioners, for the payment of compensation to each of its commissioners at a rate of up to ninety dollars for each day or portion of a day spent in actual attendance at official meetings of the district commission, or in performance of other official services or duties on behalf of the district. However, the compensation for each commissioner must not exceed eight thousand six hundred forty dollars per year.

Any commissioner may waive all or any portion of his or her compensation payable under this section as to any month or months during his or her term of office, by a written waiver filed with the clerk of the board. The waiver, to be effective, must be filed any time after the commissioner's election and prior to the date on which the compensation would otherwise be paid. The waiver shall specify the month or period of months for which it is made. The board shall fix the compensation to be paid the secretary and other employees of the district. Cemetery district commissioners and candidates for cemetery district commissioner are exempt from the requirements of chapter 42.17 RCW.

The initial cemetery district commissioners shall assume office immediately upon their election and qualification.

Staggering of terms of office shall be accomplished as follows: (1) The person elected receiving the greatest number of votes shall be elected to a six-year term of office if the election is held in an odd-numbered year or a five-year term of office if the election is held in an even-numbered year; (2) the person who is elected receiving the next greatest number of votes shall be elected to a four-year term of office if the election is held in an odd-numbered year or a three-year term of office if the election is held in an even-numbered year; and (3) the other person who is elected shall be elected to a two-year term of office if the election is held in an odd-numbered year or a one-year term of office if the election is held in an even-numbered year. The initial commissioners shall assume office immediately after they are elected and qualified but their terms of office shall be calculated from the first day of January after the election.

Thereafter, commissioners shall be elected to six-year terms of office. Commissioners shall serve until their successors are elected and qualified and assume office as provided in RCW 29A.20.040.

The polling places for a cemetery district election may be located inside or outside the boundaries of the district, as determined by the auditor of the county in which the cemetery district is located, and no such election shall be held irregular or void on that account.

The dollar thresholds established in this section must be adjusted for inflation by the office of financial management every five years, beginning July 1, 2008, based upon changes in the consumer price index during that time period. "Consumer price index" means, for any calendar year, that year's annual average consumer price index, for Washington state, for wage earners and clerical workers, all items, compiled by the bureau of labor and statistics, United States department of labor. If the bureau of labor and statistics develops more than one consumer price index for areas within the state, the index covering the greatest number of people, covering areas exclusively within the boundaries of the state, and including all items shall be used for the adjustments for inflation in this section. The office of financial management must calculate the new dollar threshold and transmit it to the office of the code reviser for publication in the Washington State Register at least one month before the new dollar threshold is to take effect.

A person holding office as commissioner for two or more special purpose districts shall receive only that per diem compensation authorized for one of his or her commissioner positions as compensation for attending an official meeting or conducting official services or duties while representing more than one of his or her districts. However, such commissioner may receive additional per diem compensation if approved by resolution of all boards of the affected commissions. [2007 c 469 § 6; 1998 c 121 § 6; 1994 c 223 § 77; 1990 c 259 § 33; 1982 c 60 § 3; 1979 ex.s. c 126 § 40; 1947 c 6 § 14; Rem. Supp. 1947 § 3778-163. Formerly RCW 68.16.140.]

Purpose—1979 ex.s. c 126: See RCW 29A.20.040(1).

Title 69

FOOD, DRUGS, COSMETICS, AND POISONS

Chapters

- 69.04** Intrastate commerce in food, drugs, and cosmetics.
69.50 Uniform controlled substances act.
69.51A Medical marijuana.

Chapter 69.04 RCW

INTRASTATE COMMERCE IN FOOD, DRUGS, AND COSMETICS

Sections

- 69.04.240 Confectionery—Adulteration.

69.04.240 Confectionery—Adulteration. A food shall be deemed to be adulterated if it is confectionery and it bears or contains any alcohol from natural or artificial alcohol flavoring in excess of one percent of the weight of the confection or any nonnutritive article or substance except harmless coloring, harmless flavoring, harmless resinous glaze not in excess of four-tenths of one percent, natural gum, and pectin. This section shall not apply to any chewing gum by reason of its containing harmless nonnutritive masticatory substances, or to any confection permitted to be sold by an endorsement from the liquor control board under RCW 66.24.360. [2007 c 226 § 3; 1984 c 78 § 2; 1945 c 257 § 42; Rem. Supp. 1945 § 6163-91. Prior: 1923 c 36 § 1, part; 1907 c 211 § 3, part.]

Finding and declaration—Severability—1984 c 78: See notes following RCW 66.12.160.

Chapter 69.50 RCW

UNIFORM CONTROLLED SUBSTANCES ACT

Sections

- 69.50.511 Cleanup of hazardous substances at illegal drug manufacturing facility—Rules.

69.50.511 Cleanup of hazardous substances at illegal drug manufacturing facility—Rules. Law enforcement agencies who during the official investigation or enforcement of any illegal drug manufacturing facility come in contact with or are aware of any substances suspected of being hazardous as defined in RCW 70.105D.020, shall notify the department of ecology for the purpose of securing a contractor to identify, clean up, store, and dispose of suspected hazardous substances, except for those random and representative samples obtained for evidentiary purposes. Whenever possible, a destruct order covering hazardous substances which may be described in general terms shall be obtained concurrently with a search warrant. Materials that have been photographed, fingerprinted, and subsampled by police shall be destroyed as soon as practical. The department of ecology shall make every effort to recover costs from the parties responsible for the suspected hazardous substance. All recoveries shall be deposited in the account or fund from which contractor payments are made.

The department of ecology may adopt rules to carry out its responsibilities under this section. The department of ecology shall consult with law enforcement agencies prior to adopting any rule or policy relating to this section. [2007 c 104 § 17; 1990 c 213 § 13; 1989 c 271 § 228.]

Application—Construction—Severability—2007 c 104: See RCW 64.70.015 and 64.70.900.

Severability—1990 c 213: See RCW 64.44.901.

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

**Chapter 69.51A RCW
MEDICAL MARIJUANA**

Sections

- 69.51A.005 Purpose and intent.
- 69.51A.010 Definitions.
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69.51A.005 Purpose and intent. The people of Washington state find that some patients with terminal or debilitating illnesses, under their physician’s care, may benefit from the medical use of marijuana. Some of the illnesses for which marijuana appears to be beneficial include chemotherapy-related nausea and vomiting in cancer patients; AIDS wasting syndrome; severe muscle spasms associated with multiple sclerosis and other spasticity disorders; epilepsy; acute or chronic glaucoma; and some forms of intractable pain.

The people find that humanitarian compassion necessitates that the decision to authorize the medical use of marijuana by patients with terminal or debilitating illnesses is a personal, individual decision, based upon their physician’s professional medical judgment and discretion.

Therefore, the people of the state of Washington intend that:

Qualifying patients with terminal or debilitating illnesses who, in the judgment of their physicians, may benefit from the medical use of marijuana, shall not be found guilty of a crime under state law for their possession and limited use of marijuana;

Persons who act as designated providers to such patients shall also not be found guilty of a crime under state law for assisting with the medical use of marijuana; and

Physicians also be excepted from liability and prosecution for the authorization of marijuana use to qualifying patients for whom, in the physician’s professional judgment, medical marijuana may prove beneficial. [2007 c 371 § 2; 1999 c 2 § 2 (Initiative Measure No. 692, approved November 3, 1998).]

Intent—2007 c 371: "The legislature intends to clarify the law on medical marijuana so that the lawful use of this substance is not impaired and medical practitioners are able to exercise their best professional judgment in the delivery of medical treatment, qualifying patients may fully participate in the medical use of marijuana, and designated providers may assist patients in the manner provided by this act without fear of state criminal prosecution. This act is also intended to provide clarification to law enforcement and to all participants in the judicial system." [2007 c 371 § 1.]

69.51A.010 Definitions. The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

- (1) "Designated provider" means a person who:
 - (a) Is eighteen years of age or older;
 - (b) Has been designated in writing by a patient to serve as a designated provider under this chapter;
 - (c) Is prohibited from consuming marijuana obtained for the personal, medical use of the patient for whom the individual is acting as designated provider; and
 - (d) Is the designated provider to only one patient at any one time.
- (2) "Medical use of marijuana" means the production, possession, or administration of marijuana, as defined in RCW 69.50.101(q), for the exclusive benefit of a qualifying patient in the treatment of his or her terminal or debilitating illness.
- (3) "Qualifying patient" means a person who:
 - (a) Is a patient of a physician licensed under chapter 18.71 or 18.57 RCW;
 - (b) Has been diagnosed by that physician as having a terminal or debilitating medical condition;
 - (c) Is a resident of the state of Washington at the time of such diagnosis;
 - (d) Has been advised by that physician about the risks and benefits of the medical use of marijuana; and
 - (e) Has been advised by that physician that they may benefit from the medical use of marijuana.
- (4) "Terminal or debilitating medical condition" means:
 - (a) Cancer, human immunodeficiency virus (HIV), multiple sclerosis, epilepsy or other seizure disorder, or spasticity disorders; or
 - (b) Intractable pain, limited for the purpose of this chapter to mean pain unrelieved by standard medical treatments and medications; or
 - (c) Glaucoma, either acute or chronic, limited for the purpose of this chapter to mean increased intraocular pressure unrelieved by standard treatments and medications; or
 - (d) Crohn’s disease with debilitating symptoms unrelieved by standard treatments or medications; or
 - (e) Hepatitis C with debilitating nausea or intractable pain unrelieved by standard treatments or medications; or
 - (f) Diseases, including anorexia, which result in nausea, vomiting, wasting, appetite loss, cramping, seizures, muscle spasms, or spasticity, when these symptoms are unrelieved by standard treatments or medications; or
 - (g) Any other medical condition duly approved by the Washington state medical quality assurance commission in consultation with the board of osteopathic medicine and surgery as directed in this chapter.
- (5) "Valid documentation" means:
 - (a) A statement signed by a qualifying patient’s physician, or a copy of the qualifying patient’s pertinent medical records, which states that, in the physician’s professional opinion, the patient may benefit from the medical use of marijuana;
 - (b) Proof of identity such as a Washington state driver’s license or identicard, as defined in RCW 46.20.035; and
 - (c) A copy of the physician statement described in (a) of this subsection shall have the same force and effect as the

signed original. [2007 c 371 § 3; 1999 c 2 § 6 (Initiative Measure No. 692, approved November 3, 1998).]

Intent—2007 c 371: See note following RCW 69.51A.005.

69.51A.030 Physicians excepted from state's criminal laws. A physician licensed under chapter 18.71 or 18.57 RCW shall be excepted from the state's criminal laws and shall not be penalized in any manner, or denied any right or privilege, for:

(1) Advising a qualifying patient about the risks and benefits of medical use of marijuana or that the qualifying patient may benefit from the medical use of marijuana where such use is within a professional standard of care or in the individual physician's medical judgment; or

(2) Providing a qualifying patient with valid documentation, based upon the physician's assessment of the qualifying patient's medical history and current medical condition, that the medical use of marijuana may benefit a particular qualifying patient. [2007 c 371 § 4; 1999 c 2 § 4 (Initiative Measure No. 692, approved November 3, 1998).]

Intent—2007 c 371: See note following RCW 69.51A.005.

69.51A.040 Failure to seize marijuana, qualifying patients' affirmative defense. (1) If a law enforcement officer determines that marijuana is being possessed lawfully under the medical marijuana law, the officer may document the amount of marijuana, take a representative sample that is large enough to test, but not seize the marijuana. A law enforcement officer or agency shall not be held civilly liable for failure to seize marijuana in this circumstance.

(2) If charged with a violation of state law relating to marijuana, any qualifying patient who is engaged in the medical use of marijuana, or any designated provider who assists a qualifying patient in the medical use of marijuana, will be deemed to have established an affirmative defense to such charges by proof of his or her compliance with the requirements provided in this chapter. Any person meeting the requirements appropriate to his or her status under this chapter shall be considered to have engaged in activities permitted by this chapter and shall not be penalized in any manner, or denied any right or privilege, for such actions.

(3) A qualifying patient, if eighteen years of age or older, or a designated provider shall:

(a) Meet all criteria for status as a qualifying patient or designated provider;

(b) Possess no more marijuana than is necessary for the patient's personal, medical use, not exceeding the amount necessary for a sixty-day supply; and

(c) Present his or her valid documentation to any law enforcement official who questions the patient or provider regarding his or her medical use of marijuana.

(4) A qualifying patient, if under eighteen years of age at the time he or she is alleged to have committed the offense, shall demonstrate compliance with subsection (3)(a) and (c) of this section. However, any possession under subsection (3)(b) of this section, as well as any production, acquisition, and decision as to dosage and frequency of use, shall be the responsibility of the parent or legal guardian of the qualifying patient. [2007 c 371 § 5; 1999 c 2 § 5 (Initiative Measure No. 692, approved November 3, 1998).]

Intent—2007 c 371: See note following RCW 69.51A.005.

69.51A.060 Crimes—Limitations of chapter. (1) It shall be a misdemeanor to use or display medical marijuana in a manner or place which is open to the view of the general public.

(2) Nothing in this chapter requires any health insurance provider to be liable for any claim for reimbursement for the medical use of marijuana.

(3) Nothing in this chapter requires any physician to authorize the use of medical marijuana for a patient.

(4) Nothing in this chapter requires any accommodation of any on-site medical use of marijuana in any place of employment, in any school bus or on any school grounds, in any youth center, in any correctional facility, or smoking medical marijuana in any public place as that term is defined in RCW 70.160.020.

(5) It is a class C felony to fraudulently produce any record purporting to be, or tamper with the content of any record for the purpose of having it accepted as, valid documentation under *RCW 69.51A.010(6)(a).

(6) No person shall be entitled to claim the affirmative defense provided in RCW 69.51A.040 for engaging in the medical use of marijuana in a way that endangers the health or well-being of any person through the use of a motorized vehicle on a street, road, or highway. [2007 c 371 § 6; 1999 c 2 § 8 (Initiative Measure No. 692, approved November 3, 1998).]

***Reviser's note:** The reference to RCW 69.51A.010(6)(a) is erroneous. RCW 69.51A.010(5)(a) was apparently intended.

Intent—2007 c 371: See note following RCW 69.51A.005.

69.51A.070 Addition of medical conditions. The Washington state medical quality assurance commission in consultation with the board of osteopathic medicine and surgery, or other appropriate agency as designated by the governor, shall accept for consideration petitions submitted to add terminal or debilitating conditions to those included in this chapter. In considering such petitions, the Washington state medical quality assurance commission in consultation with the board of osteopathic medicine and surgery shall include public notice of, and an opportunity to comment in a public hearing upon, such petitions. The Washington state medical quality assurance commission in consultation with the board of osteopathic medicine and surgery shall, after hearing, approve or deny such petitions within one hundred eighty days of submission. The approval or denial of such a petition shall be considered a final agency action, subject to judicial review. [2007 c 371 § 7; 1999 c 2 § 9 (Initiative Measure No. 692, approved November 3, 1998).]

Intent—2007 c 371: See note following RCW 69.51A.005.

69.51A.080 Adoption of rules by the department of health—Sixty-day supply for qualifying patients. (1) By July 1, 2008, the department of health shall adopt rules defining the quantity of marijuana that could reasonably be presumed to be a sixty-day supply for qualifying patients; this presumption may be overcome with evidence of a qualifying patient's necessary medical use.

(2) As used in this chapter, "sixty-day supply" means that amount of marijuana that qualifying patients would rea-

sonably be expected to need over a period of sixty days for their personal medical use. During the rule-making process, the department shall make a good faith effort to include all stakeholders identified in the rule-making analysis as being impacted by the rule.

(3) The department of health shall gather information from medical and scientific literature, consulting with experts and the public, and reviewing the best practices of other states regarding access to an adequate, safe, consistent, and secure source, including alternative distribution systems, of medical marijuana for qualifying patients. The department shall report its findings to the legislature by July 1, 2008. [2007 c 371 § 8.]

Intent—2007 c 371: See note following RCW 69.51A.005.

Title 70

PUBLIC HEALTH AND SAFETY

Chapters

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Chapter 70.02 RCW

MEDICAL RECORDS—HEALTH CARE INFORMATION ACCESS AND DISCLOSURE

Sections

70.02.050 Disclosure without patient's authorization.

70.02.050 Disclosure without patient's authorization.

(1) A health care provider or health care facility may disclose health care information about a patient without the patient's authorization to the extent a recipient needs to know the information, if the disclosure is:

(a) To a person who the provider or facility reasonably believes is providing health care to the patient;

(b) To any other person who requires health care information for health care education, or to provide planning, quality assurance, peer review, or administrative, legal, financial, actuarial services to, or other health care operations for or on behalf of the health care provider or health care facility; or for assisting the health care provider or health care facility in the delivery of health care and the health care provider or health care facility reasonably believes that the person:

(i) Will not use or disclose the health care information for any other purpose; and

(ii) Will take appropriate steps to protect the health care information;

(c) To any other health care provider or health care facility reasonably believed to have previously provided health care to the patient, to the extent necessary to provide health care to the patient, unless the patient has instructed the health care provider or health care facility in writing not to make the disclosure;

(d) To any person if the health care provider or health care facility reasonably believes that disclosure will avoid or minimize an imminent danger to the health or safety of the patient or any other individual, however there is no obligation under this chapter on the part of the provider or facility to so disclose;

(e) To immediate family members of the patient, including a patient's state registered domestic partner, or any other individual with whom the patient is known to have a close personal relationship, if made in accordance with good medical or other professional practice, unless the patient has instructed the health care provider or health care facility in writing not to make the disclosure;

(f) To a health care provider or health care facility who is the successor in interest to the health care provider or health care facility maintaining the health care information;

(g) For use in a research project that an institutional review board has determined:

(i) Is of sufficient importance to outweigh the intrusion into the privacy of the patient that would result from the disclosure;

(ii) Is impracticable without the use or disclosure of the health care information in individually identifiable form;

(iii) Contains reasonable safeguards to protect the information from redisclosure;

(iv) Contains reasonable safeguards to protect against identifying, directly or indirectly, any patient in any report of the research project; and

(v) Contains procedures to remove or destroy at the earliest opportunity, consistent with the purposes of the project, information that would enable the patient to be identified, unless an institutional review board authorizes retention of identifying information for purposes of another research project;

(h) To a person who obtains information for purposes of an audit, if that person agrees in writing to:

(i) Remove or destroy, at the earliest opportunity consistent with the purpose of the audit, information that would enable the patient to be identified; and

(ii) Not to disclose the information further, except to accomplish the audit or report unlawful or improper conduct involving fraud in payment for health care by a health care provider or patient, or other unlawful conduct by the health care provider;

(i) To an official of a penal or other custodial institution in which the patient is detained;

(j) To provide directory information, unless the patient has instructed the health care provider or health care facility not to make the disclosure;

(k) To fire, police, sheriff, or another public authority, that brought, or caused to be brought, the patient to the health care facility or health care provider if the disclosure is limited to the patient's name, residence, sex, age, occupation, condition, diagnosis, estimated or actual discharge date, or extent and location of injuries as determined by a physician, and whether the patient was conscious when admitted;

(l) To federal, state, or local law enforcement authorities and the health care provider, health care facility, or third-party payor believes in good faith that the health care information disclosed constitutes evidence of criminal conduct that occurred on the premises of the health care provider, health care facility, or third-party payor;

(m) To another health care provider, health care facility, or third-party payor for the health care operations of the health care provider, health care facility, or third-party payor that receives the information, if each entity has or had a relationship with the patient who is the subject of the health care information being requested, the health care information pertains to such relationship, and the disclosure is for the purposes described in RCW 70.02.010(8) (a) and (b); or

(n) For payment.

(2) A health care provider shall disclose health care information about a patient without the patient's authorization if the disclosure is:

(a) To federal, state, or local public health authorities, to the extent the health care provider is required by law to report health care information; when needed to determine compliance with state or federal licensure, certification or registration rules or laws; or when needed to protect the public health;

(b) To federal, state, or local law enforcement authorities to the extent the health care provider is required by law;

(c) To federal, state, or local law enforcement authorities, upon receipt of a written or oral request made to a nursing supervisor, administrator, or designated privacy official, in a case in which the patient is being treated or has been treated for a bullet wound, gunshot wound, powder burn, or other injury arising from or caused by the discharge of a firearm, or an injury caused by a knife, an ice pick, or any other

sharp or pointed instrument which federal, state, or local law enforcement authorities reasonably believe to have been intentionally inflicted upon a person, or a blunt force injury that federal, state, or local law enforcement authorities reasonably believe resulted from a criminal act, the following information, if known:

(i) The name of the patient;

(ii) The patient's residence;

(iii) The patient's sex;

(iv) The patient's age;

(v) The patient's condition;

(vi) The patient's diagnosis, or extent and location of injuries as determined by a health care provider;

(vii) Whether the patient was conscious when admitted;

(viii) The name of the health care provider making the determination in (c)(v), (vi), and (vii) of this subsection;

(ix) Whether the patient has been transferred to another facility; and

(x) The patient's discharge time and date;

(d) To county coroners and medical examiners for the investigations of deaths;

(e) Pursuant to compulsory process in accordance with RCW 70.02.060.

(3) All state or local agencies obtaining patient health care information pursuant to this section shall adopt rules establishing their record acquisition, retention, and security policies that are consistent with this chapter. [2007 c 156 § 12; 2006 c 235 § 3; 2005 c 468 § 4; 1998 c 158 § 1; 1993 c 448 § 4; 1991 c 335 § 204.]

Purpose—2006 c 235: "The purpose of this act is to aid law enforcement in combating crime through the rapid identification of all persons who require medical treatment as a result of a criminal act and to assist in the rapid identification of human remains." [2006 c 235 § 1.]

Effective date—2006 c 235: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately [March 27, 2006]." [2006 c 235 § 5.]

Effective date—1993 c 448: See note following RCW 70.02.010.

Chapter 70.05 RCW

LOCAL HEALTH DEPARTMENTS, BOARDS, OFFICERS—REGULATIONS

Sections

70.05.070 Local health officer—Powers and duties.

70.05.070 Local health officer—Powers and duties.

The local health officer, acting under the direction of the local board of health or under direction of the administrative officer appointed under RCW 70.05.040 or 70.05.035, if any, shall:

(1) Enforce the public health statutes of the state, rules of the state board of health and the secretary of health, and all local health rules, regulations and ordinances within his or her jurisdiction including imposition of penalties authorized under RCW 70.119A.030 and 70.118.130, the confidentiality provisions in RCW 70.24.105 and rules adopted to implement those provisions, and filing of actions authorized by RCW 43.70.190;

Chapter 70.38 RCW

HEALTH PLANNING AND DEVELOPMENT

Sections

70.38.015	Declaration of public policy.
70.38.018	Statewide health resources strategy—Consistency—Waivers.
70.38.128	Certificates of need—Elective percutaneous coronary interventions—Rules.
70.38.135	Services and surveys—Rules.
70.38.919	Repealed.

70.38.015 Declaration of public policy. It is declared to be the public policy of this state:

(1) That strategic health planning efforts must be supported by appropriately tailored regulatory activities that can effectuate the goals and principles of the statewide health resources strategy developed pursuant to chapter 43.370 RCW. The implementation of the strategy can promote, maintain, and assure the health of all citizens in the state, provide accessible health services, health manpower, health facilities, and other resources while controlling increases in costs, and recognize prevention as a high priority in health programs. Involvement in health planning from both consumers and providers throughout the state should be encouraged;

(2) That the certificate of need program is a component of a health planning regulatory process that is consistent with the statewide health resources strategy and public policy goals that are clearly articulated and regularly updated;

(3) That the development and maintenance of adequate health care information, statistics and projections of need for health facilities and services is essential to effective health planning and resources development;

(4) That the development of nonregulatory approaches to health care cost containment should be considered, including the strengthening of price competition; and

(5) That health planning should be concerned with public health and health care financing, access, and quality, recognizing their close interrelationship and emphasizing cost control of health services, including cost-effectiveness and cost-benefit analysis. [2007 c 259 § 55; 1989 1st ex.s. c 9 § 601; 1983 c 235 § 1; 1980 c 139 § 1; 1979 ex.s. c 161 § 1.]

Severability—Subheadings not law—2007 c 259: See notes following RCW 41.05.033.

70.38.018 Statewide health resources strategy—Consistency—Waivers. (1) For the purposes of this section and RCW 70.38.015 and 70.38.135, "statewide health resource strategy" or "strategy" means the statewide health resource strategy developed by the office of financial management pursuant to chapter 43.370 RCW.

(2) Effective January 1, 2010, for those facilities and services covered by the certificate of need programs, certificate of need determinations must be consistent with the statewide health resources strategy developed pursuant to RCW 43.370.030, including any health planning policies and goals identified in the statewide health resources strategy in effect at the time of application. The department may waive specific terms of the strategy if the applicant demonstrates that consistency with those terms will create an undue burden on the population that a particular project would serve, or in

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(2) Take such action as is necessary to maintain health and sanitation supervision over the territory within his or her jurisdiction;

(3) Control and prevent the spread of any dangerous, contagious or infectious diseases that may occur within his or her jurisdiction;

(4) Inform the public as to the causes, nature, and prevention of disease and disability and the preservation, promotion and improvement of health within his or her jurisdiction;

(5) Prevent, control or abate nuisances which are detrimental to the public health;

(6) Attend all conferences called by the secretary of health or his or her authorized representative;

(7) Collect such fees as are established by the state board of health or the local board of health for the issuance or renewal of licenses or permits or such other fees as may be authorized by law or by the rules of the state board of health;

(8) Inspect, as necessary, expansion or modification of existing public water systems, and the construction of new public water systems, to assure that the expansion, modification, or construction conforms to system design and plans;

(9) Take such measures as he or she deems necessary in order to promote the public health, to participate in the establishment of health educational or training activities, and to authorize the attendance of employees of the local health department or individuals engaged in community health programs related to or part of the programs of the local health department. [2007 c 343 § 10; 1999 c 391 § 5; 1993 c 492 § 239; 1991 c 3 § 309; 1990 c 133 § 10; 1984 c 25 § 7; 1979 c 141 § 80; 1967 ex.s. c 51 § 12.]

Captions and part headings not law—2007 c 343: See RCW 70.118B.900.

Findings—Purpose—1999 c 391: See note following RCW 70.05.180.

Findings—Intent—1993 c 492: See notes following RCW 43.20.050.

Short title—Severability—Savings—Captions not law—Reservation of legislative power—Effective dates—1993 c 492: See RCW 43.72.910 through 43.72.915.

Findings—Severability—1990 c 133: See notes following RCW 36.94.140.

Chapter 70.14 RCW

HEALTH CARE SERVICES PURCHASED BY STATE AGENCIES

Sections

70.14.150 Data-sharing agreements—Report.

70.14.150 Data-sharing agreements—Report. (1) The department of social and health services and the health care authority shall enter into data-sharing agreements with the appropriate agencies in the states of Oregon and Idaho to assure the valid Washington state residence of applicants for health care services in Washington. Such agreements shall include appropriate safeguards related to the confidentiality of the shared information.

(2) The department of social and health services and the health care authority must jointly report on the status of the data-sharing agreements to the appropriate committees of the legislature no later than November 30, 2007. [2007 c 60 § 1.]

emergency circumstances which pose a threat to public health. [2007 c 259 § 56.]

Severability—Subheadings not law—2007 c 259: See notes following RCW 41.05.033.

70.38.128 Certificates of need—Elective percutaneous coronary interventions—Rules. To promote the stability of Washington's cardiac care delivery system, by July 1, 2008, the department of health shall adopt rules establishing criteria for the issuance of a certificate of need under this chapter for the performance of elective percutaneous coronary interventions at hospitals that do not otherwise provide on-site cardiac surgery.

Prior to initiating rule making, the department shall contract for an independent evidence-based review of the circumstances under which elective percutaneous coronary interventions should be allowed in Washington at hospitals that do not otherwise provide on-site cardiac surgery. The review shall address, at a minimum, factors related to access to care, patient safety, quality outcomes, costs, and the stability of Washington's cardiac care delivery system and of existing cardiac care providers, and ensure that elective coronary intervention volumes at the University of Washington academic medical center are maintained at levels required for training of cardiologists consistent with applicable accreditation requirements. The department shall consider the results of this review, and any associated recommendations, in adopting these rules. [2007 c 440 § 1.]

70.38.135 Services and surveys—Rules. The secretary shall have authority to:

(1) Provide when needed temporary or intermittent services of experts or consultants or organizations thereof, by contract, when such services are to be performed on a part time or fee-for-service basis;

(2) Make or cause to be made such on-site surveys of health care or medical facilities as may be necessary for the administration of the certificate of need program;

(3) Upon review of recommendations, if any, from the board of health or the office of financial management as contained in the Washington health resources strategy:

(a) Promulgate rules under which health care facilities providers doing business within the state shall submit to the department such data related to health and health care as the department finds necessary to the performance of its functions under this chapter;

(b) Promulgate rules pertaining to the maintenance and operation of medical facilities which receive federal assistance under the provisions of Title XVI;

(c) Promulgate rules in implementation of the provisions of this chapter, including the establishment of procedures for public hearings for predecisions and post-decisions on applications for certificate of need;

(d) Promulgate rules providing circumstances and procedures of expedited certificate of need review if there has not been a significant change in existing health facilities of the same type or in the need for such health facilities and services;

(4) Grant allocated state funds to qualified entities, as defined by the department, to fund not more than seventy-five percent of the costs of regional planning activities,

excluding costs related to review of applications for certificates of need, provided for in this chapter or approved by the department; and

(5) Contract with and provide reasonable reimbursement for qualified entities to assist in determinations of certificates of need. [2007 c 259 § 57; 1989 1st ex.s. c 9 § 607; 1983 c 235 § 10; 1979 ex.s. c 161 § 13.]

Severability—Subheadings not law—2007 c 259: See notes following RCW 41.05.033.

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

Chapter 70.41 RCW

HOSPITAL LICENSING AND REGULATION

Sections

70.41.115	Specialty hospitals—Licenses—Exemptions.
70.41.200	Quality improvement and medical malpractice prevention program—Quality improvement committee—Sanction and grievance procedures—Information collection, reporting, and sharing. (<i>Effective until July 1, 2009.</i>)
70.41.200	Quality improvement and medical malpractice prevention program—Quality improvement committee—Sanction and grievance procedures—Information collection, reporting, and sharing. (<i>Effective July 1, 2009.</i>)

70.41.115 Specialty hospitals—Licenses—Exemptions. (1) The definitions in this subsection apply throughout this section unless the context clearly requires otherwise.

(a) "Emergency services" means health care services medically necessary to evaluate and treat a medical condition that manifests itself by the acute onset of a symptom or symptoms, including severe pain, that would lead a prudent layperson acting reasonably to believe that a health condition exists that requires immediate medical attention, and that the absence of immediate medical attention could reasonably be expected to result in serious impairment to bodily functions or serious dysfunction of an organ or part of the body, or would place the person's health, or in the case of a pregnant woman, the health of the woman or her unborn child, in serious jeopardy.

(b) "General hospital" means a hospital that provides general acute care services, including emergency services.

(c) "Specialty hospital" means a subclass of hospital that is primarily or exclusively engaged in the care and treatment of one of the following categories: (i) Patients with a cardiac condition; (ii) patients with an orthopedic condition; (iii) patients receiving a surgical procedure; and (iv) any other specialized category of services that the secretary of health and human services designates as a specialty hospital.

(d) "Transfer agreement" means a written agreement providing an effective process for the transfer of a patient requiring emergency services to a general hospital providing emergency services and for continuity of care for that patient.

(e) "Health service area" has the same meaning as in RCW 70.38.025.

(2) To be licensed under this chapter, a specialty hospital shall:

- (a) Be significantly engaged in providing inpatient care;
- (b) Comply with all standards and rules adopted by the department for hospitals;

(c) Provide appropriate discharge planning;

(d) Provide staff proficient in resuscitation and respiration maintenance twenty-four hours per day, seven days per week;

(e) Participate in the medicare and medicaid programs and provide at least the same percentage of services to medicare and medicaid beneficiaries, as a percent of gross revenues, as the lowest percentage of services provided to medicare and medicaid beneficiaries by a general hospital in the same health service area. The lowest percentage of services provided to medicare and medicaid beneficiaries shall be determined by the department in consultation with the general hospitals in the health service area but shall not be the percentage of medicare and medicaid services of a hospital that serves primarily members of a particular health plan or government sponsor;

(f) Provide at least the same percentage of charity care, as a percent of gross revenues, as the lowest percentage of charity care provided by a general hospital in the same health service area. The lowest percentage of charity care shall be determined by the department in consultation with the general hospitals in the health service area but shall not be the percentage of charity care of a hospital that serves primarily members of a particular health plan or government sponsor;

(g) Require any physician owner to: (i) In accordance with chapter 19.68 RCW, disclose a financial interest in the specialty hospital and provide a list of alternative hospitals before referring a patient to the specialty hospital; and (ii) if the specialty hospital does not have an intensive care unit, notify the patient that if intensive care services are required, the patient will be transferred to another hospital;

(h) Provide emergency services twenty-four hours per day, seven days per week in a designated area of the hospital, and comply with requirements for emergency facilities that are established by the department;

(i) Establish procedures to stabilize a patient with an emergency medical condition until the patient is transported or transferred to another hospital if emergency services cannot be provided at the specialty hospital to meet the needs of the patient in an emergency, and maintain a transfer agreement with a general hospital in the same health service area that establishes a process for patient transfers in a situation in which the specialty hospital cannot provide continuing care for a patient because of the specialty hospital's scope of services and for the transfer of patients; and

(j) Accept the transfer of patients from general hospitals when the patients require the category of care or treatment provided by the specialty hospital.

(3) This section does not apply to:

(a) A specialty hospital that provides only psychiatric, pediatric, long-term acute care, cancer, or rehabilitative services; or

(b) A hospital that was licensed under this chapter before January 1, 2007. [2007 c 102 § 2.]

Finding—2007 c 102: "The legislature finds that specialty hospitals jeopardize the financial balance of community hospitals by selectively providing care to less ill patients, treating fewer medicare, medicaid, and uninsured patients, providing primarily care that is profitable to investors, and reducing community hospital staffing. To assure that private and public hospitals in Washington remain financially viable institutions able to provide general acute care in their communities and maintain the capacity to respond to local, state, and national emergencies, the legislature has concluded that

specialty hospitals must meet certain conditions in order to be licensed. These conditions will ensure that specialty hospitals and community hospitals compete on a level playing field and, therefore, will minimize the adverse impacts of specialty hospitals on community general hospitals while assuring quality patient care." [2007 c 102 § 1.]

70.41.200 Quality improvement and medical malpractice prevention program—Quality improvement committee—Sanction and grievance procedures—Information collection, reporting, and sharing. (Effective until July 1, 2009.) (1) Every hospital shall maintain a coordinated quality improvement program for the improvement of the quality of health care services rendered to patients and the identification and prevention of medical malpractice. The program shall include at least the following:

(a) The establishment of a quality improvement committee with the responsibility to review the services rendered in the hospital, both retrospectively and prospectively, in order to improve the quality of medical care of patients and to prevent medical malpractice. The committee shall oversee and coordinate the quality improvement and medical malpractice prevention program and shall ensure that information gathered pursuant to the program is used to review and to revise hospital policies and procedures;

(b) A medical staff privileges sanction procedure through which credentials, physical and mental capacity, and competence in delivering health care services are periodically reviewed as part of an evaluation of staff privileges;

(c) The periodic review of the credentials, physical and mental capacity, and competence in delivering health care services of all persons who are employed or associated with the hospital;

(d) A procedure for the prompt resolution of grievances by patients or their representatives related to accidents, injuries, treatment, and other events that may result in claims of medical malpractice;

(e) The maintenance and continuous collection of information concerning the hospital's experience with negative health care outcomes and incidents injurious to patients including health care-associated infections as defined in RCW 43.70.056, patient grievances, professional liability premiums, settlements, awards, costs incurred by the hospital for patient injury prevention, and safety improvement activities;

(f) The maintenance of relevant and appropriate information gathered pursuant to (a) through (e) of this subsection concerning individual physicians within the physician's personnel or credential file maintained by the hospital;

(g) Education programs dealing with quality improvement, patient safety, medication errors, injury prevention, infection control, staff responsibility to report professional misconduct, the legal aspects of patient care, improved communication with patients, and causes of malpractice claims for staff personnel engaged in patient care activities; and

(h) Policies to ensure compliance with the reporting requirements of this section.

(2) Any person who, in substantial good faith, provides information to further the purposes of the quality improvement and medical malpractice prevention program or who, in substantial good faith, participates on the quality improvement committee shall not be subject to an action for civil damages or other relief as a result of such activity. Any per-

son or entity participating in a coordinated quality improvement program that, in substantial good faith, shares information or documents with one or more other programs, committees, or boards under subsection (8) of this section is not subject to an action for civil damages or other relief as a result of the activity. For the purposes of this section, sharing information is presumed to be in substantial good faith. However, the presumption may be rebutted upon a showing of clear, cogent, and convincing evidence that the information shared was knowingly false or deliberately misleading.

(3) Information and documents, including complaints and incident reports, created specifically for, and collected and maintained by, a quality improvement committee are not subject to review or disclosure, except as provided in this section, or discovery or introduction into evidence in any civil action, and no person who was in attendance at a meeting of such committee or who participated in the creation, collection, or maintenance of information or documents specifically for the committee shall be permitted or required to testify in any civil action as to the content of such proceedings or the documents and information prepared specifically for the committee. This subsection does not preclude: (a) In any civil action, the discovery of the identity of persons involved in the medical care that is the basis of the civil action whose involvement was independent of any quality improvement activity; (b) in any civil action, the testimony of any person concerning the facts which form the basis for the institution of such proceedings of which the person had personal knowledge acquired independently of such proceedings; (c) in any civil action by a health care provider regarding the restriction or revocation of that individual's clinical or staff privileges, introduction into evidence information collected and maintained by quality improvement committees regarding such health care provider; (d) in any civil action, disclosure of the fact that staff privileges were terminated or restricted, including the specific restrictions imposed, if any and the reasons for the restrictions; or (e) in any civil action, discovery and introduction into evidence of the patient's medical records required by regulation of the department of health to be made regarding the care and treatment received.

(4) Each quality improvement committee shall, on at least a semiannual basis, report to the governing board of the hospital in which the committee is located. The report shall review the quality improvement activities conducted by the committee, and any actions taken as a result of those activities.

(5) The department of health shall adopt such rules as are deemed appropriate to effectuate the purposes of this section.

(6) The medical quality assurance commission or the board of osteopathic medicine and surgery, as appropriate, may review and audit the records of committee decisions in which a physician's privileges are terminated or restricted. Each hospital shall produce and make accessible to the commission or board the appropriate records and otherwise facilitate the review and audit. Information so gained shall not be subject to the discovery process and confidentiality shall be respected as required by subsection (3) of this section. Failure of a hospital to comply with this subsection is punishable by a civil penalty not to exceed two hundred fifty dollars.

(7) The department, the joint commission on accreditation of health care organizations, and any other accrediting

organization may review and audit the records of a quality improvement committee or peer review committee in connection with their inspection and review of hospitals. Information so obtained shall not be subject to the discovery process, and confidentiality shall be respected as required by subsection (3) of this section. Each hospital shall produce and make accessible to the department the appropriate records and otherwise facilitate the review and audit.

(8) A coordinated quality improvement program may share information and documents, including complaints and incident reports, created specifically for, and collected and maintained by, a quality improvement committee or a peer review committee under RCW 4.24.250 with one or more other coordinated quality improvement programs maintained in accordance with this section or RCW 43.70.510, a quality assurance committee maintained in accordance with RCW 18.20.390 or 74.42.640, or a peer review committee under RCW 4.24.250, for the improvement of the quality of health care services rendered to patients and the identification and prevention of medical malpractice. The privacy protections of chapter 70.02 RCW and the federal health insurance portability and accountability act of 1996 and its implementing regulations apply to the sharing of individually identifiable patient information held by a coordinated quality improvement program. Any rules necessary to implement this section shall meet the requirements of applicable federal and state privacy laws. Information and documents disclosed by one coordinated quality improvement program to another coordinated quality improvement program or a peer review committee under RCW 4.24.250 and any information and documents created or maintained as a result of the sharing of information and documents shall not be subject to the discovery process and confidentiality shall be respected as required by subsection (3) of this section, RCW 18.20.390 (6) and (8), 74.42.640 (7) and (9), and 4.24.250.

(9) A hospital that operates a nursing home as defined in RCW 18.51.010 may conduct quality improvement activities for both the hospital and the nursing home through a quality improvement committee under this section, and such activities shall be subject to the provisions of subsections (2) through (8) of this section.

(10) Violation of this section shall not be considered negligence per se. [2007 c 261 § 3. Prior: 2005 c 291 § 3; 2005 c 33 § 7; 2004 c 145 § 3; 2000 c 6 § 3; 1994 sp.s. c 9 § 742; 1993 c 492 § 415; 1991 c 3 § 336; 1987 c 269 § 5; 1986 c 300 § 4.]

Findings—2007 c 261: See note following RCW 43.70.056.

Findings—2005 c 33: See note following RCW 18.20.390.

Severability—Headings and captions not law—Effective date—1994 sp.s. c 9: See RCW 18.79.900 through 18.79.902.

Findings—Intent—1993 c 492: See notes following RCW 43.20.050.

Short title—Severability—Savings—Captions not law—Reservation of legislative power—Effective dates—1993 c 492: See RCW 43.72.910 through 43.72.915.

Legislative findings—Severability—1986 c 300: See notes following RCW 18.57.245.

Board of osteopathic medicine and surgery: Chapter 18.57 RCW.

Medical quality assurance commission: Chapter 18.71 RCW.

70.41.200 Quality improvement and medical malpractice prevention program—Quality improvement committee—Sanction and grievance procedures—Information collection, reporting, and sharing. (Effective July 1, 2009.) (1) Every hospital shall maintain a coordinated quality improvement program for the improvement of the quality of health care services rendered to patients and the identification and prevention of medical malpractice. The program shall include at least the following:

(a) The establishment of a quality improvement committee with the responsibility to review the services rendered in the hospital, both retrospectively and prospectively, in order to improve the quality of medical care of patients and to prevent medical malpractice. The committee shall oversee and coordinate the quality improvement and medical malpractice prevention program and shall ensure that information gathered pursuant to the program is used to review and to revise hospital policies and procedures;

(b) A medical staff privileges sanction procedure through which credentials, physical and mental capacity, and competence in delivering health care services are periodically reviewed as part of an evaluation of staff privileges;

(c) The periodic review of the credentials, physical and mental capacity, and competence in delivering health care services of all persons who are employed or associated with the hospital;

(d) A procedure for the prompt resolution of grievances by patients or their representatives related to accidents, injuries, treatment, and other events that may result in claims of medical malpractice;

(e) The maintenance and continuous collection of information concerning the hospital's experience with negative health care outcomes and incidents injurious to patients including health care-associated infections as defined in RCW 43.70.056, patient grievances, professional liability premiums, settlements, awards, costs incurred by the hospital for patient injury prevention, and safety improvement activities;

(f) The maintenance of relevant and appropriate information gathered pursuant to (a) through (e) of this subsection concerning individual physicians within the physician's personnel or credential file maintained by the hospital;

(g) Education programs dealing with quality improvement, patient safety, medication errors, injury prevention, infection control, staff responsibility to report professional misconduct, the legal aspects of patient care, improved communication with patients, and causes of malpractice claims for staff personnel engaged in patient care activities; and

(h) Policies to ensure compliance with the reporting requirements of this section.

(2) Any person who, in substantial good faith, provides information to further the purposes of the quality improvement and medical malpractice prevention program or who, in substantial good faith, participates on the quality improvement committee shall not be subject to an action for civil damages or other relief as a result of such activity. Any person or entity participating in a coordinated quality improvement program that, in substantial good faith, shares information or documents with one or more other programs, committees, or boards under subsection (8) of this section is not subject to an action for civil damages or other relief as a result

of the activity. For the purposes of this section, sharing information is presumed to be in substantial good faith. However, the presumption may be rebutted upon a showing of clear, cogent, and convincing evidence that the information shared was knowingly false or deliberately misleading.

(3) Information and documents, including complaints and incident reports, created specifically for, and collected and maintained by, a quality improvement committee are not subject to review or disclosure, except as provided in this section, or discovery or introduction into evidence in any civil action, and no person who was in attendance at a meeting of such committee or who participated in the creation, collection, or maintenance of information or documents specifically for the committee shall be permitted or required to testify in any civil action as to the content of such proceedings or the documents and information prepared specifically for the committee. This subsection does not preclude: (a) In any civil action, the discovery of the identity of persons involved in the medical care that is the basis of the civil action whose involvement was independent of any quality improvement activity; (b) in any civil action, the testimony of any person concerning the facts which form the basis for the institution of such proceedings of which the person had personal knowledge acquired independently of such proceedings; (c) in any civil action by a health care provider regarding the restriction or revocation of that individual's clinical or staff privileges, introduction into evidence information collected and maintained by quality improvement committees regarding such health care provider; (d) in any civil action, disclosure of the fact that staff privileges were terminated or restricted, including the specific restrictions imposed, if any and the reasons for the restrictions; or (e) in any civil action, discovery and introduction into evidence of the patient's medical records required by regulation of the department of health to be made regarding the care and treatment received.

(4) Each quality improvement committee shall, on at least a semiannual basis, report to the governing board of the hospital in which the committee is located. The report shall review the quality improvement activities conducted by the committee, and any actions taken as a result of those activities.

(5) The department of health shall adopt such rules as are deemed appropriate to effectuate the purposes of this section.

(6) The medical quality assurance commission or the board of osteopathic medicine and surgery, as appropriate, may review and audit the records of committee decisions in which a physician's privileges are terminated or restricted. Each hospital shall produce and make accessible to the commission or board the appropriate records and otherwise facilitate the review and audit. Information so gained shall not be subject to the discovery process and confidentiality shall be respected as required by subsection (3) of this section. Failure of a hospital to comply with this subsection is punishable by a civil penalty not to exceed two hundred fifty dollars.

(7) The department, the joint commission on accreditation of health care organizations, and any other accrediting organization may review and audit the records of a quality improvement committee or peer review committee in connection with their inspection and review of hospitals. Information so obtained shall not be subject to the discovery process, and confidentiality shall be respected as required by

subsection (3) of this section. Each hospital shall produce and make accessible to the department the appropriate records and otherwise facilitate the review and audit.

(8) A coordinated quality improvement program may share information and documents, including complaints and incident reports, created specifically for, and collected and maintained by, a quality improvement committee or a peer review committee under RCW 4.24.250 with one or more other coordinated quality improvement programs maintained in accordance with this section or RCW 43.70.510, a coordinated quality improvement committee maintained by an ambulatory surgical facility under RCW 70.230.070, a quality assurance committee maintained in accordance with RCW 18.20.390 or 74.42.640, or a peer review committee under RCW 4.24.250, for the improvement of the quality of health care services rendered to patients and the identification and prevention of medical malpractice. The privacy protections of chapter 70.02 RCW and the federal health insurance portability and accountability act of 1996 and its implementing regulations apply to the sharing of individually identifiable patient information held by a coordinated quality improvement program. Any rules necessary to implement this section shall meet the requirements of applicable federal and state privacy laws. Information and documents disclosed by one coordinated quality improvement program to another coordinated quality improvement program or a peer review committee under RCW 4.24.250 and any information and documents created or maintained as a result of the sharing of information and documents shall not be subject to the discovery process and confidentiality shall be respected as required by subsection (3) of this section, RCW 18.20.390 (6) and (8), 74.42.640 (7) and (9), and 4.24.250.

(9) A hospital that operates a nursing home as defined in RCW 18.51.010 may conduct quality improvement activities for both the hospital and the nursing home through a quality improvement committee under this section, and such activities shall be subject to the provisions of subsections (2) through (8) of this section.

(10) Violation of this section shall not be considered negligence per se. [2007 c 273 § 22; 2007 c 261 § 3. Prior: 2005 c 291 § 3; 2005 c 33 § 7; 2004 c 145 § 3; 2000 c 6 § 3; 1994 sp.s. c 9 § 742; 1993 c 492 § 415; 1991 c 3 § 336; 1987 c 269 § 5; 1986 c 300 § 4.]

Reviser's note: This section was amended by 2007 c 261 § 3 and by 2007 c 273 § 22, each without reference to the other. Both amendments are incorporated in the publication of this section under RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

Effective date—Implementation—2007 c 273: See RCW 70.230.900 and 70.230.901.

Finding—2007 c 261: See note following RCW 43.70.056.

Findings—2005 c 33: See note following RCW 18.20.390.

Severability—Headings and captions not law—Effective date—1994 sp.s. c 9: See RCW 18.79.900 through 18.79.902.

Findings—Intent—1993 c 492: See notes following RCW 43.20.050.

Short title—Severability—Savings—Captions not law—Reservation of legislative power—Effective dates—1993 c 492: See RCW 43.72.910 through 43.72.915.

Legislative findings—Severability—1986 c 300: See notes following RCW 18.57.245.

Board of osteopathic medicine and surgery: Chapter 18.57 RCW.

Medical quality assurance commission: Chapter 18.71 RCW.

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Chapter 70.44 RCW

PUBLIC HOSPITAL DISTRICTS

Sections

70.44.050 Commissioners—Compensation and expenses—Insurance—Resolutions by majority vote—Officers—Rules.

70.44.050 Commissioners—Compensation and expenses—Insurance—Resolutions by majority vote—Officers—Rules. A district shall provide by resolution for the payment of compensation to each of its commissioners at a rate of ninety dollars for each day or portion thereof spent in actual attendance at official meetings of the district commission, or in performance of other official services or duties on behalf of the district, to include meetings of the commission of his or her own district, or meetings attended by one or more commissioners of two or more districts called to consider business common to them, except that the total compensation paid to such commissioner during any one year shall not exceed eight thousand six hundred forty dollars. The commissioners may not be compensated for services performed of a ministerial or professional nature.

Any commissioner may waive all or any portion of his or her compensation payable under this section as to any month or months during his or her term of office, by a written waiver filed with the district as provided in this section. The waiver, to be effective, must be filed any time after the commissioner's election and prior to the date on which the compensation would otherwise be paid. The waiver shall specify the month or period of months for which it is made.

Any district providing group insurance for its employees, covering them, their immediate family, and dependents, may provide insurance for its commissioners with the same coverage. Each commissioner shall be reimbursed for reasonable expenses actually incurred in connection with such business and meetings, including his or her subsistence and lodging and travel while away from his or her place of residence. No resolution shall be adopted without a majority vote of the whole commission. The commission shall organize by election of its own members of a president and secretary, shall by resolution adopt rules governing the transaction of its business and shall adopt an official seal. All proceedings of the commission shall be by motion or resolution recorded in a book or books kept for such purpose, which shall be public records.

The dollar thresholds established in this section must be adjusted for inflation by the office of financial management every five years, beginning July 1, 2008, based upon changes in the consumer price index during that time period. "Consumer price index" means, for any calendar year, that year's annual average consumer price index, for Washington state, for wage earners and clerical workers, all items, compiled by the bureau of labor and statistics, United States department of labor. If the bureau of labor and statistics develops more than one consumer price index for areas within the state, the index covering the greatest number of people, covering areas exclusively within the boundaries of the state, and including all items shall be used for the adjustments for inflation in this section. The office of financial management must calculate the new dollar threshold and transmit it to the office of the code reviser for publication in the Washington State Register

at least one month before the new dollar threshold is to take effect.

A person holding office as commissioner for two or more special purpose districts shall receive only that per diem compensation authorized for one of his or her commissioner positions as compensation for attending an official meeting or conducting official services or duties while representing more than one of his or her districts. However, such commissioner may receive additional per diem compensation if approved by resolution of all boards of the affected commissions. [2007 c 469 § 7; 1998 c 121 § 7; 1985 c 330 § 7; 1982 c 84 § 14; 1975 c 42 § 1; 1965 c 157 § 1; 1945 c 264 § 15; Rem. Supp. 1945 § 6090-44.]

Chapter 70.47 RCW

BASIC HEALTH PLAN—HEALTH CARE ACCESS ACT

Sections

70.47.020	Definitions.
70.47.060	Powers and duties of administrator—Schedule of services—Premiums, copayments, subsidies—Enrollment.

70.47.020 Definitions. As used in this chapter:

(1) "Washington basic health plan" or "plan" means the system of enrollment and payment for basic health care services, administered by the plan administrator through participating managed health care systems, created by this chapter.

(2) "Administrator" means the Washington basic health plan administrator, who also holds the position of administrator of the Washington state health care authority.

(3) "Health coverage tax credit program" means the program created by the Trade Act of 2002 (P.L. 107-210) that provides a federal tax credit that subsidizes private health insurance coverage for displaced workers certified to receive certain trade adjustment assistance benefits and for individuals receiving benefits from the pension benefit guaranty corporation.

(4) "Health coverage tax credit eligible enrollee" means individual workers and their qualified family members who lose their jobs due to the effects of international trade and are eligible for certain trade adjustment assistance benefits; or are eligible for benefits under the alternative trade adjustment assistance program; or are people who receive benefits from the pension benefit guaranty corporation and are at least fifty-five years old.

(5) "Managed health care system" means: (a) Any health care organization, including health care providers, insurers, health care service contractors, health maintenance organizations, or any combination thereof, that provides directly or by contract basic health care services, as defined by the administrator and rendered by duly licensed providers, to a defined patient population enrolled in the plan and in the managed health care system; or (b) a self-funded or self-insured method of providing insurance coverage to subsidized enrollees provided under RCW 41.05.140 and subject to the limitations under RCW 70.47.100(7).

(6) "Subsidized enrollee" means:

(a) An individual, or an individual plus the individual's spouse or dependent children:

(i) Who is not eligible for medicare;

(ii) Who is not confined or residing in a government-operated institution, unless he or she meets eligibility criteria adopted by the administrator;

(iii) Who is not a full-time student who has received a temporary visa to study in the United States;

(iv) Who resides in an area of the state served by a managed health care system participating in the plan;

(v) Whose gross family income at the time of enrollment does not exceed two hundred percent of the federal poverty level as adjusted for family size and determined annually by the federal department of health and human services; and

(vi) Who chooses to obtain basic health care coverage from a particular managed health care system in return for periodic payments to the plan;

(b) An individual who meets the requirements in (a)(i) through (iv) and (vi) of this subsection and who is a foster parent licensed under chapter 74.15 RCW and whose gross family income at the time of enrollment does not exceed three hundred percent of the federal poverty level as adjusted for family size and determined annually by the federal department of health and human services; and

(c) To the extent that state funds are specifically appropriated for this purpose, with a corresponding federal match, an individual, or an individual's spouse or dependent children, who meets the requirements in (a)(i) through (iv) and (vi) of this subsection and whose gross family income at the time of enrollment is more than two hundred percent, but less than two hundred fifty-one percent, of the federal poverty level as adjusted for family size and determined annually by the federal department of health and human services.

(7) "Nonsubsidized enrollee" means an individual, or an individual plus the individual's spouse or dependent children: (a) Who is not eligible for medicare; (b) who is not confined or residing in a government-operated institution, unless he or she meets eligibility criteria adopted by the administrator; (c) who is accepted for enrollment by the administrator as provided in RCW 48.43.018, either because the potential enrollee cannot be required to complete the standard health questionnaire under RCW 48.43.018, or, based upon the results of the standard health questionnaire, the potential enrollee would not qualify for coverage under the Washington state health insurance pool; (d) who resides in an area of the state served by a managed health care system participating in the plan; (e) who chooses to obtain basic health care coverage from a particular managed health care system; and (f) who pays or on whose behalf is paid the full costs for participation in the plan, without any subsidy from the plan.

(8) "Subsidy" means the difference between the amount of periodic payment the administrator makes to a managed health care system on behalf of a subsidized enrollee plus the administrative cost to the plan of providing the plan to that subsidized enrollee, and the amount determined to be the subsidized enrollee's responsibility under RCW 70.47.060(2).

(9) "Premium" means a periodic payment, which an individual, their employer or another financial sponsor makes to the plan as consideration for enrollment in the plan as a subsidized enrollee, a nonsubsidized enrollee, or a health coverage tax credit eligible enrollee.

(10) "Rate" means the amount, negotiated by the administrator with and paid to a participating managed health care system, that is based upon the enrollment of subsidized, non-

subsidized, and health coverage tax credit eligible enrollees in the plan and in that system. [2007 c 259 § 35; 2005 c 188 § 2; 2004 c 192 § 1; 2000 c 79 § 43; 1997 c 335 § 1; 1997 c 245 § 5. Prior: 1995 c 266 § 2; 1995 c 2 § 3; 1994 c 309 § 4; 1993 c 492 § 209; 1987 1st ex.s. c 5 § 4.]

Severability—Subheadings not law—2007 c 259: See notes following RCW 41.05.033.

Findings—2005 c 188: "The legislature finds that the basic health plan is a valuable means of providing access to affordable health insurance coverage for low-income families and individuals in Washington state. The legislature further finds that persons studying in the United States as full-time students under temporary visas must show, as a condition of receiving their temporary visa, that they have sufficient funds available for self-support during their entire proposed course of study. For this reason, the legislature finds that it is not appropriate to provide subsidized basic health plan coverage to this group of students." [2005 c 188 § 1.]

Effective date—2004 c 192: "This act takes effect January 1, 2005." [2004 c 192 § 6.]

Effective date—Severability—2000 c 79: See notes following RCW 48.04.010.

Effective date—1995 c 266: See note following RCW 70.47.060.

Effective date—1995 c 2: See note following RCW 43.72.090.

Findings—Intent—1993 c 492: See notes following RCW 43.20.050.

Short title—Severability—Savings—Captions not law—Reservation of legislative power—Effective dates—1993 c 492: See RCW 43.72.910 through 43.72.915.

70.47.060 Powers and duties of administrator—Schedule of services—Premiums, copayments, subsidies—Enrollment. The administrator has the following powers and duties:

(1) To design and from time to time revise a schedule of covered basic health care services, including physician services, inpatient and outpatient hospital services, prescription drugs and medications, and other services that may be necessary for basic health care. In addition, the administrator may, to the extent that funds are available, offer as basic health plan services chemical dependency services, mental health services and organ transplant services; however, no one service or any combination of these three services shall increase the actuarial value of the basic health plan benefits by more than five percent excluding inflation, as determined by the office of financial management. All subsidized and nonsubsidized enrollees in any participating managed health care system under the Washington basic health plan shall be entitled to receive covered basic health care services in return for premium payments to the plan. The schedule of services shall emphasize proven preventive and primary health care and shall include all services necessary for prenatal, postnatal, and well-child care. However, with respect to coverage for subsidized enrollees who are eligible to receive prenatal and postnatal services through the medical assistance program under chapter 74.09 RCW, the administrator shall not contract for such services except to the extent that such services are necessary over not more than a one-month period in order to maintain continuity of care after diagnosis of pregnancy by the managed care provider. The schedule of services shall also include a separate schedule of basic health care services for children, eighteen years of age and younger, for those subsidized or nonsubsidized enrollees who choose to secure basic coverage through the plan only for their dependent children. In designing and revising the schedule of services, the administrator shall consider the guidelines for

assessing health services under the mandated benefits act of 1984, RCW 48.47.030, and such other factors as the administrator deems appropriate.

(2)(a) To design and implement a structure of periodic premiums due the administrator from subsidized enrollees that is based upon gross family income, giving appropriate consideration to family size and the ages of all family members. The enrollment of children shall not require the enrollment of their parent or parents who are eligible for the plan. The structure of periodic premiums shall be applied to subsidized enrollees entering the plan as individuals pursuant to subsection (11) of this section and to the share of the cost of the plan due from subsidized enrollees entering the plan as employees pursuant to subsection (12) of this section.

(b) To determine the periodic premiums due the administrator from subsidized enrollees under RCW 70.47.020(6)(b). Premiums due for foster parents with gross family income up to two hundred percent of the federal poverty level shall be set at the minimum premium amount charged to enrollees with income below sixty-five percent of the federal poverty level. Premiums due for foster parents with gross family income between two hundred percent and three hundred percent of the federal poverty level shall not exceed one hundred dollars per month.

(c) To determine the periodic premiums due the administrator from nonsubsidized enrollees. Premiums due from nonsubsidized enrollees shall be in an amount equal to the cost charged by the managed health care system provider to the state for the plan plus the administrative cost of providing the plan to those enrollees and the premium tax under RCW 48.14.0201.

(d) To determine the periodic premiums due the administrator from health coverage tax credit eligible enrollees. Premiums due from health coverage tax credit eligible enrollees must be in an amount equal to the cost charged by the managed health care system provider to the state for the plan, plus the administrative cost of providing the plan to those enrollees and the premium tax under RCW 48.14.0201. The administrator will consider the impact of eligibility determination by the appropriate federal agency designated by the Trade Act of 2002 (P.L. 107-210) as well as the premium collection and remittance activities by the United States internal revenue service when determining the administrative cost charged for health coverage tax credit eligible enrollees.

(e) An employer or other financial sponsor may, with the prior approval of the administrator, pay the premium, rate, or any other amount on behalf of a subsidized or nonsubsidized enrollee, by arrangement with the enrollee and through a mechanism acceptable to the administrator. The administrator shall establish a mechanism for receiving premium payments from the United States internal revenue service for health coverage tax credit eligible enrollees.

(f) To develop, as an offering by every health carrier providing coverage identical to the basic health plan, as configured on January 1, 2001, a basic health plan model plan with uniformity in enrollee cost-sharing requirements.

(3) To evaluate, with the cooperation of participating managed health care system providers, the impact on the basic health plan of enrolling health coverage tax credit eligible enrollees. The administrator shall issue to the appropriate committees of the legislature preliminary evaluations on June

1, 2005, and January 1, 2006, and a final evaluation by June 1, 2006. The evaluation shall address the number of persons enrolled, the duration of their enrollment, their utilization of covered services relative to other basic health plan enrollees, and the extent to which their enrollment contributed to any change in the cost of the basic health plan.

(4) To end the participation of health coverage tax credit eligible enrollees in the basic health plan if the federal government reduces or terminates premium payments on their behalf through the United States internal revenue service.

(5) To design and implement a structure of enrollee cost-sharing due a managed health care system from subsidized, nonsubsidized, and health coverage tax credit eligible enrollees. The structure shall discourage inappropriate enrollee utilization of health care services, and may utilize copayments, deductibles, and other cost-sharing mechanisms, but shall not be so costly to enrollees as to constitute a barrier to appropriate utilization of necessary health care services.

(6) To limit enrollment of persons who qualify for subsidies so as to prevent an overexpenditure of appropriations for such purposes. Whenever the administrator finds that there is danger of such an overexpenditure, the administrator shall close enrollment until the administrator finds the danger no longer exists. Such a closure does not apply to health coverage tax credit eligible enrollees who receive a premium subsidy from the United States internal revenue service as long as the enrollees qualify for the health coverage tax credit program.

(7) To limit the payment of subsidies to subsidized enrollees, as defined in RCW 70.47.020. The level of subsidy provided to persons who qualify may be based on the lowest cost plans, as defined by the administrator.

(8) To adopt a schedule for the orderly development of the delivery of services and availability of the plan to residents of the state, subject to the limitations contained in RCW 70.47.080 or any act appropriating funds for the plan.

(9) To solicit and accept applications from managed health care systems, as defined in this chapter, for inclusion as eligible basic health care providers under the plan for subsidized enrollees, nonsubsidized enrollees, or health coverage tax credit eligible enrollees. The administrator shall endeavor to assure that covered basic health care services are available to any enrollee of the plan from among a selection of two or more participating managed health care systems. In adopting any rules or procedures applicable to managed health care systems and in its dealings with such systems, the administrator shall consider and make suitable allowance for the need for health care services and the differences in local availability of health care resources, along with other resources, within and among the several areas of the state. Contracts with participating managed health care systems shall ensure that basic health plan enrollees who become eligible for medical assistance may, at their option, continue to receive services from their existing providers within the managed health care system if such providers have entered into provider agreements with the department of social and health services.

(10) To receive periodic premiums from or on behalf of subsidized, nonsubsidized, and health coverage tax credit eligible enrollees, deposit them in the basic health plan operating account, keep records of enrollee status, and authorize

periodic payments to managed health care systems on the basis of the number of enrollees participating in the respective managed health care systems.

(11) To accept applications from individuals residing in areas served by the plan, on behalf of themselves and their spouses and dependent children, for enrollment in the Washington basic health plan as subsidized, nonsubsidized, or health coverage tax credit eligible enrollees, to give priority to members of the Washington national guard and reserves who served in Operation Enduring Freedom, Operation Iraqi Freedom, or Operation Noble Eagle, and their spouses and dependents, for enrollment in the Washington basic health plan, to establish appropriate minimum-enrollment periods for enrollees as may be necessary, and to determine, upon application and on a reasonable schedule defined by the authority, or at the request of any enrollee, eligibility due to current gross family income for sliding scale premiums. Funds received by a family as part of participation in the adoption support program authorized under RCW 26.33.320 and 74.13.100 through 74.13.145 shall not be counted toward a family's current gross family income for the purposes of this chapter. When an enrollee fails to report income or income changes accurately, the administrator shall have the authority either to bill the enrollee for the amounts overpaid by the state or to impose civil penalties of up to two hundred percent of the amount of subsidy overpaid due to the enrollee incorrectly reporting income. The administrator shall adopt rules to define the appropriate application of these sanctions and the processes to implement the sanctions provided in this subsection, within available resources. No subsidy may be paid with respect to any enrollee whose current gross family income exceeds twice the federal poverty level or, subject to RCW 70.47.110, who is a recipient of medical assistance or medical care services under chapter 74.09 RCW. If a number of enrollees drop their enrollment for no apparent good cause, the administrator may establish appropriate rules or requirements that are applicable to such individuals before they will be allowed to reenroll in the plan.

(12) To accept applications from business owners on behalf of themselves and their employees, spouses, and dependent children, as subsidized or nonsubsidized enrollees, who reside in an area served by the plan. The administrator may require all or the substantial majority of the eligible employees of such businesses to enroll in the plan and establish those procedures necessary to facilitate the orderly enrollment of groups in the plan and into a managed health care system. The administrator may require that a business owner pay at least an amount equal to what the employee pays after the state pays its portion of the subsidized premium cost of the plan on behalf of each employee enrolled in the plan. Enrollment is limited to those not eligible for medicare who wish to enroll in the plan and choose to obtain the basic health care coverage and services from a managed care system participating in the plan. The administrator shall adjust the amount determined to be due on behalf of or from all such enrollees whenever the amount negotiated by the administrator with the participating managed health care system or systems is modified or the administrative cost of providing the plan to such enrollees changes.

(13) To determine the rate to be paid to each participating managed health care system in return for the provision of

covered basic health care services to enrollees in the system. Although the schedule of covered basic health care services will be the same or actuarially equivalent for similar enrollees, the rates negotiated with participating managed health care systems may vary among the systems. In negotiating rates with participating systems, the administrator shall consider the characteristics of the populations served by the respective systems, economic circumstances of the local area, the need to conserve the resources of the basic health plan trust account, and other factors the administrator finds relevant.

(14) To monitor the provision of covered services to enrollees by participating managed health care systems in order to assure enrollee access to good quality basic health care, to require periodic data reports concerning the utilization of health care services rendered to enrollees in order to provide adequate information for evaluation, and to inspect the books and records of participating managed health care systems to assure compliance with the purposes of this chapter. In requiring reports from participating managed health care systems, including data on services rendered enrollees, the administrator shall endeavor to minimize costs, both to the managed health care systems and to the plan. The administrator shall coordinate any such reporting requirements with other state agencies, such as the insurance commissioner and the department of health, to minimize duplication of effort.

(15) To evaluate the effects this chapter has on private employer-based health care coverage and to take appropriate measures consistent with state and federal statutes that will discourage the reduction of such coverage in the state.

(16) To develop a program of proven preventive health measures and to integrate it into the plan wherever possible and consistent with this chapter.

(17) To provide, consistent with available funding, assistance for rural residents, underserved populations, and persons of color.

(18) In consultation with appropriate state and local government agencies, to establish criteria defining eligibility for persons confined or residing in government-operated institutions.

(19) To administer the premium discounts provided under RCW 48.41.200(3)(a) (i) and (ii) pursuant to a contract with the Washington state health insurance pool.

(20) To give priority in enrollment to persons who disenrolled from the program in order to enroll in medicaid, and subsequently became ineligible for medicaid coverage. [2007 c 259 § 36; 2006 c 343 § 9; 2004 c 192 § 3; 2001 c 196 § 13; 2000 c 79 § 34. Prior: 1998 c 314 § 17; 1998 c 148 § 1; prior: 1997 c 337 § 2; 1997 c 335 § 2; 1997 c 245 § 6; 1997 c 231 § 206; prior: 1995 c 266 § 1; 1995 c 2 § 4; 1994 c 309 § 5; 1993 c 492 § 212; 1992 c 232 § 908; prior: 1991 sp.s. c 4 § 2; 1991 c 3 § 339; 1987 1st ex.s. c 5 § 8.]

Severability—Subheadings not law—2007 c 259: See notes following RCW 41.05.033.

Findings—2006 c 343: See note following RCW 43.60A.160.

Effective date—2004 c 192: See note following RCW 70.47.020.

Effective date—2001 c 196: See note following RCW 48.20.025.

Effective date—Severability—2000 c 79: See notes following RCW 48.04.010.

Effective date—1997 c 337 §§ 1 and 2: See note following RCW 70.47.015.

[2007 RCW Supp—page 826]

Short title—Part headings and captions not law—Severability—Effective dates—1997 c 231: See notes following RCW 48.43.005.

Effective date—1995 c 266: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and shall take effect July 1, 1995." [1995 c 266 § 5.]

Effective date—1995 c 2: See note following RCW 43.72.090.

Contingency—1994 c 309 §§ 5 and 6: "If a court in a permanent injunction, permanent order, or final decision determines that the amendments made by sections 5 and 6, chapter 309, Laws of 1994, must be submitted to the people for their adoption and ratification, or rejection, as a result of section 13, chapter 2, Laws of 1994, the amendments made by sections 5 and 6, chapter 309, Laws of 1994, shall be null and void." [1994 c 309 § 7.]

Findings—Intent—1993 c 492: See notes following RCW 43.20.050.

Short title—Severability—Savings—Captions not law—Reservation of legislative power—Effective dates—1993 c 492: See RCW 43.72.910 through 43.72.915.

Severability—1992 c 232: See note following RCW 43.33A.180.

Effective date—1991 sp.s. c 4: See note following RCW 70.47.030.

Chapter 70.47A RCW

SMALL EMPLOYER HEALTH INSURANCE PARTNERSHIP PROGRAM

Sections

70.47A.010	Finding—Intent.
70.47A.020	Definitions.
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70.47A.060	Rules.
70.47A.080	Health insurance partnership account.
70.47A.100	Health insurance partnership board.
70.47A.110	Health insurance partnership board—Duties.

70.47A.010 Finding—Intent. (1) The legislature finds that many small employers struggle with the cost of providing employer-sponsored health insurance coverage to their employees, while others are unable to offer employer-sponsored health insurance due to its high cost. Low-wage workers also struggle with the burden of paying their share of the costs of employer-sponsored health insurance, while others turn down their employer's offer of coverage due to its costs.

(2) The legislature intends, through establishment of a health insurance partnership program, to remove economic barriers to health insurance coverage for low-wage employees of small employers by building on the private sector health benefit plan system and encouraging employer and employee participation in employer-sponsored health benefit plan coverage. [2007 c 260 § 1; 2006 c 255 § 1.]

70.47A.020 Definitions. The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

(1) "Administrator" means the administrator of the Washington state health care authority, established under chapter 41.05 RCW.

(2) "Board" means the health insurance partnership board established in RCW 70.47A.100.

(3) "Eligible partnership participant" means an individual who:

(a) Is a resident of the state of Washington;

(b) Has family income that does not exceed two hundred percent of the federal poverty level, as determined annually by the federal department of health and human services; and

(c) Is employed by a participating small employer or is a former employee of a participating small employer who chooses to continue receiving coverage through the partnership following separation from employment.

(4) "Health benefit plan" has the same meaning as defined in RCW 48.43.005.

(5) "Participating small employer" means a small employer that employs at least one eligible partnership participant and has entered into an agreement with the partnership for the partnership to offer and administer the small employer's group health benefit plan, as defined in federal law, Sec. 706 of ERISA (29 U.S.C. Sec. 1167), for enrollees in the plan.

(6) "Partnership" means the health insurance partnership established in RCW 70.47A.030.

(7) "Partnership participant" means an employee of a participating small employer, or a former employee of a participating small employer who chooses to continue receiving coverage through the partnership following separation from employment.

(8) "Small employer" has the same meaning as defined in RCW 48.43.005.

(9) "Subsidy" or "premium subsidy" means payment or reimbursement to an eligible partnership participant toward the purchase of a health benefit plan, and may include a net billing arrangement with insurance carriers or a prospective or retrospective payment for health benefit plan premiums. [2007 c 260 § 2; 2006 c 255 § 2.]

70.47A.030 Health insurance partnership established—Administrator duties. (1) To the extent funding is appropriated in the operating budget for this purpose, the health insurance partnership is established. The administrator shall be responsible for the implementation and operation of the health insurance partnership, directly or by contract. The administrator shall offer premium subsidies to eligible partnership participants under RCW 70.47A.040.

(2) Consistent with policies adopted by the board under *section 59 of this act, the administrator shall, directly or by contract:

(a) Establish and administer procedures for enrolling small employers in the partnership, including publicizing the existence of the partnership and disseminating information on enrollment, and establishing rules related to minimum participation of employees in small groups purchasing health insurance through the partnership. Opportunities to publicize the program for outreach and education of small employers on the value of insurance shall explore the use of online employer guides. As a condition of participating in the partnership, a small employer must agree to establish a cafeteria plan under section 125 of the federal internal revenue code that will enable employees to use pretax dollars to pay their share of their health benefit plan premium. The partnership shall provide technical assistance to small employers for this purpose;

(b) Establish and administer procedures for health benefit plan enrollment by employees of small employers during open enrollment periods and outside of open enrollment peri-

ods upon the occurrence of any qualifying event specified in the federal health insurance portability and accountability act of 1996 or applicable state law. Neither the employer nor the partnership shall limit an employee's choice of coverage from among all the health benefit plans offered;

(c) Establish and manage a system for the partnership to be designated as the sponsor or administrator of a participating small employer health benefit plan and to undertake the obligations required of a plan administrator under federal law;

(d) Establish and manage a system of collecting and transmitting to the applicable carriers all premium payments or contributions made by or on behalf of partnership participants, including employer contributions, automatic payroll deductions for partnership participants, premium subsidy payments, and contributions from philanthropies;

(e) Establish and manage a system for determining eligibility for and making premium subsidy payments under chapter 259, Laws of 2007;

(f) Establish a mechanism to apply a surcharge to all health benefit plans, which shall be used only to pay for administrative and operational expenses of the partnership. The surcharge must be applied uniformly to all health benefit plans offered through the partnership and must be included in the premium for each health benefit plan. Surcharges may not be used to pay any premium assistance payments under this chapter;

(g) Design a schedule of premium subsidies that is based upon gross family income, giving appropriate consideration to family size and the ages of all family members based on a benchmark health benefit plan designated by the board. The amount of an eligible partnership participant's premium subsidy shall be determined by applying a sliding scale subsidy schedule with the percentage of premium similar to that developed for subsidized basic health plan enrollees under RCW 70.47.060. The subsidy shall be applied to the employee's premium obligation for his or her health benefit plan, so that employees benefit financially from any employer contribution to the cost of their coverage through the partnership.

(3) The administrator may enter into interdepartmental agreements with the office of the insurance commissioner, the department of social and health services, and any other state agencies necessary to implement this chapter. [2007 c 259 § 58; 2006 c 255 § 3.]

*Reviser's note: Section 59 of this act was vetoed by the governor.

Severability—Subheadings not law—2007 c 259: See notes following RCW 41.05.033.

70.47A.040 Applications for premium subsidies. Beginning September 1, 2008, the administrator shall accept applications from eligible partnership participants, on behalf of themselves, their spouses, and their dependent children, to receive premium subsidies through the health insurance partnership. [2007 c 260 § 6; 2006 c 255 § 4.]

70.47A.050 Enrollment to remain within appropriation. Enrollment in the health insurance partnership is not an entitlement and shall not result in expenditures that exceed the amount that has been appropriated for the program in the operating budget. If it appears that continued enrollment will

result in expenditures exceeding the appropriated level for a particular fiscal year, the administrator may freeze new enrollment in the program and establish a waiting list of eligible employees who shall receive subsidies only when sufficient funds are available. [2007 c 260 § 12; 2006 c 255 § 5.]

70.47A.060 Rules. The administrator shall adopt all rules necessary for the implementation and operation of the health insurance partnership. As part of the rule development process, the administrator shall consult with small employers, carriers, employee organizations, and the office of the insurance commissioner under Title 48 RCW to determine an effective and efficient method for the payment of subsidies under this chapter. All rules shall be adopted in accordance with chapter 34.05 RCW. [2007 c 260 § 13; 2006 c 255 § 6.]

70.47A.080 Health insurance partnership account. The health insurance partnership account is hereby established in the custody of the state treasurer. Any nongeneral fund—state funds collected for the health insurance partnership shall be deposited in the health insurance partnership account. Moneys in the account shall be used exclusively for the purposes of administering the health insurance partnership, including payments to insurance carriers on behalf of health insurance partnership enrollees. Only the administrator of the health care authority or his or her designee may authorize expenditures from the account. The account is subject to allotment procedures under chapter 43.88 RCW, but an appropriation is not required for expenditures. [2007 c 260 § 14; 2006 c 255 § 8.]

70.47A.100 Health insurance partnership board. (1) The health insurance partnership board is hereby established. The governor shall appoint a seven-member health insurance partnership board by June 30, 2007. The board shall be composed of persons with expertise in the health insurance market and benefit design, and be chaired by the administrator.

(2) The governor shall appoint the initial members of the board to staggered terms not to exceed four years. Initial appointments shall be made on or before June 1, 2007. Members appointed thereafter shall serve two-year terms. Members of the board shall be compensated in accordance with RCW 43.03.250 and shall be reimbursed for their travel expenses while on official business in accordance with RCW 43.03.050 and 43.03.060. The board shall prescribe rules for the conduct of its business. Meetings of the board shall be at the call of the chair.

(3) The board may establish technical advisory committees or seek the advice of technical experts when necessary to execute the powers and duties included in this section.

(4) The board and employees of the board shall not be civilly or criminally liable and shall not have any penalty or cause of action of any nature arise against them for any action taken or not taken, including any discretionary decision or failure to make a discretionary decision, when the action or inaction is done in good faith and in the performance of the powers and duties under this chapter. Nothing in this section prohibits legal actions against the board to enforce the board's statutory or contractual duties or obligations. [2007 c 260 § 4.]

Preliminary report—2007 c 260: "On or before December 1, 2008, the health insurance partnership board shall submit a preliminary report to the governor and the legislature that includes an implementation plan to incorporate the individual and small group health insurance markets into the partnership program. In preparing the report, the board shall examine at least the following issues:

(1) The impact of these markets being incorporated into the partnership, with respect to the utilization of services and cost of health plans offered through the partnership;

(2) The impact of applying small group health benefit plan regulations on access to health services and the cost of coverage for these markets; and

(3) How the composition of the board should be modified to reflect the incorporation of the individual and small group markets in the partnership." [2007 c 260 § 10.]

Report—2007 c 260: "On or before September 1, 2009, the health insurance partnership board shall submit a report and recommendations to the governor and the legislature regarding:

(1) The risks and benefits of additional markets participating in the partnership:

(a) The report shall examine the following markets:

(i) Washington state health insurance pool under chapter 48.41 RCW;

(ii) Basic health plan under chapter 70.47 RCW;

(iii) Public employees' benefits board enrollees under chapter 41.05 RCW;

(iv) Public school employees; and

(v) Any final recommendations for the individual and small group markets, relevant to the study outlined in section 10 of this act; and

(b) The report shall examine at least the following issues:

(i) The impact of these markets participating in the partnership, with respect to the utilization of services and cost of health plans offered through the partnership;

(ii) Whether any distinction should be made in participation between active and retired employees enrolled in public employees' benefits board plans, giving consideration to the implicit subsidy that nonmedicare-eligible retirees currently benefit from by being pooled with active employees, and how medicare-eligible retirees would be affected;

(iii) The impact of applying small group health benefit plan regulations on access to health services and the cost of coverage for these markets; and

(iv) If the board recommends the inclusion of additional markets, how the composition of the board should be modified to reflect the participation of these markets; and

(2) The risks and benefits of establishing a requirement that residents of the state of Washington age eighteen and over obtain and maintain affordable creditable coverage, as defined in the federal health insurance portability and accountability act of 1996 (42 U.S.C. Sec. 300gg(c)). The report shall address the question of how a requirement that residents maintain coverage could be enforced in the state of Washington." [2007 c 260 § 11.]

70.47A.110 Health insurance partnership board—Duties. (1) The health insurance partnership board shall:

(a) Develop policies for enrollment of small employers in the partnership, including minimum participation rules for small employer groups. The small employer shall determine the criteria for eligibility and enrollment in his or her plan and the terms and amounts of the employer's contributions to that plan, consistent with any minimum employer premium contribution level established by the board under (d) of this subsection;

(b) Designate health benefit plans that are currently offered in the small group market that will qualify for premium subsidy payments. At least four health benefit plans shall be chosen, with multiple deductible and point-of-service cost-sharing options. The health benefit plans shall range from catastrophic to comprehensive coverage, and one health benefit plan shall be a high deductible health plan. Every effort shall be made to include health benefit plans that include components to maximize the quality of care provided and result in improved health outcomes, such as preventive care, wellness incentives, chronic care management services,

and provider network development and payment policies related to quality of care;

(c) Approve a mid-range benefit plan from those selected to be used as a benchmark plan for calculating premium subsidies;

(d) Determine whether there should be a minimum employer premium contribution on behalf of employees, and if so, how much;

(e) Determine appropriate health benefit plan rating methodologies. The methodologies shall be based on the small group adjusted community rate as defined in Title 48 RCW. The board shall evaluate the impact of applying the small group community rating with the partnership principle of allowing each employee to choose their health benefit plan, and consider options to reduce uncertainty for carriers and provide for efficient risk management of high-cost enrollees through risk adjustment, reinsurance, or other mechanisms;

(f) Conduct analyses and provide recommendations as requested by the legislature and the governor, with the assistance of staff from the health care authority and the office of the insurance commissioner.

(2) The board may authorize one or more limited health care service plans for dental care services to be offered by limited health care service contractors under RCW 48.44.035. However, such plan shall not qualify for subsidy payments.

(3) In fulfilling the requirements of this section, the board shall consult with small employers, the office of the insurance commissioner, members in good standing of the American academy of actuaries, health carriers, agents and brokers, and employees of small business. [2007 c 260 § 5.]

Chapter 70.48 RCW CITY AND COUNTY JAILS ACT

Sections

- 70.48.090 Interlocal contracts for jail services—Neighboring states—Responsibility for operation of jail—City or county departments of corrections authorized.
- 70.48.130 Emergency or necessary medical and health care for confined persons—Reimbursement procedures—Conditions—Limitations. (2007 c 259 § 66 expires June 30, 2009.)

70.48.090 Interlocal contracts for jail services—Neighboring states—Responsibility for operation of jail—City or county departments of corrections authorized. (1) Contracts for jail services may be made between a county and a city, and among counties and cities. The contracts shall: Be in writing, give one governing unit the responsibility for the operation of the jails, specify the responsibilities of each governing unit involved, and include the applicable charges for custody of the prisoners as well as the basis for adjustments in the charges. The contracts may be terminated only by ninety days written notice to the governing units involved and to the office. The notice shall state the grounds for termination and the specific plans for accommodating the affected jail population.

(2) A city or county may contract for jail services with an adjacent county, or city in an adjacent county, in a neighboring state. A person convicted in the courts of this state and sentenced to a term of confinement in a city or county jail

may be transported to a jail in the adjacent county to be confined until: (a) The term of confinement is completed; or (b) that person is returned to be confined in a city or county jail in this state.

(3) The contract authorized in subsection (1) of this section shall be for a minimum term of ten years when state funds are provided to construct or remodel a jail in one governing unit that will be used to house prisoners of other governing units. The contract may not be terminated prior to the end of the term without the office's approval. If the contract is terminated, or upon the expiration and nonrenewal of the contract, the governing unit whose jail facility was built or remodeled to hold the prisoners of other governing units shall pay to the state treasurer the amount set by the *corrections standards board or office when it authorized disbursement of state funds for the remodeling or construction under **RCW 70.48.120. This amount shall be deposited in the local jail improvement and construction account and shall fairly represent the construction costs incurred in order to house prisoners from other governing units. The office may pay the funds to the governing units which had previously contracted for jail services under rules which the office may adopt. The acceptance of state funds for constructing or remodeling consolidated jail facilities constitutes agreement to the proportionate amounts set by the office. Notice of the proportionate amounts shall be given to all governing units involved.

(4) A city or county primarily responsible for the operation of a jail or jails may create a department of corrections to be in charge of such jail and of all persons confined therein by law, subject to the authority of the governing unit. If such department is created, it shall have charge of jails and persons confined therein. If no such department of corrections is created, the chief law enforcement officer of the city or county primarily responsible for the operation of said jail shall have charge of the jail and of all persons confined therein. [2007 c 13 § 1; 2002 c 125 § 1; 1987 c 462 § 7; 1986 c 118 § 6; 1979 ex.s. c 232 § 15; 1977 ex.s. c 316 § 9.]

Reviser's note: *(1) The corrections standards board no longer exists. See 1987 c 462 § 21.

** (2) RCW 70.48.120 was repealed by 1991 sp.s. c 13 § 122, effective July 1, 1991.

Effective dates—1987 c 462: See note following RCW 13.04.116.

Severability—1977 ex.s. c 316: See note following RCW 70.48.020.

70.48.130 Emergency or necessary medical and health care for confined persons—Reimbursement procedures—Conditions—Limitations. (2007 c 259 § 66 expires June 30, 2009.) It is the intent of the legislature that all jail inmates receive appropriate and cost-effective emergency and necessary medical care. Governing units, the department of social and health services, and medical care providers shall cooperate to achieve the best rates consistent with adequate care.

Payment for emergency or necessary health care shall be by the governing unit, except that the department of social and health services shall directly reimburse the provider pursuant to chapter 74.09 RCW, in accordance with the rates and benefits established by the department, if the confined person is eligible under the department's medical care programs as authorized under chapter 74.09 RCW. After payment by the department, the financial responsibility for any remaining

balance, including unpaid client liabilities that are a condition of eligibility or participation under chapter 74.09 RCW, shall be borne by the medical care provider and the governing unit as may be mutually agreed upon between the medical care provider and the governing unit. In the absence of mutual agreement between the medical care provider and the governing unit, the financial responsibility for any remaining balance shall be borne equally between the medical care provider and the governing unit. Total payments from all sources to providers for care rendered to confined persons eligible under chapter 74.09 RCW shall not exceed the amounts that would be paid by the department for similar services provided under Title XIX medicaid, unless additional resources are obtained from the confined person.

As part of the screening process upon booking or preparation of an inmate into jail, general information concerning the inmate's ability to pay for medical care shall be identified, including insurance or other medical benefits or resources to which an inmate is entitled. This information shall be made available to the department, the governing unit, and any provider of health care services.

The governing unit or provider may obtain reimbursement from the confined person for the cost of health care services not provided under chapter 74.09 RCW, including reimbursement from any insurance program or from other medical benefit programs available to the confined person. Nothing in this chapter precludes civil or criminal remedies to recover the costs of medical care provided jail inmates or paid for on behalf of inmates by the governing unit. As part of a judgment and sentence, the courts are authorized to order defendants to repay all or part of the medical costs incurred by the governing unit or provider during confinement.

To the extent that a confined person is unable to be financially responsible for medical care and is ineligible for the department's medical care programs under chapter 74.09 RCW, or for coverage from private sources, and in the absence of an interlocal agreement or other contracts to the contrary, the governing unit may obtain reimbursement for the cost of such medical services from the unit of government that initiated the charges on which the person is being held in the jail: PROVIDED, That reimbursement for the cost of such services shall be by the state for state prisoners being held in a jail who are accused of either escaping from a state facility or of committing an offense in a state facility.

There shall be no right of reimbursement to the governing unit from units of government that initiated the charges for which a person is being held in the jail for care provided after the charges are disposed of by sentencing or otherwise, unless by intergovernmental agreement pursuant to chapter 39.34 RCW.

Under no circumstance shall necessary medical services be denied or delayed because of disputes over the cost of medical care or a determination of financial responsibility for payment of the costs of medical care provided to confined persons.

Nothing in this section shall limit any existing right of any party, governing unit, or unit of government against the person receiving the care for the cost of the care provided. [2007 c 259 § 66; 1993 c 409 § 1; 1986 c 118 § 9; 1977 ex.s. c 316 § 13.]

Expiration date—2007 c 259 § 66: "Section 66 of this act expires June 30, 2009." [2007 c 259 § 76.]

Severability—Subheadings not law—2007 c 259: See notes following RCW 41.05.033.

Effective date—1993 c 409: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and shall take effect immediately [May 15, 1993]." [1993 c 409 § 2.]

Severability—1977 ex.s. c 316: See note following RCW 70.48.020.

Chapter 70.56 RCW

ADVERSE HEALTH EVENTS AND INCIDENT REPORTING SYSTEM

Sections

70.56.010 Definitions. (*Effective July 1, 2009.*)

70.56.030 Department of health—Duties—Rules.

70.56.010 Definitions. (*Effective July 1, 2009.*) The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

(1) "Adverse health event" or "adverse event" means the list of serious reportable events adopted by the national quality forum in 2002, in its consensus report on serious reportable events in health care. The department shall update the list, through adoption of rules, as subsequent changes are made by the national quality forum. The term does not include an incident.

(2) "Ambulatory surgical facility" means a facility licensed under chapter 70.230 RCW.

(3) "Childbirth center" means a facility licensed under chapter 18.46 RCW.

(4) "Correctional medical facility" means a part or unit of a correctional facility operated by the department of corrections under chapter 72.10 RCW that provides medical services for lengths of stay in excess of twenty-four hours to offenders.

(5) "Department" means the department of health.

(6) "Health care worker" means an employee, independent contractor, licensee, or other individual who is directly involved in the delivery of health services in a medical facility.

(7) "Hospital" means a facility licensed under chapter 70.41 RCW.

(8) "Incident" means an event, occurrence, or situation involving the clinical care of a patient in a medical facility that:

(a) Results in unanticipated injury to a patient that is not related to the natural course of the patient's illness or underlying condition and does not constitute an adverse event; or

(b) Could have injured the patient but did not either cause an unanticipated injury or require the delivery of additional health care services to the patient.

"Incident" does not include an adverse event.

(9) "Independent entity" means that entity that the department of health contracts with under RCW 70.56.040 to receive notifications and reports of adverse events and incidents, and carry out the activities specified in RCW 70.56.040.

(10) "Medical facility" means a childbirth center, hospital, psychiatric hospital, or correctional medical facility. An ambulatory surgical facility shall be considered a medical

facility for purposes of this chapter upon the effective date of any requirement for state registration or licensure of ambulatory surgical facilities.

(11) "Psychiatric hospital" means a hospital facility licensed as a psychiatric hospital under chapter 71.12 RCW. [2007 c 273 § 20; 2006 c 8 § 105.]

Effective date—Implementation—2007 c 273: See RCW 70.230.900 and 70.230.901.

70.56.030 Department of health—Duties—Rules. (1)

The department shall:

(a) Receive and investigate, where necessary, notifications and reports of adverse events, including root cause analyses and corrective action plans submitted as part of reports, and communicate to individual facilities the department's conclusions, if any, regarding an adverse event reported by a facility;

(b) Provide to the Washington state quality forum established in RCW 41.05.029 such information from the adverse health events and incidents reports made under this chapter as the department and the Washington state quality forum determine will assist in the Washington state quality forum's research regarding health care quality, evidence-based medicine, and patient safety. Any shared information must be aggregated and not identify an individual medical facility. As determined by the department and the Washington state quality forum, selected shared information may be disseminated on the Washington state quality forum's web site and through other appropriate means; and

(c) Adopt rules as necessary to implement this chapter.

(2) The department may enforce the reporting requirements of RCW 70.56.020 using its existing enforcement authority provided in chapter 18.46 RCW for childbirth centers, chapter 70.41 RCW for hospitals, and chapter 71.12 RCW for psychiatric hospitals. [2007 c 259 § 13; 2006 c 8 § 107.]

Severability—Subheadings not law—2007 c 259: See notes following RCW 41.05.033.

Chapter 70.58 RCW VITAL STATISTICS

Sections

70.58.107 Fees charged by department and local registrars.
70.58.175 Certificate of death—Domestic partnership information.

70.58.107 Fees charged by department and local registrars. The department of health shall charge a fee of twenty dollars for certified copies of records and for copies or information provided for research, statistical, or administrative purposes, and eight dollars for a search of the files or records when no copy is made. The department shall prescribe by regulation fees to be paid for preparing sealed files and for opening sealed files.

No fee may be demanded or required for furnishing certified copies of a birth, death, fetal death, marriage, divorce, annulment, or legal separation record for use in connection with a claim for compensation or pension pending before the veterans administration. No fee may be demanded or required for furnishing certified copies of a death certificate of a sex offender for use by a law enforcement agency in

maintaining a registered sex offender database, or that of any offender requested by a county clerk or court in the state of Washington for purposes of extinguishing the offender's legal financial obligation.

The department shall keep a true and correct account of all fees received and transmit the fees to the state treasurer on a weekly basis.

Local registrars shall charge the same fees as the state as hereinabove provided and as prescribed by department regulation except in cases where payment is made by credit card, charge card, debit card, smart card, stored value card, federal wire, automatic clearinghouse system, or other electronic communication. Payment by these electronic methods may be subject to an additional fee consistent with the requirements established by RCW 36.29.190. All such fees collected, except for seven dollars of each fee collected for the issuance of birth certificates and first copies of death certificates and fourteen dollars of each fee collected for additional copies of the same death certificate ordered at the same time as the first copy, shall be paid to the jurisdictional health department.

All local registrars in cities and counties shall keep a true and correct account of all fees received under this section for the issuance of certified copies and shall transmit seven dollars of the fees collected for birth certificates and first copies of death certificates and fourteen dollars of the fee collected for additional copies of death certificates to the state treasurer on or before the first day of January, April, July, and October. All but five dollars of the fees turned over to the state treasurer by local registrars shall be paid to the department of health for the purpose of developing and maintaining the state vital records systems, including a web-based electronic death registration system.

Eight dollars of each fee imposed for the issuance of certified copies, except for copies suitable for display issued under RCW 70.58.085, at both the state and local levels shall be held by the state treasurer in the death investigations' account established by RCW 43.79.445. [2007 c 200 § 2; 2007 c 91 § 2. Prior: 2003 c 272 § 1; 2003 c 241 § 1; 1997 c 223 § 1; 1991 c 3 § 343; 1988 c 40 § 1; 1987 c 223 § 3.]

Reviser's note: This section was amended by 2007 c 91 § 2 and by 2007 c 200 § 2, each without reference to the other. Both amendments are incorporated in the publication of this section under RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

70.58.175 Certificate of death—Domestic partnership information. Information recorded on death certificates shall include domestic partnership status and the surviving partner's information to the same extent such information is recorded for marital status and the surviving spouse's information. [2007 c 156 § 32.]

Chapter 70.76 RCW

POLYBROMINATED DIPHENYL ETHERS— FLAME RETARDANTS

Sections

70.76.005 Findings.
70.76.010 Definitions.
70.76.020 Manufacture, sale, or distribution of noncombustible products containing PBDEs—Exemptions.

70.76.030	Manufacture, sale, or distribution of products containing commercial deca-bde—Departments review of commercial deca-bde alternatives—Effective date of prohibitions.
70.76.040	Fire safety committee.
70.76.050	Departments review of commercial deca-bde alternatives and effects of PBDEs in waste stream—Publication.
70.76.060	Exclusions from chapter—Transportation and storage.
70.76.070	Notification to sellers.
70.76.080	Assistance to state agencies.
70.76.090	Retailers—Liability—Existing stock.
70.76.100	Enforcement—Achieving compliance with chapter—Enforcement sequence—Recall—Penalties.
70.76.110	Rules.

70.76.005 Findings. Polybrominated diphenyl ethers (PBDEs) have been used extensively as flame retardants in a large number of common household products for the past thirty years. Studies on animals show that PBDEs can impact the developing brain, affecting behavior and learning after birth and into adulthood, making exposure to fetuses and children a particular concern. Levels of PBDEs are increasing in people, and in the environment, particularly in North America. Because people can be exposed to these chemicals through house dust and indoor air as well as through food, it is important to phase out their use in common household products, provided that effective flame retardants that are safer and technically feasible are available at a reasonable cost. [2007 c 65 § 1.]

70.76.010 Definitions. The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

- (1) "Comestible" means edible.
- (2) "Commercial decabromo diphenyl ether" or "commercial deca-bde" means the chemical mixture of decabromo diphenyl ether, including associated polybrominated diphenyl ether impurities not intentionally added.
- (3) "Department" means the department of ecology.
- (4) "Electronic enclosure" means the plastic housing that encloses the components of electronic products, including but not limited to televisions and computers.
- (5) "Manufacturer" means any person, firm, association, partnership, corporation, governmental entity, organization, or joint venture that produces a product containing polybrominated diphenyl ethers or an importer or domestic distributor of a noncomestible product containing polybrominated diphenyl ethers. A manufacturer does not include a retailer who:
 - (a) Adds a private label brand or cobrands a product for sale; or
 - (b) Assembles components to create a single noncomestible product based on an individual consumer preference.
- (6) "Mattress" has the same meaning as defined by the United States consumer product safety commission in 16 C.F.R. Part 1633 (2007) as it existed on July 22, 2007, and includes mattress sets, box springs, futons, crib mattresses, and youth mattresses. "Mattress" includes mattress pads.
- (7) "Medical device" means an instrument, machine, implant, or diagnostic test used to help diagnose a disease or other condition or to cure, treat, or prevent disease.
- (8) "Polybrominated diphenyl ethers" or "PBDEs" means chemical forms that consist of diphenyl ethers bound with bromine atoms. Polybrominated diphenyl ethers include, but are not limited to, the three primary forms of the

commercial mixtures known as pentabromo diphenyl ether (penta-bde), octabromo diphenyl ether (octa-bde), and decabromo diphenyl ether (deca-bde).

(9) "Residential upholstered furniture" means residential seating products intended for indoor use in a home or other dwelling intended for residential occupancy that consists in whole or in part of resilient cushioning materials enclosed within a covering consisting of fabric or related materials, if the resilient cushioning materials are sold with the item of upholstered furniture and the upholstered furniture is constructed with a contiguous upholstered seat and back that may include arms.

(10) "Retailer" means a person who offers a product for sale at retail through any means including, but not limited to, remote offerings such as sales outlets, catalogs, or the internet, but does not include a sale that is a wholesale transaction with a distributor or a retailer. A retailer does not include a person, firm, association, partnership, corporation, governmental entity, organization, or joint venture that both manufactures and sells a product at retail.

(11) "Technically feasible" means an alternative that is available at a cost and in sufficient quantity to permit the manufacturer to produce an economically viable product.

(12) "Transportation vehicle" means a mechanized vehicle that is used to transport goods or people including, but not limited to, airplanes, automobiles, motorcycles, trucks, buses, trains, boats, ships, streetcars, or monorail cars. [2007 c 65 § 2.]

70.76.020 Manufacture, sale, or distribution of non-comestible products containing PBDEs—Exemptions. After January 1, 2008, no person may manufacture, knowingly sell, offer for sale, distribute for sale, or distribute for use in this state noncomestible products containing PBDEs. Exemptions from the prohibition in this section are limited to the following:

- (1) Products containing deca-bde, except as provided in RCW 70.76.030;
- (2) The sale or distribution of any used transportation vehicle manufactured before January 1, 2008, with component parts containing PBDEs;
- (3) The sale or distribution of any used transportation vehicle parts or new transportation vehicle parts manufactured before January 1, 2008, that contain PBDEs;
- (4) The manufacture, sale, repair, distribution, maintenance, refurbishment, or modification of equipment containing PBDEs and used primarily for military or federally funded space program applications. The exemption in this subsection (4) does not cover consumer-based goods with broad applicability;
- (5) Federal aviation administration fire worthiness requirements and recommendations;
- (6) The manufacture, sale, repair, distribution, maintenance, refurbishment, or modification of any new raw material or component part used in a transportation vehicle with component parts, including original spare parts, containing deca-bde;
- (7) The use of commercial deca-bde in the maintenance, refurbishment, or modification of transportation equipment;
- (8) The sale or distribution of any product containing PBDEs that has been previously owned, purchased, or sold in

commerce, provided it was manufactured before the effective date of the prohibition;

(9) The manufacture, sale, or distribution of any new product or product component consisting of recycled or used materials containing deca-bde;

(10) The sale or purchase of any previously owned product containing PBDEs made in casual or isolated sales as defined in RCW 82.04.040 and to sales by nonprofit organizations;

(11) The manufacture, sale, or distribution of new carpet cushion made from recycled foam containing less than one-tenth of one percent penta-bde; and

(12) Medical devices. [2007 c 65 § 3.]

70.76.030 Manufacture, sale, or distribution of products containing commercial deca-bde—Departments review of commercial deca-bde alternatives—Effective date of prohibitions. (1) Except as provided in RCW 70.76.090, no person may manufacture, knowingly sell, offer for sale, distribute for sale, or distribute for use in this state mattresses containing commercial deca-bde after January 1, 2008.

(2) Except as provided in RCW 70.76.090, no person may manufacture, knowingly sell, offer for sale, distribute for sale, or distribute for use in this state residential upholstered furniture that contains commercial deca-bde, or any television or computer that has an electronic enclosure that contains commercial deca-bde after the effective date established in subsection (3) of this section. This prohibition may not take effect until the department and the department of health identify that a safer and technically feasible alternative is available, and the fire safety committee, created in RCW 70.76.040, determines that the identified alternative meets applicable fire safety standards. The effective date of the prohibition must be established according to the following process:

(a) The department and the department of health shall review risk assessments, scientific studies, and other relevant findings regarding alternatives to the use of commercial deca-bde in residential upholstered furniture, televisions, and computers.

(b) If the department and the department of health jointly find that safer and technically feasible alternatives are available for any of these uses, the department shall convene the fire safety committee created in RCW 70.76.040 to determine whether the identified alternatives meet applicable fire safety standards.

(c) By majority vote, the fire safety committee created in RCW 70.76.040 shall make a finding whether an alternative identified under (b) of this subsection meets applicable fire safety standards. The fire safety committee shall report their finding to the state fire marshal. After reviewing the finding of the fire safety committee, the state fire marshal shall determine whether an alternative identified under (b) of this subsection meets applicable fire safety standards. The determination of the fire marshal must be based upon the finding of the fire safety committee. The state fire marshal shall report the determination to the department.

(d) The department shall seek public input on their findings, the findings of the fire safety committee, and the determination by the state fire marshal. The department shall pub-

lish these findings in the Washington State Register, and submit them in a report to the appropriate committees of the legislature. The department shall initially report these findings by December 31, 2008.

(3) The effective date of the prohibition is as follows:

(a) If the December 31, 2008, report required in subsection (2)(d) of this section finds that a safer and technically feasible alternative that meets applicable fire safety standards is available, the prohibition takes effect January 1, 2011;

(b) If the December 31, 2008, report required in subsection (2)(d) of this section does not find that a safer and technically feasible alternative that meets applicable fire safety standards is available, the prohibition does not take effect January 1, 2011. Beginning in 2009, by December 31st of each year, the department shall review and report on alternatives as described in subsection (2) of this section. The prohibition in subsection (2) of this section takes effect two years after a report submitted to the legislature required under subsection (2)(d) of this section finds that a safer and technically feasible alternative that meets applicable fire safety standards is available. [2007 c 65 § 4.]

70.76.040 Fire safety committee. (1) The fire safety committee is created for the exclusive purpose of finding whether an alternative identified under RCW 70.76.030(2)(b) meets applicable fire safety standards.

(2) A majority vote of the members of the fire safety committee constitutes a finding that an alternative meets applicable fire safety standards.

(3) The fire safety committee consists of the following members:

(a) A representative from the department, who shall chair the fire safety committee, and serve as an ex officio nonvoting member.

(b) Five voting members, appointed by the governor, as follows:

(i) A representative of the office of the state fire marshal;

(ii) A representative of a statewide association representing the interests of fire chiefs;

(iii) A representative of a statewide association representing the interests of fire commissioners;

(iv) A representative of a recognized statewide council, affiliated with an international association representing the interests of firefighters; and

(v) A representative of a statewide association representing the interests of volunteer firefighters. [2007 c 65 § 5.]

70.76.050 Departments review of commercial deca-bde alternatives and effects of PBDEs in waste stream—Publication. The department and the department of health shall review risk assessments, scientific studies, and other relevant findings regarding alternatives to the use of commercial deca-bde in products not directly addressed in this chapter. If a flame retardant that is safer and technically feasible becomes available, the department shall convene the fire safety committee created in RCW 70.76.040. The fire safety committee and the state fire marshal shall proceed as required in RCW 70.76.030(2)(c) to determine if the identified alternative meets applicable fire safety standards. The department and the department of health shall also review

risk assessments, scientific studies, and other findings regarding the potential effect of PBDEs in the waste stream. By December 31st of the year in which the finding is made, the department must publish the information required by this subsection in the Washington State Register and present it in a report to the appropriate committees of the legislature. [2007 c 65 § 6.]

70.76.060 Exclusions from chapter—Transportation and storage. Nothing in this chapter restricts the ability of a manufacturer, importer, or distributor from transporting products containing PBDEs through the state or storing the products in the state for later distribution outside the state. [2007 c 65 § 7.]

70.76.070 Notification to sellers. A manufacturer of products containing PBDEs that are restricted under this chapter must notify persons that sell the manufacturer's products in this state about the provisions of this chapter no less than ninety days prior to the effective date of the restrictions. [2007 c 65 § 8.]

70.76.080 Assistance to state agencies. The department shall assist state agencies to give priority and preference to the purchase of equipment, supplies, and other products that do not contain PBDEs. [2007 c 65 § 9.]

70.76.090 Retailers—Liability—Existing stock. (1) Retailers who unknowingly sell products prohibited under RCW 70.76.020 or 70.76.030 are not liable under this chapter.

(2) In-state retailers in possession of products on the date that restrictions on the sale of the products become effective under RCW 70.76.020 or 70.76.030 may exhaust their existing stock through sales to the public.

(3) The department must assist in-state retailers in identifying potential products containing PBDEs.

(4) If a retailer unknowingly possesses products that are prohibited for sale under RCW 70.76.020 or 70.76.030 and the manufacturer does not recall the products as required under RCW 70.76.100(2), the retailer may exhaust its existing stock through sales to the public. However, no additional prohibited stock may be sold or offered for sale. [2007 c 65 § 10.]

70.76.100 Enforcement—Achieving compliance with chapter—Enforcement sequence—Recall—Penalties. (1) Enforcement of this chapter must rely on notification and information exchange between the department and manufacturers. The department shall achieve compliance with this chapter using the following enforcement sequence:

(a) Before the effective date of the product prohibition in RCW 70.76.020 or 70.76.030, the department shall prepare and distribute information to in-state manufacturers and out-of-state manufacturers, to the maximum extent practicable, to assist them in identifying products prohibited for manufacture, sale, or distribution under this chapter.

(b) The department may request a certificate of compliance from a manufacturer. A certificate of compliance attests

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that a manufacturer's product or products meets the requirements of this chapter.

(c) The department may issue a warning letter to a manufacturer that produces, sells, or distributes prohibited products in violation of this chapter. The department shall offer information or other appropriate assistance to the manufacturer in complying with this chapter. If, after one year, compliance is not achieved, penalties may be assessed under subsection (3) of this section.

(2) A manufacturer that knowingly produces, sells, or distributes a product prohibited from manufacture, sale, or distribution in this state under this chapter shall recall the product and reimburse the retailer or any other purchaser for the product and any applicable shipping and handling for returning the products.

(3) A manufacturer of products containing PBDEs in violation of this chapter is subject to a civil penalty not to exceed one thousand dollars for each violation in the case of a first offense. Manufacturers who are repeat violators are subject to a civil penalty not to exceed five thousand dollars for each repeat offense. Penalties collected under this section must be deposited in the state toxics control account created in RCW 70.105D.070. [2007 c 65 § 11.]

70.76.110 Rules. The department may adopt rules to fully implement this chapter. [2007 c 65 § 12.]

Chapter 70.83 RCW

PHENYLKETONURIA AND OTHER PREVENTABLE HERITABLE DISORDERS

Sections

70.83.023	Specialty clinics—Defined disorders—Fee for infant screening.
70.83.040	Services and facilities of state agencies made available to families and physicians.

70.83.023 Specialty clinics—Defined disorders—Fee for infant screening. The department has the authority to collect a fee of three dollars and fifty cents from the parents or other responsible party of each infant screened for congenital disorders as defined by the state board of health under RCW 70.83.020 to fund specialty clinics that provide treatment services for those with the defined disorders. The fee may be collected through the facility where a screening specimen is obtained. [2007 c 259 § 8.]

Severability—Subheadings not law—2007 c 259: See notes following RCW 41.05.033.

70.83.040 Services and facilities of state agencies made available to families and physicians. When notified of positive screening tests, the state department of health shall offer the use of its services and facilities, designed to prevent mental retardation or physical defects in such children, to the attending physician, or the parents of the newborn child if no attending physician can be identified.

The services and facilities of the department, and other state and local agencies cooperating with the department in carrying out programs of detection and prevention of mental retardation and physical defects shall be made available to the family and physician to the extent required in order to

carry out the intent of this chapter and within the availability of funds. [2007 c 259 § 7; 2005 c 518 § 938; 1999 c 76 § 1; 1991 c 3 § 350; 1979 c 141 § 114; 1967 c 82 § 4.]

Severability—Subheadings not law—2007 c 259: See notes following RCW 41.05.033.

Severability—Effective date—2005 c 518: See notes following RCW 28A.305.210.

Chapter 70.93 RCW

WASTE REDUCTION, RECYCLING, AND MODEL LITTER CONTROL ACT

Sections

70.93.030 Definitions.

70.93.093 Official gatherings and sports facilities—Recycling.

70.93.030 Definitions. The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

(1) "Conveyance" means a boat, airplane, or vehicle.

(2) "Department" means the department of ecology.

(3) "Director" means the director of the department of ecology.

(4) "Disposable package or container" means all packages or containers defined as such by rules adopted by the department of ecology.

(5) "Junk vehicle" has the same meaning as defined in RCW 46.55.010.

(6) "Litter" means all waste material including but not limited to disposable packages or containers thrown or deposited as herein prohibited and solid waste that is illegally dumped, but not including the wastes of the primary processes of mining, logging, sawmilling, farming, or manufacturing. "Litter" includes the material described in subsection (11) of this section as "potentially dangerous litter."

(7) "Litter bag" means a bag, sack, or other container made of any material which is large enough to serve as a receptacle for litter inside the vehicle or watercraft of any person. It is not necessarily limited to the state approved litter bag but must be similar in size and capacity.

(8) "Litter receptacle" means those containers adopted by the department of ecology and which may be standardized as to size, shape, capacity, and color and which shall bear the state anti-litter symbol, as well as any other receptacles suitable for the depositing of litter.

(9) "Official gathering" means an event where authorization to hold the event is approved, recognized, or issued by a government, public body, or authority, including but not limited to fairs, musical concerts, athletic games, festivals, tournaments, or any other formal or ceremonial event, during which beverages are sold by a vendor or vendors in single-use aluminum, glass, or plastic bottles or cans.

(10) "Person" means any political subdivision, government agency, municipality, industry, public or private corporation, copartnership, association, firm, individual, or other entity whatsoever.

(11) "Potentially dangerous litter" means litter that is likely to injure a person or cause damage to a vehicle or other property. "Potentially dangerous litter" means:

(a) Cigarettes, cigars, or other tobacco products that are capable of starting a fire;

(b) Glass;

(c) A container or other product made predominantly or entirely of glass;

(d) A hypodermic needle or other medical instrument designed to cut or pierce;

(e) Raw human waste, including soiled baby diapers, regardless of whether or not the waste is in a container of any sort; and

(f) Nails or tacks.

(12) "Public place" means any area that is used or held out for use by the public whether owned or operated by public or private interests.

(13) "Recycling" means transforming or remanufacturing waste materials into a finished product for use other than landfill disposal or incineration.

(14) "Recycling center" means a central collection point for recyclable materials.

(15) "Sports facility" means an outdoor recreational sports facility, including but not limited to athletic fields and ballparks, at which beverages are sold by a vendor or vendors in single-use aluminum, glass, or plastic bottles or cans.

(16) "To litter" means a single or cumulative act of disposing of litter.

(17) "Vehicle" includes every device capable of being moved upon a public highway and in, upon, or by which any persons or property is or may be transported or drawn upon a public highway, excepting devices moved by human or animal power or used exclusively upon stationary rails or tracks.

(18) "Waste reduction" means reducing the amount or toxicity of waste generated or reusing materials.

(19) "Watercraft" means any boat, ship, vessel, barge, or other floating craft. [2007 c 244 § 1; 2003 c 337 § 2; 2000 c 154 § 1; 1998 c 257 § 3; 1991 c 319 § 102; 1979 c 94 § 3; 1971 ex.s. c 307 § 3.]

Findings—2003 c 337: See note following RCW 70.93.060.

Severability—2000 c 154: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [2000 c 154 § 5.]

Severability—Part headings not law—1991 c 319: See RCW 70.95F.900 and 70.95F.901.

70.93.093 Official gatherings and sports facilities—Recycling. In communities where there is an established curbside service and where recycling service is available to businesses, a recycling program must be provided at every official gathering and at every sports facility by the vendors who sell beverages in single-use aluminum, glass, or plastic bottles or cans. A recycling program includes provision of receptacles or reverse vending machines, and provisions to transport and recycle the collected materials. Facility managers or event coordinators may choose to work with vendors to coordinate the recycling program. The recycling receptacles or reverse vending machines must be clearly marked, and must be provided for the aluminum, glass, or plastic bottles or cans that contain the beverages sold by the vendor. [2007 c 244 § 2.]

Chapter 70.94 RCW

WASHINGTON CLEAN AIR ACT

Sections

70.94.017	Air pollution control account—Subaccount distribution. (Expires July 1, 2020.)
70.94.085	Cost-reimbursement agreements.
70.94.094	Designation of authority treasurer and auditor—Duties.
70.94.473	Limitations on burning wood for heat.
70.94.488	Wood smoke emissions—Findings.
70.94.505	Wood smoke emissions—Work group.

70.94.017 Air pollution control account—Subaccount distribution. (Expires July 1, 2020.) (1) Money deposited in the segregated subaccount of the air pollution control account under RCW 46.68.020(2) shall be distributed as follows:

(a) Eighty-five percent shall be distributed to air pollution control authorities created under this chapter. The money must be distributed in direct proportion with the amount of fees imposed under RCW 46.12.080, 46.12.170, and 46.12.181 that are collected within the boundaries of each authority. However, an amount in direct proportion with those fees collected in counties for which no air pollution control authority exists must be distributed to the department.

(b) The remaining fifteen percent shall be distributed to the department.

(2) Money distributed to air pollution control authorities and the department under subsection (1) of this section must be used as follows:

(a) Eighty-five percent of the money received by an air pollution control authority or the department is available on a priority basis to retrofit school buses with exhaust emission control devices or to provide funding for fueling infrastructure necessary to allow school bus fleets to use alternative, cleaner fuels. In addition, the director of ecology or the air pollution control officer may direct funding under this section for other publicly or privately owned diesel equipment if the director of ecology or the air pollution control officer finds that funding for other publicly or privately owned diesel equipment will provide public health benefits and further the purposes of this chapter.

(b) The remaining fifteen percent may be used by the air pollution control authority or department to reduce transportation-related air contaminant emissions and clean up air pollution, or reduce and monitor toxic air contaminants.

(3) Money in the air pollution control account may be spent by the department only after appropriation.

(4) This section expires July 1, 2020. [2007 c 348 § 102; 2005 c 295 § 5; 2003 c 264 § 1.]

Findings—Part headings not law—2007 c 348: See RCW 43.325.005 and 43.325.903.

Effective date—2005 c 295 §§ 5, 6, and 10: "Sections 5, 6, and 10 of this act are necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and take effect July 1, 2005." [2005 c 295 § 14.]

Findings—2005 c 295: See note following RCW 70.120A.010.

70.94.085 Cost-reimbursement agreements. (1) An authority may enter into a written cost-reimbursement agreement with a permit applicant or project proponent to recover from the applicant or proponent the reasonable costs incurred

by the authority in carrying out the requirements of this chapter, as well as the requirements of other relevant laws, as they relate to permit coordination, environmental review, application review, technical studies, and permit processing. The cost-reimbursement agreement shall identify the specific tasks, costs, and schedule for work to be conducted under the agreement.

(2) The written cost-reimbursement agreement shall be negotiated with the permit applicant or project proponent. Under the provisions of a cost-reimbursement agreement, funds from the applicant or proponent shall be used by the air pollution control authority to contract with an independent consultant to carry out the work covered by the cost-reimbursement agreement. The air pollution control authority may also use funds provided under a cost-reimbursement agreement to assign current staff to review the work of the consultant, to provide necessary technical assistance when an independent consultant with comparable technical skills is unavailable, and to recover reasonable and necessary direct and indirect costs that arise from processing the permit. The air pollution control authority shall, in developing the agreement, ensure that final decisions that involve policy matters are made by the agency and not by the consultant. The air pollution control authority shall make an estimate of the number of permanent staff hours to process the permits, and shall contract with consultants to replace the time and functions committed by these permanent staff to the project. The billing process shall provide for accurate time and cost accounting and may include a billing cycle that provides for progress payments. Use of cost-reimbursement agreements shall not reduce the current level of staff available to work on permits not covered by cost-reimbursement agreements. The air pollution control authority may not use any funds under a cost-reimbursement agreement to replace or supplant existing funding. The provisions of chapter 42.52 RCW apply to any cost-reimbursement agreement, and to any person hired as a result of a cost-reimbursement agreement. Members of the air pollution control authority's board of directors shall be considered as state officers, and employees of the air pollution control authority shall be considered as state employees, for the sole purpose of applying the restrictions of chapter 42.52 RCW to this section. [2007 c 94 § 14; 2003 c 70 § 5; 2000 c 251 § 6.]

Intent—Captions not law—Effective date—2000 c 251: See notes following RCW 43.21A.690.

70.94.094 Designation of authority treasurer and auditor—Duties. The treasurer of each component city, town, or county shall create a separate fund into which shall be paid all money collected from taxes or from any other available sources, levied by or obtained for the activated authority on property or on any other available sources in such city, town, or county. The collected money shall be forwarded quarterly by the treasurer of each such city, town, or county to the treasurer of the county designated by the board as the treasurer for the authority. The treasurer of the county designated to serve as treasurer of the authority shall establish and maintain funds as authorized by the board.

Money shall be disbursed from funds collected under this section upon warrants drawn by either the authority or

the auditor of the county designated by the board as the auditor for the authority, as authorized by the board.

If an authority chooses to use a county auditor for the disbursement of funds, the respective county shall be reimbursed by the board for services rendered by the auditor of the respective county in connection with the disbursement of funds under this section. [2007 c 164 § 1; 1969 ex.s. c 168 § 10; 1967 c 238 § 18.]

70.94.473 Limitations on burning wood for heat. (1)

Any person in a residence or commercial establishment which has an adequate source of heat without burning wood shall:

(a) Not burn wood in any solid fuel burning device whenever the department has determined under RCW 70.94.715 that any air pollution episode exists in that area;

(b) Not burn wood in any solid fuel burning device except those which are either Oregon department of environmental quality phase II or United States environmental protection agency certified or certified by the department under RCW 70.94.457(1) or a pellet stove either certified or issued an exemption by the United States environmental protection agency in accordance with Title 40, Part 60 of the code of federal regulations, in the geographical area and for the period of time that a first stage of impaired air quality has been determined, by the department or any authority, for that area. A first stage of impaired air quality is reached when:

(i) Fine particulates are at an ambient level of thirty-five micrograms per cubic meter measured on a twenty-four hour average; and

(ii) Forecasted meteorological conditions are not expected to allow levels of fine particulates to decline below thirty-five micrograms per cubic meter for a period of forty-eight hours or more from the time that the fine particulates are measured at the trigger level; and

(c) Not burn wood in any solid fuel burning device in a geographical area and for the period of time that a second stage of impaired air quality has been determined by the department or any authority, for that area. A second stage of impaired air quality is reached when:

(i) A first stage of impaired air quality has been in force and not been sufficient to reduce the increasing fine particulate pollution trend;

(ii) Fine particulates are at an ambient level of sixty micrograms per cubic meter measured on a twenty-four hour average; and

(iii) Forecasted meteorological conditions are not expected to allow levels of fine particulates to decline below sixty micrograms per cubic meter for a period of forty-eight hours or more from the time that the fine particulates are measured at the trigger level.

(2) Until June 30, 2009, an authority comprised of one county east of the crest of the Cascade mountains with a population of equal to or greater than four hundred thousand people, may determine by rule an alternative ambient air level of fine particulates that defines when a first stage and when a second stage of impaired air quality exists under subsection (1) of this section. All other criteria of subsection (1) of this section continue to apply to a county subject to this subsection.

(3) Actions of the department and local air pollution control authorities under this section shall preempt actions of other state agencies and local governments for the purposes of controlling air pollution from solid fuel burning devices, except where authorized by chapter 199, Laws of 1991. [2007 c 339 § 1; 2005 c 197 § 1; 1998 c 342 § 8; 1995 c 205 § 1; 1991 c 199 § 504; 1990 c 128 § 2; 1987 c 405 § 6.]

Finding—1991 c 199: See note following RCW 70.94.011.

Severability—1987 c 405: See note following RCW 70.94.450.

70.94.488 Wood smoke emissions—Findings. The legislature finds that there are some communities in the state in which the national ambient air quality standards for PM 2.5 are exceeded, primarily due to wood smoke emissions, and that current strategies are not sufficient to reduce wood smoke emissions to levels that comply with the federal standards or adequately protect public health. The legislature finds that it is in the state's interest and to the benefit of the people of the state to evaluate additional measures to reduce wood smoke emissions and update the state wood smoke control program. [2007 c 339 § 2.]

70.94.505 Wood smoke emissions—Work group. (1)

The department shall convene and chair a work group to study the impacts of wood smoke from solid fuel burning devices on communities in Washington and make recommendations to the legislature on practical and cost-effective opportunities to reduce exposure to wood smoke from solid fuel burning devices and meet the new national air quality standards for fine particulates in Washington state. The work group shall be established by the director and include representatives from the department, the state department of health, regional air quality agencies, local health departments, related industry representatives, and nongovernmental health organizations. Recommendations may include statutory or regulatory changes, incentives, and other strategies that will reduce ambient PM 2.5 pollution. Recommendations should be presented to the governor and to the legislature by December 1, 2007.

(2) In carrying out its assignment the work group shall include, but not be limited to, the following considerations:

(a) Communities in the state that have elevated levels of PM 2.5 pollution;

(b) The contribution of pollution from solid fuel burning devices to potential violations of federal air quality standards;

(c) Strategies used in other states, regions, or cities to reduce wood smoke pollution levels and effectiveness of these strategies;

(d) State laws, rules, fees, utility regulations, and other policies that may affect the ability to reduce emissions from solid fuel burning devices or encourage the use of cleaner burning devices; and

(e) Potential financial incentives and sources of funding to change out older solid fuel burning devices to cleaner burning devices. [2007 c 339 § 3.]

Chapter 70.95 RCW

SOLID WASTE MANAGEMENT—REDUCTION
AND RECYCLING

Sections

70.95.521 Waste tire removal account.

70.95.521 Waste tire removal account. The waste tire removal account is created in the state treasury. All receipts from tire fees imposed under RCW 70.95.510 must be deposited in the account. Moneys in the account may be spent only after appropriation. Expenditures from the account may be used for the cleanup of unauthorized waste tire piles and measures that prevent future accumulation of unauthorized waste tire piles. During the 2007-2009 fiscal biennium, the legislature may transfer from the waste tire removal account to the motor vehicle fund such amounts as reflect the excess fund balance of the waste tire removal account. [2007 c 518 § 708; 2005 c 354 § 3.]

Severability—Effective date—2007 c 518: See notes following RCW 46.68.170.

Finding—Intent—Severability—Effective date—2005 c 354: See notes following RCW 70.95.510.

Chapter 70.95M RCW

MERCURY

Sections

70.95M.115 Vaccines.

70.95M.115 Vaccines. (1) Beginning July 1, 2007, a person who is known to be pregnant or who is under three years of age shall not be vaccinated with a mercury-containing vaccine or injected with a mercury-containing product that contains more than 0.5 micrograms of mercury per 0.5 milliliter dose.

(2) Notwithstanding subsection (1) of this section, an influenza vaccine may contain up to 1.0 micrograms of mercury per 0.5 milliliter dose.

(3) The secretary of the department of health may, upon the secretary's or local public health officer's declaration of an outbreak of vaccine-preventable disease or of a shortage of vaccine that complies with subsection (1) or (2) of this section, suspend the requirements of this section for the duration of the outbreak or shortage. A person who is known to be pregnant or lactating or a parent or legal guardian of a child under eighteen years of age shall be informed if the person or child is to be vaccinated or injected with any mercury-containing product that contains more than the mercury limits per dose in subsections (1) and (2) of this section.

(4) All vaccines and products referenced under this section must meet food and drug administration licensing requirements. [2007 c 268 § 1; 2006 c 231 § 2.]

Findings—2006 c 231: "The legislature finds that vaccinations and immunizations are among the most important public health innovations of the last one hundred years. The centers for disease control and prevention placed vaccinations at the top of its list of the ten greatest public health achievements of the twentieth century. In its efforts to improve public health in the world's poorest countries, the Bill and Melinda Gates foundation has identified childhood immunization as a cost-effective method of improving public health and saving the lives of millions of children around the world.

Fortunately, in Washington, safe and cost-effective vaccinations against childhood diseases are widely available through both public and pri-

vate resources. The vaccines that the Washington state department of health provides to meet the requirements for the recommended childhood vaccination schedule through its universal childhood vaccine program are screened for thimerosal and preference is given toward the purchase of thimerosal-free products. The department of health currently provides thimerosal-free products for all routinely recommended childhood vaccines. Regardless of the absence of thimerosal in childhood vaccines in Washington, scientifically reputable organizations such as the centers for disease control and prevention, the national institute of medicine, the American academy of pediatrics, the food and drug administration, and the world health organization have all determined that there is no credible evidence that the use of thimerosal in vaccines poses a threat to the health and safety of children.

Notwithstanding these assurances of the safety of the vaccine supply, the legislature finds that where there is public concern over the safety of vaccines, vaccination rates may be reduced to the point that deadly, vaccine-preventable, childhood diseases return. This measure is being enacted to maintain public confidence in vaccine programs, so that the public will continue to seek vaccinations and their health benefits may continue to protect the people of Washington." [2006 c 231 § 1.]

Chapter 70.96B RCW

INTEGRATED CRISIS RESPONSE AND
INVOLUNTARY TREATMENT—PILOT PROGRAMS

Sections

70.96B.045 Emergency custody—Procedure. (*Expires July 1, 2008.*)70.96B.050 Petition for initial detention—Order to detain for evaluation and treatment period—Procedure. (*Expires July 1, 2008.*)

70.96B.045 Emergency custody—Procedure. (*Expires July 1, 2008.*) (1) If a designated crisis responder receives information alleging that a person, as the result of:

(a) A mental disorder, presents an imminent likelihood of serious harm, or is in imminent danger because of being gravely disabled, after investigation and evaluation of the specific facts alleged and of the reliability and credibility of the person or persons providing the information if any, the designated crisis responder may take the person, or cause by oral or written order the person to be taken into emergency custody in an evaluation and treatment facility for not more than seventy-two hours as described in this chapter; or

(b) Chemical dependency, presents an imminent likelihood of serious harm, or is in imminent danger because of being gravely disabled, after investigation and evaluation of the specific facts alleged and of the reliability and credibility of the person or persons providing the information if any, the designated crisis responder may take the person, or cause by oral or written order the person to be taken into emergency custody in a secure detoxification facility for not more than seventy-two hours as described in this chapter.

(2) The evaluation and treatment facility, the secure detoxification facility, or other certified chemical dependency provider shall then evaluate the person's condition and admit, detain, transfer, or discharge such person in accordance with this chapter. The facility shall notify in writing the court and the designated crisis responder of the date and time of the initial detention of each person involuntarily detained so that a probable cause hearing will be held no later than seventy-two hours after detention.

(3) A peace officer may take or cause the person to be taken into custody and immediately delivered to an evaluation and treatment facility, secure detoxification facility, or other certified chemical dependency treatment provider: (a) Pursuant to this section; or (b) when he or she has reasonable cause to believe that such person, as a result of a mental dis-

order or chemical dependency, presents an imminent likelihood of serious harm, or is in imminent danger because of being gravely disabled. An individual brought to a facility by a peace officer may be held for up to twelve hours: PROVIDED, That the individual is examined by a designated crisis responder within three hours of arrival. Within twelve hours of arrival the designated crisis responder must determine whether the individual meets detention criteria. If the individual is detained, the designated mental health professional shall file a petition for detention or supplemental petition as appropriate and commence service on the designated attorney for the detained person.

(4) Nothing in this chapter limits the power of a peace officer to take a person into custody and immediately deliver the person to the emergency department of a local hospital or to a detoxification facility. [2007 c 120 § 2.]

Effective date—2007 c 120: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately [April 18, 2007]." [2007 c 120 § 3.]

Expiration date—2007 c 120 §§ 1 and 2: "Sections 1 and 2 of this act expire July 1, 2008." [2007 c 120 § 4.]

70.96B.050 Petition for initial detention—Order to detain for evaluation and treatment period—Procedure. (Expires July 1, 2008.) (1) When a designated crisis responder receives information alleging that a person, as a result of a mental disorder, chemical dependency disorder, or both, presents a likelihood of serious harm or is gravely disabled, the designated crisis responder may, after investigation and evaluation of the specific facts alleged and of the reliability and credibility of any person providing information to initiate detention, if satisfied that the allegations are true and that the person will not voluntarily seek appropriate treatment, file a petition for initial detention. Before filing the petition, the designated crisis responder must personally interview the person, unless the person refuses an interview, and determine whether the person will voluntarily receive appropriate evaluation and treatment at either an evaluation and treatment facility, a detoxification facility, or other certified chemical dependency provider.

(2)(a) An order to detain to an evaluation and treatment facility, a detoxification facility, or other certified chemical dependency provider for not more than a seventy-two hour evaluation and treatment period may be issued by a judge upon request of a designated crisis responder: (i) Whenever it appears to the satisfaction of a judge of the superior court, district court, or other court permitted by court rule, that there is probable cause to support the petition, and (ii) that the person has refused or failed to accept appropriate evaluation and treatment voluntarily.

(b) The petition for initial detention, signed under penalty of perjury or sworn telephonic testimony, may be considered by the court in determining whether there are sufficient grounds for issuing the order.

(c) The order shall designate retained counsel or, if counsel is appointed from a list provided by the court, the name, business address, and telephone number of the attorney appointed to represent the person.

(3) The designated crisis responder shall then serve or cause to be served on such person, his or her guardian, and

conservator, if any, a copy of the order to appear, together with a notice of rights and a petition for initial detention. After service on the person, the designated crisis responder shall file the return of service in court and provide copies of all papers in the court file to the evaluation and treatment facility or secure detoxification facility and the designated attorney. The designated crisis responder shall notify the court and the prosecuting attorney that a probable cause hearing will be held within seventy-two hours of the date and time of outpatient evaluation or admission to the evaluation and treatment facility, secure detoxification facility, or other certified chemical dependency provider. The person may be accompanied by one or more of his or her relatives, friends, an attorney, a personal physician, or other professional or religious advisor to the place of evaluation. An attorney accompanying the person to the place of evaluation shall be permitted to be present during the admission evaluation. Any other person accompanying the person may be present during the admission evaluation. The facility may exclude the person if his or her presence would present a safety risk, delay the proceedings, or otherwise interfere with the evaluation.

(4) The designated crisis responder may notify a peace officer to take the person or cause the person to be taken into custody and placed in an evaluation and treatment facility, a secure detoxification facility, or other certified chemical dependency provider. At the time the person is taken into custody there shall commence to be served on the person, his or her guardian, and conservator, if any, a copy of the original order together with a notice of detention, a notice of rights, and a petition for initial detention. [2007 c 120 § 1; 2005 c 504 § 206.]

Effective date—Expiration date—2007 c 120 §§ 1 and 2: See notes following RCW 70.96B.045.

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

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

Chapter 70.105D RCW

HAZARDOUS WASTE CLEANUP—MODEL TOXICS CONTROL ACT

Sections

70.105D.020	Definitions.
70.105D.030	Department's powers and duties.
70.105D.060	Timing of review.
70.105D.070	Toxics control accounts (<i>as amended by 2007 c 341</i>).
70.105D.070	Toxics control accounts (<i>as amended by 2007 c 446</i>).
70.105D.070	Toxics control accounts (<i>as amended by 2007 c 522</i>).
70.105D.120	Puget Sound partners.

70.105D.020 Definitions. (1) "Agreed order" means an order issued by the department under this chapter with which the potentially liable person receiving the order agrees to comply. An agreed order may be used to require or approve any cleanup or other remedial actions but it is not a settlement under RCW 70.105D.040(4) and shall not contain a covenant not to sue, or provide protection from claims for contribution, or provide eligibility for public funding of remedial actions under RCW 70.105D.070(2)(d)(xi).

(2) "Department" means the department of ecology.

(3) "Director" means the director of ecology or the director's designee.

(4) "Environmental covenant" has the same meaning as defined in RCW 64.70.020.

(5) "Facility" means (a) any building, structure, installation, equipment, pipe or pipeline (including any pipe into a sewer or publicly owned treatment works), well, pit, pond, lagoon, impoundment, ditch, landfill, storage container, motor vehicle, rolling stock, vessel, or aircraft, or (b) any site or area where a hazardous substance, other than a consumer product in consumer use, has been deposited, stored, disposed of, or placed, or otherwise come to be located.

(6) "Federal cleanup law" means the federal comprehensive environmental response, compensation, and liability act of 1980, 42 U.S.C. Sec. 9601 et seq., as amended by Public Law 99-499.

(7)(a) "Fiduciary" means a person acting for the benefit of another party as a bona fide trustee; executor; administrator; custodian; guardian of estates or guardian ad litem; receiver; conservator; committee of estates of incapacitated persons; trustee in bankruptcy; trustee, under an indenture agreement, trust agreement, lease, or similar financing agreement, for debt securities, certificates of interest or certificates of participation in debt securities, or other forms of indebtedness as to which the trustee is not, in the capacity of trustee, the lender. Except as provided in subsection (17)(b)(iii) of this section, the liability of a fiduciary under this chapter shall not exceed the assets held in the fiduciary capacity.

(b) "Fiduciary" does not mean:

(i) A person acting as a fiduciary with respect to a trust or other fiduciary estate that was organized for the primary purpose of, or is engaged in, actively carrying on a trade or business for profit, unless the trust or other fiduciary estate was created as part of, or to facilitate, one or more estate plans or because of the incapacity of a natural person;

(ii) A person who acquires ownership or control of a facility with the objective purpose of avoiding liability of the person or any other person. It is prima facie evidence that the fiduciary acquired ownership or control of the facility to avoid liability if the facility is the only substantial asset in the fiduciary estate at the time the facility became subject to the fiduciary estate;

(iii) A person who acts in a capacity other than that of a fiduciary or in a beneficiary capacity and in that capacity directly or indirectly benefits from a trust or fiduciary relationship;

(iv) A person who is a beneficiary and fiduciary with respect to the same fiduciary estate, and who while acting as a fiduciary receives benefits that exceed customary or reasonable compensation, and incidental benefits permitted under applicable law;

(v) A person who is a fiduciary and receives benefits that substantially exceed customary or reasonable compensation, and incidental benefits permitted under applicable law; or

(vi) A person who acts in the capacity of trustee of state or federal lands or resources.

(8) "Fiduciary capacity" means the capacity of a person holding title to a facility, or otherwise having control of an interest in the facility pursuant to the exercise of the responsibilities of the person as a fiduciary.

(9) "Foreclosure and its equivalents" means purchase at a foreclosure sale, acquisition, or assignment of title in lieu of foreclosure, termination of a lease, or other repossession, acquisition of a right to title or possession, an agreement in satisfaction of the obligation, or any other comparable formal or informal manner, whether pursuant to law or under warranties, covenants, conditions, representations, or promises from the borrower, by which the holder acquires title to or possession of a facility securing a loan or other obligation.

(10) "Hazardous substance" means:

(a) Any dangerous or extremely hazardous waste as defined in RCW 70.105.010 (5) and (6), or any dangerous or extremely dangerous waste designated by rule pursuant to chapter 70.105 RCW;

(b) Any hazardous substance as defined in RCW 70.105.010(14) or any hazardous substance as defined by rule pursuant to chapter 70.105 RCW;

(c) Any substance that, on March 1, 1989, is a hazardous substance under section 101(14) of the federal cleanup law, 42 U.S.C. Sec. 9601(14);

(d) Petroleum or petroleum products; and

(e) Any substance or category of substances, including solid waste decomposition products, determined by the director by rule to present a threat to human health or the environment if released into the environment.

The term hazardous substance does not include any of the following when contained in an underground storage tank from which there is not a release: Crude oil or any fraction thereof or petroleum, if the tank is in compliance with all applicable federal, state, and local law.

(11) "Holder" means a person who holds indicia of ownership primarily to protect a security interest. A holder includes the initial holder such as the loan originator, any subsequent holder such as a successor-in-interest or subsequent purchaser of the security interest on the secondary market, a guarantor of an obligation, surety, or any other person who holds indicia of ownership primarily to protect a security interest, or a receiver, court-appointed trustee, or other person who acts on behalf or for the benefit of a holder. A holder can be a public or privately owned financial institution, receiver, conservator, loan guarantor, or other similar persons that loan money or guarantee repayment of a loan. Holders typically are banks or savings and loan institutions but may also include others such as insurance companies, pension funds, or private individuals that engage in loaning of money or credit.

(12) "Independent remedial actions" means remedial actions conducted without department oversight or approval, and not under an order, agreed order, or consent decree.

(13) "Indicia of ownership" means evidence of a security interest, evidence of an interest in a security interest, or evidence of an interest in a facility securing a loan or other obligation, including any legal or equitable title to a facility acquired incident to foreclosure and its equivalents. Evidence of such interests includes, mortgages, deeds of trust, sellers interest in a real estate contract, liens, surety bonds, and guarantees of obligations, title held pursuant to a lease financing transaction in which the lessor does not select initially the leased facility, or legal or equitable title obtained pursuant to foreclosure and their equivalents. Evidence of such interests also includes assignments, pledges, or other

rights to or other forms of encumbrance against the facility that are held primarily to protect a security interest.

(14) "Industrial properties" means properties that are or have been characterized by, or are to be committed to, traditional industrial uses such as processing or manufacturing of materials, marine terminal and transportation areas and facilities, fabrication, assembly, treatment, or distribution of manufactured products, or storage of bulk materials, that are either:

(a) Zoned for industrial use by a city or county conducting land use planning under chapter 36.70A RCW; or

(b) For counties not planning under chapter 36.70A RCW and the cities within them, zoned for industrial use and adjacent to properties currently used or designated for industrial purposes.

(15) "Institutional controls" means measures undertaken to limit or prohibit activities that may interfere with the integrity of a remedial action or result in exposure to or migration of hazardous substances at a site. "Institutional controls" include environmental covenants.

(16) "Operating a facility primarily to protect a security interest" occurs when all of the following are met: (a) Operating the facility where the borrower has defaulted on the loan or otherwise breached the security agreement; (b) operating the facility to preserve the value of the facility as an ongoing business; (c) the operation is being done in anticipation of a sale, transfer, or assignment of the facility; and (d) the operation is being done primarily to protect a security interest. Operating a facility for longer than one year prior to foreclosure or its equivalents shall be presumed to be operating the facility for other than to protect a security interest.

(17) "Owner or operator" means:

(a) Any person with any ownership interest in the facility or who exercises any control over the facility; or

(b) In the case of an abandoned facility, any person who had owned, or operated, or exercised control over the facility any time before its abandonment;

The term does not include:

(i) An agency of the state or unit of local government which acquired ownership or control through a drug forfeiture action under RCW 69.50.505, or involuntarily through bankruptcy, tax delinquency, abandonment, or other circumstances in which the government involuntarily acquires title. This exclusion does not apply to an agency of the state or unit of local government which has caused or contributed to the release or threatened release of a hazardous substance from the facility;

(ii) A person who, without participating in the management of a facility, holds indicia of ownership primarily to protect the person's security interest in the facility. Holders after foreclosure and its equivalent and holders who engage in any of the activities identified in subsection (18)(e) through (g) of this section shall not lose this exemption provided the holder complies with all of the following:

(A) The holder properly maintains the environmental compliance measures already in place at the facility;

(B) The holder complies with the reporting requirements in the rules adopted under this chapter;

(C) The holder complies with any order issued to the holder by the department to abate an imminent or substantial endangerment;

(D) The holder allows the department or potentially liable persons under an order, agreed order, or settlement agreement under this chapter access to the facility to conduct remedial actions and does not impede the conduct of such remedial actions;

(E) Any remedial actions conducted by the holder are in compliance with any preexisting requirements identified by the department, or, if the department has not identified such requirements for the facility, the remedial actions are conducted consistent with the rules adopted under this chapter; and

(F) The holder does not exacerbate an existing release. The exemption in this subsection (17)(b)(ii) does not apply to holders who cause or contribute to a new release or threatened release or who are otherwise liable under RCW 70.105D.040(1) (b), (c), (d), and (e); provided, however, that a holder shall not lose this exemption if it establishes that any such new release has been remediated according to the requirements of this chapter and that any hazardous substances remaining at the facility after remediation of the new release are divisible from such new release;

(iii) A fiduciary in his, her, or its personal or individual capacity. This exemption does not preclude a claim against the assets of the estate or trust administered by the fiduciary or against a nonemployee agent or independent contractor retained by a fiduciary. This exemption also does not apply to the extent that a person is liable under this chapter independently of the person's ownership as a fiduciary or for actions taken in a fiduciary capacity which cause or contribute to a new release or exacerbate an existing release of hazardous substances. This exemption applies provided that, to the extent of the fiduciary's powers granted by law or by the applicable governing instrument granting fiduciary powers, the fiduciary complies with all of the following:

(A) The fiduciary properly maintains the environmental compliance measures already in place at the facility;

(B) The fiduciary complies with the reporting requirements in the rules adopted under this chapter;

(C) The fiduciary complies with any order issued to the fiduciary by the department to abate an imminent or substantial endangerment;

(D) The fiduciary allows the department or potentially liable persons under an order, agreed order, or settlement agreement under this chapter access to the facility to conduct remedial actions and does not impede the conduct of such remedial actions;

(E) Any remedial actions conducted by the fiduciary are in compliance with any preexisting requirements identified by the department, or, if the department has not identified such requirements for the facility, the remedial actions are conducted consistent with the rules adopted under this chapter; and

(F) The fiduciary does not exacerbate an existing release. The exemption in this subsection (17)(b)(iii) does not apply to fiduciaries who cause or contribute to a new release or threatened release or who are otherwise liable under RCW 70.105D.040(1) (b), (c), (d), and (e); provided however, that a fiduciary shall not lose this exemption if it establishes that any such new release has been remediated according to the requirements of this chapter and that any hazardous substances remaining at the facility after remediation of the new

release are divisible from such new release. The exemption in this subsection (17)(b)(iii) also does not apply where the fiduciary's powers to comply with this subsection (17)(b)(iii) are limited by a governing instrument created with the objective purpose of avoiding liability under this chapter or of avoiding compliance with this chapter; or

(iv) Any person who has any ownership interest in, operates, or exercises control over real property where a hazardous substance has come to be located solely as a result of migration of the hazardous substance to the real property through the ground water from a source off the property, if:

(A) The person can demonstrate that the hazardous substance has not been used, placed, managed, or otherwise handled on the property in a manner likely to cause or contribute to a release of the hazardous substance that has migrated onto the property;

(B) The person has not caused or contributed to the release of the hazardous substance;

(C) The person does not engage in activities that damage or interfere with the operation of remedial actions installed on the person's property or engage in activities that result in exposure of humans or the environment to the contaminated groundwater that has migrated onto the property;

(D) If requested, the person allows the department, potentially liable persons who are subject to an order, agreed order, or consent decree, and the authorized employees, agents, or contractors of each, access to the property to conduct remedial actions required by the department. The person may attempt to negotiate an access agreement before allowing access; and

(E) Legal withdrawal of groundwater does not disqualify a person from the exemption in this subsection (17)(b)(iv).

(18) "Participation in management" means exercising decision-making control over the borrower's operation of the facility, environmental compliance, or assuming or manifesting responsibility for the overall management of the enterprise encompassing the day-to-day decision making of the enterprise.

The term does not include any of the following: (a) A holder with the mere capacity or ability to influence, or the unexercised right to control facility operations; (b) a holder who conducts or requires a borrower to conduct an environmental audit or an environmental site assessment at the facility for which indicia of ownership is held; (c) a holder who requires a borrower to come into compliance with any applicable laws or regulations at the facility for which indicia of ownership is held; (d) a holder who requires a borrower to conduct remedial actions including setting minimum requirements, but does not otherwise control or manage the borrower's remedial actions or the scope of the borrower's remedial actions except to prepare a facility for sale, transfer, or assignment; (e) a holder who engages in workout or policing activities primarily to protect the holder's security interest in the facility; (f) a holder who prepares a facility for sale, transfer, or assignment or requires a borrower to prepare a facility for sale, transfer, or assignment; (g) a holder who operates a facility primarily to protect a security interest, or requires a borrower to continue to operate, a facility primarily to protect a security interest; and (h) a prospective holder who, as a condition of becoming a holder, requires an owner or operator to conduct an environmental audit, conduct an environmental

site assessment, come into compliance with any applicable laws or regulations, or conduct remedial actions prior to holding a security interest is not participating in the management of the facility.

(19) "Person" means an individual, firm, corporation, association, partnership, consortium, joint venture, commercial entity, state government agency, unit of local government, federal government agency, or Indian tribe.

(20) "Policing activities" means actions the holder takes to ensure that the borrower complies with the terms of the loan or security interest or actions the holder takes or requires the borrower to take to maintain the value of the security. Policing activities include: Requiring the borrower to conduct remedial actions at the facility during the term of the security interest; requiring the borrower to comply or come into compliance with applicable federal, state, and local environmental and other laws, regulations, and permits during the term of the security interest; securing or exercising authority to monitor or inspect the facility including on-site inspections, or to monitor or inspect the borrower's business or financial condition during the term of the security interest; or taking other actions necessary to adequately police the loan or security interest such as requiring a borrower to comply with any warranties, covenants, conditions, representations, or promises from the borrower.

(21) "Potentially liable person" means any person whom the department finds, based on credible evidence, to be liable under RCW 70.105D.040. The department shall give notice to any such person and allow an opportunity for comment before making the finding, unless an emergency requires otherwise.

(22) "Prepare a facility for sale, transfer, or assignment" means to secure access to the facility; perform routine maintenance on the facility; remove inventory, equipment, or structures; properly maintain environmental compliance measures already in place at the facility; conduct remedial actions to clean up releases at the facility; or to perform other similar activities intended to preserve the value of the facility where the borrower has defaulted on the loan or otherwise breached the security agreement or after foreclosure and its equivalents and in anticipation of a pending sale, transfer, or assignment, primarily to protect the holder's security interest in the facility. A holder can prepare a facility for sale, transfer, or assignment for up to one year prior to foreclosure and its equivalents and still stay within the security interest exemption in subsection (17)(b)(ii) of this section.

(23) "Primarily to protect a security interest" means the indicia of ownership is held primarily for the purpose of securing payment or performance of an obligation. The term does not include indicia of ownership held primarily for investment purposes nor indicia of ownership held primarily for purposes other than as protection for a security interest. A holder may have other, secondary reasons, for maintaining indicia of ownership, but the primary reason must be for protection of a security interest. Holding indicia of ownership after foreclosure or its equivalents for longer than five years shall be considered to be holding the indicia of ownership for purposes other than primarily to protect a security interest. For facilities that have been acquired through foreclosure or its equivalents prior to July 23, 1995, this five-year period shall begin as of July 23, 1995.

(24) "Public notice" means, at a minimum, adequate notice mailed to all persons who have made timely request of the department and to persons residing in the potentially affected vicinity of the proposed action; mailed to appropriate news media; published in the newspaper of largest circulation in the city or county of the proposed action; and opportunity for interested persons to comment.

(25) "Release" means any intentional or unintentional entry of any hazardous substance into the environment, including but not limited to the abandonment or disposal of containers of hazardous substances.

(26) "Remedy" or "remedial action" means any action or expenditure consistent with the purposes of this chapter to identify, eliminate, or minimize any threat or potential threat posed by hazardous substances to human health or the environment including any investigative and monitoring activities with respect to any release or threatened release of a hazardous substance and any health assessments or health effects studies conducted in order to determine the risk or potential risk to human health.

(27) "Security interest" means an interest in a facility created or established for the purpose of securing a loan or other obligation. Security interests include deeds of trusts, sellers interest in a real estate contract, liens, legal, or equitable title to a facility acquired incident to foreclosure and its equivalents, and title pursuant to lease financing transactions. Security interests may also arise from transactions such as sale and leasebacks, conditional sales, installment sales, trust receipt transactions, certain assignments, factoring agreements, accounts receivable financing arrangements, easements, and consignments, if the transaction creates or establishes an interest in a facility for the purpose of securing a loan or other obligation.

(28) "Workout activities" means those actions by which a holder, at any time prior to foreclosure and its equivalents, seeks to prevent, cure, or mitigate a default by the borrower or obligor; or to preserve, or prevent the diminution of, the value of the security. Workout activities include: Restructuring or renegotiating the terms of the security interest; requiring payment of additional rent or interest; exercising forbearance; requiring or exercising rights pursuant to an assignment of accounts or other amounts owed to an obligor; requiring or exercising rights pursuant to an escrow agreement pertaining to amounts owed to an obligor; providing specific or general financial or other advice, suggestions, counseling, or guidance; and exercising any right or remedy the holder is entitled to by law or under any warranties, covenants, conditions, representations, or promises from the borrower. [2007 c 104 § 18; 2005 c 191 § 1; 1998 c 6 § 1; 1997 c 406 § 2; 1995 c 70 § 1; 1994 c 254 § 2; 1989 c 2 § 2 (Initiative Measure No. 97, approved November 8, 1988).]

Application—Construction—Severability—2007 c 104: See RCW 64.70.015 and 64.70.900.

Findings—Intent—1997 c 406: "The legislature finds that:

(1) Engrossed Substitute House Bill No. 1810 enacted during the 1995 legislative session [1995 c 359] authorized establishment of the model toxics control act policy advisory committee, a twenty-two member committee representing a broad range of interests including the legislature, agriculture, large and small business, environmental organizations, and local and state government. The committee was charged with the task of providing advice to the legislature and the department of ecology to more effectively implement the model toxics control act, chapter 70.105D RCW.

(2) The committee members committed considerable time and effort to

their charge, meeting twenty-six times during 1995 and 1996 to discuss and decide issues. In addition, the committee created four subcommittees that met over sixty times during this same period. There were also numerous working subgroups and drafting committees formed on an ad hoc basis to support the committee's work. Many members of the public also attended these meetings and were provided opportunities to contribute to the committee deliberations.

(3) The policy advisory committee completed its work and submitted a final report to the department of ecology and the legislature on December 15, 1996. That report contains numerous recommendations for statutory changes that were agreed to by consensus of the committee members or obtained broad support of most of the committee members. Chapter 406, Laws of 1997 is intended to implement those recommended statutory changes." [1997 c 406 § 1.]

70.105D.030 Department's powers and duties. (1)

The department may exercise the following powers in addition to any other powers granted by law:

(a) Investigate, provide for investigating, or require potentially liable persons to investigate any releases or threatened releases of hazardous substances, including but not limited to inspecting, sampling, or testing to determine the nature or extent of any release or threatened release. If there is a reasonable basis to believe that a release or threatened release of a hazardous substance may exist, the department's authorized employees, agents, or contractors may enter upon any property and conduct investigations. The department shall give reasonable notice before entering property unless an emergency prevents such notice. The department may by subpoena require the attendance or testimony of witnesses and the production of documents or other information that the department deems necessary;

(b) Conduct, provide for conducting, or require potentially liable persons to conduct remedial actions (including investigations under (a) of this subsection) to remedy releases or threatened releases of hazardous substances. In carrying out such powers, the department's authorized employees, agents, or contractors may enter upon property. The department shall give reasonable notice before entering property unless an emergency prevents such notice. In conducting, providing for, or requiring remedial action, the department shall give preference to permanent solutions to the maximum extent practicable and shall provide for or require adequate monitoring to ensure the effectiveness of the remedial action;

(c) Indemnify contractors retained by the department for carrying out investigations and remedial actions, but not for any contractor's reckless or willful misconduct;

(d) Carry out all state programs authorized under the federal cleanup law and the federal resource, conservation, and recovery act, 42 U.S.C. Sec. 6901 et seq., as amended;

(e) Classify substances as hazardous substances for purposes of RCW 70.105D.020 and classify substances and products as hazardous substances for purposes of RCW 82.21.020(1);

(f) Issue orders or enter into consent decrees or agreed orders that include, or issue written opinions under (i) of this subsection that may be conditioned upon, environmental covenants where necessary to protect human health and the environment from a release or threatened release of a hazardous substance from a facility. Prior to establishing an environmental covenant under this subsection, the department shall consult with and seek comment from a city or county department

ment with land use planning authority for real property subject to the environmental covenant;

(g) Enforce the application of permanent and effective institutional controls that are necessary for a remedial action to be protective of human health and the environment and the notification requirements established in RCW 70.105D.110, and impose penalties for violations of that section consistent with RCW 70.105D.050;

(h) Require holders to conduct remedial actions necessary to abate an imminent or substantial endangerment pursuant to RCW 70.105D.020(17)(b)(ii)(C);

(i) Provide informal advice and assistance to persons regarding the administrative and technical requirements of this chapter. This may include site-specific advice to persons who are conducting or otherwise interested in independent remedial actions. Any such advice or assistance shall be advisory only, and shall not be binding on the department. As a part of providing this advice and assistance for independent remedial actions, the department may prepare written opinions regarding whether the independent remedial actions or proposals for those actions meet the substantive requirements of this chapter or whether the department believes further remedial action is necessary at the facility. Nothing in this chapter may be construed to preclude the department from issuing a written opinion on whether further remedial action is necessary at any portion of the real property located within a facility, even if further remedial action is still necessary elsewhere at the same facility. Such a written opinion on a portion of a facility must also provide an opinion on the status of the facility as a whole. The department may collect, from persons requesting advice and assistance, the costs incurred by the department in providing such advice and assistance; however, the department shall, where appropriate, waive collection of costs in order to provide an appropriate level of technical assistance in support of public participation. The state, the department, and officers and employees of the state are immune from all liability, and no cause of action of any nature may arise from any act or omission in providing, or failing to provide, informal advice and assistance; and

(j) Take any other actions necessary to carry out the provisions of this chapter, including the power to adopt rules under chapter 34.05 RCW.

(2) The department shall immediately implement all provisions of this chapter to the maximum extent practicable, including investigative and remedial actions where appropriate. The department shall adopt, and thereafter enforce, rules under chapter 34.05 RCW to:

(a) Provide for public participation, including at least (i) public notice of the development of investigative plans or remedial plans for releases or threatened releases and (ii) concurrent public notice of all compliance orders, agreed orders, enforcement orders, or notices of violation;

(b) Establish a hazard ranking system for hazardous waste sites;

(c) Provide for requiring the reporting by an owner or operator of releases of hazardous substances to the environment that may be a threat to human health or the environment within ninety days of discovery, including such exemptions from reporting as the department deems appropriate, how-

ever this requirement shall not modify any existing requirements provided for under other laws;

(d) Establish reasonable deadlines not to exceed ninety days for initiating an investigation of a hazardous waste site after the department receives notice or otherwise receives information that the site may pose a threat to human health or the environment and other reasonable deadlines for remedying releases or threatened releases at the site;

(e) Publish and periodically update minimum cleanup standards for remedial actions at least as stringent as the cleanup standards under section 121 of the federal cleanup law, 42 U.S.C. Sec. 9621, and at least as stringent as all applicable state and federal laws, including health-based standards under state and federal law; and

(f) Apply industrial clean-up standards at industrial properties. Rules adopted under this subsection shall ensure that industrial properties cleaned up to industrial standards cannot be converted to nonindustrial uses without approval from the department. The department may require that a property cleaned up to industrial standards is cleaned up to a more stringent applicable standard as a condition of conversion to a nonindustrial use. Industrial clean-up standards may not be applied to industrial properties where hazardous substances remaining at the property after remedial action pose a threat to human health or the environment in adjacent nonindustrial areas.

(3) To achieve and protect the state's long-term ecological health, the department shall prioritize sufficient funding to clean up hazardous waste sites and prevent the creation of future hazards due to improper disposal of toxic wastes, and create financing tools to clean up large-scale hazardous waste sites requiring multiyear commitments. To effectively monitor toxic accounts expenditures, the department shall develop a comprehensive ten-year financing report that identifies long-term remedial action project costs, tracks expenses, and projects future needs.

(4) Before December 20th of each even-numbered year, the department shall:

(a) Develop a comprehensive ten-year financing report in coordination with all local governments with clean-up responsibilities that identifies the projected biennial hazardous waste site remedial action needs that are eligible for funding from the local toxics control account;

(b) Work with local governments to develop working capital reserves to be incorporated in the ten-year financing report;

(c) Identify the projected remedial action needs for orphaned, abandoned, and other clean-up sites that are eligible for funding from the state toxics control account;

(d) Project the remedial action need, cost, revenue, and any recommended working capital reserve estimate to the next biennium's long-term remedial action needs from both the local toxics control account and the state toxics control account, and submit this information to the appropriate standing fiscal and environmental committees of the senate and house of representatives. This submittal must also include a ranked list of such remedial action projects for both accounts; and

(e) Provide the legislature and the public each year with an accounting of the department's activities supported by appropriations from the state and local toxics control

accounts, including a list of known hazardous waste sites and their hazard rankings, actions taken and planned at each site, how the department is meeting its waste management priorities under RCW 70.105.150, and all funds expended under this chapter.

(5) The department shall establish a scientific advisory board to render advice to the department with respect to the hazard ranking system, cleanup standards, remedial actions, deadlines for remedial actions, monitoring, the classification of substances as hazardous substances for purposes of RCW 70.105D.020 and the classification of substances or products as hazardous substances for purposes of RCW 82.21.020(1). The board shall consist of five independent members to serve staggered three-year terms. No members may be employees of the department. Members shall be reimbursed for travel expenses as provided in RCW 43.03.050 and 43.03.060.

(6) The department shall establish a program to identify potential hazardous waste sites and to encourage persons to provide information about hazardous waste sites.

(7) For all facilities where an environmental covenant has been required under subsection (1)(f) of this section, including all facilities where the department has required an environmental covenant under an order, agreed order, or consent decree, or as a condition of a written opinion issued under the authority of subsection (1)(i) of this section, the department shall periodically review the environmental covenant for effectiveness. Except as otherwise provided in (c) of this subsection, the department shall conduct a review at least once every five years after an environmental covenant is recorded.

(a) The review shall consist of, at a minimum:

(i) A review of the title of the real property subject to the environmental covenant to determine whether the environmental covenant was properly recorded and, if applicable, amended or terminated;

(ii) A physical inspection of the real property subject to the environmental covenant to determine compliance with the environmental covenant, including whether any development or redevelopment of the real property has violated the terms of the environmental covenant; and

(iii) A review of the effectiveness of the environmental covenant in limiting or prohibiting activities that may interfere with the integrity of the remedial action or that may result in exposure to or migration of hazardous substances. This shall include a review of available monitoring data.

(b) If an environmental covenant has been amended or terminated without proper authority, or if the terms of an environmental covenant have been violated, or if the environmental covenant is no longer effective in limiting or prohibiting activities that may interfere with the integrity of the remedial action or that may result in exposure to or migration of hazardous substances, then the department shall take any and all appropriate actions necessary to ensure compliance with the environmental covenant and the policies and requirements of this chapter.

(c) For facilities where an environmental covenant required by the department under subsection (1)(f) of this section was required before July 1, 2007, the department shall:

(i) Enter all required information about the environmental covenant into the registry established under RCW 64.70.120 by June 30, 2008;

(ii) For those facilities where more than five years has elapsed since the environmental covenant was required and the department has yet to conduct a review, conduct an initial review according to the following schedule:

(A) By December 30, 2008, fifty facilities;

(B) By June 30, 2009, fifty additional facilities; and

(C) By June 30, 2010, the remainder of the facilities;

(iii) Once this initial review has been completed, conduct subsequent reviews at least once every five years. [2007 c 446 § 1; 2007 c 225 § 1; 2007 c 104 § 19; 2002 c 288 § 3; 2001 c 291 § 401; 1997 c 406 § 3; 1995 c 70 § 2. Prior: 1994 c 257 § 11; 1994 c 254 § 3; 1989 c 2 § 3 (Initiative Measure No. 97, approved November 8, 1988).]

Reviser's note: This section was amended by 2007 c 104 § 19, 2007 c 225 § 1, and by 2007 c 446 § 1, each without reference to the other. All amendments are incorporated in the publication of this section under RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

Application—Construction—Severability—2007 c 104: See RCW 64.70.015 and 64.70.900.

Effective date—2002 c 288 §§ 2-4: See note following RCW 70.105D.110.

Severability—2002 c 288: See note following RCW 70.105D.010.

Part headings not law—Effective date—2001 c 291: See notes following RCW 43.20A.360.

Findings—Intent—1997 c 406: See note following RCW 70.105D.020.

Severability—1994 c 257: See note following RCW 36.70A.270.

70.105D.060 Timing of review. The department's investigative and remedial decisions under RCW 70.105D.030 and 70.105D.050, its decisions regarding filing a lien under RCW 70.105D.055, and its decisions regarding liable persons under RCW 70.105D.020, 70.105D.040, 70.105D.050, and 70.105D.055 shall be reviewable exclusively in superior court and only at the following times: (1) In a cost recovery suit under RCW 70.105D.050(3); (2) in a suit by the department to enforce an order or an agreed order, or seek a civil penalty under this chapter; (3) in a suit for reimbursement under RCW 70.105D.050(2); (4) in a suit by the department to compel investigative or remedial action; (5) in a citizen's suit under RCW 70.105D.050(5); and (6) in a suit for removal or reduction of a lien under RCW 70.105D.050(7). Except in suits for reduction or removal of a lien under RCW 70.105D.050(7), the court shall uphold the department's actions unless they were arbitrary and capricious. In suits for reduction or removal of a lien under RCW 70.105D.050(7), the court shall review such suits pursuant to the standards set forth in RCW 70.105D.050(7). [2007 c 104 § 20; 2005 c 211 § 3; 1994 c 257 § 13; 1989 c 2 § 6 (Initiative Measure No. 97, approved November 8, 1988).]

Application—Construction—Severability—2007 c 104: See RCW 64.70.015 and 64.70.900.

Severability—1994 c 257: See note following RCW 36.70A.270.

70.105D.070 Toxics control accounts (as amended by 2007 c 341).

(1) The state toxics control account and the local toxics control account are hereby created in the state treasury.

(2) The following moneys shall be deposited into the state toxics control account: (a) Those revenues which are raised by the tax imposed under

RCW 82.21.030 and which are attributable to that portion of the rate equal to thirty-three one-hundredths of one percent; (b) the costs of remedial actions recovered under this chapter or chapter 70.105A RCW; (c) penalties collected or recovered under this chapter; and (d) any other money appropriated or transferred to the account by the legislature. Moneys in the account may be used only to carry out the purposes of this chapter, including but not limited to the following activities:

- (i) The state's responsibility for hazardous waste planning, management, regulation, enforcement, technical assistance, and public education required under chapter 70.105 RCW;
- (ii) The state's responsibility for solid waste planning, management, regulation, enforcement, technical assistance, and public education required under chapter 70.95 RCW;
- (iii) The hazardous waste cleanup program required under this chapter;
- (iv) State matching funds required under the federal cleanup law;
- (v) Financial assistance for local programs in accordance with chapters 70.95, 70.95C, 70.95I, and 70.105 RCW;
- (vi) State government programs for the safe reduction, recycling, or disposal of hazardous wastes from households, small businesses, and agriculture;
- (vii) Hazardous materials emergency response training;
- (viii) Water and environmental health protection and monitoring programs;
- (ix) Programs authorized under chapter 70.146 RCW;
- (x) A public participation program, including regional citizen advisory committees;
- (xi) Public funding to assist potentially liable persons to pay for the costs of remedial action in compliance with cleanup standards under RCW 70.105D.030(2)(e) but only when the amount and terms of such funding are established under a settlement agreement under RCW 70.105D.040(4) and when the director has found that the funding will achieve both (A) a substantially more expeditious or enhanced cleanup than would otherwise occur, and (B) the prevention or mitigation of unfair economic hardship; and
- (xii) Development and demonstration of alternative management technologies designed to carry out the top two hazardous waste management priorities of RCW 70.105.150.

(3) The following moneys shall be deposited into the local toxics control account: Those revenues which are raised by the tax imposed under RCW 82.21.030 and which are attributable to that portion of the rate equal to thirty-seven one-hundredths of one percent.

(a) Moneys deposited in the local toxics control account shall be used by the department for grants or loans to local governments for the following purposes in descending order of priority:

- (i) Remedial actions;
- (ii) Hazardous waste plans and programs under chapter 70.105 RCW;
- (iii) Solid waste plans and programs under chapters 70.95, 70.95C, 70.95I, and 70.105 RCW;
- (iv) Funds for a program to assist in the assessment and cleanup of sites of methamphetamine production, but not to be used for the initial containment of such sites, consistent with the responsibilities and intent of RCW 69.50.511; and
- (v) Cleanup and disposal of hazardous substances from abandoned or derelict vessels, defined for the purposes of this section as vessels that have little or no value and either have no identified owner or have an identified owner lacking financial resources to clean up and dispose of the vessel, that pose a threat to human health or the environment. ~~((For purposes of this subsection (3)(a)(v), "abandoned or derelict vessels" means vessels that have little or no value and either have no identified owner or have an identified owner lacking financial resources to clean up and dispose of the vessel.))~~

(b) Funds for plans and programs shall be allocated consistent with the priorities and matching requirements established in chapters 70.105, 70.95C, 70.95I, and 70.95 RCW, except that any applicant that is a Puget Sound partner, as defined in RCW 90.71.010, along with any project that is referenced in the action agenda developed by the Puget Sound partnership under RCW 90.71.310, shall, except as conditioned by RCW 70.105D.120, receive priority for any available funding for any grant or funding programs or sources that use a competitive bidding process. ~~((During the 1999-2001 fiscal biennium, moneys in the account may also be used for the following activities: Conducting a study of whether dioxins occur in fertilizers, soil amendments, and soils; reviewing applications for registration of fertilizers; and conducting a study of plant uptake of metals. During the 2005-2007 fiscal biennium, the legislature may transfer from the local toxics control account to the state toxics control account such amounts as specified in the omnibus capital budget bill. During the 2005-2007 fiscal biennium, moneys in the account may also be used for grants to local governments to retrofit public sector diesel equipment and for storm water planning and implementation activities.~~

~~(b))~~ (c) Funds may also be appropriated to the department of health to implement programs to reduce testing requirements under the federal safe drinking water act for public water systems. The department of health shall reimburse the account from fees assessed under RCW 70.119A.115 by June 30, 1995.

(4) Except for unanticipated receipts under RCW 43.79.260 through 43.79.282, moneys in the state and local toxics control accounts may be spent only after appropriation by statute.

(5) One percent of the moneys deposited into the state and local toxics control accounts shall be allocated only for public participation grants to persons who may be adversely affected by a release or threatened release of a hazardous substance and to not-for-profit public interest organizations. The primary purpose of these grants is to facilitate the participation by persons and organizations in the investigation and remedying of releases or threatened releases of hazardous substances and to implement the state's solid and hazardous waste management priorities. However, during the 1999-2001 fiscal biennium, funding may not be granted to entities engaged in lobbying activities, and applicants may not be awarded grants if their cumulative grant awards under this section exceed two hundred thousand dollars. No grant may exceed sixty thousand dollars. Grants may be renewed annually. Moneys appropriated for public participation from either account which are not expended at the close of any biennium shall revert to the state toxics control account.

(6) No moneys deposited into either the state or local toxics control account may be used for solid waste incinerator feasibility studies, construction, maintenance, or operation, or, after January 1, 2010, for projects designed to address the restoration of Puget Sound, funded in a competitive grant process, that are in conflict with the action agenda developed by the Puget Sound partnership under RCW 90.71.310.

(7) The department shall adopt rules for grant or loan issuance and performance.

~~((8) During the 2005-2007 fiscal biennium, the legislature may transfer from the state toxics control account to the water quality account such amounts as reflect the excess fund balance of the fund.))~~ [2007 c 341 § 30; 2005 c 488 § 926; 2003 1st sp.s. c 25 § 933; 2001 c 27 § 2; 2000 2nd sp.s. c 1 § 912; 1999 c 309 § 923. Prior: 1998 c 346 § 905; 1998 c 81 § 2; 1997 c 406 § 5; 1994 c 252 § 5; 1991 sp.s. c 13 § 69; 1989 c 2 § 7 (Initiative Measure No. 97, approved November 8, 1988).]

Severability—Effective date—2007 c 341: See RCW 90.71.906 and 90.71.907.

70.105D.070 Toxics control accounts (as amended by 2007 c 446).

(1) The state toxics control account and the local toxics control account are hereby created in the state treasury.

(2) The following moneys shall be deposited into the state toxics control account: (a) Those revenues which are raised by the tax imposed under RCW 82.21.030 and which are attributable to that portion of the rate equal to thirty-three one-hundredths of one percent; (b) the costs of remedial actions recovered under this chapter or chapter 70.105A RCW; (c) penalties collected or recovered under this chapter; and (d) any other money appropriated or transferred to the account by the legislature. Moneys in the account may be used only to carry out the purposes of this chapter, including but not limited to the following activities:

- (i) The state's responsibility for hazardous waste planning, management, regulation, enforcement, technical assistance, and public education required under chapter 70.105 RCW;
- (ii) The state's responsibility for solid waste planning, management, regulation, enforcement, technical assistance, and public education required under chapter 70.95 RCW;
- (iii) The hazardous waste cleanup program required under this chapter;
- (iv) State matching funds required under the federal cleanup law;
- (v) Financial assistance for local programs in accordance with chapters 70.95, 70.95C, 70.95I, and 70.105 RCW;
- (vi) State government programs for the safe reduction, recycling, or disposal of hazardous wastes from households, small businesses, and agriculture;
- (vii) Hazardous materials emergency response training;
- (viii) Water and environmental health protection and monitoring programs;
- (ix) Programs authorized under chapter 70.146 RCW;
- (x) A public participation program, including regional citizen advisory committees;
- (xi) Public funding to assist potentially liable persons to pay for the costs of remedial action in compliance with cleanup standards under RCW 70.105D.030(2)(e) but only when the amount and terms of such funding are

established under a settlement agreement under RCW 70.105D.040(4) and when the director has found that the funding will achieve both (A) a substantially more expeditious or enhanced cleanup than would otherwise occur, and (B) the prevention or mitigation of unfair economic hardship; and

(xii) Development and demonstration of alternative management technologies designed to carry out the ~~(top two)~~ hazardous waste management priorities of RCW 70.105.150.

(3) The following moneys shall be deposited into the local toxics control account: Those revenues which are raised by the tax imposed under RCW 82.21.030 and which are attributable to that portion of the rate equal to thirty-seven one-hundredths of one percent.

(a) Moneys deposited in the local toxics control account shall be used by the department for grants or loans to local governments for the following purposes in descending order of priority: (i) Remedial actions; (ii) hazardous waste plans and programs under chapter 70.105 RCW; (iii) solid waste plans and programs under chapters 70.95, 70.95C, 70.95I, and 70.105 RCW; (iv) funds for a program to assist in the assessment and cleanup of sites of methamphetamine production, but not to be used for the initial containment of such sites, consistent with the responsibilities and intent of RCW 69.50.511; and (v) cleanup and disposal of hazardous substances from abandoned or derelict vessels that pose a threat to human health or the environment. For purposes of this subsection (3)(a)(v), "abandoned or derelict vessels" means vessels that have little or no value and either have no identified owner or have an identified owner lacking financial resources to clean up and dispose of the vessel. Funds for plans and programs shall be allocated consistent with the priorities and matching requirements established in chapters 70.105, 70.95C, 70.95I, and 70.95 RCW. During the 1999-2001 fiscal biennium, moneys in the account may also be used for the following activities: Conducting a study of whether dioxins occur in fertilizers, soil amendments, and soils; reviewing applications for registration of fertilizers; and conducting a study of plant uptake of metals. During the 2005-2007 fiscal biennium, the legislature may transfer from the local toxics control account to the state toxics control account such amounts as specified in the omnibus capital budget bill. During the 2005-2007 fiscal biennium, moneys in the account may also be used for grants to local governments to retrofit public sector diesel equipment and for storm water planning and implementation activities.

(b) Funds may also be appropriated to the department of health to implement programs to reduce testing requirements under the federal safe drinking water act for public water systems. The department of health shall reimburse the account from fees assessed under RCW 70.119A.115 by June 30, 1995.

(c) To expedite cleanups throughout the state, the department shall partner with local communities and liable parties for cleanups. The department is authorized to use the following additional strategies in order to ensure a healthful environment for future generations:

(i) The director may alter grant-matching requirements to create incentives for local governments to expedite cleanups when one of the following conditions exists:

(A) Funding would prevent or mitigate unfair economic hardship imposed by the clean-up liability;

(B) Funding would create new substantial economic development, public recreational, or habitat restoration opportunities that would not otherwise occur; or

(C) Funding would create an opportunity for acquisition and redevelopment of vacant, orphaned, or abandoned property under RCW 70.105D.040(5) that would not otherwise occur;

(ii) The use of outside contracts to conduct necessary studies;

(iii) The purchase of remedial action cost-cap insurance, when necessary to expedite multiparty clean-up efforts.

(4) Except for unanticipated receipts under RCW 43.79.260 through 43.79.282, moneys in the state and local toxics control accounts may be spent only after appropriation by statute.

(5) One percent of the moneys deposited into the state and local toxics control accounts shall be allocated only for public participation grants to persons who may be adversely affected by a release or threatened release of a hazardous substance and to not-for-profit public interest organizations. The primary purpose of these grants is to facilitate the participation by persons and organizations in the investigation and remedying of releases or threatened releases of hazardous substances and to implement the state's solid and hazardous waste management priorities. However, during the 1999-2001 fiscal biennium, funding may not be granted to entities engaged in lobbying activities, and applicants may not be awarded grants if their cumulative grant awards under this section exceed two hundred thousand dollars. No grant may exceed sixty thousand dollars. Grants may be renewed annually. Moneys appropriated for public participation from either account which are not

expended at the close of any biennium shall revert to the state toxics control account.

(6) No moneys deposited into either the state or local toxics control account may be used for solid waste incinerator feasibility studies, construction, maintenance, or operation.

(7) The department shall adopt rules for grant or loan issuance and performance.

(8) During the 2005-2007 fiscal biennium, the legislature may transfer from the state toxics control account to the water quality account such amounts as reflect the excess fund balance of the fund. [2007 c 446 § 2; 2005 c 488 § 926; 2003 1st sp.s. c 25 § 933; 2001 c 27 § 2; 2000 2nd sp.s. c 1 § 912; 1999 c 309 § 923. Prior: 1998 c 346 § 905; 1998 c 81 § 2; 1997 c 406 § 5; 1994 c 252 § 5; 1991 sp.s. c 13 § 69; 1989 c 2 § 7 (Initiative Measure No. 97, approved November 8, 1988).]

70.105D.070 Toxics control accounts (as amended by 2007 c 522).

(1) The state toxics control account and the local toxics control account are hereby created in the state treasury.

(2) The following moneys shall be deposited into the state toxics control account: (a) Those revenues which are raised by the tax imposed under RCW 82.21.030 and which are attributable to that portion of the rate equal to thirty-three one-hundredths of one percent; (b) the costs of remedial actions recovered under this chapter or chapter 70.105A RCW; (c) penalties collected or recovered under this chapter; and (d) any other money appropriated or transferred to the account by the legislature. Moneys in the account may be used only to carry out the purposes of this chapter, including but not limited to the following activities:

(i) The state's responsibility for hazardous waste planning, management, regulation, enforcement, technical assistance, and public education required under chapter 70.105 RCW;

(ii) The state's responsibility for solid waste planning, management, regulation, enforcement, technical assistance, and public education required under chapter 70.95 RCW;

(iii) The hazardous waste cleanup program required under this chapter;

(iv) State matching funds required under the federal cleanup law;

(v) Financial assistance for local programs in accordance with chapters 70.95, 70.95C, 70.95I, and 70.105 RCW;

(vi) State government programs for the safe reduction, recycling, or disposal of hazardous wastes from households, small businesses, and agriculture;

(vii) Hazardous materials emergency response training;

(viii) Water and environmental health protection and monitoring programs;

(ix) Programs authorized under chapter 70.146 RCW;

(x) A public participation program, including regional citizen advisory committees;

(xi) Public funding to assist potentially liable persons to pay for the costs of remedial action in compliance with cleanup standards under RCW 70.105D.030(2)(e) but only when the amount and terms of such funding are established under a settlement agreement under RCW 70.105D.040(4) and when the director has found that the funding will achieve both (A) a substantially more expeditious or enhanced cleanup than would otherwise occur, and (B) the prevention or mitigation of unfair economic hardship; and

(xii) Development and demonstration of alternative management technologies designed to carry out the top two hazardous waste management priorities of RCW 70.105.150.

(3) The following moneys shall be deposited into the local toxics control account: Those revenues which are raised by the tax imposed under RCW 82.21.030 and which are attributable to that portion of the rate equal to thirty-seven one-hundredths of one percent.

(a) Moneys deposited in the local toxics control account shall be used by the department for grants or loans to local governments for the following purposes in descending order of priority: (i) Remedial actions; (ii) hazardous waste plans and programs under chapter 70.105 RCW; (iii) solid waste plans and programs under chapters 70.95, 70.95C, 70.95I, and 70.105 RCW; (iv) funds for a program to assist in the assessment and cleanup of sites of methamphetamine production, but not to be used for the initial containment of such sites, consistent with the responsibilities and intent of RCW 69.50.511; and (v) cleanup and disposal of hazardous substances from abandoned or derelict vessels that pose a threat to human health or the environment. For purposes of this subsection (3)(a)(v), "abandoned or derelict vessels" means vessels that have little or no value and either have no identified owner or have an identified owner lacking financial resources to clean up and dispose of the vessel. Funds for plans and programs shall be allocated consistent with the priorities and matching requirements established in chapters 70.105,

70.95C, 70.95I, and 70.95 RCW. During the 1999-2001 fiscal biennium, moneys in the account may also be used for the following activities: Conducting a study of whether dioxins occur in fertilizers, soil amendments, and soils; reviewing applications for registration of fertilizers; and conducting a study of plant uptake of metals. During the 2005-2007 fiscal biennium, the legislature may transfer from the local toxics control account to the state toxics control account such amounts as specified in the omnibus capital budget bill. During the ((2005-2007)) 2007-2009 fiscal biennium, moneys in the account may also be used for grants to local governments to retrofit public sector diesel equipment and for storm water planning and implementation activities.

(b) Funds may also be appropriated to the department of health to implement programs to reduce testing requirements under the federal safe drinking water act for public water systems. The department of health shall reimburse the account from fees assessed under RCW 70.119A.115 by June 30, 1995.

(4) Except for unanticipated receipts under RCW 43.79.260 through 43.79.282, moneys in the state and local toxics control accounts may be spent only after appropriation by statute.

(5) One percent of the moneys deposited into the state and local toxics control accounts shall be allocated only for public participation grants to persons who may be adversely affected by a release or threatened release of a hazardous substance and to not-for-profit public interest organizations. The primary purpose of these grants is to facilitate the participation by persons and organizations in the investigation and remedying of releases or threatened releases of hazardous substances and to implement the state's solid and hazardous waste management priorities. However, during the 1999-2001 fiscal biennium, funding may not be granted to entities engaged in lobbying activities, and applicants may not be awarded grants if their cumulative grant awards under this section exceed two hundred thousand dollars. No grant may exceed sixty thousand dollars. Grants may be renewed annually. Moneys appropriated for public participation from either account which are not expended at the close of any biennium shall revert to the state toxics control account.

(6) No moneys deposited into either the state or local toxics control account may be used for solid waste incinerator feasibility studies, construction, maintenance, or operation.

(7) The department shall adopt rules for grant or loan issuance and performance.

~~((8) During the 2005-2007 fiscal biennium, the legislature may transfer from the state toxics control account to the water quality account such amounts as reflect the excess fund balance of the fund.))~~ [2007 c 522 § 954; 2007 c 520 § 6033; 2005 c 488 § 926; 2003 1st sp.s. c 25 § 933; 2001 c 27 § 2; 2000 2nd sp.s. c 1 § 912; 1999 c 309 § 923. Prior: 1998 c 346 § 905; 1998 c 81 § 2; 1997 c 406 § 5; 1994 c 252 § 5; 1991 sp.s. c 13 § 69; 1989 c 2 § 7 (Initiative Measure No. 97, approved November 8, 1988).]

Reviser's note: RCW 70.105D.070 was amended three times during the 2007 legislative session, all without reference to the other. For rule of construction concerning sections amended more than once during the same legislative session, see RCW 1.12.025.

Severability—Effective date—2007 c 522: See notes following RCW 15.64.050.

Part headings not law—Severability—Effective date—2007 c 520: See notes following RCW 43.19.125.

Part headings not law—Severability—Effective dates—2005 c 488: See notes following RCW 28B.50.360.

Severability—Effective date—2003 1st sp.s. c 25: See notes following RCW 19.28.351.

Finding—2001 c 27: "The legislature finds that there is an increasing number of derelict vessels that have been abandoned in the waters along the shorelines of the state. These vessels pose hazards to navigation and threaten the environment with the potential release of hazardous materials. There is no current federal program that comprehensively addresses this problem, and the legislature recognizes that the state must assist in providing a solution to this increasing hazard." [2001 c 27 § 1.]

Severability—Effective date—2000 2nd sp.s. c 1: See notes following RCW 41.05.143.

Severability—Effective date—1999 c 309: See notes following RCW 41.06.152.

Construction—Severability—Effective date—1998 c 346: See notes following RCW 50.24.014.

Local governments—Increased service—1998 c 81: "If this act mandates an increased level of service by local governments, the local govern-

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ment may, under RCW 43.135.060 and chapter 4.92 RCW, submit claims for reimbursement by the legislature. The claims shall be subject to verification by the office of financial management." [1998 c 81 § 3.]

Findings—Intent—1997 c 406: See note following RCW 70.105D.020.

Finding—Effective date—1994 c 252: See notes following RCW 70.119A.020.

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

70.105D.120 Puget Sound partners. When administering funds under this chapter, the department shall give preference only to Puget Sound partners, as defined in RCW 90.71.010, in comparison to other entities that are eligible to be included in the definition of Puget Sound partner. Entities that are not eligible to be a Puget Sound partner due to geographic location, composition, exclusion from the scope of the Puget Sound action agenda developed by the Puget Sound partnership under RCW 90.71.310, or for any other reason, shall not be given less preferential treatment than Puget Sound partners. [2007 c 341 § 31.]

Severability—Effective date—2007 c 341: See RCW 90.71.906 and 90.71.907.

Chapter 70.118 RCW

ON-SITE SEWAGE DISPOSAL SYSTEMS

Sections

70.118.090 Funding.

70.118.130 Civil penalties.

70.118.140 Shellfish—On-site sewage grant program—Priority areas—Memorandum of understanding.

70.118.090 Funding. The department may not use funds appropriated to implement an element of the action agenda developed by the Puget Sound partnership under RCW 90.71.310 to conduct any activity required under chapter 281, Laws of 1994. [2007 c 341 § 61; 1994 c 281 § 6.]

Severability—Effective date—2007 c 341: See RCW 90.71.906 and 90.71.907.

Finding—Purpose—Effective date—1994 c 281: See notes following RCW 70.118.020.

70.118.130 Civil penalties. A local health officer who is responsible for administering and enforcing regulations regarding on-site sewage disposal systems is authorized to issue civil penalties for violations of those regulations under the same limitations and requirements imposed on the department under RCW 70.118B.050, except that the amount of a penalty shall not exceed one thousand dollars per day for every violation, and judgments shall be entered in the name of the local health jurisdiction and penalties shall be placed into the general fund or funds of the entity or entities operating the local health jurisdiction. [2007 c 343 § 9.]

Captions and part headings not law—2007 c 343: See RCW 70.118B.900.

70.118.140 Shellfish—On-site sewage grant program—Priority areas—Memorandum of understanding. (1)(a) The department of health shall manage the established shellfish—on-site sewage grant program in Puget Sound and for Pacific and Grays Harbor counties. The

department of health shall provide funds to local health jurisdictions to be used as grants or loans to individuals for improving their on-site sewage systems. The grants or loans may be provided only in areas that have the potential to adversely affect water quality in commercial and recreational shellfish growing areas.

(b) A recipient of a grant or loan shall enter into an agreement with the appropriate local health jurisdiction to maintain the improved on-site sewage system according to specifications required by the local health jurisdiction.

(c) The department of health shall work closely with local health jurisdictions and it shall be the goal of the department of health to attain geographic equity between Grays Harbor, Willapa Bay, and Puget Sound when making funds available under this program.

(d) For the purposes of this subsection, "geographic equity" means issuing on-site sewage grants or loans at a level that matches the funds generated from the oyster reserve lands in that area.

(2) In Puget Sound, the department of health shall give first priority to areas that are:

(a) Identified as "areas of special concern" under WAC 246-272-01001;

(b) Included within a shellfish protection district under chapter 90.72 RCW; or

(c) Identified as a marine recovery area under chapter 70.118A RCW.

(3) In Grays Harbor and Pacific counties, the department of health shall give first priority to preventing the deterioration of water quality in areas where commercial or recreational shellfish are grown.

(4) The department of health and each participating local health jurisdiction shall enter into a memorandum of understanding that will establish an applicant income eligibility requirement for individual grant applicants from within the jurisdiction and other mutually agreeable terms and conditions of the grant program.

(5) The department of health may recover the costs to administer this program not to exceed ten percent of the shellfish—on-site sewage grant program.

(6) For the 2007-2009 biennium, from the funds received under this section, Pacific county may transfer up to two hundred thousand dollars to the department of fish and wildlife for research identified by the department of fish and wildlife and the appropriate oyster reserve advisory committee under RCW 77.60.160. [2007 c 341 § 43; 2001 c 273 § 3. Formerly RCW 90.71.100.]

Severability—Effective date—2007 c 341: See RCW 90.71.906 and 90.71.907.

Chapter 70.118B RCW

LARGE ON-SITE SEWAGE DISPOSAL SYSTEMS

Sections

70.118B.005	Findings.
70.118B.010	Definitions.
70.118B.020	Comprehensive regulation—Department duties.
70.118B.030	Operating permits required—Application.
70.118B.040	Rules.
70.118B.050	Violations—Civil penalties.
70.118B.060	Injunctions.
70.118B.070	Authority and duties.
70.118B.900	Captions and part headings not law—2007 c 343.

70.118B.005 Findings.

The legislature finds that:
(1) Protection of the environment and public health requires properly designed, operated, and maintained on-site sewage systems. Failure of those systems can pose certain health and environmental hazards if sewage leaks above ground or if untreated sewage reaches surface or groundwater.

(2) Chapter 70.118A RCW provides a framework for ongoing management of on-site sewage systems located in marine recovery areas and regulated by local health jurisdictions under state board of health rules. This chapter will provide a framework for comprehensive management of large on-site sewage systems statewide.

(3) The primary purpose of this chapter is to establish, in a single state agency, comprehensive regulation of the design, operation, and maintenance of large on-site sewage systems, and their operators, that provides both public health and environmental protection. To accomplish these purposes, this chapter provides for:

(a) The permitting and continuing oversight of large on-site sewage systems;

(b) The establishment by the department of standards and rules for the siting, design, construction, installation, operation, maintenance, and repair of large on-site sewage systems; and

(c) The enforcement by the department of the standards and rules established under this chapter. [2007 c 343 § 1.]

70.118B.010 Definitions. The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

(1) "Department" means the state department of health.

(2) "Industrial wastewater" means the water or liquid carried waste from an industrial process. These wastes may result from any process or activity of industry, manufacture, trade, or business, from the development of any natural resource, or from animal operations such as feedlots, poultry houses, or dairies. The term includes contaminated storm water and leachate from solid waste facilities.

(3) "Large on-site sewage system" means an on-site sewage system with design flows of between three thousand five hundred gallons per day and one hundred thousand gallons per day.

(4) "On-site sewage system" means an integrated system of components, located on or nearby the property it serves, that conveys, stores, treats, and provides subsurface soil treatment and disposal of domestic sewage. It consists of a collection system, a treatment component or treatment sequence, and a subsurface soil disposal component. It may or may not include a mechanical treatment system. An on-site sewage system also refers to a holding tank sewage system or other system that does not have a soil dispersal component. A holding tank that discharges to a sewer is not included in the definition of on-site sewage system. A system into which storm water or industrial wastewater is discharged is not included in the definition of on-site sewage system.

(5) "Person" means any individual, corporation, company, association, firm, partnership, governmental agency, or any other entity whatsoever, and the authorized agents of any such entities.

(6) "Secretary" means the secretary of health.

(7) "Waters of the state" has the same meaning as defined in RCW 90.48.020. [2007 c 343 § 2.]

70.118B.020 Comprehensive regulation—Department duties. (1) For the protection of human health and the environment the department shall:

(a) Establish and provide for the comprehensive regulation of large on-site sewage systems including, but not limited to, system siting, design, construction, installation, operation, maintenance, and repair;

(b) Control and prevent pollution of streams, lakes, rivers, ponds, inland waters, salt waters, water courses, and other surface and underground waters of the state of Washington, except to the extent authorized by permits issued under this chapter;

(c) Issue annual operating permits for large on-site sewage systems based on the system's ability to function properly in compliance with the applicable comprehensive regulatory requirements; and

(d) Enforce the large on-site sewage system requirements.

(2) Large on-site sewage systems permitted by the department may not be used for treatment and disposal of industrial wastewater or combined sanitary sewer and storm water systems.

(3) The work group convened under RCW 70.118A.080(4) to make recommendations to the appropriate committees of the legislature for the development of certification or licensing of maintenance specialists shall include recommendations for the development of certification or licensing of large on-site [sewage] system operators. [2007 c 343 § 3.]

70.118B.030 Operating permits required—Application. (1) A person may not install or operate a large on-site sewage system without an operating permit as provided in this chapter after July 1, 2009. The owner of the system is responsible for obtaining a permit.

(2) The department shall issue operating permits in accordance with the rules adopted under RCW 70.118B.040.

(3) The department shall ensure the system meets all applicable siting, design, construction, and installation requirements prior to issuing an initial operating permit. Prior to renewing an operating permit, the department may review the performance of the system to determine compliance with rules and any permit conditions.

(4) At the time of initial permit application or at the time of permit renewal the department shall impose those permit conditions, requirements for system improvements, and compliance schedules as it determines are reasonable and necessary to ensure that the system will be operated and maintained properly. Each application must be accompanied by a fee as established in rules adopted by the department.

(5) Operating permits shall be issued for a term of one year, and shall be renewed annually, unless the operator fails to apply for a new permit or the department finds good cause to deny the application for renewal.

(6) Each permit may be issued only for the site and owner named in the application. Permits are not transferable

or assignable except with the written approval of the department.

(7) The department may deny an application for a permit or modify, suspend, or revoke a permit in any case in which it finds that the permit was obtained by fraud or there is or has been a failure, refusal, or inability to comply with the requirements of this chapter or the standards or rules adopted under this chapter. RCW 43.70.115 governs notice of denial, revocation, suspension, or modification and provides the right to an adjudicative proceeding to the permit applicant or permittee.

(8) For systems with design flows of more than fourteen thousand five hundred gallons per day, the department shall adopt rules to ensure adequate public notice and opportunity for review and comment on initial large on-site sewage system permit applications and subsequent permit applications to increase the volume of waste disposal or change effluent characteristics. The rules must include provisions for notice of final decisions. Methods for providing notice may include electronic mail, posting on the department's internet site, publication in a local newspaper, press releases, mailings, or other means of notification the department determines appropriate.

(9) A person aggrieved by the issuance of an initial permit, or by the issuance of a subsequent permit to increase the volume of waste disposal or to change effluent characteristics, for systems with design flows of more than fourteen thousand five hundred gallons per day, has the right to an adjudicative proceeding. The application for an adjudicative proceeding must be in writing, state the basis for contesting the action, include a copy of the decision, be served on and received by the department within twenty-eight days of receipt of notice of the final decision, and be served in a manner that shows proof of receipt. An adjudicative proceeding conducted under this subsection is governed by chapter 34.05 RCW.

(10) Any permit issued by the department of ecology for a large on-site sewage system under chapter 90.48 RCW is valid until it first expires after July 22, 2007. The system owner shall apply for an operating permit at least one hundred twenty days prior to expiration of the department of ecology permit.

(11) Systems required to meet operator certification requirements under chapter 70.95B RCW must continue to meet those requirements as a condition of the department operating permit. [2007 c 343 § 4.]

70.118B.040 Rules. (1) For the protection of human health and the environment, the secretary shall adopt rules for the comprehensive regulation of large on-site sewage systems, which includes, but is not limited to, the siting, design, construction, installation, maintenance, repair, and permitting of the systems.

(2) In adopting the rules, the secretary shall, in consultation with the department of ecology, require that large on-site sewage systems comply with the applicable sections of chapter 90.48 RCW regarding control and prevention of pollution of waters of the state, including but not limited to:

(a) Surface and groundwater standards established under RCW 90.48.035; and

(b) Those provisions requiring all known, available, and reasonable methods of treatment.

(3) In adopting the rules, the secretary shall ensure that requirements for large on-site sewage systems are consistent with the requirements of any comprehensive plans or development regulations adopted under chapter 36.70A RCW or any other applicable comprehensive plan, land use plan, or development regulation adopted by a city, town, or county. [2007 c 343 § 5.]

70.118B.050 Violations—Civil penalties. (1) A person who violates a law or rule regulating large on-site sewage systems administered by the department is subject to a penalty of not more than ten thousand dollars per day for every violation. Every violation is a separate and distinct offense. In case of a continuing violation, each day's continuing violation is a separate and distinct violation. The penalty assessed must reflect the significance of the violation and the previous record of compliance on the part of the person responsible for compliance with large on-site sewage system requirements.

(2) Every person who, through an act of commission or omission, procures, aids, or abets a violation is considered to have violated the provisions of this section and is subject to the penalty provided in this section.

(3) The penalty provided for in this section must be imposed by a notice in writing to the person against whom the civil penalty is assessed and must describe the violation. The notice must be personally served in the manner of service of a summons in a civil action or in a manner that shows proof of receipt. A penalty imposed by this section is due twenty-eight days after receipt of notice unless application for an adjudicative proceeding is filed as provided in subsection (4) of this section.

(4) Within twenty-eight days after notice is received, the person incurring the penalty may file an application for an adjudicative proceeding and may pursue subsequent review as provided in chapter 34.05 RCW and applicable rules.

(5) A penalty imposed by a final administrative order is due upon service of the final administrative order. A person who fails to pay a penalty assessed by a final administrative order within thirty days of service of the final administrative order shall pay, in addition to the amount of the penalty, interest at the rate of one percent of the unpaid balance of the assessed penalty for each month or part of a month that the penalty remains unpaid, commencing with the month in which the notice of penalty was served, and reasonable attorneys' fees as are incurred if civil enforcement of the final administrative order is required to collect the penalty.

(6) A person who institutes proceedings for judicial review of a final administrative order assessing a civil penalty under this chapter shall place the full amount of the penalty in an interest-bearing account in the registry of the reviewing court. At the conclusion of the proceeding the court shall, as appropriate, enter a judgment on behalf of the department and order that the judgment be satisfied to the extent possible from moneys paid into the registry of the court or shall enter a judgment in favor of the person appealing the penalty assessment and order return of the moneys paid into the registry of the court together with accrued interest to the person appealing. The judgment may award rea-

sonable attorneys' fees for the cost of the attorney general's office in representing the department.

(7) If no appeal is taken from a final administrative order assessing a civil penalty under this chapter, the department may file a certified copy of the final administrative order with the clerk of the superior court in which the large on-site sewage system is located or in Thurston county, and the clerk shall enter judgment in the name of the department and in the amount of the penalty assessed in the final administrative order.

(8) A judgment entered under subsection (6) or (7) of this section has the same force and effect as, and is subject to all of the provisions of law relating to, a judgment in a civil action, and may be enforced in the same manner as any other judgment of the court in which it is entered.

(9) The large on-site sewage systems account is created in the custody of the state treasurer. All receipts from penalties imposed under this section shall be deposited into the account. Expenditures from the account shall be used by the department to provide training and technical assistance to large on-site sewage system owners and operators. Only the secretary or the secretary's designee may authorize expenditures from the account. The account is subject to allotment procedures under chapter 43.88 RCW, but an appropriation is not required for expenditures. [2007 c 343 § 6.]

70.118B.060 Injunctions. Notwithstanding the existence or use of any other remedy, the department may bring an action to enjoin a violation or threatened violation of this chapter or rules adopted under this chapter. The department may bring the action in the superior court of the county in which the large on-site sewage system is located or in the superior court of Thurston county. [2007 c 343 § 7.]

70.118B.070 Authority and duties. The authority and duties created in this chapter are in addition to any authority and duties already provided in law. Nothing in this chapter limits the powers of the state or any political subdivision to exercise such authority. [2007 c 343 § 8.]

70.118B.900 Captions and part headings not law—2007 c 343. Captions and part headings used in this act are not any part of the law. [2007 c 343 § 16.]

Chapter 70.128 RCW ADULT FAMILY HOMES

Sections

70.128.010	Definitions.
70.128.040	Adoption of rules and standards—Negotiated rule making.
70.128.043	Negotiated rule making—Statewide unit of licensees—Intent.
70.128.225	Advisory committee.

70.128.010 Definitions. Unless the context clearly requires otherwise, the definitions in this section apply throughout this chapter.

(1) "Adult family home" means a residential home in which a person or persons provide personal care, special care, room, and board to more than one but not more than six adults who are not related by blood or marriage to the person or persons providing the services.

(2) "Provider" means any person who is licensed under this chapter to operate an adult family home. For the purposes of this section, "person" means any individual, partnership, corporation, association, or limited liability company.

(3) "Department" means the department of social and health services.

(4) "Resident" means an adult in need of personal or special care in an adult family home who is not related to the provider.

(5) "Adults" means persons who have attained the age of eighteen years.

(6) "Home" means an adult family home.

(7) "Imminent danger" means serious physical harm to or death of a resident has occurred, or there is a serious threat to resident life, health, or safety.

(8) "Special care" means care beyond personal care as defined by the department, in rule.

(9) "Capacity" means the maximum number of persons in need of personal or special care permitted in an adult family home at a given time. This number shall include related children or adults in the home and who received special care.

(10) "Resident manager" means a person employed or designated by the provider to manage the adult family home.

(11) "Adult family home licensee" means a provider as defined in this section who does not receive payments from the medicaid and state-funded long-term care programs. [2007 c 184 § 7. Prior: 2001 c 319 § 6; 2001 c 319 § 2; 1995 c 260 § 2; 1989 c 427 § 16.]

Part headings not law—Severability—Conflict with federal requirements—2007 c 184: See notes following RCW 41.56.029.

70.128.040 Adoption of rules and standards—Negotiated rule making. (1) The department shall adopt rules and standards with respect to adult family homes and the operators thereof to be licensed under this chapter to carry out the purposes and requirements of this chapter. The rules and standards relating to applicants and operators shall address the differences between individual providers and providers that are partnerships, corporations, associations, or companies. The rules and standards shall also recognize and be appropriate to the different needs and capacities of the various populations served by adult family homes such as but not limited to persons who are developmentally disabled or elderly. In developing rules and standards the department shall recognize the residential family-like nature of adult family homes and not develop rules and standards which by their complexity serve as an overly restrictive barrier to the development of the adult family homes in the state. Procedures and forms established by the department shall be developed so they are easy to understand and comply with. Paper work requirements shall be minimal. Easy to understand materials shall be developed for applicants and providers explaining licensure requirements and procedures.

(2)(a) In developing the rules and standards, the department shall consult with all divisions and administrations within the department serving the various populations living in adult family homes, including the division of developmental disabilities and the aging and adult services administration. Involvement by the divisions and administration shall be for the purposes of assisting the department to develop rules and standards appropriate to the different needs and

capacities of the various populations served by adult family homes. During the initial stages of development of proposed rules, the department shall provide notice of development of the rules to organizations representing adult family homes and their residents, and other groups that the department finds appropriate. The notice shall state the subject of the rules under consideration and solicit written recommendations regarding their form and content.

(b) In addition, the department shall engage in negotiated rule making pursuant to RCW 34.05.310(2)(a) with the exclusive representative of the adult family home licensees selected in accordance with RCW 70.128.043 and with other affected interests before adopting requirements that affect adult family home licensees.

(3) Except where provided otherwise, chapter 34.05 RCW shall govern all department rule-making and adjudicative activities under this chapter. [2007 c 184 § 8; 1995 c 260 § 3; 1989 c 427 § 18.]

Part headings not law—Severability—Conflict with federal requirements—2007 c 184: See notes following RCW 41.56.029.

70.128.043 Negotiated rule making—Statewide unit of licensees—Intent. (1) Solely for the purposes of negotiated rule making pursuant to RCW 34.05.310(2)(a) and 70.128.040, a statewide unit of all adult family home licensees is appropriate. As of July 22, 2007, the exclusive representative of adult family home licensees in the statewide unit shall be the organization certified by the American arbitration association as the sole representative after the association conducts a cross-check comparing authorization cards against the department of social and health services' records and finds that majority support for the organization exists. If adult family home licensees seek to select a different representative thereafter, the adult family home licensees may request that the American arbitration association conduct an election and certify the results of the election.

(2) In enacting this section, the legislature intends to provide state action immunity under federal and state antitrust laws for the joint activities of licensees and their exclusive representative to the extent such activities are authorized by this chapter. [2007 c 184 § 6.]

Part headings not law—Severability—Conflict with federal requirements—2007 c 184: See notes following RCW 41.56.029.

70.128.225 Advisory committee. (1) In an effort to ensure a cooperative process among the department, adult family home provider representatives, and resident and family representatives on matters pertaining to the adult family home program, the secretary, or his or her designee, shall designate an advisory committee. The advisory committee must include: Representatives from the industry including four adult family home providers, at least two of whom are affiliated with recognized adult family home associations; one representative from the state long-term care ombudsman program; one representative from the statewide resident council program; one representative from a general authority Washington law enforcement agency as defined in RCW 10.93.020; and two representatives of families and other consumers. The secretary shall appoint a chairperson for the committee from the committee membership for a term of one year. In appointing the chairperson, the secretary shall con-

sult with members of the committee. Depending on the topic to be discussed, the department may invite other representatives in addition to the named members of the advisory committee. The secretary, or his or her designee, shall periodically, but not less than quarterly, convene a meeting of the advisory committee to encourage open dialogue on matters affecting the adult family home program. It is, minimally, expected that the department will discuss with the advisory committee the department's inspection, enforcement, and quality improvement activities, in addition to seeking their comments and recommendations on matters described under subsection (2) of this section.

(2) The secretary, or his or her designee, shall seek comments and recommendations from the advisory committee prior to the adoption of rules and standards, implementation of adult family home provider programs, or development of methods and rates of payment.

(3) Establishment of the advisory committee shall not prohibit the department of social and health services from utilizing other advisory activities that the department of social and health services deems necessary for program development.

(4) Members of the advisory committee shall be reimbursed for travel expenses as provided in RCW 43.03.050 and 43.03.060 from license fees collected under chapter 70.128 RCW. [2007 c 40 § 1; 2002 c 223 § 4.]

Chapter 70.146 RCW WATER POLLUTION CONTROL FACILITIES FINANCING

Sections

70.146.030	Water quality account—Progress report.
70.146.070	Grants or loans for water pollution control facilities—Considerations.
70.146.080	Determination of tax receipts in water quality account—Transfer of sufficient moneys from general revenues.
70.146.100	Water quality capital account—Expenditures.
70.146.110	Puget Sound partners.

70.146.030 Water quality account—Progress report.

(1) The water quality account is hereby created in the state treasury. Moneys in the account may be used only in a manner consistent with this chapter. Moneys deposited in the account shall be administered by the department of ecology and shall be subject to legislative appropriation. Moneys placed in the account shall include tax receipts as provided in RCW 82.24.027, 82.24.026(2)(d), and 82.32.390, principal and interest from the repayment of any loans granted pursuant to this chapter, and any other moneys appropriated to the account by the legislature.

(2) The department may use or permit the use of any moneys in the account to make grants or loans to public bodies, including grants to public bodies as cost-sharing moneys in any case where federal, local, or other funds are made available on a cost-sharing basis, for water pollution control facilities and activities, or for purposes of assisting a public body to obtain an ownership interest in water pollution control facilities and/or to defray a part of the payments made by a public body to a service provider under a service agreement entered into pursuant to RCW 70.150.060, within the purposes of this chapter and for related administrative expenses.

For the period July 1, 2007, to June 30, 2009, moneys in the account may be used to process applications received by the department that seek to make changes to or transfer existing water rights and for other water resources and water quality activities, for water conveyance projects, shoreline technical assistance[,] Puget Sound education and outreach[,] and for grants and technical assistance to public bodies for watershed planning under chapter 90.82 RCW. No more than three percent of the moneys deposited in the account may be used by the department to pay for the administration of the grant and loan program authorized by this chapter.

(3) Beginning with the biennium ending June 30, 1997, the department shall present a biennial progress report on the use of moneys from the account to the chairs of the senate committee on ways and means and the house of representatives committee on appropriations. The first report is due June 30, 1996, and the report for each succeeding biennium is due December 31st of the odd-numbered year. The report shall consist of a list of each recipient, project description, and amount of the grant, loan, or both. [2007 c 522 § 955. Prior: 2005 c 518 § 940; 2005 c 514 § 1108; 2004 c 277 § 909; 2003 1st sp.s. c 25 § 934; 2002 c 371 § 921; 2001 2nd sp.s. c 7 § 922; 1996 c 37 § 2; 1995 2nd sp.s. c 18 § 921; 1991 sp.s. c 13 § 61; prior: 1987 c 505 § 64; 1987 c 436 § 6; 1986 c 3 § 3.]

Severability—Effective date—2007 c 522: See notes following RCW 15.64.050.

Severability—Effective date—2005 c 518: See notes following RCW 28A.305.210.

Effective date—2005 c 514: See note following RCW 83.100.230.

Part headings not law—Severability—2005 c 514: See notes following RCW 82.12.808.

Severability—Effective dates—2004 c 277: See notes following RCW 89.08.550.

Severability—Effective date—2003 1st sp.s. c 25: See notes following RCW 19.28.351.

Severability—Effective date—2002 c 371: See notes following RCW 9.46.100.

Severability—Effective date—2001 2nd sp.s. c 7: See notes following RCW 43.320.110.

Severability—Effective date—1995 2nd sp.s. c 18: See notes following RCW 19.118.110.

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

Effective dates—1986 c 3: See note following RCW 82.24.027.

70.146.070 Grants or loans for water pollution control facilities—Considerations. (1) When making grants or loans for water pollution control facilities, the department shall consider the following:

- (a) The protection of water quality and public health;
- (b) The cost to residential ratepayers if they had to finance water pollution control facilities without state assistance;
- (c) Actions required under federal and state permits and compliance orders;
- (d) The level of local fiscal effort by residential ratepayers since 1972 in financing water pollution control facilities;
- (e) Except as otherwise conditioned by RCW 70.146.110, whether the entity receiving assistance is a Puget Sound partner, as defined in RCW 90.71.010;

(f) Whether the project is referenced in the action agenda developed by the Puget Sound partnership under RCW 90.71.310;

(g) The extent to which the applicant county or city, or if the applicant is another public body, the extent to which the county or city in which the applicant public body is located, has established programs to mitigate nonpoint pollution of the surface or subterranean water sought to be protected by the water pollution control facility named in the application for state assistance; and

(h) The recommendations of the Puget Sound partnership, created in RCW 90.71.210, and any other board, council, commission, or group established by the legislature or a state agency to study water pollution control issues in the state.

(2) Except where necessary to address a public health need or substantial environmental degradation, a county, city, or town planning under RCW 36.70A.040 may not receive a grant or loan for water pollution control facilities unless it has adopted a comprehensive plan, including a capital facilities plan element, and development regulations as required by RCW 36.70A.040. This subsection does not require any county, city, or town planning under RCW 36.70A.040 to adopt a comprehensive plan or development regulations before requesting or receiving a grant or loan under this chapter if such request is made before the expiration of the time periods specified in RCW 36.70A.040. A county, city, or town planning under RCW 36.70A.040 which has not adopted a comprehensive plan and development regulations within the time periods specified in RCW 36.70A.040 is not prohibited from receiving a grant or loan under this chapter if the comprehensive plan and development regulations are adopted as required by RCW 36.70A.040 before submitting a request for a grant or loan.

(3) Whenever the department is considering awarding grants or loans for public facilities to special districts requesting funding for a proposed facility located in a county, city, or town planning under RCW 36.70A.040, it shall consider whether the county, city, or town planning under RCW 36.70A.040 in whose planning jurisdiction the proposed facility is located has adopted a comprehensive plan and development regulations as required by RCW 36.70A.040.

(4) After January 1, 2010, any project designed to address the effects of water pollution on Puget Sound may be funded under this chapter only if the project is not in conflict with the action agenda developed by the Puget Sound partnership under RCW 90.71.310. [2007 c 341 § 60; 2007 c 341 § 26; 1999 c 164 § 603; 1997 c 429 § 30; 1991 sp.s. c 32 § 24; 1986 c 3 § 10.]

Reviser's note: This section was amended by 2007 c 341 § 26 and by 2007 c 341 § 60, each without reference to the other. Both amendments are incorporated in the publication of this section under RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

Severability—Effective date—2007 c 341: See RCW 90.71.906 and 90.71.907.

Findings—Intent—Part headings and subheadings not law—Effective date—Severability—1999 c 164: See notes following RCW 43.160.010.

Savings—1999 c 164 §§ 301-303, 305, 306, and 601-603: See note following RCW 82.60.020.

Effective date—1997 c 429 §§ 29 and 30: See note following RCW 43.155.070.

Severability—1997 c 429: See note following RCW 36.70A.3201.

Section headings not law—1991 sp.s. c 32: See RCW 36.70A.902.

Effective dates—1986 c 3: See note following RCW 82.24.027.

70.146.080 Determination of tax receipts in water quality account—Transfer of sufficient moneys from general revenues. Within thirty days after June 30, 1987, and within thirty days after each succeeding fiscal year thereafter, the state treasurer shall determine the tax receipts deposited into the water quality account for the preceding fiscal year. If the tax receipts deposited into the account in each of the fiscal years 1988 and 1989 are less than forty million dollars, the state treasurer shall transfer sufficient moneys from general state revenues into the water quality account to bring the total receipts in each fiscal year up to forty million dollars.

For the biennium ending June 30, 1991, if the tax receipts deposited into the water quality account and the earnings on investment of balances credited to the account are less than ninety million dollars, the treasurer shall transfer sufficient moneys from general state revenues into the water quality account to bring the total revenue up to ninety million dollars. The determination and transfer shall be made by July 31, 1991.

For fiscal year 1992 and for fiscal years 1995 and 1996 and thereafter, if the tax receipts deposited into the water quality account for each fiscal year are less than forty-five million dollars, the treasurer shall transfer sufficient moneys from general state revenues into the water quality account to bring the total revenue up to forty-five million dollars. However, during the 2007-2009 fiscal biennium, the legislature may specify the transfer of a different amount in the operating budget bill. Determinations and transfers shall be made by July 31 for the preceding fiscal year. [2007 c 522 § 956; 2005 c 518 § 941; 2003 1st sp.s. c 25 § 935; 1994 sp.s. c 6 § 902; 1993 sp.s. c 24 § 924; 1991 sp.s. c 16 § 923; 1986 c 3 § 11.]

Severability—Effective date—2007 c 522: See notes following RCW 15.64.050.

Severability—Effective date—2005 c 518: See notes following RCW 28A.305.210.

Severability—Effective date—2003 1st sp.s. c 25: See notes following RCW 19.28.351.

Severability—Effective date—1994 sp.s. c 6: See notes following RCW 28A.310.020.

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

Severability—Effective date—1991 sp.s. c 16: See notes following RCW 9.46.100.

Effective dates—1986 c 3: See note following RCW 82.24.027.

70.146.100 Water quality capital account—Expenditures. (1) The water quality capital account is created in the state treasury. Moneys in the water quality capital account may be spent only after appropriation.

(2) Expenditures from the water quality capital account may only be used: (a) To make grants or loans to public bodies, including grants to public bodies as cost-sharing moneys in any case where federal, local, or other moneys are made available on a cost-sharing basis, for the capital component of water pollution control facilities and activities; (b) for purposes of assisting a public body to obtain an ownership inter-

est in water pollution control facilities; or (c) to defray any part of the capital component of the payments made by a public body to a service provider under a service agreement entered into under RCW 70.150.060. [2007 c 233 § 1.]

Effective date—2007 c 233: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect July 1, 2007." [2007 c 233 § 2.]

70.146.110 Puget Sound partners. When making grants or loans for water pollution control facilities under RCW 70.146.070, the department shall give preference only to Puget Sound partners, as defined in RCW 90.71.010, in comparison to other entities that are eligible to be included in the definition of Puget Sound partner. Entities that are not eligible to be a Puget Sound partner due to geographic location, composition, exclusion from the scope of the action agenda developed by the Puget Sound partnership under RCW 90.71.310, or for any other reason, shall not be given less preferential treatment than Puget Sound partners. [2007 c 341 § 27.]

Severability—Effective date—2007 c 341: See RCW 90.71.906 and 90.71.907.

Chapter 70.149 RCW

HEATING OIL POLLUTION LIABILITY PROTECTION ACT

Sections

70.149.040 Duties of director. (*Expires June 1, 2013.*)

70.149.120 Heating oil tanks—Design criteria—Reimbursement.

70.149.040 Duties of director. (*Expires June 1, 2013.*)

The director shall:

(1) Design a program, consistent with RCW 70.149.120, for providing pollution liability insurance for heating oil tanks that provides up to sixty thousand dollars per occurrence coverage and aggregate limits, and protects the state of Washington from unwanted or unanticipated liability for accidental release claims;

(2) Administer, implement, and enforce the provisions of this chapter. To assist in administration of the program, the director is authorized to appoint up to two employees who are exempt from the civil service law, chapter 41.06 RCW, and who shall serve at the pleasure of the director;

(3) Administer the heating oil pollution liability trust account, as established under RCW 70.149.070;

(4) Employ and discharge, at his or her discretion, agents, attorneys, consultants, companies, organizations, and employees as deemed necessary, and to prescribe their duties and powers, and fix their compensation;

(5) Adopt rules under chapter 34.05 RCW as necessary to carry out the provisions of this chapter;

(6) Design and from time to time revise a reinsurance contract providing coverage to an insurer or insurers meeting the requirements of this chapter. The director is authorized to provide reinsurance through the pollution liability insurance program trust account;

(7) Solicit bids from insurers and select an insurer to provide pollution liability insurance for third-party bodily injury

and property damage, and corrective action to owners and operators of heating oil tanks;

(8) Register, and design a means of accounting for, operating heating oil tanks;

(9) Implement a program to provide advice and technical assistance to owners and operators of active and abandoned heating oil tanks if contamination from an active or abandoned heating oil tank is suspected. Advice and assistance regarding administrative and technical requirements may include observation of testing or site assessment and review of the results of reports. If the director finds that contamination is not present or that the contamination is apparently minor and not a threat to human health or the environment, the director may provide written opinions and conclusions on the results of the investigation to owners and operators of active and abandoned heating oil tanks. The agency is authorized to collect, from persons requesting advice and assistance, the costs incurred by the agency in providing such advice and assistance. The costs may include travel costs and expenses associated with review of reports and preparation of written opinions and conclusions. Funds from cost reimbursement must be deposited in the heating oil pollution liability trust account. The state of Washington, the pollution liability insurance agency, and its officers and employees are immune from all liability, and no cause of action arises from any act or omission in providing, or failing to provide, such advice, opinion, conclusion, or assistance;

(10) Establish a public information program to provide information regarding liability, technical, and environmental requirements associated with active and abandoned heating oil tanks;

(11) Monitor agency expenditures and seek to minimize costs and maximize benefits to ensure responsible financial stewardship;

(12) Create an advisory committee of stakeholders to advise the director on all aspects of program operations and fees authorized by this chapter, including pollution prevention programs. The advisory committee must have one member each from the Pacific Northwest oil heat council, the Washington oil marketers association, the western states petroleum association, and the department of ecology and three members from among the owners of home heating oil tanks registered with the pollution liability insurance agency who are generally representative of the geographical distribution and types of registered owners. The committee should meet at least quarterly, or more frequently at the discretion of the director; and

(13) Study if appropriate user fees to supplement program funding are necessary and develop recommendations for legislation to authorize such fees. [2007 c 240 § 1; 2004 c 203 § 1; 1997 c 8 § 1; 1995 c 20 § 4.]

Application—2007 c 240: See note following RCW 70.149.120.

70.149.120 Heating oil tanks—Design criteria—Reimbursement. (1) The pollution liability insurance agency shall identify design criteria for heating oil tanks that provide superior protection against future leaks as compared to standard steel tank designs. Any tank designs identified under this section must either be constructed with fiberglass

or offer at least an equivalent level of protection against leaks as a standard fiberglass design.

(2) The pollution liability insurance agency shall reimburse any owner or operator, who is participating in the program created in this chapter and who has experienced an occurrence or remedial action, for the difference in price between a standard steel heating tank and a new heating oil tank that satisfies the design standards identified under subsection (1) of this section, if the owner or operator chooses or is required to replace his or her tank at the time of the occurrence or remedial action.

(3) Any new heating oil tank reimbursement provided under this section must be funded within the amount of per occurrence coverage provided to the owner or operator under RCW 70.149.040. [2007 c 240 § 2.]

Application—2007 c 240: "This act applies prospectively and only to individuals who file a claim with the pollution liability insurance agency on or after July 22, 2007." [2007 c 240 § 3.]

Chapter 70.150 RCW

WATER QUALITY JOINT DEVELOPMENT ACT

Sections

70.150.070 RCW 70.150.030 through 70.150.060 to be additional method of providing services.

70.150.070 RCW 70.150.030 through 70.150.060 to be additional method of providing services. RCW 70.150.030 through 70.150.060 shall be deemed to provide an additional method for the provision of services from and in connection with facilities and shall be regarded as supplemental and additional to powers conferred by other state laws and by federal laws. [2007 c 494 § 505; 2005 c 469 § 2; 1986 c 244 § 7.]

Part headings and captions not law—Effective dates—Severability—2007 c 494: See RCW 39.10.903 through 39.10.905.

Chapter 70.225 RCW

PRESCRIPTION MONITORING PROGRAM

Sections

70.225.010 Definitions.
 70.225.020 Prescription monitoring program—Subject to funding—Duties of dispensers.
 70.225.025 Rules.
 70.225.030 Enhancement of program—Feasibility study.
 70.225.040 Confidentiality of prescription information—Procedures—Immunity when acting in good faith.
 70.225.050 Department may contract for operation of program.
 70.225.060 Violations—Penalties—Disclosure exemption for health care providers.
 70.225.900 Severability—Subheadings not law—2007 c 259.

70.225.010 Definitions. The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

(1) "Controlled substance" has the meaning provided in RCW 69.50.101.

(2) "Department" means the department of health.

(3) "Patient" means the person or animal who is the ultimate user of a drug for whom a prescription is issued or for whom a drug is dispensed.

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(4) "Dispenser" means a practitioner or pharmacy that delivers a Schedule II, III, IV, or V controlled substance to the ultimate user, but does not include:

(a) A practitioner or other authorized person who administers, as defined in RCW 69.41.010, a controlled substance; or

(b) A licensed wholesale distributor or manufacturer, as defined in chapter 18.64 RCW, of a controlled substance. [2007 c 259 § 42.]

70.225.020 Prescription monitoring program—Subject to funding—Duties of dispensers.

(1) When sufficient funding is provided for such purpose through federal or private grants, or is appropriated by the legislature, the department shall establish and maintain a prescription monitoring program to monitor the prescribing and dispensing of all Schedules II, III, IV, and V controlled substances and any additional drugs identified by the board of pharmacy as demonstrating a potential for abuse by all professionals licensed to prescribe or dispense such substances in this state. The program shall be designed to improve health care quality and effectiveness by reducing abuse of controlled substances, reducing duplicative prescribing and overprescribing of controlled substances, and improving controlled substance prescribing practices with the intent of eventually establishing an electronic database available in real time to dispensers and prescribers of controlled substances. As much as possible, the department should establish a common database with other states.

(2) Except as provided in subsection (4) of this section, each dispenser shall submit to the department by electronic means information regarding each prescription dispensed for a drug included under subsection (1) of this section. Drug prescriptions for more than immediate one day use should be reported. The information submitted for each prescription shall include, but not be limited to:

- (a) Patient identifier;
- (b) Drug dispensed;
- (c) Date of dispensing;
- (d) Quantity dispensed;
- (e) Prescriber; and
- (f) Dispenser.

(3) Each dispenser shall submit the information in accordance with transmission methods established by the department.

(4) The data submission requirements of this section do not apply to:

(a) Medications provided to patients receiving inpatient services provided at hospitals licensed under chapter 70.41 RCW; or patients of such hospitals receiving services at the clinics, day surgery areas, or other settings within the hospital's license where the medications are administered in single doses; or

(b) Pharmacies operated by the department of corrections for the purpose of providing medications to offenders in department of corrections institutions who are receiving pharmaceutical services from a department of corrections pharmacy, except that the department of corrections must submit data related to each offender's current prescriptions for controlled substances upon the offender's release from a department of corrections institution.

(5) The department shall seek federal grants to support the activities described in chapter 259, Laws of 2007. The department may not require a practitioner or a pharmacist to pay a fee or tax specifically dedicated to the operation of the system. [2007 c 259 § 43.]

70.225.025 Rules. The department shall adopt rules to implement this chapter. [2007 c 259 § 47.]

70.225.030 Enhancement of program—Feasibility study. To the extent that funding is provided for such purpose through federal or private grants, or is appropriated by the legislature, the health care authority shall study the feasibility of enhancing the prescription monitoring program established in RCW 70.225.020 in order to improve the quality of state purchased health services by reducing legend drug abuse, reducing duplicative and overprescribing of legend drugs, and improving legend drug prescribing practices. The study shall address the steps necessary to expand the program to allow those who prescribe or dispense prescription drugs to perform a web-based inquiry and obtain real time information regarding the legend drug utilization history of persons for whom they are providing medical or pharmaceutical care when such persons are receiving health services through state purchased health care programs. [2007 c 259 § 44.]

70.225.040 Confidentiality of prescription information—Procedures—Immunity when acting in good faith.

(1) Prescription information submitted to the department shall be confidential, in compliance with chapter 70.02 RCW and federal health care information privacy requirements and not subject to disclosure, except as provided in subsections (3) and (4) of this section.

(2) The department shall maintain procedures to ensure that the privacy and confidentiality of patients and patient information collected, recorded, transmitted, and maintained is not disclosed to persons except as in subsections (3) and (4) of this section.

(3) The department may provide data in the prescription monitoring program to the following persons:

(a) Persons authorized to prescribe or dispense controlled substances, for the purpose of providing medical or pharmaceutical care for their patients;

(b) An individual who requests the individual's own prescription monitoring information;

(c) Health professional licensing, certification, or regulatory agency or entity;

(d) Appropriate local, state, and federal law enforcement or prosecutorial officials who are engaged in a bona fide specific investigation involving a designated person;

(e) Authorized practitioners of the department of social and health services regarding medicaid program recipients;

(f) The director or director's designee within the department of labor and industries regarding workers' compensation claimants;

(g) The director or the director's designee within the department of corrections regarding offenders committed to the department of corrections;

(h) Other entities under grand jury subpoena or court order; and

(i) Personnel of the department for purposes of administration and enforcement of this chapter or chapter 69.50 RCW.

(4) The department may provide data to public or private entities for statistical, research, or educational purposes after removing information that could be used to identify individual patients, dispensers, prescribers, and persons who received prescriptions from dispensers.

(5) A dispenser or practitioner acting in good faith is immune from any civil, criminal, or administrative liability that might otherwise be incurred or imposed for requesting, receiving, or using information from the program. [2007 c 259 § 45.]

70.225.050 Department may contract for operation of program. The department may contract with another agency of this state or with a private vendor, as necessary, to ensure the effective operation of the prescription monitoring program. Any contractor is bound to comply with the provisions regarding confidentiality of prescription information in RCW 70.225.040 and is subject to the penalties specified in RCW 70.225.060 for unlawful acts. [2007 c 259 § 46.]

70.225.060 Violations—Penalties—Disclosure exemption for health care providers. (1) A dispenser who knowingly fails to submit prescription monitoring information to the department as required by this chapter or knowingly submits incorrect prescription information is subject to disciplinary action under chapter 18.130 RCW.

(2) A person authorized to have prescription monitoring information under this chapter who knowingly discloses such information in violation of this chapter is subject to civil penalty.

(3) A person authorized to have prescription monitoring information under this chapter who uses such information in a manner or for a purpose in violation of this chapter is subject to civil penalty.

(4) In accordance with chapter 70.02 RCW and federal health care information privacy requirements, any physician or pharmacist authorized to access a patient's prescription monitoring may discuss or release that information to other health care providers involved with the patient in order to provide safe and appropriate care coordination. [2007 c 259 § 48.]

70.225.900 Severability—Subheadings not law—2007 c 259. See notes following RCW 41.05.033.

Chapter 70.230 RCW

AMBULATORY SURGICAL FACILITIES

Sections

70.230.010	Definitions. (<i>Effective July 1, 2009.</i>)
70.230.020	Duties of secretary—Rules. (<i>Effective July 1, 2009.</i>)
70.230.030	Operating without a license. (<i>Effective July 1, 2009.</i>)
70.230.040	Exclusions from chapter. (<i>Effective July 1, 2009.</i>)
70.230.050	Licenses—Applicants—Renewal. (<i>Effective July 1, 2009.</i>)
70.230.060	Facility safety and emergency training. (<i>Effective July 1, 2009.</i>)
70.230.070	Denial, suspension, or revocation of license—Investigating complaints—Penalties. (<i>Effective July 1, 2009.</i>)
70.230.080	Coordinated quality improvement—Rules. (<i>Effective July 1, 2009.</i>)

- 70.230.090 Ambulatory surgical facilities—Construction, maintenance, and operation—Minimum standards and rules. (*Effective July 1, 2009.*)
- 70.230.100 Ambulatory surgical facilities—Surveys. (*Effective July 1, 2009.*)
- 70.230.110 Ambulatory surgical facilities—Submission of data related to the quality of patient care. (*Effective July 1, 2009.*)
- 70.230.120 Reports—Discipline of a health care provider for unprofessional conduct—Penalties. (*Effective July 1, 2009.*)
- 70.230.130 Written records—Decisions to restrict or terminate privileges of practitioners—Penalties. (*Effective July 1, 2009.*)
- 70.230.140 Information concerning practitioners—Disclosure. (*Effective July 1, 2009.*)
- 70.230.150 Unanticipated outcomes—Notification. (*Effective July 1, 2009.*)
- 70.230.160 Complaint toll-free telephone number—Notice. (*Effective July 1, 2009.*)
- 70.230.170 Information received by department—Disclosure. (*Effective July 1, 2009.*)
- 70.230.180 Ambulatory surgical facility account. (*Effective July 1, 2009.*)
- 70.230.900 Effective date—2007 c 273.
- 70.230.901 Implementation—2007 c 273.

70.230.010 Definitions. (*Effective July 1, 2009.*) The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

(1) "Ambulatory surgical facility" means any distinct entity that operates for the primary purpose of providing specialty or multispecialty outpatient surgical services in which patients are admitted to and discharged from the facility within twenty-four hours and do not require inpatient hospitalization, whether or not the facility is certified under Title XVIII of the federal social security act.

(2) "Department" means the department of health.

(3) "General anesthesia" means a state of unconsciousness intentionally produced by anesthetic agents, with absence of pain sensation over the entire body, in which the patient is without protective reflexes and is unable to maintain an airway.

(4) "Person" means an individual, firm, partnership, corporation, company, association, joint stock association, and the legal successor thereof.

(5) "Practitioner" means any physician or surgeon licensed under chapter 18.71 RCW, an osteopathic physician or surgeon licensed under chapter 18.57 RCW, or a podiatric physician or surgeon licensed under chapter 18.22 RCW.

(6) "Secretary" means the secretary of health.

(7) "Surgical services" means invasive medical procedures that:

(a) Utilize a knife, laser, cautery, cryogenics, or chemicals; and

(b) Remove, correct, or facilitate the diagnosis or cure of a disease, process, or injury through that branch of medicine that treats diseases, injuries, and deformities by manual or operative methods by a practitioner. [2007 c 273 § 1.]

70.230.020 Duties of secretary—Rules. (*Effective July 1, 2009.*) The secretary shall:

(1) Issue a license to any ambulatory surgical facility that:

(a) Submits payment of the fee established in *section 7, chapter 273, Laws of 2007;

(b) Submits a completed application that demonstrates the ability to comply with the standards established for operating and maintaining an ambulatory surgical facility in statute and rule. An ambulatory surgical facility shall be deemed to have met the standards if it submits proof of certification as

a medicare ambulatory surgical facility or accreditation by an organization that the secretary has determined to have substantially equivalent standards to those of the department; and

(c) Successfully completes the survey requirements established in RCW 70.230.100;

(2) Develop an application form for applicants for a license to operate an ambulatory surgical facility;

(3) Initiate investigations and enforcement actions for complaints or other information regarding failure to comply with this chapter or the standards and rules adopted under this chapter;

(4) Conduct surveys of facilities, including reviews of medical records and documents required to be maintained under this chapter or rules adopted under this chapter;

(5) By March 1, 2008, determine which accreditation organizations have substantially equivalent standards for purposes of deeming specific licensing requirements required in statute and rule as having met the state's standards; and

(6) Adopt any rules necessary to implement this chapter. [2007 c 273 § 2.]

***Reviser's note:** Section 7, chapter 273, Laws of 2007 requires identification of, and a report on, a reasonable fee schedule for licenses and renewal licenses.

70.230.030 Operating without a license. (*Effective July 1, 2009.*) Except as provided in RCW 70.230.040, after June 30, 2009, no person or governmental unit of the state of Washington, acting separately or jointly with any other person or governmental unit, shall establish, maintain, or conduct an ambulatory surgical facility in this state or advertise by using the term "ambulatory surgical facility," "day surgery center," "licensed surgical center," or other words conveying similar meaning without a license issued by the department under this chapter. [2007 c 273 § 3.]

70.230.040 Exclusions from chapter. (*Effective July 1, 2009.*) Nothing in this chapter:

(1) Applies to an ambulatory surgical facility that is maintained and operated by a hospital licensed under chapter 70.41 RCW;

(2) Applies to an office maintained for the practice of dentistry;

(3) Applies to outpatient specialty or multispecialty surgical services routinely and customarily performed in the office of a practitioner in an individual or group practice that do not require general anesthesia; or

(4) Limits an ambulatory surgical facility to performing only surgical services. [2007 c 273 § 4.]

70.230.050 Licenses—Applicants—Renewal. (*Effective July 1, 2009.*) (1) An applicant for a license to operate an ambulatory surgical facility must demonstrate the ability to comply with the standards established for operating and maintaining an ambulatory surgical facility in statute and rule, including:

(a) Submitting a written application to the department providing all necessary information on a form provided by the department, including a list of surgical specialties offered;

(b) Submitting building plans for review and approval by the department for new construction, alterations other than

minor alterations, and additions to existing facilities, prior to obtaining a license and occupying the building;

(c) Demonstrating the ability to comply with this chapter and any rules adopted under this chapter;

(d) Cooperating with the department during on-site surveys prior to obtaining an initial license or renewing an existing license;

(e) Providing such proof as the department may require concerning the ownership and management of the ambulatory surgical facility, including information about the organization and governance of the facility and the identity of the applicant, officers, directors, partners, managing employees, or owners of ten percent or more of the applicant's assets;

(f) Submitting proof of operation of a coordinated quality improvement program in accordance with RCW 70.230.080;

(g) Submitting a copy of the facility safety and emergency training program established under RCW 70.230.060;

(h) Paying any fees established under *section 7, chapter 273, Laws of 2007; and

(i) Providing any other information that the department may reasonably require.

(2) A license is valid for three years, after which an ambulatory surgical facility must submit an application for renewal of license upon forms provided by the department and the renewal fee as established in *section 7, chapter 273, Laws of 2007. The applicant must demonstrate the ability to comply with the standards established for operating and maintaining an ambulatory surgical facility in statutes, standards, and rules. The applicant must submit the license renewal document no later than thirty days prior to the date of expiration of the license.

(3) The applicant may demonstrate compliance with any of the requirements of subsection (1) of this section by providing satisfactory documentation to the secretary that it has met the standards of an accreditation organization or federal agency that the secretary has determined to have substantially equivalent standards as the statutes and rules of this state. [2007 c 273 § 5.]

***Reviser's note:** Section 7, chapter 273, Laws of 2007 requires identification of, and a report on, a reasonable fee schedule for licenses and renewal licenses.

70.230.060 Facility safety and emergency training. (Effective July 1, 2009.) An ambulatory surgical facility shall have a facility safety and emergency training program. The program shall include:

(1) On-site equipment, medication, and trained personnel to facilitate handling of services sought or provided and to facilitate the management of any medical emergency that may arise in connection with services sought or provided;

(2) Written transfer agreements with local hospitals licensed under chapter 70.41 RCW, approved by the ambulatory surgical facility's medical staff; and

(3) A procedural plan for handling medical emergencies that shall be available for review during surveys and inspections. [2007 c 273 § 6.]

70.230.070 Denial, suspension, or revocation of license—Investigating complaints—Penalties. (Effective July 1, 2009.) (1) The secretary may deny, suspend, or

revoke the license of any ambulatory surgical facility in any case in which he or she finds the applicant or registered entity knowingly made a false statement of material fact in the application for the license or any supporting data in any record required by this chapter or matter under investigation by the department.

(2) The secretary shall investigate complaints concerning operation of an ambulatory surgical facility without a license. The secretary may issue a notice of intention to issue a cease and desist order to any person whom the secretary has reason to believe is engaged in the unlicensed operation of an ambulatory surgical facility. If the secretary makes a written finding of fact that the public interest will be irreparably harmed by delay in issuing an order, the secretary may issue a temporary cease and desist order. The person receiving a temporary cease and desist order shall be provided an opportunity for a prompt hearing. The temporary cease and desist order shall remain in effect until further order of the secretary. Any person operating an ambulatory surgical facility under this chapter without a license is guilty of a misdemeanor, and each day of operation of an unlicensed ambulatory surgical facility constitutes a separate offense.

(3) The secretary is authorized to deny, suspend, revoke, or modify a license or provisional license in any case in which it finds that there has been a failure or refusal to comply with the requirements of this chapter or the standards or rules adopted under this chapter. RCW 43.70.115 governs notice of a license denial, revocation, suspension, or modification and provides the right to an adjudicative proceeding.

(4) Pursuant to chapter 34.05 RCW, the secretary may assess monetary penalties of a civil nature not to exceed one thousand dollars per violation. [2007 c 273 § 8.]

70.230.080 Coordinated quality improvement—Rules. (Effective July 1, 2009.) (1) Every ambulatory surgical facility shall maintain a coordinated quality improvement program for the improvement of the quality of health care services rendered to patients and the identification and prevention of medical malpractice. The program shall include at least the following:

(a) The establishment of a quality improvement committee with the responsibility to review the services rendered in the ambulatory surgical facility, both retrospectively and prospectively, in order to improve the quality of medical care of patients and to prevent medical malpractice. The committee shall oversee and coordinate the quality improvement and medical malpractice prevention program and shall ensure that information gathered pursuant to the program is used to review and to revise the policies and procedures of the ambulatory surgical facility;

(b) A medical staff privileges sanction procedure through which credentials, physical and mental capacity, and competence in delivering health care services are periodically reviewed as part of an evaluation of staff privileges;

(c) The periodic review of the credentials, physical and mental capacity, and competence in delivering health care services of all persons who are employed or associated with the ambulatory surgical facility;

(d) A procedure for the prompt resolution of grievances by patients or their representatives related to accidents, inju-

ries, treatment, and other events that may result in claims of medical malpractice;

(e) The maintenance and continuous collection of information concerning the ambulatory surgical facility's experience with negative health care outcomes and incidents injurious to patients, patient grievances, professional liability premiums, settlements, awards, costs incurred by the ambulatory surgical facility for patient injury prevention, and safety improvement activities;

(f) The maintenance of relevant and appropriate information gathered pursuant to (a) through (e) of this subsection concerning individual practitioners within the practitioner's personnel or credential file maintained by the ambulatory surgical facility;

(g) Education programs dealing with quality improvement, patient safety, medication errors, injury prevention, staff responsibility to report professional misconduct, the legal aspects of patient care, improved communication with patients, and causes of malpractice claims for staff personnel engaged in patient care activities; and

(h) Policies to ensure compliance with the reporting requirements of this section.

(2) Any person who, in substantial good faith, provides information to further the purposes of the quality improvement and medical malpractice prevention program or who, in substantial good faith, participates on the quality improvement committee is not subject to an action for civil damages or other relief as a result of such activity. Any person or entity participating in a coordinated quality improvement program that, in substantial good faith, shares information or documents with one or more other programs, committees, or boards under subsection (8) of this section is not subject to an action for civil damages or other relief as a result of the activity. For the purposes of this section, sharing information is presumed to be in substantial good faith. However, the presumption may be rebutted upon a showing of clear, cogent, and convincing evidence that the information shared was knowingly false or deliberately misleading.

(3) Information and documents, including complaints and incident reports, created specifically for, and collected and maintained by, a quality improvement committee are not subject to review or disclosure, except as provided in this section, or discovery or introduction into evidence in any civil action, and no person who was in attendance at a meeting of such committee or who participated in the creation, collection, or maintenance of information or documents specifically for the committee shall be permitted or required to testify in any civil action as to the content of such proceedings or the documents and information prepared specifically for the committee. This subsection does not preclude: (a) In any civil action, the discovery of the identity of persons involved in the medical care that is the basis of the civil action whose involvement was independent of any quality improvement activity; (b) in any civil action, the testimony of any person concerning the facts which form the basis for the institution of such proceedings of which the person had personal knowledge acquired independently of such proceedings; (c) in any civil action by a health care provider regarding the restriction or revocation of that individual's clinical or staff privileges, introduction into evidence of information collected and maintained by quality improvement committees regarding such

health care provider; (d) in any civil action, disclosure of the fact that staff privileges were terminated or restricted, including the specific restrictions imposed, if any, and the reasons for the restrictions; or (e) in any civil action, discovery and introduction into evidence of the patient's medical records required by rule of the department to be made regarding the care and treatment received.

(4) Each quality improvement committee shall, on at least a semiannual basis, report to the management of the ambulatory surgical facility, as identified in the facility's application, in which the committee is located. The report shall review the quality improvement activities conducted by the committee, and any actions taken as a result of those activities.

(5) The department shall adopt such rules as are deemed appropriate to effectuate the purposes of this section.

(6) The medical quality assurance commission, the board of osteopathic medicine and surgery, or the podiatric medical board, as appropriate, may review and audit the records of committee decisions in which a practitioner's privileges are terminated or restricted. Each ambulatory surgical facility shall produce and make accessible to the commission or board the appropriate records and otherwise facilitate the review and audit. Information so gained is not subject to the discovery process and confidentiality shall be respected as required by subsection (3) of this section. Failure of an ambulatory surgical facility to comply with this subsection is punishable by a civil penalty not to exceed two hundred fifty dollars.

(7) The department and any accrediting organization may review and audit the records of a quality improvement committee or peer review committee in connection with their inspection and review of the ambulatory surgical facility. Information so obtained is not subject to the discovery process, and confidentiality shall be respected as required by subsection (3) of this section. Each ambulatory surgical facility shall produce and make accessible to the department the appropriate records and otherwise facilitate the review and audit.

(8) A coordinated quality improvement program may share information and documents, including complaints and incident reports, created specifically for, and collected and maintained by, a quality improvement committee or a peer review committee under RCW 4.24.250 with one or more other coordinated quality improvement programs maintained in accordance with this section or RCW 43.70.510 or 70.41.200, a quality assurance committee maintained in accordance with RCW 18.20.390 or 74.42.640, or a peer review committee under RCW 4.24.250, for the improvement of the quality of health care services rendered to patients and the identification and prevention of medical malpractice. The privacy protections of chapter 70.02 RCW and the federal health insurance portability and accountability act of 1996 and its implementing regulations apply to the sharing of individually identifiable patient information held by a coordinated quality improvement program. Any rules necessary to implement this section shall meet the requirements of applicable federal and state privacy laws. Information and documents disclosed by one coordinated quality improvement program to another coordinated quality improvement program or a peer review committee under RCW 4.24.250

and any information and documents created or maintained as a result of the sharing of information and documents are not subject to the discovery process and confidentiality shall be respected as required by subsection (3) of this section, RCW 18.20.390 (6) and (8), 70.41.200(3), 74.42.640 (7) and (9), and 4.24.250.

(9) An ambulatory surgical facility that participates in a coordinated quality improvement program under RCW 43.70.510 shall be deemed to have met the requirements of this section.

(10) Violation of this section shall not be considered negligence per se. [2007 c 273 § 9.]

70.230.090 Ambulatory surgical facilities—Construction, maintenance, and operation—Minimum standards and rules. (*Effective July 1, 2009.*) The department shall establish and adopt such minimum standards and rules pertaining to the construction, maintenance, and operation of ambulatory surgical facilities and rescind, amend, or modify such rules, as are necessary in the public interest, and particularly for the establishment and maintenance of standards of patient care required for the safe and adequate care and treatment of patients. In establishing the format and content of these standards and rules, the department shall give consideration to maintaining consistency with such minimum standards and rules applicable to ambulatory surgical facilities in the survey standards of accrediting organizations or federal agencies that the secretary has determined to have substantially equivalent standards as the statutes and rules of this state. [2007 c 273 § 10.]

70.230.100 Ambulatory surgical facilities—Surveys. (*Effective July 1, 2009.*) (1) The department shall make or cause to be made a survey of all ambulatory surgical facilities every eighteen months. Every survey of an ambulatory surgical facility may include an inspection of every part of the surgical facility. The department may make an examination of all phases of the ambulatory surgical facility operation necessary to determine compliance with all applicable statutes, rules, and regulations. In the event that the department is unable to make a survey or cause a survey to be made during the three years of the term of the license, the license of the ambulatory surgical facility shall remain in effect until the state conducts a survey or a substitute survey is performed if the ambulatory surgical facility is in compliance with all other licensing requirements.

(2) An ambulatory surgical facility shall be deemed to have met the survey standards of this section if it submits proof of certification as a medicare ambulatory surgical facility or accreditation by an organization that the secretary has determined to have substantially equivalent survey standards to those of the department. A survey performed pursuant to medicare certification or by an approved accrediting organization may substitute for a survey by the department if:

(a) The ambulatory surgical facility has satisfactorily completed a survey by the department in the previous eighteen months; and

(b) Within thirty days of learning the result of a survey, the ambulatory surgical facility provides the department with documentary evidence that the ambulatory surgical facility

has been certified or accredited as a result of a survey and the date of the survey.

(3) Ambulatory surgical facilities shall make the written reports of surveys conducted pursuant to medicare certification procedures or by an approved accrediting organization available to department surveyors during any department surveys, upon request. [2007 c 273 § 11.]

70.230.110 Ambulatory surgical facilities—Submission of data related to the quality of patient care. (*Effective July 1, 2009.*) The department shall require ambulatory surgical facilities to submit data related to the quality of patient care for review by the department. The data shall be submitted every eighteen months. The department shall consider the reporting standards of other public and private organizations that measure quality in order to maintain consistency in reporting and minimize the burden on the ambulatory surgical facility. The department shall review the data to determine the maintenance of quality patient care at the facility. If the department determines that the care offered at the facility may present a risk to the health and safety of patients, the department may conduct an inspection of the facility and initiate appropriate actions to protect the public. Information submitted to the department pursuant to this section shall be exempt from disclosure under chapter 42.56 RCW. [2007 c 273 § 12.]

70.230.120 Reports—Discipline of a health care provider for unprofessional conduct—Penalties. (*Effective July 1, 2009.*) (1) The chief administrator or executive officer of an ambulatory surgical facility shall report to the department when the practice of a health care provider licensed by a disciplining authority under RCW 18.130.040 is restricted, suspended, limited, or terminated based upon a conviction, determination, or finding by the ambulatory surgical facility that the provider has committed an action defined as unprofessional conduct under RCW 18.130.180. The chief administrator or executive officer shall also report any voluntary restriction or termination of the practice of a health care provider licensed by a disciplining authority under RCW 18.130.040 while the provider is under investigation or the subject of a proceeding by the ambulatory surgical facility regarding unprofessional conduct, or in return for the ambulatory surgical facility not conducting such an investigation or proceeding or not taking action. The department shall forward the report to the appropriate disciplining authority.

(2) Reports made under subsection (1) of this section must be made within fifteen days of the date of: (a) A conviction, determination, or finding by the ambulatory surgical facility that the health care provider has committed an action defined as unprofessional conduct under RCW 18.130.180; or (b) acceptance by the ambulatory surgical facility of the voluntary restriction or termination of the practice of a health care provider, including his or her voluntary resignation, while under investigation or the subject of proceedings regarding unprofessional conduct under RCW 18.130.180.

(3) Failure of an ambulatory surgical facility to comply with this section is punishable by a civil penalty not to exceed two hundred fifty dollars.

(4) An ambulatory surgical facility, its chief administrator, or its executive officer who files a report under this section is immune from suit, whether direct or derivative, in any civil action related to the filing or contents of the report, unless the conviction, determination, or finding on which the report and its content are based is proven to not have been made in good faith. The prevailing party in any action brought alleging that the conviction, determination, finding, or report was not made in good faith is entitled to recover the costs of litigation, including reasonable attorneys' fees.

(5) The department shall forward reports made under subsection (1) of this section to the appropriate disciplining authority designated under Title 18 RCW within fifteen days of the date the report is received by the department. The department shall notify an ambulatory surgical facility that has made a report under subsection (1) of this section of the results of the disciplining authority's case disposition decision within fifteen days after the case disposition. Case disposition is the decision whether to issue a statement of charges, take informal action, or close the complaint without action against a provider. In its biennial report to the legislature under RCW 18.130.310, the department shall specifically identify the case dispositions of reports made by ambulatory surgical facilities under subsection (1) of this section. [2007 c 273 § 13.]

70.230.130 Written records—Decisions to restrict or terminate privileges of practitioners—Penalties. (*Effective July 1, 2009.*) Each ambulatory surgical facility shall keep written records of decisions to restrict or terminate privileges of practitioners. Copies of such records shall be made available to the medical quality assurance commission, the board of osteopathic medicine and surgery, or the podiatric medical board, within thirty days of a request, and all information so gained remains confidential in accordance with RCW 70.230.080 and 70.230.120 and is protected from the discovery process. Failure of an ambulatory surgical facility to comply with this section is punishable by a civil penalty not to exceed two hundred fifty dollars. [2007 c 273 § 14.]

70.230.140 Information concerning practitioners—Disclosure. (*Effective July 1, 2009.*) (1) Prior to granting or renewing clinical privileges or association of any practitioner or hiring a practitioner, an ambulatory surgical facility approved pursuant to this chapter shall request from the practitioner and the practitioner shall provide the following information:

(a) The name of any hospital, ambulatory surgical facility, or other facility with or at which the practitioner had or has any association, employment, privileges, or practice;

(b) If such association, employment, privilege, or practice was discontinued, the reasons for its discontinuation;

(c) Any pending professional medical misconduct proceedings or any pending medical malpractice actions in this state or another state, the substance of the allegations in the proceedings or actions, and any additional information concerning the proceedings or actions as the practitioner deems appropriate;

(d) The substance of the findings in the actions or proceedings and any additional information concerning the actions or proceedings as the practitioner deems appropriate;

(e) A waiver by the practitioner of any confidentiality provisions concerning the information required to be provided to ambulatory surgical facilities pursuant to this subsection; and

(f) A verification by the practitioner that the information provided by the practitioner is accurate and complete.

(2) Prior to granting privileges or association to any practitioner or hiring a practitioner, an ambulatory surgical facility approved under this chapter shall request from any hospital or ambulatory surgical facility with or at which the practitioner had or has privileges, was associated, or was employed, the following information concerning the practitioner:

(a) Any pending professional medical misconduct proceedings or any pending medical malpractice actions, in this state or another state;

(b) Any judgment or settlement of a medical malpractice action and any finding of professional misconduct in this state or another state by a licensing or disciplinary board; and

(c) Any information required to be reported by hospitals or ambulatory surgical facilities pursuant to RCW 18.130.070.

(3) The medical quality assurance commission, board of osteopathic medicine and surgery, podiatric medical board, or dental quality assurance commission, as appropriate, shall be advised within thirty days of the name of any practitioner denied staff privileges, association, or employment on the basis of adverse findings under subsection (1) of this section.

(4) A hospital, ambulatory surgical facility, or other facility that receives a request for information from another hospital, ambulatory surgical facility, or other facility pursuant to subsections (1) and (2) of this section shall provide such information concerning the physician in question to the extent such information is known to the hospital, ambulatory surgical facility, or other facility receiving such a request, including the reasons for suspension, termination, or curtailment of employment or privileges at the hospital, ambulatory surgical facility, or facility. A hospital, ambulatory surgical facility, other facility, or other person providing such information in good faith is not liable in any civil action for the release of such information.

(5) Information and documents, including complaints and incident reports, created specifically for, and collected and maintained by, a quality improvement committee are not subject to discovery or introduction into evidence in any civil action, and no person who was in attendance at a meeting of such committee or who participated in the creation, collection, or maintenance of information or documents specifically for the committee shall be permitted or required to testify in any civil action as to the content of such proceedings or the documents and information prepared specifically for the committee. This subsection does not preclude: (a) In any civil action, the discovery of the identity of persons involved in the medical care that is the basis of the civil action whose involvement was independent of any quality improvement activity; (b) in any civil action, the testimony of any person concerning the facts which form the basis for the institution of such proceedings of which the person had personal knowl-

edge acquired independently of such proceedings; (c) in any civil action by a health care provider regarding the restriction or revocation of that individual's clinical or staff privileges, introduction into evidence information collected and maintained by quality improvement committees regarding such health care provider; (d) in any civil action, disclosure of the fact that staff privileges were terminated or restricted, including the specific restrictions imposed, if any, and the reasons for the restrictions; or (e) in any civil action, discovery and introduction into evidence of the patient's medical records required by rule of the department to be made regarding the care and treatment received.

(6) Ambulatory surgical facilities shall be granted access to information held by the medical quality assurance commission, board of osteopathic medicine and surgery, or podiatric medical board pertinent to decisions of the ambulatory surgical facility regarding credentialing and recredentialing of practitioners.

(7) Violation of this section shall not be considered negligence per se. [2007 c 273 § 15.]

70.230.150 Unanticipated outcomes—Notification. (*Effective July 1, 2009.*) Ambulatory surgical facilities shall have in place policies to assure that, when appropriate, information about unanticipated outcomes is provided to patients or their families or any surrogate decision makers identified pursuant to RCW 7.70.065. Notifications of unanticipated outcomes under this section do not constitute an acknowledgement or admission of liability, nor may the fact of notification, the content disclosed, or any and all statements, affirmations, gestures, or conduct expressing apology be introduced as evidence in a civil action. [2007 c 273 § 16.]

70.230.160 Complaint toll-free telephone number—Notice. (*Effective July 1, 2009.*) Every ambulatory surgical facility shall post in conspicuous locations a notice of the department's ambulatory surgical facility complaint toll-free telephone number. The form of the notice shall be approved by the department. [2007 c 273 § 17.]

70.230.170 Information received by department—Disclosure. (*Effective July 1, 2009.*) Information received by the department through filed reports, inspection, or as otherwise authorized under this chapter may be disclosed publicly, as permitted under chapter 42.56 RCW, subject to the following provisions:

(1) Licensing inspections, or complaint investigations regardless of findings, shall, as requested, be disclosed no sooner than three business days after the ambulatory surgical facility has received the resulting assessment report;

(2) Information regarding administrative action against the license [licensee] shall, as requested, be disclosed after the ambulatory surgical facility has received the documents initiating the administrative action;

(3) Information about complaints that did not warrant an investigation shall not be disclosed except to notify the ambulatory surgical facility and the complainant that the complaint did not warrant an investigation; and

(4) Information disclosed under this section shall not disclose individual names. [2007 c 273 § 18.]

70.230.180 Ambulatory surgical facility account. (*Effective July 1, 2009.*) The ambulatory surgical facility account is created in the custody of the state treasurer. All receipts from fees and penalties imposed under this chapter must be deposited into the account. Expenditures from the account may be used only for administration of this chapter. Only the secretary or the secretary's designee may authorize expenditures from the account. The account is subject to allotment procedures under chapter 43.88 RCW, but an appropriation is not required for expenditures. [2007 c 273 § 19.]

70.230.900 Effective date—2007 c 273. Except for section 7 of this act, this act takes effect July 1, 2009. [2007 c 273 § 29.]

70.230.901 Implementation—2007 c 273. The secretary of health may take the necessary steps to ensure that this act is implemented on its effective date. [2007 c 273 § 30.]

Title 71

MENTAL ILLNESS

Chapters

71.05 Mental illness.

71.24 Community mental health services act.

71.34 Mental health services for minors.

71.36 Coordination of children's mental health services.

Chapter 71.05 RCW

MENTAL ILLNESS

Sections

71.05.020	Definitions.
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71.05.720	Training for community mental health employees.

71.05.020 Definitions. The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

(1) "Admission" or "admit" means a decision by a physician that a person should be examined or treated as a patient in a hospital;

(2) "Antipsychotic medications" means that class of drugs primarily used to treat serious manifestations of mental

illness associated with thought disorders, which includes, but is not limited to atypical antipsychotic medications;

(3) "Attending staff" means any person on the staff of a public or private agency having responsibility for the care and treatment of a patient;

(4) "Commitment" means the determination by a court that a person should be detained for a period of either evaluation or treatment, or both, in an inpatient or a less restrictive setting;

(5) "Conditional release" means a revocable modification of a commitment, which may be revoked upon violation of any of its terms;

(6) "Crisis stabilization unit" means a short-term facility or a portion of a facility licensed by the department of health and certified by the department of social and health services under RCW 71.24.035, such as an evaluation and treatment facility or a hospital, which has been designed to assess, diagnose, and treat individuals experiencing an acute crisis without the use of long-term hospitalization;

(7) "Custody" means involuntary detention under the provisions of this chapter or chapter 10.77 RCW, uninterrupted by any period of unconditional release from commitment from a facility providing involuntary care and treatment;

(8) "Department" means the department of social and health services;

(9) "Designated chemical dependency specialist" means a person designated by the county alcoholism and other drug addiction program coordinator designated under RCW 70.96A.310 to perform the commitment duties described in chapters 70.96A and 70.96B RCW;

(10) "Designated crisis responder" means a mental health professional appointed by the county or the regional support network to perform the duties specified in this chapter;

(11) "Designated mental health professional" means a mental health professional designated by the county or other authority authorized in rule to perform the duties specified in this chapter;

(12) "Detention" or "detain" means the lawful confinement of a person, under the provisions of this chapter;

(13) "Developmental disabilities professional" means a person who has specialized training and three years of experience in directly treating or working with persons with developmental disabilities and is a psychiatrist, psychologist, or social worker, and such other developmental disabilities professionals as may be defined by rules adopted by the secretary;

(14) "Developmental disability" means that condition defined in RCW 71A.10.020(3);

(15) "Discharge" means the termination of hospital medical authority. The commitment may remain in place, be terminated, or be amended by court order;

(16) "Evaluation and treatment facility" means any facility which can provide directly, or by direct arrangement with other public or private agencies, emergency evaluation and treatment, outpatient care, and timely and appropriate inpatient care to persons suffering from a mental disorder, and which is certified as such by the department. A physically separate and separately operated portion of a state hospital may be designated as an evaluation and treatment facility. A

facility which is part of, or operated by, the department or any federal agency will not require certification. No correctional institution or facility, or jail, shall be an evaluation and treatment facility within the meaning of this chapter;

(17) "Gravely disabled" means a condition in which a person, as a result of a mental disorder: (a) Is in danger of serious physical harm resulting from a failure to provide for his or her essential human needs of health or safety; or (b) manifests severe deterioration in routine functioning evidenced by repeated and escalating loss of cognitive or volitional control over his or her actions and is not receiving such care as is essential for his or her health or safety;

(18) "Habilitative services" means those services provided by program personnel to assist persons in acquiring and maintaining life skills and in raising their levels of physical, mental, social, and vocational functioning. Habilitative services include education, training for employment, and therapy. The habilitative process shall be undertaken with recognition of the risk to the public safety presented by the person being assisted as manifested by prior charged criminal conduct;

(19) "History of one or more violent acts" refers to the period of time ten years prior to the filing of a petition under this chapter, excluding any time spent, but not any violent acts committed, in a mental health facility or in confinement as a result of a criminal conviction;

(20) "Imminent" means the state or condition of being likely to occur at any moment or near at hand, rather than distant or remote;

(21) "Individualized service plan" means a plan prepared by a developmental disabilities professional with other professionals as a team, for a person with developmental disabilities, which shall state:

(a) The nature of the person's specific problems, prior charged criminal behavior, and habilitation needs;

(b) The conditions and strategies necessary to achieve the purposes of habilitation;

(c) The intermediate and long-range goals of the habilitation program, with a projected timetable for the attainment;

(d) The rationale for using this plan of habilitation to achieve those intermediate and long-range goals;

(e) The staff responsible for carrying out the plan;

(f) Where relevant in light of past criminal behavior and due consideration for public safety, the criteria for proposed movement to less-restrictive settings, criteria for proposed eventual discharge or release, and a projected possible date for discharge or release; and

(g) The type of residence immediately anticipated for the person and possible future types of residences;

(22) "Judicial commitment" means a commitment by a court pursuant to the provisions of this chapter;

(23) "Likelihood of serious harm" means:

(a) A substantial risk that: (i) Physical harm will be inflicted by a person upon his or her own person, as evidenced by threats or attempts to commit suicide or inflict physical harm on oneself; (ii) physical harm will be inflicted by a person upon another, as evidenced by behavior which has caused such harm or which places another person or persons in reasonable fear of sustaining such harm; or (iii) physical harm will be inflicted by a person upon the property of

others, as evidenced by behavior which has caused substantial loss or damage to the property of others; or

(b) The person has threatened the physical safety of another and has a history of one or more violent acts;

(24) "Mental disorder" means any organic, mental, or emotional impairment which has substantial adverse effects on a person's cognitive or volitional functions;

(25) "Mental health professional" means a psychiatrist, psychologist, psychiatric nurse, or social worker, and such other mental health professionals as may be defined by rules adopted by the secretary pursuant to the provisions of this chapter;

(26) "Peace officer" means a law enforcement official of a public agency or governmental unit, and includes persons specifically given peace officer powers by any state law, local ordinance, or judicial order of appointment;

(27) "Private agency" means any person, partnership, corporation, or association that is not a public agency, whether or not financed in whole or in part by public funds, which constitutes an evaluation and treatment facility or private institution, or hospital, which is conducted for, or includes a department or ward conducted for, the care and treatment of persons who are mentally ill;

(28) "Professional person" means a mental health professional and shall also mean a physician, registered nurse, and such others as may be defined by rules adopted by the secretary pursuant to the provisions of this chapter;

(29) "Psychiatrist" means a person having a license as a physician and surgeon in this state who has in addition completed three years of graduate training in psychiatry in a program approved by the American medical association or the American osteopathic association and is certified or eligible to be certified by the American board of psychiatry and neurology;

(30) "Psychologist" means a person who has been licensed as a psychologist pursuant to chapter 18.83 RCW;

(31) "Public agency" means any evaluation and treatment facility or institution, or hospital which is conducted for, or includes a department or ward conducted for, the care and treatment of persons with mental illness, if the agency is operated directly by, federal, state, county, or municipal government, or a combination of such governments;

(32) "Registration records" include all the records of the department, regional support networks, treatment facilities, and other persons providing services to the department, county departments, or facilities which identify persons who are receiving or who at any time have received services for mental illness;

(33) "Release" means legal termination of the commitment under the provisions of this chapter;

(34) "Resource management services" has the meaning given in chapter 71.24 RCW;

(35) "Secretary" means the secretary of the department of social and health services, or his or her designee;

(36) "Social worker" means a person with a master's or further advanced degree from an accredited school of social work or a degree deemed equivalent under rules adopted by the secretary;

(37) "Treatment records" include registration and all other records concerning persons who are receiving or who at any time have received services for mental illness, which are

maintained by the department, by regional support networks and their staffs, and by treatment facilities. Treatment records include mental health information contained in a medical bill including but not limited to mental health drugs, a mental health diagnosis, provider name, and dates of service stemming from a medical service. Treatment records do not include notes or records maintained for personal use by a person providing treatment services for the department, regional support networks, or a treatment facility if the notes or records are not available to others;

(38) "Violent act" means behavior that resulted in homicide, attempted suicide, nonfatal injuries, or substantial damage to property. [2007 c 375 § 6; 2007 c 191 § 2; 2005 c 504 § 104; 2000 c 94 § 1; 1999 c 13 § 5; 1998 c 297 § 3; 1997 c 112 § 3. Prior: 1989 c 420 § 13; 1989 c 205 § 8; 1989 c 120 § 2; 1979 ex.s. c 215 § 5; 1973 1st ex.s. c 142 § 7.]

Reviser's note: This section was amended by 2007 c 191 § 2 and by 2007 c 375 § 6, each without reference to the other. Both amendments are incorporated in the publication of this section under RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

Findings—Purpose—Construction—Severability—2007 c 375: See notes following RCW 10.31.110.

Alphabetization—Correction of references—2005 c 504: "(1) The code reviser shall alphabetize and renumber the definitions, and correct any internal references affected by this act.

(2) The code reviser shall replace all references to "county designated mental health professional" with "designated mental health professional" in the Revised Code of Washington." [2005 c 504 § 811.]

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

Purpose—Construction—1999 c 13: See note following RCW 10.77.010.

Effective dates—Severability—Intent—1998 c 297: See notes following RCW 71.05.010.

71.05.150 Detention of mentally disordered persons for evaluation and treatment—Procedure. (1) When a designated mental health professional receives information alleging that a person, as a result of a mental disorder: (i) Presents a likelihood of serious harm; or (ii) is gravely disabled; the designated mental health professional may, after investigation and evaluation of the specific facts alleged and of the reliability and credibility of any person providing information to initiate detention, if satisfied that the allegations are true and that the person will not voluntarily seek appropriate treatment, file a petition for initial detention. Before filing the petition, the designated mental health professional must personally interview the person, unless the person refuses an interview, and determine whether the person will voluntarily receive appropriate evaluation and treatment at an evaluation and treatment facility or in a crisis stabilization unit.

(2)(a) An order to detain to a designated evaluation and treatment facility for not more than a seventy-two-hour evaluation and treatment period may be issued by a judge of the superior court upon request of a designated mental health professional, whenever it appears to the satisfaction of a judge of the superior court:

(i) That there is probable cause to support the petition; and

(ii) That the person has refused or failed to accept appropriate evaluation and treatment voluntarily.

(b) The petition for initial detention, signed under penalty of perjury, or sworn telephonic testimony may be considered by the court in determining whether there are sufficient grounds for issuing the order.

(c) The order shall designate retained counsel or, if counsel is appointed from a list provided by the court, the name, business address, and telephone number of the attorney appointed to represent the person.

(3) The designated mental health professional shall then serve or cause to be served on such person, his or her guardian, and conservator, if any, a copy of the order together with a notice of rights, and a petition for initial detention. After service on such person the designated mental health professional shall file the return of service in court and provide copies of all papers in the court file to the evaluation and treatment facility and the designated attorney. The designated mental health professional shall notify the court and the prosecuting attorney that a probable cause hearing will be held within seventy-two hours of the date and time of outpatient evaluation or admission to the evaluation and treatment facility. The person shall be permitted to be accompanied by one or more of his or her relatives, friends, an attorney, a personal physician, or other professional or religious advisor to the place of evaluation. An attorney accompanying the person to the place of evaluation shall be permitted to be present during the admission evaluation. Any other individual accompanying the person may be present during the admission evaluation. The facility may exclude the individual if his or her presence would present a safety risk, delay the proceedings, or otherwise interfere with the evaluation.

(4) The designated mental health professional may notify a peace officer to take such person or cause such person to be taken into custody and placed in an evaluation and treatment facility. At the time such person is taken into custody there shall commence to be served on such person, his or her guardian, and conservator, if any, a copy of the original order together with a notice of rights and a petition for initial detention. [2007 c 375 § 7; 1998 c 297 § 8; 1997 c 112 § 8; 1984 c 233 § 1; 1979 ex.s. c 215 § 9; 1975 1st ex.s. c 199 § 3; 1974 ex.s. c 145 § 8; 1973 1st ex.s. c 142 § 20.]

Findings—Purpose—Construction—Severability—2007 c 375: See notes following RCW 10.31.110.

Captions not law—2007 c 375: See note following RCW 10.77.084.

Effective dates—Severability—Intent—1998 c 297: See notes following RCW 71.05.010.

71.05.153 Emergent detention of persons with mental disorders—Procedure. (1) When a designated mental health professional receives information alleging that a person, as the result of a mental disorder, presents an imminent likelihood of serious harm, or is in imminent danger because of being gravely disabled, after investigation and evaluation of the specific facts alleged and of the reliability and credibility of the person or persons providing the information if any, the designated mental health professional may take such person, or cause by oral or written order such person to be taken into emergency custody in an evaluation and treatment facility for not more than seventy-two hours as described in RCW 71.05.180.

(2) A peace officer may take or cause such person to be taken into custody and immediately delivered to a crisis sta-

bilization unit, an evaluation and treatment facility, or the emergency department of a local hospital under the following circumstances:

(a) Pursuant to subsection (1) of this section; or

(b) When he or she has reasonable cause to believe that such person is suffering from a mental disorder and presents an imminent likelihood of serious harm or is in imminent danger because of being gravely disabled.

(3) Persons delivered to a crisis stabilization unit, evaluation and treatment facility, or the emergency department of a local hospital by peace officers pursuant to subsection (2) of this section may be held by the facility for a period of up to twelve hours: PROVIDED, That they are examined by a mental health professional within three hours of their arrival. Within twelve hours of their arrival, the designated mental health professional must determine whether the individual meets detention criteria. If the individual is detained, the designated mental health professional shall file a petition for detention or a supplemental petition as appropriate and commence service on the designated attorney for the detained person. [2007 c 375 § 8.]

Findings—Purpose—Construction—Severability—2007 c 375: See notes following RCW 10.31.110.

Captions not law—2007 c 375: See note following RCW 10.77.084.

71.05.157 Evaluation by designated mental health professional—When required—Required notifications.

(1) When a designated mental health professional is notified by a jail that a defendant or offender who was subject to a discharge review under RCW 71.05.232 is to be released to the community, the designated mental health professional shall evaluate the person within seventy-two hours of release.

(2) When an offender is under court-ordered treatment in the community and the supervision of the department of corrections, and the treatment provider becomes aware that the person is in violation of the terms of the court order, the treatment provider shall notify the designated mental health professional and the department of corrections of the violation and request an evaluation for purposes of revocation of the less restrictive alternative.

(3) When a designated mental health professional becomes aware that an offender who is under court-ordered treatment in the community and the supervision of the department of corrections is in violation of a treatment order or a condition of supervision that relates to public safety, or the designated mental health professional detains a person under this chapter, the designated mental health professional shall notify the person's treatment provider and the department of corrections.

(4) When an offender who is confined in a state correctional facility or is under supervision of the department of corrections in the community is subject to a petition for involuntary treatment under this chapter, the petitioner shall notify the department of corrections and the department of corrections shall provide documentation of its risk assessment or other concerns to the petitioner and the court if the department of corrections classified the offender as a high risk or high needs offender.

(5) Nothing in this section creates a duty on any treatment provider or designated mental health professional to provide offender supervision.

(6) No jail or state correctional facility may be considered a less restrictive alternative to an evaluation and treatment facility. [2007 c 375 § 9; 2005 c 504 § 507; 2004 c 166 § 16.]

Findings—Purpose—Construction—Severability—2007 c 375: See notes following RCW 10.31.110.

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

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

Severability—Effective dates—2004 c 166: See notes following RCW 71.05.040.

71.05.160 Petition for initial detention. Any facility receiving a person pursuant to RCW 71.05.150 or 71.05.153 shall require the designated mental health professional to prepare a petition for initial detention stating the circumstances under which the person's condition was made known and stating that there is evidence, as a result of his or her personal observation or investigation, that the actions of the person for which application is made constitute a likelihood of serious harm, or that he or she is gravely disabled, and stating the specific facts known to him or her as a result of his or her personal observation or investigation, upon which he or she bases the belief that such person should be detained for the purposes and under the authority of this chapter.

If a person is involuntarily placed in an evaluation and treatment facility pursuant to RCW 71.05.150 or 71.05.153, on the next judicial day following the initial detention, the designated mental health professional shall file with the court and serve the designated attorney of the detained person the petition or supplemental petition for initial detention, proof of service of notice, and a copy of a notice of emergency detention. [2007 c 375 § 13; 1998 c 297 § 9; 1997 c 112 § 10; 1974 ex.s. c 145 § 9; 1973 1st ex.s. c 142 § 21.]

Findings—Purpose—Construction—Severability—2007 c 375: See notes following RCW 10.31.110.

Effective dates—Severability—Intent—1998 c 297: See notes following RCW 71.05.010.

71.05.360 Rights of involuntarily detained persons. (1)(a) Every person involuntarily detained or committed under the provisions of this chapter shall be entitled to all the rights set forth in this chapter, which shall be prominently posted in the facility, and shall retain all rights not denied him or her under this chapter except as chapter 9.41 RCW may limit the right of a person to purchase or possess a firearm or to qualify for a concealed pistol license.

(b) No person shall be presumed incompetent as a consequence of receiving an evaluation or voluntary or involuntary treatment for a mental disorder, under this chapter or any prior laws of this state dealing with mental illness. Competency shall not be determined or withdrawn except under the provisions of chapter 10.77 or 11.88 RCW.

(c) Any person who leaves a public or private agency following evaluation or treatment for mental disorder shall be given a written statement setting forth the substance of this section.

(2) Each person involuntarily detained or committed pursuant to this chapter shall have the right to adequate care and individualized treatment.

(3) The provisions of this chapter shall not be construed to deny to any person treatment by spiritual means through prayer in accordance with the tenets and practices of a church or religious denomination.

(4) Persons receiving evaluation or treatment under this chapter shall be given a reasonable choice of an available physician or other professional person qualified to provide such services.

(5) Whenever any person is detained for evaluation and treatment pursuant to this chapter, both the person and, if possible, a responsible member of his or her immediate family, personal representative, guardian, or conservator, if any, shall be advised as soon as possible in writing or orally, by the officer or person taking him or her into custody or by personnel of the evaluation and treatment facility where the person is detained that unless the person is released or voluntarily admits himself or herself for treatment within seventy-two hours of the initial detention:

(a) A judicial hearing in a superior court, either by a judge or court commissioner thereof, shall be held not more than seventy-two hours after the initial detention to determine whether there is probable cause to detain the person after the seventy-two hours have expired for up to an additional fourteen days without further automatic hearing for the reason that the person is a person whose mental disorder presents a likelihood of serious harm or that the person is gravely disabled;

(b) The person has a right to communicate immediately with an attorney; has a right to have an attorney appointed to represent him or her before and at the probable cause hearing if he or she is indigent; and has the right to be told the name and address of the attorney that the mental health professional has designated pursuant to this chapter;

(c) The person has the right to remain silent and that any statement he or she makes may be used against him or her;

(d) The person has the right to present evidence and to cross-examine witnesses who testify against him or her at the probable cause hearing; and

(e) The person has the right to refuse psychiatric medications, including antipsychotic medication beginning twenty-four hours prior to the probable cause hearing.

(6) When proceedings are initiated under RCW 71.05.153, no later than twelve hours after such person is admitted to the evaluation and treatment facility the personnel of the evaluation and treatment facility or the designated mental health professional shall serve on such person a copy of the petition for initial detention and the name, business address, and phone number of the designated attorney and shall forthwith commence service of a copy of the petition for initial detention on the designated attorney.

(7) The judicial hearing described in subsection (5) of this section is hereby authorized, and shall be held according to the provisions of subsection (5) of this section and rules promulgated by the supreme court.

(8) At the probable cause hearing the detained person shall have the following rights in addition to the rights previously specified:

(a) To present evidence on his or her behalf;

(b) To cross-examine witnesses who testify against him or her;

(c) To be proceeded against by the rules of evidence;

(d) To remain silent;

(e) To view and copy all petitions and reports in the court file.

(9) The physician-patient privilege or the psychologist-client privilege shall be deemed waived in proceedings under this chapter relating to the administration of antipsychotic medications. As to other proceedings under this chapter, the privileges shall be waived when a court of competent jurisdiction in its discretion determines that such waiver is necessary to protect either the detained person or the public.

The waiver of a privilege under this section is limited to records or testimony relevant to evaluation of the detained person for purposes of a proceeding under this chapter. Upon motion by the detained person or on its own motion, the court shall examine a record or testimony sought by a petitioner to determine whether it is within the scope of the waiver.

The record maker shall not be required to testify in order to introduce medical or psychological records of the detained person so long as the requirements of RCW 5.45.020 are met except that portions of the record which contain opinions as to the detained person's mental state must be deleted from such records unless the person making such conclusions is available for cross-examination.

(10) Insofar as danger to the person or others is not created, each person involuntarily detained, treated in a less restrictive alternative course of treatment, or committed for treatment and evaluation pursuant to this chapter shall have, in addition to other rights not specifically withheld by law, the following rights:

(a) To wear his or her own clothes and to keep and use his or her own personal possessions, except when deprivation of same is essential to protect the safety of the resident or other persons;

(b) To keep and be allowed to spend a reasonable sum of his or her own money for canteen expenses and small purchases;

(c) To have access to individual storage space for his or her private use;

(d) To have visitors at reasonable times;

(e) To have reasonable access to a telephone, both to make and receive confidential calls, consistent with an effective treatment program;

(f) To have ready access to letter writing materials, including stamps, and to send and receive uncensored correspondence through the mails;

(g) To discuss treatment plans and decisions with professional persons;

(h) Not to consent to the administration of antipsychotic medications and not to thereafter be administered antipsychotic medications unless ordered by a court under RCW 71.05.217 or pursuant to an administrative hearing under RCW 71.05.215;

(i) Not to consent to the performance of electroconvulsant therapy or surgery, except emergency life-saving surgery, unless ordered by a court under RCW 71.05.217;

(j) Not to have psychosurgery performed on him or her under any circumstances;

(k) To dispose of property and sign contracts unless such person has been adjudicated an incompetent in a court proceeding directed to that particular issue.

(11) Every person involuntarily detained shall immediately be informed of his or her right to a hearing to review the legality of his or her detention and of his or her right to counsel, by the professional person in charge of the facility providing evaluation and treatment, or his or her designee, and, when appropriate, by the court. If the person so elects, the court shall immediately appoint an attorney to assist him or her.

(12) A person challenging his or her detention or his or her attorney shall have the right to designate and have the court appoint a reasonably available independent physician or licensed mental health professional to examine the person detained, the results of which examination may be used in the proceeding. The person shall, if he or she is financially able, bear the cost of such expert examination, otherwise such expert examination shall be at public expense.

(13) Nothing contained in this chapter shall prohibit the patient from petitioning by writ of habeas corpus for release.

(14) Nothing in this chapter shall prohibit a person committed on or prior to January 1, 1974, from exercising a right available to him or her at or prior to January 1, 1974, for obtaining release from confinement.

(15) Nothing in this section permits any person to knowingly violate a no-contact order or a condition of an active judgment and sentence or an active condition of supervision by the department of corrections. [2007 c 375 § 14; 2005 c 504 § 107; 1997 c 112 § 30; 1974 ex.s. c 145 § 25; 1973 1st ex.s. c 142 § 41.]

Findings—Purpose—Construction—Severability—2007 c 375: See notes following RCW 10.31.110.

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

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

71.05.390 Confidential information and records—Disclosure. Except as provided in this section, RCW 71.05.445, 71.05.630, 70.96A.150, or pursuant to a valid release under RCW 70.02.030, the fact of admission and all information and records compiled, obtained, or maintained in the course of providing services to either voluntary or involuntary recipients of services at public or private agencies shall be confidential.

Information and records may be disclosed only:

(1) In communications between qualified professional persons to meet the requirements of this chapter, in the provision of services or appropriate referrals, or in the course of guardianship proceedings. The consent of the person, or his or her personal representative or guardian, shall be obtained before information or records may be disclosed by a professional person employed by a facility unless provided to a professional person:

(a) Employed by the facility;

(b) Who has medical responsibility for the patient's care;

(c) Who is a designated mental health professional;

(d) Who is providing services under chapter 71.24 RCW;

(e) Who is employed by a state or local correctional facility where the person is confined or supervised; or

(f) Who is providing evaluation, treatment, or follow-up services under chapter 10.77 RCW.

(2) When the communications regard the special needs of a patient and the necessary circumstances giving rise to such needs and the disclosure is made by a facility providing services to the operator of a facility in which the patient resides or will reside.

(3)(a) When the person receiving services, or his or her guardian, designates persons to whom information or records may be released, or if the person is a minor, when his or her parents make such designation.

(b) A public or private agency shall release to a person's next of kin, attorney, personal representative, guardian, or conservator, if any:

(i) The information that the person is presently a patient in the facility or that the person is seriously physically ill;

(ii) A statement evaluating the mental and physical condition of the patient, and a statement of the probable duration of the patient's confinement, if such information is requested by the next of kin, attorney, personal representative, guardian, or conservator; and

(iii) Such other information requested by the next of kin or attorney as may be necessary to decide whether or not proceedings should be instituted to appoint a guardian or conservator.

(4) To the extent necessary for a recipient to make a claim, or for a claim to be made on behalf of a recipient for aid, insurance, or medical assistance to which he or she may be entitled.

(5)(a) For either program evaluation or research, or both: PROVIDED, That the secretary adopts rules for the conduct of the evaluation or research, or both. Such rules shall include, but need not be limited to, the requirement that all evaluators and researchers must sign an oath of confidentiality substantially as follows:

"As a condition of conducting evaluation or research concerning persons who have received services from (fill in the facility, agency, or person) I,, agree not to divulge, publish, or otherwise make known to unauthorized persons or the public any information obtained in the course of such evaluation or research regarding persons who have received services such that the person who received such services is identifiable.

I recognize that unauthorized release of confidential information may subject me to civil liability under the provisions of state law.

/s/ "

(b) Nothing in this chapter shall be construed to prohibit the compilation and publication of statistical data for use by government or researchers under standards, including standards to assure maintenance of confidentiality, set forth by the secretary.

(6)(a) To the courts as necessary to the administration of this chapter or to a court ordering an evaluation or treatment under chapter 10.77 RCW solely for the purpose of preventing the entry of any evaluation or treatment order that is inconsistent with any order entered under this chapter.

(b) To a court or its designee in which a motion under chapter 10.77 RCW has been made for involuntary medication of a defendant for the purpose of competency restoration.

(c) Disclosure under this subsection is mandatory for the purpose of the health insurance portability and accountability act.

(7)(a) When a mental health professional is requested by a representative of a law enforcement or corrections agency, including a police officer, sheriff, community corrections officer, a municipal attorney, or prosecuting attorney to undertake an investigation or provide treatment under RCW 71.05.150, 10.31.110, or 71.05.153, the mental health professional shall, if requested to do so, advise the representative in writing of the results of the investigation including a statement of reasons for the decision to detain or release the person investigated. Such written report shall be submitted within seventy-two hours of the completion of the investigation or the request from the law enforcement or corrections representative, whichever occurs later.

(b) To law enforcement officers, public health officers, or personnel of the department of corrections or the indeterminate sentence review board for persons who are the subject of the records and who are committed to the custody or supervision of the department of corrections or indeterminate sentence review board which information or records are necessary to carry out the responsibilities of their office. Except for dissemination of information released pursuant to RCW 71.05.425 and 4.24.550, regarding persons committed under this chapter under RCW 71.05.280(3) and 71.05.320 (3)(c) after dismissal of a sex offense as defined in RCW 9.94A.030, the extent of information that may be released is limited as follows:

(i) Only the fact, place, and date of involuntary commitment, the fact and date of discharge or release, and the last known address shall be disclosed upon request;

(ii) The law enforcement and public health officers or personnel of the department of corrections or indeterminate sentence review board shall be obligated to keep such information confidential in accordance with this chapter;

(iii) Additional information shall be disclosed only after giving notice to said person and his or her counsel and upon a showing of clear, cogent, and convincing evidence that such information is necessary and that appropriate safeguards for strict confidentiality are and will be maintained. However, in the event the said person has escaped from custody, said notice prior to disclosure is not necessary and that the facility from which the person escaped shall include an evaluation as to whether the person is of danger to persons or property and has a propensity toward violence;

(iv) Information and records shall be disclosed to the department of corrections pursuant to and in compliance with the provisions of RCW 71.05.445 for the purposes of completing presentence investigations or risk assessment reports, supervision of an incarcerated offender or offender under supervision in the community, planning for and provision of supervision of an offender, or assessment of an offender's risk to the community; and

(v) Disclosure under this subsection is mandatory for the purposes of the health insurance portability and accountability act.

(8) To the attorney of the detained person.

(9) To the prosecuting attorney as necessary to carry out the responsibilities of the office under RCW 71.05.330(2) and 71.05.340(1)(b) and 71.05.335. The prosecutor shall be provided access to records regarding the committed person's treatment and prognosis, medication, behavior problems, and other records relevant to the issue of whether treatment less restrictive than inpatient treatment is in the best interest of the committed person or others. Information shall be disclosed only after giving notice to the committed person and the person's counsel.

(10) To appropriate law enforcement agencies and to a person, when the identity of the person is known to the public or private agency, whose health and safety has been threatened, or who is known to have been repeatedly harassed, by the patient. The person may designate a representative to receive the disclosure. The disclosure shall be made by the professional person in charge of the public or private agency or his or her designee and shall include the dates of commitment, admission, discharge, or release, authorized or unauthorized absence from the agency's facility, and only such other information that is pertinent to the threat or harassment. The decision to disclose or not shall not result in civil liability for the agency or its employees so long as the decision was reached in good faith and without gross negligence.

(11) To appropriate corrections and law enforcement agencies all necessary and relevant information in the event of a crisis or emergent situation that poses a significant and imminent risk to the public. The decision to disclose or not shall not result in civil liability for the mental health service provider or its employees so long as the decision was reached in good faith and without gross negligence.

(12) To the persons designated in RCW 71.05.425 for the purposes described in that section.

(13) Civil liability and immunity for the release of information about a particular person who is committed to the department under RCW 71.05.280(3) and 71.05.320(3)(c) after dismissal of a sex offense as defined in RCW 9.94A.030, is governed by RCW 4.24.550.

(14) Upon the death of a person, his or her next of kin, personal representative, guardian, or conservator, if any, shall be notified.

Next of kin who are of legal age and competent shall be notified under this section in the following order: Spouse, parents, children, brothers and sisters, and other relatives according to the degree of relation. Access to all records and information compiled, obtained, or maintained in the course of providing services to a deceased patient shall be governed by RCW 70.02.140.

(15) To the department of health for the purposes of determining compliance with state or federal licensure, certification, or registration rules or laws. However, the information and records obtained under this subsection are exempt from public inspection and copying pursuant to chapter 42.56 RCW.

(16) To mark headstones or otherwise memorialize patients interred at state hospital cemeteries. The department of social and health services shall make available the name, date of birth, and date of death of patients buried in state hospital cemeteries fifty years after the death of a patient.

(17) To law enforcement officers and to prosecuting attorneys as are necessary to enforce RCW 9.41.040(2)(a)(ii).

The extent of information that may be released is limited as follows:

(a) Only the fact, place, and date of involuntary commitment, an official copy of any order or orders of commitment, and an official copy of any written or oral notice of ineligibility to possess a firearm that was provided to the person pursuant to RCW 9.41.047(1), shall be disclosed upon request;

(b) The law enforcement and prosecuting attorneys may only release the information obtained to the person's attorney as required by court rule and to a jury or judge, if a jury is waived, that presides over any trial at which the person is charged with violating RCW 9.41.040(2)(a)(ii);

(c) Disclosure under this subsection is mandatory for the purposes of the health insurance portability and accountability act.

(18) When a patient would otherwise be subject to the provisions of RCW 71.05.390 and disclosure is necessary for the protection of the patient or others due to his or her unauthorized disappearance from the facility, and his or her whereabouts is unknown, notice of such disappearance, along with relevant information, may be made to relatives, the department of corrections when the person is under the supervision of the department, and governmental law enforcement agencies designated by the physician in charge of the patient or the professional person in charge of the facility, or his or her professional designee.

Except as otherwise provided in this chapter, the uniform health care information act, chapter 70.02 RCW, applies to all records and information compiled, obtained, or maintained in the course of providing services.

(19) The fact of admission, as well as all records, files, evidence, findings, or orders made, prepared, collected, or maintained pursuant to this chapter shall not be admissible as evidence in any legal proceeding outside this chapter without the written consent of the person who was the subject of the proceeding except in a subsequent criminal prosecution of a person committed pursuant to RCW 71.05.280(3) or 71.05.320(3)(c) on charges that were dismissed pursuant to chapter 10.77 RCW due to incompetency to stand trial, in a civil commitment proceeding pursuant to chapter 71.09 RCW, or, in the case of a minor, a guardianship or dependency proceeding. The records and files maintained in any court proceeding pursuant to this chapter shall be confidential and available subsequent to such proceedings only to the person who was the subject of the proceeding or his or her attorney. In addition, the court may order the subsequent release or use of such records or files only upon good cause shown if the court finds that appropriate safeguards for strict confidentiality are and will be maintained. [2007 c 375 § 15. Prior: 2005 c 504 § 109; 2005 c 453 § 5; 2005 c 274 § 346; prior: 2004 c 166 § 6; 2004 c 157 § 5; 2004 c 33 § 2; prior: 2000 c 94 § 9; 2000 c 75 § 6; 2000 c 74 § 7; 1999 c 12 § 1; 1998 c 297 § 22; 1993 c 448 § 6; 1990 c 3 § 112; 1986 c 67 § 8; 1985 c 207 § 1; 1983 c 196 § 4; 1979 ex.s. c 215 § 17; 1975 1st ex.s. c 199 § 10; 1974 ex.s. c 145 § 27; 1973 1st ex.s. c 142 § 44.]

Findings—Purpose—Construction—Severability—2007 c 375: See notes following RCW 10.31.110.

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

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

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

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

Severability—Effective dates—2004 c 166: See notes following RCW 71.05.040.

Findings—Intent—Severability—Effective date—2004 c 157: See notes following RCW 10.77.010.

Finding—Intent—2004 c 33: "The legislature finds that social stigmas surrounding mental illness have prevented patients buried in the state hospital cemeteries from being properly memorialized. From 1887 to 1953, the state buried many of the patients who died while in residence at the three state hospitals on hospital grounds. In order to honor these patients, the legislature intends that the state be allowed to release records necessary to appropriately mark their resting place." [2004 c 33 § 1.]

Intent—2000 c 75: See note following RCW 71.05.445.

Severability—2000 c 74: See note following RCW 10.77.060.

Effective dates—Severability—Intent—1998 c 297: See notes following RCW 71.05.010.

Effective date—1993 c 448: See note following RCW 70.02.010.

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

71.05.630 Treatment records—Confidential—Release. (1) Except as otherwise provided by law, all treatment records shall remain confidential and may be released only to the persons designated in this section, or to other persons designated in an informed written consent of the patient.

(2) Treatment records of a person may be released without informed written consent in the following circumstances:

(a) To a person, organization, or agency as necessary for management or financial audits, or program monitoring and evaluation. Information obtained under this subsection shall remain confidential and may not be used in a manner that discloses the name or other identifying information about the person whose records are being released.

(b) To the department, the director of regional support networks, or a qualified staff member designated by the director only when necessary to be used for billing or collection purposes. The information shall remain confidential.

(c) For purposes of research as permitted in chapter 42.48 RCW.

(d) Pursuant to lawful order of a court.

(e) To qualified staff members of the department, to the director of regional support networks, to resource management services responsible for serving a patient, or to service providers designated by resource management services as necessary to determine the progress and adequacy of treatment and to determine whether the person should be transferred to a less restrictive or more appropriate treatment modality or facility. The information shall remain confidential.

(f) Within the treatment facility where the patient is receiving treatment, confidential information may be disclosed to persons employed, serving in bona fide training programs, or participating in supervised volunteer programs, at the facility when it is necessary to perform their duties.

(g) Within the department as necessary to coordinate treatment for mental illness, developmental disabilities, alcoholism, or drug abuse of persons who are under the supervision of the department.

(h) To a licensed physician who has determined that the life or health of the person is in danger and that treatment without the information contained in the treatment records could be injurious to the patient's health. Disclosure shall be limited to the portions of the records necessary to meet the medical emergency.

(i) To a facility that is to receive a person who is involuntarily committed under chapter 71.05 RCW, or upon transfer of the person from one treatment facility to another. The release of records under this subsection shall be limited to the treatment records required by law, a record or summary of all somatic treatments, and a discharge summary. The discharge summary may include a statement of the patient's problem, the treatment goals, the type of treatment which has been provided, and recommendation for future treatment, but may not include the patient's complete treatment record.

(j) Notwithstanding the provisions of RCW 71.05.390(7), to a correctional facility or a corrections officer who is responsible for the supervision of a person who is receiving inpatient or outpatient evaluation or treatment. Except as provided in RCW 71.05.445 and 71.34.345, release of records under this section is limited to:

(i) An evaluation report provided pursuant to a written supervision plan.

(ii) The discharge summary, including a record or summary of all somatic treatments, at the termination of any treatment provided as part of the supervision plan.

(iii) When a person is returned from a treatment facility to a correctional facility, the information provided under (j)(iv) of this subsection.

(iv) Any information necessary to establish or implement changes in the person's treatment plan or the level or kind of supervision as determined by resource management services. In cases involving a person transferred back to a correctional facility, disclosure shall be made to clinical staff only.

(k) To the person's counsel or guardian ad litem, without modification, at any time in order to prepare for involuntary commitment or recommitment proceedings, reexaminations, appeals, or other actions relating to detention, admission, commitment, or patient's rights under chapter 71.05 RCW.

(l) To staff members of the protection and advocacy agency or to staff members of a private, nonprofit corporation for the purpose of protecting and advocating the rights of persons with mental disorders or developmental disabilities. Resource management services may limit the release of information to the name, birthdate, and county of residence of the patient, information regarding whether the patient was voluntarily admitted, or involuntarily committed, the date and place of admission, placement, or commitment, the name and address of a guardian of the patient, and the date and place of the guardian's appointment. Any staff member who wishes to obtain additional information shall notify the patient's resource management services in writing of the request and of the resource management services' right to object. The staff member shall send the notice by mail to the guardian's address. If the guardian does not object in writing within fifteen days after the notice is mailed, the staff member may obtain the additional information. If the guardian objects in writing within fifteen days after the notice is

mailed, the staff member may not obtain the additional information.

(m) For purposes of coordinating health care, the department may release without informed written consent of the patient, information acquired for billing and collection purposes as described in (b) of this subsection to all current treating providers of the patient with prescriptive authority who have written a prescription for the patient within the last twelve months. The department shall notify the patient that billing and collection information has been released to named providers, and provide the substance of the information released and the dates of such release. The department shall not release counseling, inpatient psychiatric hospitalization, or drug and alcohol treatment information without a signed written release from the client.

(3) Whenever federal law or federal regulations restrict the release of information contained in the treatment records of any patient who receives treatment for chemical dependency, the department may restrict the release of the information as necessary to comply with federal law and regulations. [2007 c 191 § 1; 2005 c 504 § 112; 2000 c 75 § 5; 1989 c 205 § 13.]

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

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

Intent—2000 c 75: See note following RCW 71.05.445.

Contingent effective date—1989 c 205 §§ 11-19: See note following RCW 71.05.620.

71.05.700 Home visit by designated mental health professional or crisis intervention worker—Accompaniment by second trained individual. No designated mental health professional or crisis intervention worker shall be required to respond to a private home or other private location to stabilize or treat a person in crisis, or to evaluate a person for potential detention under the state's involuntary treatment act, unless a second trained individual, determined by the clinical team supervisor, on-call supervisor, or individual professional acting alone based on a risk assessment for potential violence, accompanies them. The second individual may be a law enforcement officer, a mental health professional, a mental health paraprofessional who has received training under RCW 71.05.715, or other first responder, such as fire or ambulance personnel. No retaliation may be taken against a worker who, following consultation with the clinical team, refuses to go on a home visit alone. [2007 c 360 § 2.]

Findings—2007 c 360: "The legislature finds that designated mental health professionals go out into the community to evaluate people for potential detention under the state's involuntary treatment act. Also, designated mental health professionals and other mental health workers do crisis intervention work intended to stabilize a person in crisis and provide immediate treatment and intervention in communities throughout Washington state. In many cases, the presence of a second trained individual on outreach to a person's private home or other private location will enhance safety for consumers, families, and mental health professionals and will advance the legislature's interest in quality mental health care services." [2007 c 360 § 1.]

Short title—2007 c 360: "This act may be known and cited as the Marty Smith law." [2007 c 360 § 7.]

[2007 RCW Supp—page 872]

71.05.705 Provider of designated mental health professional or crisis outreach services—Policy for home visits. Each provider of designated mental health professional or crisis outreach services shall maintain a written policy that, at a minimum, describes the organization's plan for training, staff back-up, information sharing, and communication for crisis outreach staff who respond to private homes or non-public settings. [2007 c 360 § 3.]

Findings—Short title—2007 c 360: See notes following RCW 71.05.700.

71.05.710 Home visit by mental health professional—Wireless telephone to be provided. Any mental health professional who engages in home visits to clients shall be provided by their employer with a wireless telephone or comparable device for the purpose of emergency communication. [2007 c 360 § 4.]

Findings—Short title—2007 c 360: See notes following RCW 71.05.700.

71.05.715 Crisis visit by mental health professional—Access to information. Any mental health professional who is dispatched on a crisis visit, as described in RCW 71.05.700, shall have prompt access to information about any history of dangerousness or potential dangerousness on the client they are being sent to evaluate that is documented in crisis plans or commitment records and is available without unduly delaying a crisis response. [2007 c 360 § 5.]

Findings—Short title—2007 c 360: See notes following RCW 71.05.700.

71.05.720 Training for community mental health employees. Annually, all community mental health employees who work directly with clients shall be provided with training on safety and violence prevention topics described in RCW 49.19.030. The curriculum for the training shall be developed collaboratively among the department of social and health services, contracted mental health providers, and employee organizations that represent community mental health workers. [2007 c 360 § 6.]

Findings—Short title—2007 c 360: See notes following RCW 71.05.700.

Chapter 71.24 RCW

COMMUNITY MENTAL HEALTH SERVICES ACT

Sections

71.24.025	Definitions.
71.24.035	Secretary's powers and duties as state mental health authority—Secretary designated as regional support network, when.
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71.24.061	Children's mental health providers—Children's mental health evidence-based practice institute—Pilot program.
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71.24.025 Definitions. Unless the context clearly requires otherwise, the definitions in this section apply throughout this chapter.

(1) "Acutely mentally ill" means a condition which is limited to a short-term severe crisis episode of:

(a) A mental disorder as defined in RCW 71.05.020 or, in the case of a child, as defined in RCW 71.34.020;

(b) Being gravely disabled as defined in RCW 71.05.020 or, in the case of a child, a gravely disabled minor as defined in RCW 71.34.020; or

(c) Presenting a likelihood of serious harm as defined in RCW 71.05.020 or, in the case of a child, as defined in RCW 71.34.020.

(2) "Available resources" means funds appropriated for the purpose of providing community mental health programs, federal funds, except those provided according to Title XIX of the Social Security Act, and state funds appropriated under this chapter or chapter 71.05 RCW by the legislature during any biennium for the purpose of providing residential services, resource management services, community support services, and other mental health services. This does not include funds appropriated for the purpose of operating and administering the state psychiatric hospitals.

(3) "Child" means a person under the age of eighteen years.

(4) "Chronically mentally ill adult" or "adult who is chronically mentally ill" means an adult who has a mental disorder and meets at least one of the following criteria:

(a) Has undergone two or more episodes of hospital care for a mental disorder within the preceding two years; or

(b) Has experienced a continuous psychiatric hospitalization or residential treatment exceeding six months' duration within the preceding year; or

(c) Has been unable to engage in any substantial gainful activity by reason of any mental disorder which has lasted for a continuous period of not less than twelve months. "Substantial gainful activity" shall be defined by the department by rule consistent with Public Law 92-603, as amended.

(5) "Clubhouse" means a community-based program that provides rehabilitation services and is certified by the department of social and health services.

(6) "Community mental health program" means all mental health services, activities, or programs using available resources.

(7) "Community mental health service delivery system" means public or private agencies that provide services specifically to persons with mental disorders as defined under RCW 71.05.020 and receive funding from public sources.

(8) "Community support services" means services authorized, planned, and coordinated through resource management services including, at a minimum, assessment, diagnosis, emergency crisis intervention available twenty-four hours, seven days a week, prescreening determinations for persons who are mentally ill being considered for placement in nursing homes as required by federal law, screening for patients being considered for admission to residential services, diagnosis and treatment for children who are acutely mentally ill or severely emotionally disturbed discovered under screening through the federal Title XIX early and periodic screening, diagnosis, and treatment program, investigation, legal, and other nonresidential services under chapter 71.05 RCW, case management services, psychiatric treatment including medication supervision, counseling, psychotherapy, assuring transfer of relevant patient information

between service providers, recovery services, and other services determined by regional support networks.

(9) "Consensus-based" means a program or practice that has general support among treatment providers and experts, based on experience or professional literature, and may have anecdotal or case study support, or that is agreed but not possible to perform studies with random assignment and controlled groups.

(10) "County authority" means the board of county commissioners, county council, or county executive having authority to establish a community mental health program, or two or more of the county authorities specified in this subsection which have entered into an agreement to provide a community mental health program.

(11) "Department" means the department of social and health services.

(12) "Designated mental health professional" means a mental health professional designated by the county or other authority authorized in rule to perform the duties specified in this chapter.

(13) "Emerging best practice" or "promising practice" means a practice that presents, based on preliminary information, potential for becoming a research-based or consensus-based practice.

(14) "Evidence-based" means a program or practice that has had multiple site random controlled trials across heterogeneous populations demonstrating that the program or practice is effective for the population.

(15) "Licensed service provider" means an entity licensed according to this chapter or chapter 71.05 RCW or an entity deemed to meet state minimum standards as a result of accreditation by a recognized behavioral health accrediting body recognized and having a current agreement with the department, that meets state minimum standards or persons licensed under chapter 18.57, 18.71, 18.83, or 18.79 RCW, as it applies to registered nurses and advanced registered nurse practitioners.

(16) "Long-term inpatient care" means inpatient services for persons committed for, or voluntarily receiving intensive treatment for, periods of ninety days or greater under chapter 71.05 RCW. "Long-term inpatient care" as used in this chapter does not include: (a) Services for individuals committed under chapter 71.05 RCW who are receiving services pursuant to a conditional release or a court-ordered less restrictive alternative to detention; or (b) services for individuals voluntarily receiving less restrictive alternative treatment on the grounds of the state hospital.

(17) "Mental health services" means all services provided by regional support networks and other services provided by the state for persons who are mentally ill.

(18) "Mentally ill persons," "persons who are mentally ill," and "the mentally ill" mean persons and conditions defined in subsections (1), (4), (27), and (28) of this section.

(19) "Recovery" means the process in which people are able to live, work, learn, and participate fully in their communities.

(20) "Regional support network" means a county authority or group of county authorities or other nonprofit entity recognized by the secretary in contract in a defined region.

(21) "Registration records" include all the records of the department, regional support networks, treatment facilities,

and other persons providing services to the department, county departments, or facilities which identify persons who are receiving or who at any time have received services for mental illness.

(22) "Research-based" means a program or practice that has some research demonstrating effectiveness, but that does not yet meet the standard of evidence-based practices.

(23) "Residential services" means a complete range of residences and supports authorized by resource management services and which may involve a facility, a distinct part thereof, or services which support community living, for persons who are acutely mentally ill, adults who are chronically mentally ill, children who are severely emotionally disturbed, or adults who are seriously disturbed and determined by the regional support network to be at risk of becoming acutely or chronically mentally ill. The services shall include at least evaluation and treatment services as defined in chapter 71.05 RCW, acute crisis respite care, long-term adaptive and rehabilitative care, and supervised and supported living services, and shall also include any residential services developed to service persons who are mentally ill in nursing homes, boarding homes, and adult family homes, and may include outpatient services provided as an element in a package of services in a supported housing model. Residential services for children in out-of-home placements related to their mental disorder shall not include the costs of food and shelter, except for children's long-term residential facilities existing prior to January 1, 1991.

(24) "Resilience" means the personal and community qualities that enable individuals to rebound from adversity, trauma, tragedy, threats, or other stresses, and to live productive lives.

(25) "Resource management services" mean the planning, coordination, and authorization of residential services and community support services administered pursuant to an individual service plan for: (a) Adults and children who are acutely mentally ill; (b) adults who are chronically mentally ill; (c) children who are severely emotionally disturbed; or (d) adults who are seriously disturbed and determined solely by a regional support network to be at risk of becoming acutely or chronically mentally ill. Such planning, coordination, and authorization shall include mental health screening for children eligible under the federal Title XIX early and periodic screening, diagnosis, and treatment program. Resource management services include seven day a week, twenty-four hour a day availability of information regarding enrollment of adults and children who are mentally ill in services and their individual service plan to designated mental health professionals, evaluation and treatment facilities, and others as determined by the regional support network.

(26) "Secretary" means the secretary of social and health services.

(27) "Seriously disturbed person" means a person who:

(a) Is gravely disabled or presents a likelihood of serious harm to himself or herself or others, or to the property of others, as a result of a mental disorder as defined in chapter 71.05 RCW;

(b) Has been on conditional release status, or under a less restrictive alternative order, at some time during the preceding two years from an evaluation and treatment facility or a state mental health hospital;

(c) Has a mental disorder which causes major impairment in several areas of daily living;

(d) Exhibits suicidal preoccupation or attempts; or

(e) Is a child diagnosed by a mental health professional, as defined in chapter 71.34 RCW, as experiencing a mental disorder which is clearly interfering with the child's functioning in family or school or with peers or is clearly interfering with the child's personality development and learning.

(28) "Severely emotionally disturbed child" or "child who is severely emotionally disturbed" means a child who has been determined by the regional support network to be experiencing a mental disorder as defined in chapter 71.34 RCW, including those mental disorders that result in a behavioral or conduct disorder, that is clearly interfering with the child's functioning in family or school or with peers and who meets at least one of the following criteria:

(a) Has undergone inpatient treatment or placement outside of the home related to a mental disorder within the last two years;

(b) Has undergone involuntary treatment under chapter 71.34 RCW within the last two years;

(c) Is currently served by at least one of the following child-serving systems: Juvenile justice, child-protection/welfare, special education, or developmental disabilities;

(d) Is at risk of escalating maladjustment due to:

(i) Chronic family dysfunction involving a caretaker who is mentally ill or inadequate;

(ii) Changes in custodial adult;

(iii) Going to, residing in, or returning from any placement outside of the home, for example, psychiatric hospital, short-term inpatient, residential treatment, group or foster home, or a correctional facility;

(iv) Subject to repeated physical abuse or neglect;

(v) Drug or alcohol abuse; or

(vi) Homelessness.

(29) "State minimum standards" means minimum requirements established by rules adopted by the secretary and necessary to implement this chapter for: (a) Delivery of mental health services; (b) licensed service providers for the provision of mental health services; (c) residential services; and (d) community support services and resource management services.

(30) "Treatment records" include registration and all other records concerning persons who are receiving or who at any time have received services for mental illness, which are maintained by the department, by regional support networks and their staffs, and by treatment facilities. Treatment records do not include notes or records maintained for personal use by a person providing treatment services for the department, regional support networks, or a treatment facility if the notes or records are not available to others.

(31) "Tribal authority," for the purposes of this section and RCW 71.24.300 only, means: The federally recognized Indian tribes and the major Indian organizations recognized by the secretary insofar as these organizations do not have a financial relationship with any regional support network that would present a conflict of interest. [2007 c 414 § 1; 2006 c 333 § 104. Prior: 2005 c 504 § 105; 2005 c 503 § 2; 2001 c 323 § 8; 1999 c 10 § 2; 1997 c 112 § 38; 1995 c 96 § 4; prior: 1994 sp.s. c 9 § 748; 1994 c 204 § 1; 1991 c 306 § 2; 1989 c 205 § 2; 1986 c 274 § 2; 1982 c 204 § 3.]

Finding—Purpose—Intent—Severability—Part headings not law—Effective dates—2006 c 333: See notes following RCW 71.24.016.

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

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

Correction of references—Savings—Severability—2005 c 503: See notes following RCW 71.24.015.

Purpose—Intent—1999 c 10: "The purpose of this act is to eliminate dates and provisions in chapter 71.24 RCW which are no longer needed. The legislature does not intend this act to make, and no provision of this act shall be construed as, a substantive change in the service delivery system or funding of the community mental health services law." [1999 c 10 § 1.]

Alphabetization of section—1999 c 10 § 2: "The code reviser shall alphabetize the definitions in RCW 71.24.025 and correct any cross-references." [1999 c 10 § 14.]

Effective date—1995 c 96: See note following RCW 71.24.400.

Severability—Headings and captions not law—Effective date—1994 sp.s. c 9: See RCW 18.79.900 through 18.79.902.

Conflict with federal requirements—1991 c 306: See note following RCW 71.24.015.

Effective date—1986 c 274 §§ 1, 2, 3, 5, and 9: See note following RCW 71.24.015.

71.24.035 Secretary's powers and duties as state mental health authority—Secretary designated as regional support network, when. (1) The department is designated as the state mental health authority.

(2) The secretary shall provide for public, client, and licensed service provider participation in developing the state mental health program, developing contracts with regional support networks, and any waiver request to the federal government under medicaid.

(3) The secretary shall provide for participation in developing the state mental health program for children and other underserved populations, by including representatives on any committee established to provide oversight to the state mental health program.

(4) The secretary shall be designated as the regional support network if the regional support network fails to meet state minimum standards or refuses to exercise responsibilities under RCW 71.24.045.

(5) The secretary shall:

(a) Develop a biennial state mental health program that incorporates regional biennial needs assessments and regional mental health service plans and state services for adults and children with mental illness. The secretary shall also develop a six-year state mental health plan;

(b) Assure that any regional or county community mental health program provides access to treatment for the region's residents, including parents who are defendants in dependency cases, in the following order of priority: (i) Persons with acute mental illness; (ii) adults with chronic mental illness and children who are severely emotionally disturbed; and (iii) persons who are seriously disturbed. Such programs shall provide:

(A) Outpatient services;

(B) Emergency care services for twenty-four hours per day;

(C) Day treatment for persons with mental illness which includes training in basic living and social skills, supported work, vocational rehabilitation, and day activities. Such ser-

vices may include therapeutic treatment. In the case of a child, day treatment includes age-appropriate basic living and social skills, educational and prevocational services, day activities, and therapeutic treatment;

(D) Screening for patients being considered for admission to state mental health facilities to determine the appropriateness of admission;

(E) Employment services, which may include supported employment, transitional work, placement in competitive employment, and other work-related services, that result in persons with mental illness becoming engaged in meaningful and gainful full or part-time work. Other sources of funding such as the division of vocational rehabilitation may be utilized by the secretary to maximize federal funding and provide for integration of services;

(F) Consultation and education services; and

(G) Community support services;

(c) Develop and adopt rules establishing state minimum standards for the delivery of mental health services pursuant to RCW 71.24.037 including, but not limited to:

(i) Licensed service providers. These rules shall permit a county-operated mental health program to be licensed as a service provider subject to compliance with applicable statutes and rules. The secretary shall provide for deeming of compliance with state minimum standards for those entities accredited by recognized behavioral health accrediting bodies recognized and having a current agreement with the department;

(ii) Regional support networks; and

(iii) Inpatient services, evaluation and treatment services and facilities under chapter 71.05 RCW, resource management services, and community support services;

(d) Assure that the special needs of persons who are minorities, elderly, disabled, children, low-income, and parents who are defendants in dependency cases are met within the priorities established in this section;

(e) Establish a standard contract or contracts, consistent with state minimum standards and RCW 71.24.320, 71.24.330, and 71.24.3201, which shall be used in contracting with regional support networks. The standard contract shall include a maximum fund balance, which shall be consistent with that required by federal regulations or waiver stipulations;

(f) Establish, to the extent possible, a standardized auditing procedure which minimizes paperwork requirements of regional support networks and licensed service providers. The audit procedure shall focus on the outcomes of service and not the processes for accomplishing them;

(g) Develop and maintain an information system to be used by the state and regional support networks that includes a tracking method which allows the department and regional support networks to identify mental health clients' participation in any mental health service or public program on an immediate basis. The information system shall not include individual patient's case history files. Confidentiality of client information and records shall be maintained as provided in this chapter and in RCW 71.05.390, 71.05.420, and 71.05.440;

(h) License service providers who meet state minimum standards;

(i) Certify regional support networks that meet state minimum standards;

(j) Periodically monitor the compliance of certified regional support networks and their network of licensed service providers for compliance with the contract between the department, the regional support network, and federal and state rules at reasonable times and in a reasonable manner;

(k) Fix fees to be paid by evaluation and treatment centers to the secretary for the required inspections;

(l) Monitor and audit regional support networks and licensed service providers as needed to assure compliance with contractual agreements authorized by this chapter;

(m) Adopt such rules as are necessary to implement the department's responsibilities under this chapter;

(n) Assure the availability of an appropriate amount, as determined by the legislature in the operating budget by amounts appropriated for this specific purpose, of community-based, geographically distributed residential services;

(o) Certify crisis stabilization units that meet state minimum standards; and

(p) Certify clubhouses that meet state minimum standards.

(6) The secretary shall use available resources only for regional support networks, except to the extent authorized, and in accordance with any priorities or conditions specified, in the biennial appropriations act.

(7) Each certified regional support network and licensed service provider shall file with the secretary, on request, such data, statistics, schedules, and information as the secretary reasonably requires. A certified regional support network or licensed service provider which, without good cause, fails to furnish any data, statistics, schedules, or information as requested, or files fraudulent reports thereof, may have its certification or license revoked or suspended.

(8) The secretary may suspend, revoke, limit, or restrict a certification or license, or refuse to grant a certification or license for failure to conform to: (a) The law; (b) applicable rules and regulations; (c) applicable standards; or (d) state minimum standards.

(9) The superior court may restrain any regional support network or service provider from operating without certification or a license or any other violation of this section. The court may also review, pursuant to procedures contained in chapter 34.05 RCW, any denial, suspension, limitation, restriction, or revocation of certification or license, and grant other relief required to enforce the provisions of this chapter.

(10) Upon petition by the secretary, and after hearing held upon reasonable notice to the facility, the superior court may issue a warrant to an officer or employee of the secretary authorizing him or her to enter at reasonable times, and examine the records, books, and accounts of any regional support network or service provider refusing to consent to inspection or examination by the authority.

(11) Notwithstanding the existence or pursuit of any other remedy, the secretary may file an action for an injunction or other process against any person or governmental unit to restrain or prevent the establishment, conduct, or operation of a regional support network or service provider without certification or a license under this chapter.

(12) The standards for certification of evaluation and treatment facilities shall include standards relating to maintenance

of good physical and mental health and other services to be afforded persons pursuant to this chapter and chapters 71.05 and 71.34 RCW, and shall otherwise assure the effectuation of the purposes of these chapters.

(13) The standards for certification of crisis stabilization units shall include standards that:

(a) Permit location of the units at a jail facility if the unit is physically separate from the general population of the jail;

(b) Require administration of the unit by mental health professionals who direct the stabilization and rehabilitation efforts; and

(c) Provide an environment affording security appropriate with the alleged criminal behavior and necessary to protect the public safety.

(14) The standards for certification of a clubhouse shall at a minimum include:

(a) The facilities may be peer-operated and must be recovery-focused;

(b) Members and employees must work together;

(c) Members must have the opportunity to participate in all the work of the clubhouse, including administration, research, intake and orientation, outreach, hiring, training and evaluation of staff, public relations, advocacy, and evaluation of clubhouse effectiveness;

(d) Members and staff and ultimately the clubhouse director must be responsible for the operation of the clubhouse, central to this responsibility is the engagement of members and staff in all aspects of clubhouse operations;

(e) Clubhouse programs must be comprised of structured activities including but not limited to social skills training, vocational rehabilitation, employment training and job placement, and community resource development;

(f) Clubhouse programs must provide in-house educational programs that significantly utilize the teaching and tutoring skills of members and assist members by helping them to take advantage of adult education opportunities in the community;

(g) Clubhouse programs must focus on strengths, talents, and abilities of its members;

(h) The work-ordered day may not include medication clinics, day treatment, or other therapy programs within the clubhouse.

(15) The department shall distribute appropriated state and federal funds in accordance with any priorities, terms, or conditions specified in the appropriations act.

(16) The secretary shall assume all duties assigned to the nonparticipating regional support networks under chapters 71.05, 71.34, and 71.24 RCW. Such responsibilities shall include those which would have been assigned to the nonparticipating counties in regions where there are not participating regional support networks.

The regional support networks, or the secretary's assumption of all responsibilities under chapters 71.05, 71.34, and 71.24 RCW, shall be included in all state and federal plans affecting the state mental health program including at least those required by this chapter, the medicaid program, and P.L. 99-660. Nothing in these plans shall be inconsistent with the intent and requirements of this chapter.

(17) The secretary shall:

(a) Disburse funds for the regional support networks within sixty days of approval of the biennial contract. The

department must either approve or reject the biennial contract within sixty days of receipt.

(b) Enter into biennial contracts with regional support networks. The contracts shall be consistent with available resources. No contract shall be approved that does not include progress toward meeting the goals of this chapter by taking responsibility for: (i) Short-term commitments; (ii) residential care; and (iii) emergency response systems.

(c) Notify regional support networks of their allocation of available resources at least sixty days prior to the start of a new biennial contract period.

(d) Deny all or part of the funding allocations to regional support networks based solely upon formal findings of non-compliance with the terms of the regional support network's contract with the department. Regional support networks disputing the decision of the secretary to withhold funding allocations are limited to the remedies provided in the department's contracts with the regional support networks.

(18) The department, in cooperation with the state congressional delegation, shall actively seek waivers of federal requirements and such modifications of federal regulations as are necessary to allow federal medicaid reimbursement for services provided by free-standing evaluation and treatment facilities certified under chapter 71.05 RCW. The department shall periodically report its efforts to the appropriate committees of the senate and the house of representatives. [2007 c 414 § 2; 2007 c 410 § 8; 2007 c 375 § 12; 2006 c 333 § 201. Prior: 2005 c 504 § 715; 2005 c 503 § 7; prior: 2001 c 334 § 7; 2001 c 323 § 10; 1999 c 10 § 4; 1998 c 245 § 137; prior: 1991 c 306 § 3; 1991 c 262 § 1; 1991 c 29 § 1; 1990 1st ex.s. c 8 § 1; 1989 c 205 § 3; 1987 c 105 § 1; 1986 c 274 § 3; 1982 c 204 § 4.]

Reviser's note: This section was amended by 2007 c 375 § 12, 2007 c 410 § 8, and by 2007 c 414 § 2, each without reference to the other. All amendments are incorporated in the publication of this section under RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

Short title—2007 c 410: See note following RCW 13.34.138.

Findings—Purpose—Construction—Severability—2007 c 375: See notes following RCW 10.31.110.

Finding—Purpose—Intent—Severability—Part headings not law—Effective dates—2006 c 333: See notes following RCW 71.24.016.

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

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

Correction of references—Savings—Severability—2005 c 503: See notes following RCW 71.24.015.

Effective date—2001 c 334: See note following RCW 71.24.805.

Purpose—Intent—1999 c 10: See note following RCW 71.24.025.

Conflict with federal requirements—1991 c 306: See note following RCW 71.24.015.

Effective date—1987 c 105: "This act is necessary for the immediate preservation of the public peace, health, and safety, the support of the state government and its existing public institutions, and shall take effect July 1, 1987." [1987 c 105 § 2.]

Effective date—1986 c 274 §§ 1, 2, 3, 5, and 9: See note following RCW 71.24.015.

71.24.055 Regional support network services—Children's access to care standards and benefit package—Recommendations to legislature. As part of the system transformation initiative, the department of social and health

services shall undertake the following activities related specifically to children's mental health services:

(1) The development of recommended revisions to the access to care standards for children. The recommended revisions shall reflect the policies and principles set out in RCW 71.36.005, 71.36.010, and 71.36.025, and recognize that early identification, intervention and prevention services, and brief intervention services may be provided outside of the regional support network system. Revised access to care standards shall assess a child's need for mental health services based upon the child's diagnosis and its negative impact upon his or her persistent impaired functioning in family, school, or the community, and should not solely condition the receipt of services upon a determination that a child is engaged in high risk behavior or is in imminent need of hospitalization or out-of-home placement. Assessment and diagnosis for children under five years of age shall be determined using a nationally accepted assessment tool designed specifically for children of that age. The recommendations shall also address whether amendments to RCW *71.24.025 (26) and (27) and 71.24.035(5) are necessary to implement revised access to care standards;

(2) Development of a revised children's mental health benefit package. The department shall ensure that services included in the children's mental health benefit package reflect the policies and principles included in RCW 71.36.005 and 71.36.025, to the extent allowable under medicaid, Title XIX of the federal social security act. Strong consideration shall be given to developmentally appropriate evidence-based and research-based practices, family-based interventions, the use of natural and peer supports, and community support services. This effort shall include a review of other states' efforts to fund family-centered children's mental health services through their medicaid programs;

(3) Consistent with the timeline developed for the system transformation initiative, recommendations for revisions to the children's access to care standards and the children's mental health services benefits package shall be presented to the legislature by January 1, 2009. [2007 c 359 § 4.]

***Reviser's note:** RCW 71.24.025 was amended by 2007 c 414 § 1, changing subsections (26) and (27) to subsections (27) and (28).

Captions not law—2007 c 359: See note following RCW 71.36.005.

71.24.061 Children's mental health providers—Children's mental health evidence-based practice institute—Pilot program. (1) The department shall provide flexibility in provider contracting to regional support networks for children's mental health services. Beginning with 2007-2009 biennium contracts, regional support network contracts shall authorize regional support networks to allow and encourage licensed community mental health centers to subcontract with individual licensed mental health professionals when necessary to meet the need for an adequate, culturally competent, and qualified children's mental health provider network.

(2) To the extent that funds are specifically appropriated for this purpose or that nonstate funds are available, a children's mental health evidence-based practice institute shall be established at the University of Washington division of public behavioral health and justice policy. The institute shall closely collaborate with entities currently engaged in evaluating and promoting the use of evidence-based,

research-based, promising, or consensus-based practices in children's mental health treatment, including but not limited to the University of Washington department of psychiatry and behavioral sciences, children's hospital and regional medical center, the University of Washington school of nursing, the University of Washington school of social work, and the Washington state institute for public policy. To ensure that funds appropriated are used to the greatest extent possible for their intended purpose, the University of Washington's indirect costs of administration shall not exceed ten percent of appropriated funding. The institute shall:

(a) Improve the implementation of evidence-based and research-based practices by providing sustained and effective training and consultation to licensed children's mental health providers and child-serving agencies who are implementing evidence-based or researched-based practices for treatment of children's emotional or behavioral disorders, or who are interested in adapting these practices to better serve ethnically or culturally diverse children. Efforts under this subsection should include a focus on appropriate oversight of implementation of evidence-based practices to ensure fidelity to these practices and thereby achieve positive outcomes;

(b) Continue the successful implementation of the "partnerships for success" model by consulting with communities so they may select, implement, and continually evaluate the success of evidence-based practices that are relevant to the needs of children, youth, and families in their community;

(c) Partner with youth, family members, family advocacy, and culturally competent provider organizations to develop a series of information sessions, literature, and on-line resources for families to become informed and engaged in evidence-based and research-based practices;

(d) Participate in the identification of outcome-based performance measures under RCW 71.36.025(2) and partner in a statewide effort to implement statewide outcomes monitoring and quality improvement processes; and

(e) Serve as a statewide resource to the department and other entities on child and adolescent evidence-based, research-based, promising, or consensus-based practices for children's mental health treatment, maintaining a working knowledge through ongoing review of academic and professional literature, and knowledge of other evidence-based practice implementation efforts in Washington and other states.

(3) To the extent that funds are specifically appropriated for this purpose, the department in collaboration with the evidence-based practice institute shall implement a pilot program to support primary care providers in the assessment and provision of appropriate diagnosis and treatment of children with mental and behavioral health disorders and track outcomes of this program. The program shall be designed to promote more accurate diagnoses and treatment through timely case consultation between primary care providers and child psychiatric specialists, and focused educational learning collaboratives with primary care providers. [2007 c 359 § 7.]

Captions not law—2007 c 359: See note following RCW 71.36.005.

71.24.065 Wraparound model of integrated children's mental health services delivery—Contracts—Evaluation—Report. To the extent funds are specifically appropriated for this purpose, the department of social and health services shall contract for implementation of a wraparound model of integrated children's mental health services delivery in up to four regional support network regions in Washington state in which wraparound programs are not currently operating, and in up to two regional support network regions in which wraparound programs are currently operating. Contracts in regions with existing wraparound programs shall be for the purpose of expanding the number of children served.

(1) Funding provided may be expended for: Costs associated with a request for proposal and contracting process; administrative costs associated with successful bidders' operation of the wraparound model; the evaluation under subsection (5) of this section; and funding for services needed by children enrolled in wraparound model sites that are not otherwise covered under existing state programs. The services provided through the wraparound model sites shall include, but not be limited to, services covered under the medicaid program. The department shall maximize the use of medicaid and other existing state-funded programs as a funding source. However, state funds provided may be used to develop a broader service package to meet needs identified in a child's care plan. Amounts provided shall supplement, and not supplant, state, local, or other funding for services that a child being served through a wraparound site would otherwise be eligible to receive.

(2) The wraparound model sites shall serve children with serious emotional or behavioral disturbances who are at high risk of residential or correctional placement or psychiatric hospitalization, and who have been referred for services from the department, a county juvenile court, a tribal court, a school, or a licensed mental health provider or agency.

(3) Through a request for proposal process, the department shall contract, with regional support networks, alone or in partnership with either educational service districts or entities licensed to provide mental health services to children with serious emotional or behavioral disturbances, to operate the wraparound model sites. The contractor shall provide care coordination and facilitate the delivery of services and other supports to families using a strength-based, highly individualized wraparound process. The request for proposal shall require that:

(a) The regional support network agree to use its medicaid revenues to fund services included in the existing regional support network's benefit package that a medicaid-eligible child participating in the wraparound model site is determined to need;

(b) The contractor provide evidence of commitments from at least the following entities to participate in wraparound care plan development and service provision when appropriate: Community mental health agencies, schools, the department of social and health services children's administration, juvenile courts, the department of social and health services juvenile rehabilitation administration, and managed health care systems contracting with the department under RCW 74.09.522; and

(c) The contractor will operate the wraparound model site in a manner that maintains fidelity to the wraparound process as defined in RCW 71.36.010.

(4) Contracts for operation of the wraparound model sites shall be executed on or before April 1, 2008, with enrollment and service delivery beginning on or before July 1, 2008.

(5) The evidence-based practice institute established in RCW 71.24.061 shall evaluate the wraparound model sites, measuring outcomes for children served. Outcomes measured shall include, but are not limited to: Decreased out-of-home placement, including residential, group, and foster care, and increased stability of such placements, school attendance, school performance, recidivism, emergency room utilization, involvement with the juvenile justice system, decreased use of psychotropic medication, and decreased hospitalization.

(6) The evidence-based practice institute shall provide a report and recommendations to the appropriate committees of the legislature by December 1, 2010. [2007 c 359 § 10.]

Captions not law—2007 c 359: See note following RCW 71.36.005.

Chapter 71.34 RCW

MENTAL HEALTH SERVICES FOR MINORS

Sections

71.34.600 Parent may request determination whether minor has mental disorder requiring inpatient treatment—Minor consent not required—Duties and obligations of professional person and facility.

71.34.600 Parent may request determination whether minor has mental disorder requiring inpatient treatment—Minor consent not required—Duties and obligations of professional person and facility. (1) A parent may bring, or authorize the bringing of, his or her minor child to an evaluation and treatment facility or an inpatient facility licensed under chapter 70.41, 71.12, or 72.23 RCW and request that the professional person examine the minor to determine whether the minor has a mental disorder and is in need of inpatient treatment.

(2) The consent of the minor is not required for admission, evaluation, and treatment if the parent brings the minor to the facility.

(3) An appropriately trained professional person may evaluate whether the minor has a mental disorder. The evaluation shall be completed within twenty-four hours of the time the minor was brought to the facility, unless the professional person determines that the condition of the minor necessitates additional time for evaluation. In no event shall a minor be held longer than seventy-two hours for evaluation. If, in the judgment of the professional person, it is determined it is a medical necessity for the minor to receive inpatient treatment, the minor may be held for treatment. The facility shall limit treatment to that which the professional person determines is medically necessary to stabilize the minor's condition until the evaluation has been completed. Within twenty-four hours of completion of the evaluation, the professional person shall notify the department if the child is held for treatment and of the date of admission.

(4) No provider is obligated to provide treatment to a minor under the provisions of this section except that no provider may refuse to treat a minor under the provisions of this section solely on the basis that the minor has not consented to the treatment. No provider may admit a minor to treatment under this section unless it is medically necessary.

(5) No minor receiving inpatient treatment under this section may be discharged from the facility based solely on his or her request.

(6) Prior to the review conducted under RCW 71.34.610, the professional person shall notify the minor of his or her right to petition superior court for release from the facility.

(7) For the purposes of this section "professional person" means "professional person" as defined in RCW 71.05.020. [2007 c 375 § 11; 2005 c 371 § 4; 1998 c 296 § 17. Formerly RCW 71.34.052.]

Findings—Purpose—Construction—Severability—2007 c 375: See notes following RCW 10.31.110.

Finding—Intent—2005 c 371: "The legislature finds that, despite explicit statements in statute that the consent of a minor child is not required for a parent-initiated admission to inpatient or outpatient mental health treatment, treatment providers consistently refuse to accept a minor aged thirteen or over if the minor does not also consent to treatment. The legislature intends that the parent-initiated treatment provisions, with their accompanying due process provisions for the minor, be made fully available to parents." [2005 c 371 § 1.]

Severability—2005 c 371: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [2005 c 371 § 7.]

Findings—Intent—Part headings not law—Short title—1998 c 296: See notes following RCW 74.13.025.

Chapter 71.36 RCW

COORDINATION OF CHILDREN'S MENTAL HEALTH SERVICES

Sections

71.36.005 Intent.
71.36.010 Definitions.
71.36.020 Repealed.
71.36.025 Elements of a children's mental health system.
71.36.030 Repealed.
71.36.060 Medicaid eligible children in temporary juvenile detention.

71.36.005 Intent. The legislature intends to substantially improve the delivery of children's mental health services in Washington state through the development and implementation of a children's mental health system that:

(1) Values early identification, intervention, and prevention;

(2) Coordinates existing categorical children's mental health programs and funding, through efforts that include elimination of duplicative care plans and case management;

(3) Treats each child in the context of his or her family, and provides services and supports needed to maintain a child with his or her family and community;

(4) Integrates families into treatment through choice of treatment, participation in treatment, and provision of peer support;

(5) Focuses on resiliency and recovery;

(6) Relies to a greater extent on evidence-based practices;

(7) Is sensitive to the unique cultural circumstances of children of color and children in families whose primary language is not English;

(8) Integrates educational support services that address students' diverse learning styles; and

(9) To the greatest extent possible, blends categorical funding to offer more service and support options to each child. [2007 c 359 § 1; 1991 c 326 § 11.]

Captions not law—2007 c 359: "Captions used in this act are not part of the law." [2007 c 359 § 14.]

71.36.010 Definitions. Unless the context clearly requires otherwise, the definitions in this section apply throughout this chapter.

(1) "Agency" means a state, tribal, or local governmental entity or a private not-for-profit organization.

(2) "Child" means a person under eighteen years of age, except as expressly provided otherwise in state or federal law.

(3) "Consensus-based" means a program or practice that has general support among treatment providers and experts, based on experience or professional literature, and may have anecdotal or case study support, or that is agreed but not possible to perform studies with random assignment and controlled groups.

(4) "County authority" means the board of county commissioners or county executive.

(5) "Department" means the department of social and health services.

(6) "Early periodic screening, diagnosis, and treatment" means the component of the federal medicaid program established pursuant to 42 U.S.C. Sec. 1396d(r), as amended.

(7) "Evidence-based" means a program or practice that has had multiple site random controlled trials across heterogeneous populations demonstrating that the program or practice is effective for the population.

(8) "Family" means a child's biological parents, adoptive parents, foster parents, guardian, legal custodian authorized pursuant to Title 26 RCW, a relative with whom a child has been placed by the department of social and health services, or a tribe.

(9) "Promising practice" or "emerging best practice" means a practice that presents, based upon preliminary information, potential for becoming a research-based or consensus-based practice.

(10) "Regional support network" means a county authority or group of county authorities or other nonprofit entity that has entered into contracts with the secretary pursuant to chapter 71.24 RCW.

(11) "Research-based" means a program or practice that has some research demonstrating effectiveness, but that does not yet meet the standard of evidence-based practices.

(12) "Secretary" means the secretary of social and health services.

(13) "Wraparound process" means a family driven planning process designed to address the needs of children and youth by the formation of a team that empowers families to make key decisions regarding the care of the child or youth in partnership with professionals and the family's natural community supports. The team produces a community-based and culturally competent intervention plan which identifies the

strengths and needs of the child or youth and family and defines goals that the team collaborates on achieving with respect for the unique cultural values of the family. The "wraparound process" shall emphasize principles of persistence and outcome-based measurements of success. [2007 c 359 § 2; 1991 c 326 § 12.]

Captions not law—2007 c 359: See note following RCW 71.36.005.

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

71.36.025 Elements of a children's mental health system. (1) It is the goal of the legislature that, by 2012, the children's mental health system in Washington state include the following elements:

(a) A continuum of services from early identification, intervention, and prevention through crisis intervention and inpatient treatment, including peer support and parent mentoring services;

(b) Equity in access to services for similarly situated children, including children with co-occurring disorders;

(c) Developmentally appropriate, high quality, and culturally competent services available statewide;

(d) Treatment of each child in the context of his or her family and other persons that are a source of support and stability in his or her life;

(e) A sufficient supply of qualified and culturally competent children's mental health providers;

(f) Use of developmentally appropriate evidence-based and research-based practices;

(g) Integrated and flexible services to meet the needs of children who, due to mental illness or emotional or behavioral disturbance, are at risk of out-of-home placement or involved with multiple child-serving systems.

(2) The effectiveness of the children's mental health system shall be determined through the use of outcome-based performance measures. The department and the evidence-based practice institute established in RCW 71.24.061, in consultation with parents, caregivers, youth, regional support networks, mental health services providers, health plans, primary care providers, tribes, and others, shall develop outcome-based performance measures such as:

(a) Decreased emergency room utilization;

(b) Decreased psychiatric hospitalization;

(c) Lessening of symptoms, as measured by commonly used assessment tools;

(d) Decreased out-of-home placement, including residential, group, and foster care, and increased stability of such placements, when necessary;

(e) Decreased runaways from home or residential placements;

(f) Decreased rates of chemical dependency;

(g) Decreased involvement with the juvenile justice system;

(h) Improved school attendance and performance;

(i) Reductions in school or child care suspensions or expulsions;

(j) Reductions in use of prescribed medication where cognitive behavioral therapies are indicated;

(k) Improved rates of high school graduation and employment; and

(l) Decreased use of mental health services upon reaching adulthood for mental disorders other than those that require ongoing treatment to maintain stability.

Performance measure reporting for children's mental health services should be integrated into existing performance measurement and reporting systems developed and implemented under chapter 71.24 RCW. [2007 c 359 § 3.]

Captions not law—2007 c 359: See note following RCW 71.36.005.

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

71.36.060 Medicaid eligible children in temporary juvenile detention. The department shall explore the feasibility of obtaining a medicaid state plan amendment to allow the state to receive medicaid matching funds for health services provided to medicaid enrolled youth who are temporarily placed in a juvenile detention facility. Temporary placement shall be defined as until adjudication or up to sixty continuous days, whichever occurs first. [2007 c 359 § 6.]

Captions not law—2007 c 359: See note following RCW 71.36.005.

Title 71A

DEVELOPMENTAL DISABILITIES

Chapters

71A.12 State services.

Chapter 71A.12 RCW

STATE SERVICES

Sections

71A.12.161 Individual and family services program—Rules.

71A.12.161 Individual and family services program—Rules. (1) The individual and family services program for individuals eligible to receive services under this title is established. This program replaces family support opportunities, traditional family support, and the flexible family support pilot program. The department shall transfer funding associated with these existing family support programs to the individual and family services program and shall operate the program within available funding. The services provided under the individual and family services program shall be funded by state funding without benefit of federal match.

(2) The department shall adopt rules to implement this section. The rules shall provide:

(a) That eligibility to receive services in the individual and family services program be determined solely by an assessment of individual need;

(b) For service priority levels to be developed that specify a maximum amount of dollars for each person per level per year;

(c) That the dollar caps for each service priority level be adjusted by the vendor rate increases authorized by the legislature; and

(d) That the following services be available under the program:

(i) Respite care;

(ii) Therapies;

(iii) Architectural and vehicular modifications;

(iv) Equipment and supplies;

(v) Specialized nutrition and clothing;

(vi) Excess medical costs not covered by another source;

(vii) Copays for medical and therapeutic services;

(viii) Transportation;

(ix) Training;

(x) Counseling;

(xi) Behavior management;

(xii) Parent/sibling education;

(xiii) Recreational opportunities; and

(xiv) Community services grants.

(3) In addition to services provided for the service priority levels under subsections (1) and (2) of this section, the department shall provide for:

(a) One-time exceptional needs and emergency needs for individuals and families not receiving individual and family services annual grants to assist individuals and families who experience a short-term crisis; and

(b) Respite services based on the department's assessment for a parent who provides personal care in the home to his or her adult son or daughter with developmental disabilities.

(4) If a person has more complex needs, a family is experiencing a more prolonged crisis, or it is determined a person needs additional services, the department shall assess the individual to determine if placement in a waiver program would be appropriate. [2007 c 283 § 2.]

Findings—Intent—2007 c 283: "(1) The legislature finds that:

(a) A developmental disability is a natural part of human life, and the presence of a developmental disability in the life of a person does not diminish the person's rights or opportunity to participate fully in the life of the local community;

(b) Investing in family members who have children and adults living in the family home preserves a valuable natural support system for the individual with a developmental disability and is also cost-effective for the state of Washington;

(c) Providing support services to families can help maintain the well-being of the family and stabilize the family unit.

(2) It is the intent of the legislature:

(a) To partner with families as care providers for children with developmental disabilities and adults who choose to live in the family home;

(b) That individual and family services be centered on the needs of the person with a developmental disability and the family;

(c) That, to the maximum extent possible, individuals and families must be given choice of services and exercise control over the resources available to them." [2007 c 283 § 1.]

Short title—2007 c 283: "This act may be known and cited as the Lance Morehouse, Jr. memorial individual and family services act." [2007 c 283 § 3.]

Construction—2007 c 283: "Nothing in this act shall be construed to create an entitlement to services or to create judicial authority to order the provision of services to any person or family if the services are unavailable or unsuitable, the child or family is not eligible for such services, or sufficient funding has not been appropriated for this program." [2007 c 283 § 4.]

Title 72

STATE INSTITUTIONS

Chapters

- 72.09** Department of corrections.
72.36 Soldiers' and veterans' homes and veterans' cemetery.
72.78 Community transition coordination networks.

Chapter 72.09 RCW

DEPARTMENT OF CORRECTIONS

Sections

- 72.09.015 Definitions.
 72.09.111 Inmate wages—Deductions—Availability of savings—
 Employment goals—Recovery of cost of incarceration.
 72.09.270 Individual reentry plan.
 72.09.280 Community justice centers.
 72.09.290 Correctional facility siting list.
 72.09.300 Local law and justice council—Rules.
 72.09.460 Inmate participation in education and work programs—Legis-
 lative intent—Priorities—Rules—Payment of costs.
 72.09.465 Postsecondary education degree programs.
 72.09.480 Inmate funds subject to deductions—Definitions—Excep-
 tions—Child support collection actions.
 72.09.495 Incarcerated parents—Policies to encourage family contact
 and engagement.

72.09.015 Definitions. The definitions in this section apply throughout this chapter.

(1) "Adult basic education" means education or instruction designed to achieve general competence of skills in reading, writing, and oral communication, including English as a second language and preparation and testing services for obtaining a high school diploma or a general equivalency diploma.

(2) "Base level of correctional services" means the minimum level of field services the department of corrections is required by statute to provide for the supervision and monitoring of offenders.

(3) "Contraband" means any object or communication the secretary determines shall not be allowed to be: (a) Brought into; (b) possessed while on the grounds of; or (c) sent from any institution under the control of the secretary.

(4) "County" means a county or combination of counties.

(5) "Department" means the department of corrections.

(6) "Earned early release" means earned release as authorized by RCW 9.94A.728.

(7) "Evidence-based" means a program or practice that has had multiple-site random controlled trials across heterogeneous populations demonstrating that the program or practice is effective in reducing recidivism for the population.

(8) "Extended family visit" means an authorized visit between an inmate and a member of his or her immediate family that occurs in a private visiting unit located at the correctional facility where the inmate is confined.

(9) "Good conduct" means compliance with department rules and policies.

(10) "Good performance" means successful completion of a program required by the department, including an education, work, or other program.

(11) "Immediate family" means the inmate's children, stepchildren, grandchildren, great grandchildren, parents,

stepparents, grandparents, great grandparents, siblings, and a person legally married to an inmate. "Immediate family" does not include an inmate adopted by another inmate or the immediate family of the adopted or adopting inmate.

(12) "Indigent inmate," "indigent," and "indigency" mean an inmate who has less than a ten-dollar balance of disposable income in his or her institutional account on the day a request is made to utilize funds and during the thirty days previous to the request.

(13) "Individual reentry plan" means the plan to prepare an offender for release into the community. It should be developed collaboratively between the department and the offender and based on an assessment of the offender using a standardized and comprehensive tool to identify the offenders' [offender's] risks and needs. The individual reentry plan describes actions that should occur to prepare individual offenders for release from prison or jail, specifies the supervision and services they will experience in the community, and describes an offender's eventual discharge to aftercare upon successful completion of supervision. An individual reentry plan is updated throughout the period of an offender's incarceration and supervision to be relevant to the offender's current needs and risks.

(14) "Inmate" means a person committed to the custody of the department, including but not limited to persons residing in a correctional institution or facility and persons released on furlough, work release, or community custody, and persons received from another state, state agency, county, or federal jurisdiction.

(15) "Privilege" means any goods or services, education or work programs, or earned early release days, the receipt of which are directly linked to an inmate's (a) good conduct; and (b) good performance. Privileges do not include any goods or services the department is required to provide under the state or federal Constitution or under state or federal law.

(16) "Promising practice" means a practice that presents, based on preliminary information, potential for becoming a research-based or consensus-based practice.

(17) "Research-based" means a program or practice that has some research demonstrating effectiveness, but that does not yet meet the standard of evidence-based practices.

(18) "Secretary" means the secretary of corrections or his or her designee.

(19) "Significant expansion" includes any expansion into a new product line or service to the class I business that results from an increase in benefits provided by the department, including a decrease in labor costs, rent, or utility rates (for water, sewer, electricity, and disposal), an increase in work program space, tax advantages, or other overhead costs.

(20) "Superintendent" means the superintendent of a correctional facility under the jurisdiction of the Washington state department of corrections, or his or her designee.

(21) "Unfair competition" means any net competitive advantage that a business may acquire as a result of a correctional industries contract, including labor costs, rent, tax advantages, utility rates (water, sewer, electricity, and disposal), and other overhead costs. To determine net competitive advantage, the correctional industries board shall review and quantify any expenses unique to operating a for-profit business inside a prison.

(22) "Vocational training" or "vocational education" means "vocational education" as defined in RCW 72.62.020.

(23) "Washington business" means an in-state manufacturer or service provider subject to chapter 82.04 RCW existing on June 10, 2004.

(24) "Work programs" means all classes of correctional industries jobs authorized under RCW 72.09.100. [2007 c 483 § 202; 2004 c 167 § 6; 1995 1st sp.s. c 19 § 3; 1987 c 312 § 2.]

Intent—2007 c 483: See note following RCW 72.09.270.

Findings—Part headings not law—Severability—2007 c 483: See RCW 72.78.005, 72.78.900, and 72.78.901.

Findings—Purpose—Short title—Severability—Effective date—1995 1st sp.s. c 19: See notes following RCW 72.09.450.

72.09.111 Inmate wages—Deductions—Availability of savings—Employment goals—Recovery of cost of incarceration. (1) The secretary shall deduct taxes and legal financial obligations from the gross wages, gratuities, or workers' compensation benefits payable directly to the inmate under chapter 51.32 RCW, of each inmate working in correctional industries work programs, or otherwise receiving such wages, gratuities, or benefits. The secretary shall also deduct child support payments from the gratuities of each inmate working in class II through class IV correctional industries work programs. The secretary shall develop a formula for the distribution of offender wages, gratuities, and benefits. The formula shall not reduce the inmate account below the indigency level, as defined in RCW 72.09.015.

(a) The formula shall include the following minimum deductions from class I gross wages and from all others earning at least minimum wage:

(i) Five percent to the public safety and education account for the purpose of crime victims' compensation;

(ii) Ten percent to a department personal inmate savings account;

(iii) Twenty percent to the department to contribute to the cost of incarceration; and

(iv) Twenty percent for payment of legal financial obligations for all inmates who have legal financial obligations owing in any Washington state superior court.

(b) The formula shall include the following minimum deductions from class II gross gratuities:

(i) Five percent to the public safety and education account for the purpose of crime victims' compensation;

(ii) Ten percent to a department personal inmate savings account;

(iii) Fifteen percent to the department to contribute to the cost of incarceration;

(iv) Twenty percent for payment of legal financial obligations for all inmates who have legal financial obligations owing in any Washington state superior court; and

(v) Fifteen percent for any child support owed under a support order.

(c) The formula shall include the following minimum deductions from any workers' compensation benefits paid pursuant to RCW 51.32.080:

(i) Five percent to the public safety and education account for the purpose of crime victims' compensation;

(ii) Ten percent to a department personal inmate savings account;

(ii) Twenty percent to the department to contribute to the cost of incarceration; and

(iv) An amount equal to any legal financial obligations owed by the inmate established by an order of any Washington state superior court up to the total amount of the award.

(d) The formula shall include the following minimum deductions from class III gratuities:

(i) Five percent for the purpose of crime victims' compensation; and

(ii) Fifteen percent for any child support owed under a support order.

(e) The formula shall include the following minimum deduction from class IV gross gratuities:

(i) Five percent to the department to contribute to the cost of incarceration; and

(ii) Fifteen percent for any child support owed under a support order.

(2) Any person sentenced to life imprisonment without possibility of release or parole under chapter 10.95 RCW or sentenced to death shall be exempt from the requirement under subsection (1)(a)(ii), (b)(ii), or (c)(ii).

(3)(a) The department personal inmate savings account, together with any accrued interest, shall only be available to an inmate at the following times:

(i) The time of his or her release from confinement;

(ii) Prior to his or her release from confinement in order to secure approved housing; or

(iii) When the secretary determines that an emergency exists for the inmate.

(b) If funds are made available pursuant to (a)(ii) or (iii) of this subsection, the funds shall be made available to the inmate in an amount determined by the secretary.

(c) The management of classes I, II, and IV correctional industries may establish an incentive payment for offender workers based on productivity criteria. This incentive shall be paid separately from the hourly wage/gratuity rate and shall not be subject to the specified deduction for cost of incarceration.

(4)(a) Subject to availability of funds for the correctional industries program, the expansion of inmate employment in class I and class II correctional industries shall be implemented according to the following schedule:

(i) Not later than June 30, 2005, the secretary shall achieve a net increase of at least two hundred in the number of inmates employed in class I or class II correctional industries work programs above the number so employed on June 30, 2003;

(ii) Not later than June 30, 2006, the secretary shall achieve a net increase of at least four hundred in the number of inmates employed in class I or class II correctional industries work programs above the number so employed on June 30, 2003;

(iii) Not later than June 30, 2007, the secretary shall achieve a net increase of at least six hundred in the number of inmates employed in class I or class II correctional industries work programs above the number so employed on June 30, 2003;

(iv) Not later than June 30, 2008, the secretary shall achieve a net increase of at least nine hundred in the number of inmates employed in class I or class II correctional industries

tries work programs above the number so employed on June 30, 2003;

(v) Not later than June 30, 2009, the secretary shall achieve a net increase of at least one thousand two hundred in the number of inmates employed in class I or class II correctional industries work programs above the number so employed on June 30, 2003;

(vi) Not later than June 30, 2010, the secretary shall achieve a net increase of at least one thousand five hundred in the number of inmates employed in class I or class II correctional industries work programs above the number so employed on June 30, 2003.

(b) Failure to comply with the schedule in this subsection does not create a private right of action.

(5) In the event that the offender worker's wages, gratuity, or workers' compensation benefit is subject to garnishment for support enforcement, the crime victims' compensation, savings, and cost of incarceration deductions shall be calculated on the net wages after taxes, legal financial obligations, and garnishment.

(6) The department shall explore other methods of recovering a portion of the cost of the inmate's incarceration and for encouraging participation in work programs, including development of incentive programs that offer inmates benefits and amenities paid for only from wages earned while working in a correctional industries work program.

(7) The department shall develop the necessary administrative structure to recover inmates' wages and keep records of the amount inmates pay for the costs of incarceration and amenities. All funds deducted from inmate wages under subsection (1) of this section for the purpose of contributions to the cost of incarceration shall be deposited in a dedicated fund with the department and shall be used only for the purpose of enhancing and maintaining correctional industries work programs.

(8) It shall be in the discretion of the secretary to apportion the inmates between class I and class II depending on available contracts and resources.

(9) Nothing in this section shall limit the authority of the department of social and health services division of child support from taking collection action against an inmate's moneys, assets, or property pursuant to chapter 26.23, 74.20, or 74.20A RCW. [2007 c 483 § 605; 2004 c 167 § 7. Prior: 2003 c 379 § 25; 2003 c 271 § 2; 2002 c 126 § 2; 1999 c 325 § 2; 1994 sp.s. c 7 § 534; 1993 sp.s. c 20 § 2.]

Finding—Intent—2007 c 483: See note following RCW 59.18.600.

Findings—Part headings not law—Severability—2007 c 483: See RCW 72.78.005, 72.78.900, and 72.78.901.

Severability—Effective dates—2003 c 379: See notes following RCW 9.94A.728.

Intent—Purpose—2003 c 379 §§ 13-27: See note following RCW 9.94A.760.

Effective date—1994 sp.s. c 7 § 534: "Section 534 of this act shall take effect June 30, 1994." [1994 sp.s. c 7 § 536.]

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

Effective date—1993 sp.s. c 20 § 2: "Section 2 of this act shall take effect June 30, 1994." [1993 sp.s. c 20 § 10.]

Severability—1993 sp.s. c 20: See note following RCW 43.19.534.

72.09.270 Individual reentry plan. (1) The department of corrections shall develop an individual reentry plan as defined in RCW 72.09.015 for every offender who is committed to the jurisdiction of the department except:

(a) Offenders who are sentenced to life without the possibility of release or sentenced to death under chapter 10.95 RCW; and

(b) Offenders who are subject to the provisions of 8 U.S.C. Sec. 1227.

(2) The individual reentry plan may be one document, or may be a series of individual plans that combine to meet the requirements of this section.

(3) In developing individual reentry plans, the department shall assess all offenders using standardized and comprehensive tools to identify the criminogenic risks, programmatic needs, and educational and vocational skill levels for each offender. The assessment tool should take into account demographic biases, such as culture, age, and gender, as well as the needs of the offender, including any learning disabilities, substance abuse or mental health issues, and social or behavior deficits.

(4)(a) The initial assessment shall be conducted as early as sentencing, but, whenever possible, no later than forty-five days of being sentenced to the jurisdiction of the department of corrections.

(b) The offender's individual reentry plan shall be developed as soon as possible after the initial assessment is conducted, but, whenever possible, no later than sixty days after completion of the assessment, and shall be periodically reviewed and updated as appropriate.

(5) The individual reentry plan shall, at a minimum, include:

(a) A plan to maintain contact with the inmate's children and family, if appropriate. The plan should determine whether parenting classes, or other services, are appropriate to facilitate successful reunification with the offender's children and family;

(b) An individualized portfolio for each offender that includes the offender's education achievements, certifications, employment, work experience, skills, and any training received prior to and during incarceration; and

(c) A plan for the offender during the period of incarceration through reentry into the community that addresses the needs of the offender including education, employment, substance abuse treatment, mental health treatment, family reunification, and other areas which are needed to facilitate a successful reintegration into the community.

(6)(a) Prior to discharge of any offender, the department shall:

(i) Evaluate the offender's needs and, to the extent possible, connect the offender with existing services and resources that meet those needs; and

(ii) Connect the offender with a community justice center and/or community transition coordination network in the area in which the offender will be residing once released from the correctional system if one exists.

(b) If the department recommends partial confinement in an offender's individual reentry plan, the department shall maximize the period of partial confinement for the offender as allowed pursuant to RCW 9.94A.728 to facilitate the offender's transition to the community.

(7) The department shall establish mechanisms for sharing information from individual reentry plans to those persons involved with the offender's treatment, programming, and reentry, when deemed appropriate. When feasible, this information shall be shared electronically.

(8)(a) In determining the county of discharge for an offender released to community custody or community placement, the department may not approve a residence location that is not in the offender's county of origin unless it is determined by the department that the offender's return to his or her county of origin would be inappropriate considering any court-ordered condition of the offender's sentence, victim safety concerns, negative influences on the offender in the community, or the location of family or other sponsoring persons or organizations that will support the offender.

(b) If the offender is not returned to his or her county of origin, the department shall provide the law and justice council of the county in which the offender is placed with a written explanation.

(c) For purposes of this section, the offender's county of origin means the county of the offender's first felony conviction in Washington.

(9) Nothing in this section creates a vested right in programming, education, or other services. [2007 c 483 § 203.]

Intent—2007 c 483: "Individual reentry plans are intended to be a tool for the department of corrections to identify the needs of an offender. Individual reentry plans are meant to assist the department in targeting programming and services to offenders with the greatest need and to the extent that those services are funded and available. The state cannot meet every need that may have contributed to every offender's criminal proclivities. Further, an individual reentry plan, and the programming resulting from that plan, are not a guarantee that an offender will not recidivate. Rather, the legislature intends that by identifying offender needs and offering programs that have been proven to reduce the likelihood of reoffense, the state will benefit by an overall reduction in recidivism." [2007 c 483 § 201.]

Findings—Part headings not law—Severability—2007 c 483: See RCW 72.78.005, 72.78.900, and 72.78.901.

72.09.280 Community justice centers. (1) The department shall continue to establish community justice centers throughout the state for the purpose of providing comprehensive services and monitoring for offenders who are reentering the community.

(2) For the purposes of this chapter, "community justice center" is defined as a nonresidential facility staffed primarily by the department in which recently released offenders may access services necessary to improve their successful reentry into the community. Such services may include but are not limited to, those listed in the individual reentry plan, mental health, chemical dependency, sex offender treatment, anger management, parenting education, financial literacy, housing assistance, and employment assistance.

(3) At a minimum, the community justice center shall include:

(a) A violator program to allow the department to utilize a range of available sanctions for offenders who violate conditions of their supervision;

(b) An employment opportunity program to assist an offender in finding employment; and

(c) Resources for connecting offenders with services such as treatment, transportation, training, family reunification, and community services.

(4) In addition to any other programs or services offered by a community justice center, the department shall designate a transition coordinator to facilitate connections between the former offender and the community. The department may designate transition coordination services to be provided by a community transition coordination network pursuant to RCW 72.78.030 if one has been established in the community where the community justice center is located and the department has entered into a memorandum of understanding with the county to share resources.

(5) The transition coordinator shall provide information to former offenders regarding services available to them in the community regardless of the length of time since the offender's release from the correctional facility. The transition coordinator shall, at a minimum, be responsible for the following:

(a) Gathering and maintaining information regarding services currently existing within the community that are available to offenders including, but not limited to:

(i) Programs offered through the department of social and health services, the department of health, the department of licensing, housing authorities, local community and technical colleges, other state or federal entities which provide public benefits, and nonprofit entities;

(ii) Services such as housing assistance, employment assistance, education, vocational training, parent education, financial literacy, treatment for substance abuse, mental health, anger management, and any other service or program that will assist the former offender to successfully transition into the community;

(b) Coordinating access to the existing services with the community providers and provide offenders with information regarding how to access the various type of services and resources that are available in the community.

(6)(a) A minimum of six community justice centers shall be operational by December 1, 2009. The six community justice centers include those in operation on July 22, 2007.

(b) By December 1, 2011, the department shall establish a minimum of three additional community justice centers within the state.

(7) In locating new centers, the department shall:

(a) Give priority to the counties with the largest population of offenders who were under the jurisdiction of the department of corrections and that do not already have a community justice center;

(b) Ensure that at least two centers are operational in eastern Washington; and

(c) Comply with RCW 72.09.290 and all applicable zoning laws and regulations.

(8) Before beginning the siting or opening of the new community justice center, the department shall:

(a) Notify the city, if applicable, and the county within which the community justice center is proposed. Such notice shall occur at least sixty days prior to selecting a specific location to provide the services listed in this section;

(b) Consult with the community providers listed in subsection (5) of this section to determine if they have the capacity to provide services to offenders through the community justice center; and

(c) Give due consideration to all comments received in response to the notice of the start of site selection and consultation with community providers.

(9) The department shall make efforts to enter into memoranda of understanding or agreements with the local community policing and supervision programs as defined in RCW 72.78.010 in which the community justice center is located to address:

(a) Efficiencies that may be gained by sharing space or resources in the provision of reentry services to offenders, including services provided through a community transition coordination network established pursuant to RCW 72.78.030 if a network has been established in the county;

(b) Mechanisms for communication of information about offenders, including the feasibility of shared access to databases;

(c) Partnerships to establish neighborhood corrections initiatives between the department of corrections and local police to supervise offenders.

(i) A neighborhood corrections initiative includes shared mechanisms to facilitate supervision of offenders which may include activities such as joint emphasis patrols to monitor high-risk offenders, service of bench and secretary warrants and detainers, joint field visits, connecting offenders with services, and, where appropriate, directing offenders into sanction alternatives in lieu of incarceration.

(ii) The agreement must address:

(A) The roles and responsibilities of police officers and corrections staff participating in the partnership; and

(B) The amount of corrections staff and police officer time that will be dedicated to partnership efforts. [2007 c 483 § 302.]

Findings—Part headings not law—Severability—2007 c 483: See RCW 72.78.005, 72.78.900, and 72.78.901.

72.09.290 Correctional facility siting list. (1) No later than July 1, 2007, and every biennium thereafter starting with the biennium beginning July 1, 2009, the department shall prepare a list of counties and rural multicounty geographic areas in which work release facilities, community justice centers and other community-based correctional facilities are anticipated to be sited during the next three fiscal years and transmit the list to the office of financial management and the counties on the list. The list may be updated as needed.

(2) In preparing the list, the department shall make substantial efforts to provide for the equitable distribution of work release, community justice centers, or other community-based correctional facilities among counties. The department shall give great weight to the following factors in determining equitable distribution:

(a) The locations of existing residential facilities owned or operated by, or operated under contract with, the department in each county;

(b) The number and proportion of adult offenders sentenced to the custody or supervision of the department by the courts of the county or rural multicounty geographic area; and

(c) The number of adult registered sex offenders classified as level II or III and adult sex offenders registered per thousand persons residing in the county.

(3) For purposes of this section, "equitable distribution" means siting or locating work release, community justice centers, or other community-based correctional facilities in a manner that reasonably reflects the proportion of offenders sentenced to the custody or supervision of the department by the courts of each county or rural multicounty geographic area designated by the department, and, to the extent practicable, the proportion of offenders residing in particular jurisdictions or communities within such counties or rural multicounty geographic areas. Equitable distribution is a policy goal, not a basis for any legal challenge to the siting, construction, occupancy, or operation of any facility anywhere in the state. [2007 c 483 § 303.]

Findings—Part headings not law—Severability—2007 c 483: See RCW 72.78.005, 72.78.900, and 72.78.901.

72.09.300 Local law and justice council—Rules. (1) Every county legislative authority shall by resolution or ordinance establish a local law and justice council. The county legislative authority shall determine the size and composition of the council, which shall include the county sheriff and a representative of the municipal police departments within the county, the county prosecutor and a representative of the municipal prosecutors within the county, a representative of the city legislative authorities within the county, a representative of the county's superior, juvenile, district, and municipal courts, the county jail administrator, the county clerk, the county risk manager, and the secretary of corrections and his or her designees. Officials designated may appoint representatives.

(2) A combination of counties may establish a local law and justice council by intergovernmental agreement. The agreement shall comply with the requirements of this section.

(3) The local law and justice council may address issues related to:

(a) Maximizing local resources including personnel and facilities, reducing duplication of services, and sharing resources between local and state government in order to accomplish local efficiencies without diminishing effectiveness;

(b) Jail management;

(c) Mechanisms for communication of information about offenders, including the feasibility of shared access to databases; and

(d) Partnerships between the department and local community policing and supervision programs to facilitate supervision of offenders under the respective jurisdictions of each and timely response to an offender's failure to comply with the terms of supervision.

(4) The county legislative authority may request technical assistance in coordinating services with other units or agencies of state or local government, which shall include the department, the office of financial management, and the Washington association of sheriffs and police chiefs.

(5) Upon receiving a request for assistance from a county, the department may provide the requested assistance.

(6) The secretary may adopt rules for the submittal, review, and approval of all requests for assistance made to the department. [2007 c 483 § 108; 1996 c 232 § 7; 1994 sp.s. c 7 § 542; 1993 sp.s. c 21 § 8; 1991 c 363 § 148; 1987 c 312 § 3.]

Findings—Part headings not law—Severability—2007 c 483: See RCW 72.78.005, 72.78.900, and 72.78.901.

Effective dates—1996 c 232: See note following RCW 9.94A.850.

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

Application—1994 sp.s. c 7 §§ 540-545: See note following RCW 13.50.010.

Effective dates—1993 sp.s. c 21: See note following RCW 82.14.310.

Purpose—Captions not law—1991 c 363: See notes following RCW 2.32.180.

Purpose—1987 c 312 § 3: "It is the purpose of RCW 72.09.300 to encourage local and state government to join in partnerships for the sharing of resources regarding the management of offenders in the correctional system. The formation of partnerships between local and state government is intended to reduce duplication while assuring better accountability and offender management through the most efficient use of resources at both the local and state level." [1987 c 312 § 1.]

72.09.460 Inmate participation in education and work programs—Legislative intent—Priorities—Rules—Payment of costs. (1) The legislature intends that all inmates be required to participate in department-approved education programs, work programs, or both, unless exempted as specifically provided in this section. Eligible inmates who refuse to participate in available education or work programs available at no charge to the inmates shall lose privileges according to the system established under RCW 72.09.130. Eligible inmates who are required to contribute financially to an education or work program and refuse to contribute shall be placed in another work program. Refusal to contribute shall not result in a loss of privileges.

(2) The legislature recognizes more inmates may agree to participate in education and work programs than are available. The department must make every effort to achieve maximum public benefit by placing inmates in available and appropriate education and work programs.

(3)(a) The department shall, to the extent possible and considering all available funds, prioritize its resources to meet the following goals for inmates in the order listed:

(i) Achievement of basic academic skills through obtaining a high school diploma or its equivalent;

(ii) Achievement of vocational skills necessary for purposes of work programs and for an inmate to qualify for work upon release;

(iii) Additional work and education programs necessary for compliance with an offender's individual reentry plan under RCW 72.09.270 with the exception of postsecondary education degree programs as provided in RCW 72.09.465; and

(iv) Other appropriate vocational, work, or education programs that are not necessary for compliance with an offender's individual reentry plan under RCW 72.09.270 with the exception of postsecondary education degree programs as provided in RCW 72.09.465.

(b) If programming is provided pursuant to (a)(i) through (iii) of this subsection, the department shall pay the cost of such programming, including but not limited to books, materials, supplies, and postage costs related to correspondence courses.

(c) If programming is provided pursuant to (a)(iv) of this subsection, inmates shall be required to pay all or a portion of the costs, including books, fees, and tuition, for participation

in any vocational, work, or education program as provided in department policies. Department policies shall include a formula for determining how much an offender shall be required to pay. The formula shall include steps which correlate to an offender average monthly income or average available balance in a personal inmate savings account and which are correlated to a prorated portion or percent of the per credit fee for tuition, books, or other ancillary costs. The formula shall be reviewed every two years. A third party may pay directly to the department all or a portion of costs and tuition for any programming provided pursuant to (a)(iv) of this subsection on behalf of an inmate. Such payments shall not be subject to any of the deductions as provided in this chapter.

(d) The department may accept any and all donations and grants of money, equipment, supplies, materials, and services from any third party, including but not limited to nonprofit entities, and may receive, utilize, and dispose of same to complete the purposes of this section.

(e) Any funds collected by the department under (c) and (d) of this subsection and subsections (8) and (9) of this section shall be used solely for the creation, maintenance, or expansion of inmate educational and vocational programs.

(4) The department shall provide access to a program of education to all offenders who are under the age of eighteen and who have not met high school graduation or general equivalency diploma requirements in accordance with chapter 28A.193 RCW. The program of education established by the department and education provider under RCW 28A.193.020 for offenders under the age of eighteen must provide each offender a choice of curriculum that will assist the inmate in achieving a high school diploma or general equivalency diploma. The program of education may include but not be limited to basic education, prevocational training, work ethic skills, conflict resolution counseling, substance abuse intervention, and anger management counseling. The curriculum may balance these and other rehabilitation, work, and training components.

(5)(a) In addition to the policies set forth in this section, the department shall consider the following factors in establishing criteria for assessing the inclusion of education and work programs in an inmate's individual reentry plan and in placing inmates in education and work programs:

(i) An inmate's release date and custody level. An inmate shall not be precluded from participating in an education or work program solely on the basis of his or her release date, except that inmates with a release date of more than one hundred twenty months in the future shall not comprise more than ten percent of inmates participating in a new class I correctional industry not in existence on June 10, 2004;

(ii) An inmate's education history and basic academic skills;

(iii) An inmate's work history and vocational or work skills;

(iv) An inmate's economic circumstances, including but not limited to an inmate's family support obligations; and

(v) Where applicable, an inmate's prior performance in department-approved education or work programs;

(b) The department shall establish, and periodically review, inmate behavior standards and program goals for all education and work programs. Inmates shall be notified of applicable behavior standards and program goals prior to

placement in an education or work program and shall be removed from the education or work program if they consistently fail to meet the standards or goals.

(6) Eligible inmates who refuse to participate in available education or work programs available at no charge to the inmates shall lose privileges according to the system established under RCW 72.09.130. Eligible inmates who are required to contribute financially to an education or work program and refuse to contribute shall be placed in another work program. Refusal to contribute shall not result in a loss of privileges.

(7) The department shall establish, by rule, objective medical standards to determine when an inmate is physically or mentally unable to participate in available education or work programs. When the department determines an inmate is permanently unable to participate in any available education or work program due to a health condition, the inmate is exempt from the requirement under subsection (1) of this section. When the department determines an inmate is temporarily unable to participate in an education or work program due to a medical condition, the inmate is exempt from the requirement of subsection (1) of this section for the period of time he or she is temporarily disabled. The department shall periodically review the medical condition of all inmates with temporary disabilities to ensure the earliest possible entry or reentry by inmates into available programming.

(8) The department shall establish policies requiring an offender to pay all or a portion of the costs and tuition for any vocational training or postsecondary education program if the offender previously abandoned coursework related to education or vocational training without excuse as defined in rule by the department. Department policies shall include a formula for determining how much an offender shall be required to pay. The formula shall include steps which correlate to an offender average monthly income or average available balance in a personal inmate savings account and which are correlated to a prorated portion or percent of the per credit fee for tuition, books, or other ancillary costs. The formula shall be reviewed every two years. A third party may pay directly to the department all or a portion of costs and tuition for any program on behalf of an inmate under this subsection. Such payments shall not be subject to any of the deductions as provided in this chapter.

(9) Notwithstanding any other provision in this section, an inmate sentenced to life without the possibility of release, sentenced to death under chapter 10.95 RCW, or subject to the provisions of 8 U.S.C. Sec. 1227:

(a) Shall not be required to participate in education programming except as may be necessary for the maintenance of discipline and security;

(b) May receive not more than one postsecondary academic degree in a program offered by the department or its contracted providers;

(c) May participate in prevocational or vocational training that may be necessary to participate in a work program;

(d) Shall be subject to the applicable provisions of this chapter relating to inmate financial responsibility for programming. [2007 c 483 § 402; 2004 c 167 § 5; 1998 c 244 § 10; 1997 c 338 § 43; 1995 1st sp.s. c 19 § 5.]

Findings—Intent—2007 c 483: "Research and practice show that long-term success in helping offenders prepare for economic self-sufficiency

requires strategies that address their education and employment needs. Recent research suggests that a solid academic foundation and employment- and career-focused programs can be cost-effective in reducing the likelihood of reoffense. To this end, the legislature intends that the state strive to provide every inmate with basic academic skills as well as educational and vocational training designed to meet the assessed needs of the offender.

Nonetheless, it is vital that offenders engaged in educational or vocational training contribute to their own success. An offender should financially contribute to his or her education, particularly postsecondary educational pursuits. The legislature intends to provide more flexibility for offenders in obtaining postsecondary education by allowing third parties to make contributions to the offender's education without mandatory deductions. In developing the loan program, the department is encouraged to adopt rules and standards similar to those that apply to students in noninstitutional settings for issues such as applying for a loan, maintaining accountability, and accruing interest on the loan obligation." [2007 c 483 § 401.]

Findings—Part headings not law—Severability—2007 c 483: See RCW 72.78.005, 72.78.900, and 72.78.901.

Effective date—1998 c 244 § 10: "Section 10 of this act takes effect September 1, 1998." [1998 c 244 § 18.]

Severability—1998 c 244: See RCW 28A.193.901.

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

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

Findings—Purpose—Short title—Severability—Effective date—1995 1st sp.s. c 19: See notes following RCW 72.09.450.

72.09.465 Postsecondary education degree programs. (1) The department shall, if funds are appropriated for the specific purpose, implement postsecondary education degree programs within state correctional institutions, including the state correctional institution with the largest population of female inmates. The department shall consider for inclusion in any postsecondary education degree program, any postsecondary education degree program from an accredited community college, college, or university that is part of an associate of arts, baccalaureate, masters of arts, or other graduate degree program.

(2) Except as provided in subsection (3) of this section, inmates shall be required to pay the costs for participation in any postsecondary education degree programs established under this subsection [section], including books, fees, tuition, or any other appropriate ancillary costs, by one or more of the following means:

(a) The inmate who is participating in the postsecondary education degree program shall, during confinement, provide the required payment or payments to the department; or

(b) A third party shall provide the required payment or payments directly to the department on behalf of an inmate, and such payments shall not be subject to any of the deductions as provided in this chapter.

(3) The department may accept any and all donations and grants of money, equipment, supplies, materials, and services from any third party, including but not limited to nonprofit entities, and may receive, utilize, and dispose of same to provide postsecondary education to inmates.

(4) Any funds collected by the department under this section and *RCW 72.09.450(4) shall be used solely for the creation, maintenance, or expansion of inmate postsecondary education degree programs. [2007 c 483 § 403.]

***Reviser's note:** The reference to RCW 72.09.450(4) appears to be a reference to an amendment to that section contained in an early version of ESSB 6157. RCW 72.09.450 was not amended in the final version of ESSB 6157, as amended by the house.

Findings—Intent—2007 c 483: See note following RCW 72.09.460.

Findings—Part headings not law—Severability—2007 c 483: See RCW 72.78.005, 72.78.900, and 72.78.901.

72.09.480 Inmate funds subject to deductions—Definitions—Exceptions—Child support collection actions.

(1) Unless the context clearly requires otherwise, the definitions in this section apply to this section.

(a) "Cost of incarceration" means the cost of providing an inmate with shelter, food, clothing, transportation, supervision, and other services and supplies as may be necessary for the maintenance and support of the inmate while in the custody of the department, based on the average per inmate costs established by the department and the office of financial management.

(b) "Minimum term of confinement" means the minimum amount of time an inmate will be confined in the custody of the department, considering the sentence imposed and adjusted for the total potential earned early release time available to the inmate.

(c) "Program" means any series of courses or classes necessary to achieve a proficiency standard, certificate, or postsecondary degree.

(2) When an inmate, except as provided in subsections (4) and (8) of this section, receives any funds in addition to his or her wages or gratuities, except settlements or awards resulting from legal action, the additional funds shall be subject to the following deductions and the priorities established in chapter 72.11 RCW:

(a) Five percent to the public safety and education account for the purpose of crime victims' compensation;

(b) Ten percent to a department personal inmate savings account;

(c) Twenty percent for payment of legal financial obligations for all inmates who have legal financial obligations owing in any Washington state superior court;

(d) Twenty percent for any child support owed under a support order; and

(e) Twenty percent to the department to contribute to the cost of incarceration.

(3) When an inmate, except as provided in subsection (8) of this section, receives any funds from a settlement or award resulting from a legal action, the additional funds shall be subject to the deductions in RCW 72.09.111(1)(a) and the priorities established in chapter 72.11 RCW.

(4) When an inmate who is subject to a child support order receives funds from an inheritance, the deduction required under subsection (2)(e) of this section shall only apply after the child support obligation has been paid in full.

(5) The amount deducted from an inmate's funds under subsection (2) of this section shall not exceed the department's total cost of incarceration for the inmate incurred during the inmate's minimum or actual term of confinement, whichever is longer.

(6)(a) The deductions required under subsection (2) of this section shall not apply to funds received by the department from an offender or from a third party on behalf of an offender for payment of education or vocational programs or postsecondary education degree programs as provided in RCW 72.09.460 and 72.09.465.

(b) The deductions required under subsection (2) of this section shall not apply to funds received by the department from a third party, including but not limited to a nonprofit entity on behalf of the department's education, vocation, or postsecondary education degree programs.

(7) The deductions required under subsection (2) of this section shall not apply to any money received by the department, on behalf of an inmate, from family or other outside sources for the payment of postage expenses. Money received under this subsection may only be used for the payment of postage expenses and may not be transferred to any other account or purpose. Money that remains unused in the inmate's postage fund at the time of release shall be subject to the deductions outlined in subsection (2) of this section.

(8) When an inmate sentenced to life imprisonment without possibility of release or sentenced to death under chapter 10.95 RCW receives funds, deductions are required under subsection (2) of this section, with the exception of a personal inmate savings account under subsection (2)(b) of this section.

(9) The secretary of the department of corrections, or his or her designee, may exempt an inmate from a personal inmate savings account under subsection (2)(b) of this section if the inmate's earliest release date is beyond the inmate's life expectancy.

(10) The interest earned on an inmate savings account created as a result of the *plan in section 4, chapter 325, Laws of 1999 shall be exempt from the mandatory deductions under this section and RCW 72.09.111.

(11) Nothing in this section shall limit the authority of the department of social and health services division of child support, the county clerk, or a restitution recipient from taking collection action against an inmate's moneys, assets, or property pursuant to chapter 9.94A, 26.23, 74.20, or 74.20A RCW including, but not limited to, the collection of moneys received by the inmate from settlements or awards resulting from legal action. [2007 c 483 § 404; 2007 c 365 § 1; 2007 c 91 § 1; 2003 c 271 § 3; 1999 c 325 § 1; 1998 c 261 § 2; 1997 c 165 § 1; 1995 1st sp.s. c 19 § 8.]

Reviser's note: *(1) 1999 c 325 § 4 requires the secretary of corrections to prepare and submit a plan to the governor and legislature by December 1, 1999.

(2) This section was amended by 2007 c 91 § 1, 2007 c 365 § 1, and by 2007 c 483 § 404, each without reference to the other. All amendments are incorporated in the publication of this section under RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

Findings—Intent—2007 c 483: See note following RCW 72.09.460.

Findings—Part headings not law—Severability—2007 c 483: See RCW 72.78.005, 72.78.900, and 72.78.901.

Findings—Purpose—Short title—Severability—Effective date—1995 1st sp.s. c 19: See notes following RCW 72.09.450.

72.09.495 Incarcerated parents—Policies to encourage family contact and engagement. (1) The secretary of corrections shall review current department policies and assess the following:

(a) The impact of existing policies on the ability of offenders to maintain familial contact and engagement between inmates and children; and

(b) The adequacy and availability of programs targeted at inmates with children.

(2) The secretary shall adopt policies that encourage familial contact and engagement between inmates and their children with the goal of reducing recidivism and intergenerational incarceration. Programs and policies should take into consideration the children's need to maintain contact with his or her parent and the inmate's ability to develop plans to financially support their children, assist in reunification when appropriate, and encourage the improvement of parenting skills where needed.

(3) The department shall conduct the following activities to assist in implementing the requirements of subsection (1) of this section:

(a) Gather information and data on the families of inmates, particularly the children of incarcerated parents;

(b) Evaluate data to determine the impact on recidivism and intergenerational incarceration; and

(c) Participate in the children of incarcerated parents advisory committee and report information obtained under this section to the advisory committee. [2007 c 384 § 2.]

Intent—Finding—2007 c 384: "The legislature recognizes the significant impact on the lives and well-being of children and families when a parent is incarcerated. It is the intent of the legislature to support children and families, and maintain familial connections when appropriate, during the period a parent is incarcerated. Further, the legislature finds that there must be a greater emphasis placed on identifying state policies and programs impacting children with incarcerated parents. Additionally, greater effort must be made to ensure that the policies and programs of the state are supportive of the children, and meet their needs during the time the parent is incarcerated.

According to the final report of the children of incarcerated parents oversight committee, helping offenders build durable family relationships may reduce the likelihood that their children will go to prison later in life. Additionally, the report indicates that offenders who reconnect with their families in sustaining ways are less likely to reoffend. In all efforts to help offenders build these relationships with their children, the safety of the children will be paramount." [2007 c 384 § 1.]

Chapter 72.36 RCW

SOLDIERS' AND VETERANS' HOMES AND VETERANS' CEMETERY

Sections

72.36.115 Eastern Washington state veterans' cemetery.

72.36.115 Eastern Washington state veterans' cemetery. (1) The department shall establish and maintain in this state an eastern Washington state veterans' cemetery.

(2) All honorably discharged veterans, as defined by RCW 41.04.007, and their spouses are eligible for interment in the eastern Washington state veterans' cemetery.

(3) The department shall collect all federal veterans' burial benefits and other available state or county resources.

(4) The department shall adopt rules defining the services available, eligibility, fees, and the general operations associated with the eastern Washington state veterans' cemetery. [2007 c 43 § 2.]

Finding—2007 c 43: "The legislature recognizes the unique sacrifices made by veterans and their family members. The legislature recognizes further that while all veterans are entitled to interment at the Tahoma national cemetery, veterans and families living in eastern Washington desire a veterans' cemetery location closer to their homes. The legislature requested and received the department of veterans affairs feasibility study and business plan outlining the need and feasibility and now intends to establish a state veterans' cemetery to honor veterans in their final resting place." [2007 c 43 § 1.]

Chapter 72.78 RCW

COMMUNITY TRANSITION COORDINATION NETWORKS

Sections

72.78.005	Findings—2007 c 483.
72.78.010	Definitions.
72.78.020	Inventory of services and resources by counties.
72.78.030	Pilot program established—Participation standards—Selection criteria—Advisory committee. (<i>Expires June 30, 2013.</i>)
72.78.040	Pilot program limitations—Individual reentry plan liability limited.
72.78.050	Funding—Requirements—Evaluation and report. (<i>Expires June 30, 2013.</i>)
72.78.060	Community transition coordination network account. (<i>Expires June 30, 2013.</i>)
72.78.070	Funding entitlement, obligation to maintain network not created.
72.78.900	Part headings not law—2007 c 483.
72.78.901	Severability—2007 c 483.

72.78.005 Findings—2007 c 483. The people of the state of Washington expect to live in safe communities in which the threat of crime is minimized. Attempting to keep communities safe by building more prisons and paying the costs of incarceration has proven to be expensive to taxpayers. Incarceration is a necessary consequence for some offenders, however, the vast majority of those offenders will eventually return to their communities. Many of these former offenders will not have had the opportunity to address the deficiencies that may have contributed to their criminal behavior. Persons who do not have basic literacy and job skills, or who are ill-equipped to make the behavioral changes necessary to successfully function in the community, have a high risk of reoffense. Recidivism represents serious costs to victims, both financial and nonmonetary in nature, and also burdens state and local governments with those offenders who recycle through the criminal justice system.

The legislature believes that recidivism can be reduced and a substantial cost savings can be realized by utilizing evidence-based, research-based, and promising programs to address offender deficits, developing and better coordinating the reentry efforts of state and local governments and local communities. Research shows that if quality assurances are adhered to, implementing an optimal portfolio of evidence-based programming options for offenders who are willing to take advantage of such programs can have a notable impact on recidivism.

While the legislature recognizes that recidivism cannot be eliminated and that a significant number of offenders are unwilling or unable to work to develop the tools necessary to successfully reintegrate into society, the interests of the public overall are better served by better preparing offenders while incarcerated, and continuing those efforts for those recently released from prison or jail, for successful, productive, and healthy transitions to their communities. Educational, employment, and treatment opportunities should be designed to address individual deficits and ideally give offenders the ability to function in society. In order to foster reintegration, chapter 483, Laws of 2007 recognizes the importance of a strong partnership between the department of corrections, local governments, law enforcement, social service providers, and interested members of communities across our state. [2007 c 483 § 1.]

72.78.010 Definitions. The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

(1) A "community transition coordination network" is a system of coordination that facilitates partnerships between supervision and service providers. It is anticipated that an offender who is released to the community will be able to utilize a community transition coordination network to be connected directly to the supervision and/or services needed for successful reentry.

(2) "Evidence-based" means a program or practice that has had multiple-site random controlled trials across heterogeneous populations demonstrating that the program or practice is effective in reducing recidivism for the population.

(3) An "individual reentry plan" means the plan to prepare an offender for release into the community. A reentry plan is developed collaboratively between the supervising authority and the offender and based on an assessment of the offender using a standardized and comprehensive tool to identify the offenders' risks and needs. An individual reentry plan describes actions that should occur to prepare individual offenders for release from jail or prison and specifies the supervision and/or services he or she will experience in the community, taking into account no contact provisions of the judgment and sentence. An individual reentry plan should be updated throughout the period of an offender's incarceration and supervision to be relevant to the offender's current needs and risks.

(4) "Local community policing and supervision programs" include probation, work release, jails, and other programs operated by local police, courts, or local correctional agencies.

(5) "Promising practice" means a practice that presents, based on preliminary information, potential for becoming a research-based or consensus-based practice.

(6) "Research-based" means a program or practice that has some research demonstrating effectiveness, but that does not yet meet the standard of evidence-based practices.

(7) "Supervising authority" means the agency or entity that has the responsibility for supervising an offender. [2007 c 483 § 101.]

72.78.020 Inventory of services and resources by counties. (1) Each county or group of counties shall conduct an inventory of the services and resources available in the county or group of counties to assist offenders in reentering the community.

(2) In conducting its inventory, the county or group of counties should consult with the following:

(a) The department of corrections, including community corrections officers;

(b) The department of social and health services in applicable program areas;

(c) Representatives from county human services departments and, where applicable, multicounty regional support networks;

(d) Local public health jurisdictions;

(e) City and county law enforcement;

(f) Local probation/supervision programs;

(g) Local community and technical colleges;

(h) The local worksorce center operated under the state-wide workforce investment system;

(i) Faith-based and nonprofit organizations providing assistance to offenders;

(j) Housing providers;

(k) Crime victims service providers; and

(l) Other community stakeholders interested in reentry efforts.

(3) The inventory must include, but is not limited to:

(a) A list of programs available through the entities listed in subsection (2) of this section and services currently available in the community for offenders including, but not limited to, housing assistance, employment assistance, education, vocational training, parenting education, financial literacy, treatment for substance abuse, mental health, anger management, life skills training, specialized treatment programs such as batterers treatment and sex offender treatment, and any other service or program that will assist the former offender to successfully transition into the community; and

(b) An indication of the availability of community representatives or volunteers to assist the offender with his or her transition.

(4) No later than January 1, 2008, each county or group of counties shall present its inventory to the policy advisory committee convened in RCW 72.78.030(8). [2007 c 483 § 102.]

72.78.030 Pilot program established—Participation standards—Selection criteria—Advisory committee. (Expires June 30, 2013.)

(1) The department of community, trade, and economic development shall establish a community transition coordination network pilot program for the purpose of awarding grants to counties or groups of counties for implementing coordinated reentry efforts for offenders returning to the community. Grant awards are subject to the availability of amounts appropriated for this specific purpose.

(2) By September 1, 2007, the Washington state institute for public policy shall, in consultation with the department of community, trade, and economic development, develop criteria for the counties in conducting its evaluation as directed by subsection (6)(c) of this section.

(3) Effective February 1, 2008, any county or group of counties may apply for participation in the community transition coordination network pilot program by submitting a proposal for a community transition coordination network.

(4) A proposal for a community transition coordination network initiated under this section must be collaborative in nature and must seek locally appropriate evidence-based or research-based solutions and promising practices utilizing the participation of public and private entities or programs to support successful, community-based offender reentry.

(5) In developing a proposal for a community transition coordination network, counties or groups of counties and the department of corrections shall collaborate in addressing:

(a) Efficiencies that may be gained by sharing space or resources in the provision of reentry services to offenders;

(b) Mechanisms for communication of information about offenders, including the feasibility of shared access to databases;

(c) Partnerships to establish neighborhood corrections initiatives as defined in RCW 72.09.280.

(6) A proposal for a community transition coordination network must include:

(a) Descriptions of collaboration and coordination between local community policing and supervision programs and those agencies and entities identified in the inventory conducted pursuant to RCW 72.78.020 to address the risks and needs of offenders under a participating county or city misdemeanor probation or other supervision program including:

(i) A proposed method of assessing offenders to identify the offenders' risks and needs. Counties and cities are encouraged, where possible, to make use of assessment tools developed by the department of corrections in this regard;

(ii) A proposal for developing and/or maintaining an individual reentry plan for offenders;

(iii) Connecting offenders to services and resources that meet the offender's needs as identified in his or her individual reentry plan including the identification of community representatives or volunteers that may assist the offender with his or her transition; and

(iv) The communication of assessment information, individual reentry plans, and service information between parties involved with [the] offender's reentry;

(b) Mechanisms to provide information to former offenders regarding services available to them in the community regardless of the length of time since the offender's release and regardless of whether the offender was released from prison or jail. Mechanisms shall, at a minimum, provide for:

(i) Maintenance of the information gathered in RCW 72.78.020 regarding services currently existing within the community that are available to offenders; and

(ii) Coordination of access to existing services with community providers and provision of information to offenders regarding how to access the various type of services and resources that are available in the community; and

(c) An evaluation of the county's or group of counties' readiness to implement a community transition coordination network including the social service needs of offenders in general, capacity of local facilities and resources to meet offenders' needs, and the cost to implement and maintain a community transition coordination network for the duration of the pilot project.

(7) The department of community, trade, and economic development shall review county applications for funding through the community transition coordination network pilot program and, no later than April 1, 2008, shall select up to four counties or groups of counties. In selecting pilot counties or regions, the department shall consider the extent to which the proposal:

(a) Addresses the requirements set out in subsection (6) of this section;

(b) Proposes effective partnerships and coordination between local community policing and supervision programs, social service and treatment providers, and the department of corrections' community justice center, if a center is located in the county or region;

(c) Focuses on measurable outcomes such as increased employment and income, treatment objectives, maintenance of stable housing, and reduced recidivism;

(d) Contributes to the diversity of pilot programs, considering factors such as geographic location, size of county or region, and reentry services currently available. The department shall ensure that a grant is awarded to at least one rural county or group of counties and at least one county or group of counties where a community justice center operated by the department of corrections is located; and

(e) Is feasible, given the evaluation of the social service needs of offenders, the existing capacity of local facilities and resources to meet offenders' needs, and the cost to implement a community transition coordination network in the county or group of counties.

(8) The department of community, trade, and economic development shall convene a policy advisory committee composed of representatives from the senate, the house of representatives, the governor's office of financial management, the department of corrections, to include one representative who is a community corrections officer, the office of crime victims' advocacy, the Washington state association of counties, association of Washington cities, a nonprofit provider of reentry services, and an ex-offender who has discharged the terms of his or her sentence. The advisory committee shall meet no less than annually to receive status reports on the implementation of community transition coordination networks, review annual reports and the pilot project evaluations submitted pursuant to RCW 72.78.050, and identify evidence-based, research-based, and promising practices for other counties seeking to establish community transition coordination networks.

(9) Pilot networks established under this section shall extend for a period of four fiscal years, beginning July 1, 2008, and ending June 30, 2012.

(10) This section expires June 30, 2013. [2007 c 483 § 103.]

72.78.040 Pilot program limitations—Individual reentry plan liability limited. (1) Nothing in RCW 72.78.030 is intended to shift the supervising responsibility or sanctioning authority from one government entity to another or give a community transition coordination network oversight responsibility for those activities or allow imposition of civil liability where none existed previously.

(2) An individual reentry plan may not be used as the basis of liability against local government entities, or its officers or employees. [2007 c 483 § 104.]

Intent—2007 c 483: See note following RCW 72.09.270.

72.78.050 Funding—Requirements—Evaluation and report. (Expires June 30, 2013.) (1) It is the intent of the legislature to provide funding for this project.

(2) Counties receiving state funds must:

(a) Demonstrate the funds allocated pursuant to this section will be used only for those purposes in establishing and maintaining a community transition coordination network;

(b) Consult with the Washington state institute for public policy at the inception of the pilot project to refine appropriate outcome measures and data tracking systems;

(c) Submit to the advisory committee established in RCW 72.78.030(8) an annual progress report by June 30th of each year of the pilot project to report on identified outcome

measures and identify evidence-based, research-based, or promising practices;

(d) Cooperate with the Washington state institute for public policy at the completion of the pilot project to conduct an evaluation of the project.

(3) The Washington state institute for public policy shall provide direction to counties in refining appropriate outcome measures for the pilot projects and establishing data tracking systems. At the completion of the pilot project, the institute shall conduct an evaluation of the projects including the benefit-cost ratio of service delivery through a community transition coordination network, associated reductions in recidivism, and identification of evidence-based, research-based, or promising practices. The institute shall report to the governor and the legislature with the results of its evaluation no later than December 31, 2012.

(4) This section expires June 30, 2013. [2007 c 483 § 105.]

72.78.060 Community transition coordination network account. (Expires June 30, 2013.) (1) The community transition coordination network account is created in the state treasury. The account may receive legislative appropriations, gifts, and grants. Moneys in the account may be spent only after appropriation. Expenditures from the account may be used only for the purposes of RCW 72.78.030.

(2) This section expires June 30, 2013. [2007 c 483 § 106.]

72.78.070 Funding entitlement, obligation to maintain network not created. Nothing in chapter 483, Laws of 2007 creates an entitlement for a county or group of counties to receive funding under the program created in RCW 72.78.030, nor an obligation for a county or group of counties to maintain a community transition coordination network established pursuant to RCW 72.78.030 upon expiration of state funding. [2007 c 483 § 107.]

72.78.900 Part headings not law—2007 c 483. Part headings used in this act are not any part of the law. [2007 c 483 § 701.]

72.78.901 Severability—2007 c 483. If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected. [2007 c 483 § 702.]

Title 73

VETERANS AND VETERANS' AFFAIRS

Chapters

73.08 Veterans' relief.

Chapter 73.08 RCW VETERANS' RELIEF

Sections

73.08.060 Repealed.

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

Title 74

PUBLIC ASSISTANCE

Chapters

- 74.04 General provisions—Administration.**
74.08A Washington workfirst temporary assistance for needy families.
74.09 Medical care.
74.09A Medical assistance—Coordination of benefits—Computerized information transfer.
74.13 Child welfare services.
74.15 Care of children, expectant mothers, developmentally disabled.
74.20 Support of dependent children.
74.20A Support of dependent children—Alternative method—1971 act.
74.31 Traumatic brain injuries.
74.34 Abuse of vulnerable adults.
74.39A Long-term care services options—Expansion.
74.46 Nursing facility medicaid payment system.

Chapter 74.04 RCW

GENERAL PROVISIONS—ADMINISTRATION

Sections

- 74.04.670 Long-term care services—Eligibility.
 74.04.800 Incarcerated parents—Policies to encourage family contact and engagement.

74.04.670 Long-term care services—Eligibility. (1) For purposes of RCW 74.04.005(10)(a), an applicant or recipient is not eligible for long-term care services if the applicant or recipient's equity interest in the home exceeds an amount established by the department in rule, which shall not be less than five hundred thousand dollars. This requirement does not apply if any of the following persons related to the applicant or recipient are legally residing in the home:

- A spouse; or
- A dependent child under age twenty-one; or
- A dependent child with a disability; or
- A dependent child who is blind; and
- The dependent child in (c) and (d) of this subsection meets the federal supplemental security income program criteria for disabled and blind.

(2) The dollar amounts specified in this section shall be increased annually, beginning in 2011, from year to year based on the percentage increase in the consumer price index for all urban consumers, all items, United States city average, rounded to the nearest one thousand dollars.

(3) This section applies to individuals who are determined eligible for medical assistance with respect to long-term care services based on an application filed on or after May 1, 2006. [2007 c 161 § 1.]

74.04.800 Incarcerated parents—Policies to encourage family contact and engagement. (1)(a) The secretary of social and health services shall review current department policies and assess the adequacy and availability of programs

targeted at persons who receive services through the department who are the children and families of a person who is incarcerated in a department of corrections facility. Great attention shall be focused on programs and policies affecting foster youth who have a parent who is incarcerated.

(b) The secretary shall adopt policies that encourage familial contact and engagement between inmates of the department of corrections facilities and their children with the goal of facilitating normal child development, while reducing recidivism and intergenerational incarceration. Programs and policies should take into consideration the children's need to maintain contact with his or her parent, the inmate's ability to develop plans to financially support their children, assist in reunification when appropriate, and encourage the improvement of parenting skills where needed. The programs and policies should also meet the needs of the child while the parent is incarcerated.

(2) The secretary shall conduct the following activities to assist in implementing the requirements of subsection (1) of this section:

(a) Gather information and data on the recipients of public assistance, or children in the care of the state under chapter 13.34 RCW, who are the children and families of inmates incarcerated in department of corrections facilities; and

(b) Participate in the children of incarcerated parents advisory committee and report information obtained under this section to the advisory committee. [2007 c 384 § 3.]

Intent—Finding—2007 c 384: See note following RCW 72.09.495.

Chapter 74.08A RCW

WASHINGTON WORKFIRST TEMPORARY ASSISTANCE FOR NEEDY FAMILIES

Sections

74.08A.270 Good cause.
74.08A.340 Funding restrictions.

74.08A.270 Good cause. (1) Good cause reasons for failure to participate in WorkFirst program components include: (a) Situations where the recipient is a parent or other relative personally providing care for a child under the age of six years, and formal or informal child care, or day care for an incapacitated individual living in the same home as a dependent child, is necessary for an individual to participate or continue participation in the program or accept employment, and such care is not available, and the department fails to provide such care; or (b) the recipient is a parent with a child under the age of one year.

(2) A parent claiming a good cause exemption from WorkFirst participation under subsection (1)(b) of this section may be required to participate in one or more of the following, up to a maximum total of twenty hours per week, if such treatment, services, or training is indicated by the comprehensive evaluation or other assessment:

(a) Mental health treatment;
(b) Alcohol or drug treatment;
(c) Domestic violence services; or
(d) Parenting education or parenting skills training, if available.

(3) The department shall: (a) Work with a parent claiming a good cause exemption under subsection (1)(b) of this

section to identify and access programs and services designed to improve parenting skills and promote child well-being, including but not limited to home visitation programs and services; and (b) provide information on the availability of home visitation services to temporary assistance for needy families caseworkers, who shall inform clients of the availability of the services. If desired by the client, the caseworker shall facilitate appropriate referrals to providers of home visitation services.

(4) Nothing in this section shall prevent a recipient from participating in the WorkFirst program on a voluntary basis.

(5) A parent is eligible for a good cause exemption under subsection (1)(b) of this section for a maximum total of twelve months over the parent's lifetime. [2007 c 289 § 1; 2002 c 89 § 1; 1997 c 58 § 314.]

74.08A.340 Funding restrictions. The department of social and health services shall operate the Washington WorkFirst program authorized under RCW 74.08A.200 through 74.08A.330, 43.330.145, *74.13.0903 and 74.25.040, and chapter 74.12 RCW within the following constraints:

(1) The full amount of the temporary assistance for needy families block grant, plus qualifying state expenditures as appropriated in the biennial operating budget, shall be appropriated to the department each year in the biennial appropriations act to carry out the provisions of the program authorized in RCW 74.08A.200 through 74.08A.330, 43.330.145, *74.13.0903 and 74.25.040, and chapter 74.12 RCW.

(2)(a) The department may expend funds defined in subsection (1) of this section in any manner that will effectively accomplish the outcome measures defined in RCW 74.08A.410 with the following exception: Beginning with the 2007-2009 biennium, funds that constitute the working connections child care program, child care quality programs, and child care licensing functions.

(b) Beginning in the 2007-2009 fiscal biennium, the legislature shall appropriate and the departments of early learning and social and health services shall expend funds defined in subsection (1) of this section that constitute the working connections child care program, child care quality programs, and child care licensing functions in a manner that is consistent with the outcome measures defined in RCW 74.08A.410.

(c) No more than fifteen percent of the amount provided in subsection (1) of this section may be spent for administrative purposes. For the purpose of this subsection, "administrative purposes" does not include expenditures for information technology and computerization needed for tracking and monitoring required by P.L. 104-193. The department shall not increase grant levels to recipients of the program authorized in RCW 74.08A.200 through 74.08A.330 and 43.330.145 and chapter 74.12 RCW.

(3) The department shall implement strategies that accomplish the outcome measures identified in RCW 74.08A.410 that are within the funding constraints in this section. Specifically, the department shall implement strategies that will cause the number of cases in the program authorized in RCW 74.08A.200 through 74.08A.330 and 43.330.145 and chapter 74.12 RCW to decrease by at least fifteen percent during the 1997-99 biennium and by at least five percent in

the subsequent biennium. The department may transfer appropriation authority between funding categories within the economic services program in order to carry out the requirements of this subsection.

(4) The department shall monitor expenditures against the appropriation levels provided for in subsection (1) of this section. The department shall quarterly make a determination as to whether expenditure levels will exceed available funding and communicate its finding to the legislature. If the determination indicates that expenditures will exceed funding at the end of the fiscal year, the department shall take all necessary actions to ensure that all services provided under this chapter shall be made available only to the extent of the availability and level of appropriation made by the legislature. [2007 c 522 § 957; 2006 c 265 § 209; 1997 c 58 § 321.]

***Reviser's note:** RCW 74.13.0903 was recodified as RCW 43.215.545 pursuant to 2007 c 17 § 7.

Severability—Effective date—2007 c 522: See notes following RCW 15.64.050.

Part headings not law—Effective date—Severability—2006 c 265: See RCW 43.215.904 through 43.215.906.

**Chapter 74.09 RCW
MEDICAL CARE**

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74.09.010 Definitions. As used in this chapter:

(1) "Children's health program" means the health care services program provided to children under eighteen years of age and in households with incomes at or below the federal poverty level as annually defined by the federal department of health and human services as adjusted for family size, and who are not otherwise eligible for medical assistance or the limited casualty program for the medically needy.

(2) "Committee" means the children's health services committee created in *section 3 of this act.

(3) "County" means the board of county commissioners, county council, county executive, or tribal jurisdiction, or its designee. A combination of two or more county authorities or tribal jurisdictions may enter into joint agreements to fulfill the requirements of **RCW 74.09.415 through 74.09.435.

(4) "Department" means the department of social and health services.

(5) "Department of health" means the Washington state department of health created pursuant to RCW 43.70.020.

(6) "Internal management" means the administration of medical assistance, medical care services, the children's health program, and the limited casualty program.

(7) "Limited casualty program" means the medical care program provided to medically needy persons as defined under Title XIX of the federal social security act, and to medically indigent persons who are without income or resources sufficient to secure necessary medical services.

(8) "Medical assistance" means the federal aid medical care program provided to categorically needy persons as defined under Title XIX of the federal social security act.

(9) "Medical care services" means the limited scope of care financed by state funds and provided to general assistance recipients, and recipients of alcohol and drug addiction services provided under chapter 74.50 RCW.

(10) "Nursing home" means nursing home as defined in RCW 18.51.010.

(11) "Poverty" means the federal poverty level determined annually by the United States department of health and human services, or successor agency.

(12) "Secretary" means the secretary of social and health services.

(13) "Full benefit dual eligible beneficiary" means an individual who, for any month: Has coverage for the month under a medicare prescription drug plan or medicare advantage plan with part D coverage; and is determined eligible by the state for full medicaid benefits for the month under any eligibility category in the state's medicaid plan or a section 1115 demonstration waiver that provides pharmacy benefits. [2007 c 3 § 2; 1990 c 296 § 6; 1987 c 406 § 11; 1981 1st ex.s. c 6 § 18; 1981 c 8 § 17; 1979 c 141 § 333; 1959 c 26 § 74.09.010. Prior: 1955 c 273 § 2.]

Reviser's note: *(1) "Section 3 of this act" [1990 c 296] which created the committee was vetoed by the governor.

** (2) RCW 74.09.415 through 74.09.435 were repealed by 2007 c 5 § 8.

Effective date—1990 c 296: See note following RCW 74.09.405.

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

74.09.015 Nurse hotline, when funded. To the extent that sufficient funding is provided specifically for this purpose, the department, in collaboration with the health care authority, shall provide all persons receiving services under this chapter with access to a twenty-four hour, seven day a week nurse hotline. The health care authority and the department of social and health services shall determine the most appropriate way to provide the nurse hotline under RCW 41.05.037 and this section, which may include use of the 211 system established in chapter 43.211 RCW. [2007 c 259 § 16.]

Severability—Subheadings not law—2007 c 259: See notes following RCW 41.05.033.

74.09.402 Children's health care—Findings—Intent.

(1) The legislature finds that:

(a) Improving the health of children in Washington state is an investment in a productive and successful next generation. The health of children is critical to their success in school and throughout their lives;

(b) Healthy children are ready to learn. In order to provide students with the opportunity to become responsible citizens, to contribute to their own economic well-being and to that of their families and communities, and to enjoy productive and satisfying lives, the state recognizes the importance that access to appropriate health services and improved health brings to the children of Washington state. In addition, fully immunized children are themselves protected, and in turn protect others, from contracting communicable diseases;

(c) Children with health insurance coverage have better health outcomes than those who lack coverage. Children without health insurance coverage are more likely to be in poor health and more likely to delay receiving, or go without, needed health care services;

(d) Health care coverage for children in Washington state is the product of critical efforts in both the private and public sectors to help children succeed. Private health insurance coverage is complemented by public programs that meet needs of low-income children whose parents are not offered health insurance coverage through their employer or who cannot otherwise afford the costs of coverage. In 2006, thirty-five percent of children in Washington state had some form of public health coverage. Washington state is making progress in its efforts to increase the number of children with health care coverage. Yet, even with these efforts of both private and public sectors, many children in Washington state continue to lack health insurance coverage. In 2006, over seventy thousand children were uninsured. Almost two-thirds of these children are in families whose income is under two hundred fifty percent of the federal poverty level; and

(e) Improved health outcomes for the children of Washington state are the expected result of improved access to health care coverage. Linking children with a medical home that provides preventive and well child health services and referral to needed specialty services, linking children with needed behavioral health and dental services, more effectively managing childhood diseases, improving nutrition, and increasing physical activity are key to improving children's health. Care should be provided in appropriate settings by efficient providers, consistent with high quality care and at an appropriate stage, soon enough to avert the need for overly expensive treatment.

(2) It is therefore the intent of the legislature that:

(a) All children in the state of Washington have health care coverage by 2010. This should be accomplished by building upon and strengthening the successes of private health insurance coverage and publicly supported children's health insurance programs in Washington state. Access to coverage should be streamlined and efficient, with reductions in unnecessary administrative costs and mechanisms to expeditiously link children with a medical home;

(b) The state, in collaboration with parents, schools, communities, health plans, and providers, take steps to improve health outcomes for the children of Washington state by linking children with a medical home, identifying

health improvement goals for children, and linking innovative purchasing strategies to those goals. [2007 c 5 § 1; 2005 c 279 § 1.]

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

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

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

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

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

74.09.460 Children's affordable health coverage—Findings—Intent. (1) The legislature finds that parents have a responsibility to:

- (a) Enroll their children in affordable health coverage;
- (b) Ensure that their children receive appropriate well-child preventive care;
- (c) Link their child with a medical home; and
- (d) Understand and act upon the health benefits of good nutrition and physical activity.

(2) The legislature intends that the programs and outreach and education efforts established in RCW 74.09.470(6), as well as partnerships with the public and private sectors, provide the support and information needed by parents to meet the responsibilities set forth in this section. [2007 c 5 § 3.]

74.09.470 Children's affordable health coverage—Department duties. (1) Consistent with the goals established in RCW 74.09.402, through the program authorized in this section, the department shall provide affordable health care coverage to children under the age of nineteen who reside in Washington state and whose family income at the time of enrollment is not greater than two hundred fifty percent of the federal poverty level as adjusted for family size and determined annually by the federal department of health and human services, and effective January 1, 2009, and only to the extent that funds are specifically appropriated therefor, to children whose family income is not greater than three hundred percent of the federal poverty level. In administering the program, the department shall take such actions as may be necessary to ensure the receipt of federal financial participation under the medical assistance program, as codified at Title XIX of the federal social security act, the state children's health insurance program, as codified at Title XXI of the federal social security act, and any other federal funding sources that are now available or may become available in the future. The department and the caseload forecast council shall estimate the anticipated caseload and costs of the program established in this section.

(2) The department shall accept applications for enrollment for children's health care coverage; establish appropri-

ate minimum-enrollment periods, as may be necessary; and determine eligibility based on current family income. The department shall make eligibility determinations within the time frames for establishing eligibility for children on medical assistance, as defined by RCW 74.09.510. The application and annual renewal processes shall be designed to minimize administrative barriers for applicants and enrolled clients, and to minimize gaps in eligibility for families who are eligible for coverage. If a change in family income results in a change in program eligibility, the department shall transfer the family members to the appropriate programs and notify the family with respect to any change in premium obligation, without a break in eligibility. The department shall use the same eligibility redetermination and appeals procedures as those provided for children on medical assistance programs. The department shall modify its eligibility renewal procedures to lower the percentage of children failing to annually renew. The department shall report to the appropriate committees of the legislature on its progress in this regard by December 2007.

(3) To ensure continuity of care and ease of understanding for families and health care providers, and to maximize the efficiency of the program, the amount, scope, and duration of health care services provided to children under this section shall be the same as that provided to children under medical assistance, as defined in RCW 74.09.520.

(4) The primary mechanism for purchasing health care coverage under this section shall be through contracts with managed health care systems as defined in RCW 74.09.522 except when utilization patterns suggest that fee-for-service purchasing could produce equally effective and cost-efficient care. However, the department shall make every effort within available resources to purchase health care coverage for uninsured children whose families have access to dependent coverage through an employer-sponsored health plan or another source when it is cost-effective for the state to do so, and the purchase is consistent with requirements of Title XIX and Title XXI of the federal social security act. To the extent allowable under federal law, the department shall require families to enroll in available employer-sponsored coverage, as a condition of participating in the program established under chapter 5, Laws of 2007, when it is cost-effective for the state to do so. Families who enroll in available employer-sponsored coverage under chapter 5, Laws of 2007 shall be accounted for separately in the annual report required by RCW 74.09.053.

(5)(a) To reflect appropriate parental responsibility, the department shall develop and implement a schedule of premiums for children's health care coverage due to the department from families with income greater than two hundred percent of the federal poverty level. For families with income greater than two hundred fifty percent of the federal poverty level, the premiums shall be established in consultation with the senate majority and minority leaders and the speaker and minority leader of the house of representatives. Premiums shall be set at a reasonable level that does not pose a barrier to enrollment. The amount of the premium shall be based upon family income and shall not exceed the premium limitations in Title XXI of the federal social security act. Premiums shall not be imposed on children in households at or

below two hundred percent of the federal poverty level as articulated in RCW 74.09.055.

(b) Beginning January 1, 2009, the department shall offer families whose income is greater than three hundred percent of the federal poverty level the opportunity to purchase health care coverage for their children through the programs administered under this section without a premium subsidy from the state. The amount paid by the family shall be in an amount equal to the rate paid by the state to the managed health care system for coverage of the child, including any associated and administrative costs to the state of providing coverage for the child.

(6) The department shall undertake a proactive, targeted outreach and education effort with the goal of enrolling children in health coverage and improving the health literacy of youth and parents. The department shall collaborate with the department of health, local public health jurisdictions, the office of [the] superintendent of public instruction, the department of early learning, health educators, health care providers, health carriers, and parents in the design and development of this effort. The outreach and education effort shall include the following components:

(a) Broad dissemination of information about the availability of coverage, including media campaigns;

(b) Assistance with completing applications, and community-based outreach efforts to help people apply for coverage. Community-based outreach efforts should be targeted to the populations least likely to be covered;

(c) Use of existing systems, such as enrollment information from the free and reduced-price lunch program, the department of early learning child care subsidy program, the department of health's women, infants, and children program, and the early childhood education and assistance program, to identify children who may be eligible but not enrolled in coverage;

(d) Contracting with community-based organizations and government entities to support community-based outreach efforts to help families apply for coverage. These efforts should be targeted to the populations least likely to be covered. The department shall provide informational materials for use by government entities and community-based organizations in their outreach activities, and should identify any available federal matching funds to support these efforts;

(e) Development and dissemination of materials to engage and inform parents and families statewide on issues such as: The benefits of health insurance coverage; the appropriate use of health services, including primary care provided by health care practitioners licensed under chapters 18.71, 18.57, 18.36A, and 18.79 RCW, and emergency services; the value of a medical home, well-child services and immunization, and other preventive health services with linkages to department of health child profile efforts; identifying and managing chronic conditions such as asthma and diabetes; and the value of good nutrition and physical activity;

(f) An evaluation of the outreach and education efforts, based upon clear outcome measures that are included in contracts with entities that undertake components of the outreach and education effort;

(g) A feasibility study and implementation plan to develop online application capability that is integrated with the department's automated client eligibility system, and to

develop data linkages with the office of [the] superintendent of public instruction for free and reduced-price lunch enrollment information and the department of early learning for child care subsidy program enrollment information. The department shall submit a feasibility study on the implementation of the requirements in this subsection to the governor and legislature by July 2008.

(7) The department shall take action to increase the number of primary care physicians providing dental disease preventive services including oral health screenings, risk assessment, family education, the application of fluoride varnish, and referral to a dentist as needed.

(8) The department shall monitor the rates of substitution between private-sector health care coverage and the coverage provided under this section and shall report to appropriate committees of the legislature by December 2010. [2007 c 5 § 2.]

74.09.480 Performance measures—Provider rate increases—Report. (1) The department, in collaboration with the department of health, health carriers, local public health jurisdictions, children's health care providers including pediatricians, family practitioners, and pediatric subspecialists, parents, and other purchasers, shall identify explicit performance measures that indicate that a child has an established and effective medical home, such as:

- (a) Childhood immunization rates;
- (b) Well child care utilization rates, including the use of validated, structured developmental assessment tools that include behavioral and oral health screening;
- (c) Care management for children with chronic illnesses;
- (d) Emergency room utilization; and
- (e) Preventive oral health service utilization.

Performance measures and targets for each performance measure must be reported to the appropriate committees of the senate and house of representatives by December 1, 2007.

(2) Beginning in calendar year 2009, targeted provider rate increases shall be linked to quality improvement measures established under this section. The department, in conjunction with those groups identified in subsection (1) of this section, shall develop parameters for determining criteria for increased payment or other incentives for those practices and health plans that incorporate evidence-based practice and improve and achieve sustained improvement with respect to the measures in both fee for service and managed care.

(3) The department shall provide an annual report to the governor and the legislature related to provider performance on these measures, beginning in September 2010 and annually thereafter. [2007 c 5 § 4.]

74.09.490 Children's mental health—Improving medication management and care coordination. (1)(a) The department, in consultation with the evidence-based practice institute established in RCW 71.24.061, shall develop and implement policies to improve prescribing practices for treatment of emotional or behavioral disturbances in children, improve the quality of children's mental health therapy through increased use of evidence-based and research-based practices and reduced variation in practice, improve communication and care coordination between pri-

mary care and mental health providers, and prioritize care in the family home or care which integrates the family where out-of-home placement is required.

(b) The department shall identify those children with emotional or behavioral disturbances who may be at high risk due to off-label use of prescription medication, use of multiple medications, high medication dosage, or lack of coordination among multiple prescribing providers, and establish one or more mechanisms to evaluate the appropriateness of the medication these children are using, including but not limited to obtaining second opinions from experts in child psychiatry.

(c) The department shall review the psychotropic medications of all children under five and establish one or more mechanisms to evaluate the appropriateness of the medication these children are using, including but not limited to obtaining second opinions from experts in child psychiatry.

(d) The department shall track prescriptive practices with respect to psychotropic medications with the goal of reducing the use of medication.

(e) The department shall encourage the use of cognitive behavioral therapies and other treatments which are empirically supported or evidence-based, in addition to or in the place of prescription medication where appropriate.

(2) The department shall convene a representative group of regional support networks, community mental health centers, and managed health care systems contracting with the department under RCW 74.09.522 to:

(a) Establish mechanisms and develop contract language that ensures increased coordination of and access to medicaid mental health benefits available to children and their families, including ensuring access to services that are identified as a result of a developmental screen administered through early periodic screening, diagnosis, and treatment;

(b) Define managed health care system and regional support network contractual performance standards that track access to and utilization of services; and

(c) Set standards for reducing the number of children that are prescribed antipsychotic drugs and receive no outpatient mental health services with their medication.

(3) The department shall submit a report on progress and any findings under this section to the legislature by January 1, 2009. [2007 c 359 § 5.]

Captions not law—2007 c 359: See note following RCW 71.36.005.

74.09.510 Medical assistance—Eligibility. Medical assistance may be provided in accordance with eligibility requirements established by the department, as defined in the social security Title XIX state plan for mandatory categorically needy persons and:

(1) Individuals who would be eligible for cash assistance except for their institutional status;

(2) Individuals who are under twenty-one years of age, who would be eligible for medicaid, but do not qualify as dependent children and who are in (a) foster care, (b) subsidized adoption, (c) a nursing facility or an intermediate care facility for persons who are mentally retarded, or (d) inpatient psychiatric facilities;

(3) Individuals who:

- (a) Are under twenty-one years of age;

(b) On or after July 22, 2007, were in foster care under the legal responsibility of the department or a federally recognized tribe located within the state; and

(c) On their eighteenth birthday, were in foster care under the legal responsibility of the department or a federally recognized tribe located within the state;

(4) Persons who are aged, blind, or disabled who: (a) Receive only a state supplement, or (b) would not be eligible for cash assistance if they were not institutionalized;

(5) Categorically eligible individuals who meet the income and resource requirements of the cash assistance programs;

(6) Individuals who are enrolled in managed health care systems, who have otherwise lost eligibility for medical assistance, but who have not completed a current six-month enrollment in a managed health care system, and who are eligible for federal financial participation under Title XIX of the social security act;

(7) Children and pregnant women allowed by federal statute for whom funding is appropriated;

(8) Working individuals with disabilities authorized under section 1902(a)(10)(A)(ii) of the social security act for whom funding is appropriated;

(9) Other individuals eligible for medical services under RCW 74.09.035 and 74.09.700 for whom federal financial participation is available under Title XIX of the social security act;

(10) Persons allowed by section 1931 of the social security act for whom funding is appropriated; and

(11) Women who: (a) Are under sixty-five years of age; (b) have been screened for breast and cervical cancer under the national breast and cervical cancer early detection program administered by the department of health or tribal entity and have been identified as needing treatment for breast or cervical cancer; and (c) are not otherwise covered by health insurance. Medical assistance provided under this subsection is limited to the period during which the woman requires treatment for breast or cervical cancer, and is subject to any conditions or limitations specified in the omnibus appropriations act. [2007 c 315 § 1. Prior: 2001 2nd sp.s. c 15 § 3; 2001 1st sp.s. c 4 § 1; prior: 1997 c 59 § 14; 1997 c 58 § 201; 1991 sp.s. c 8 § 8; 1989 1st ex.s. c 10 § 8; 1989 c 87 § 2; 1985 c 5 § 2; 1981 2nd ex.s. c 3 § 5; 1981 1st ex.s. c 6 § 20; 1981 c 8 § 19; 1971 ex.s. c 169 § 4; 1970 ex.s. c 60 § 1; 1967 ex.s. c 30 § 4.]

Conflict with federal requirements—2007 c 315: "If any part of this act is found to be in conflict with federal requirements that are a prescribed condition to the allocation of federal funds to the state, the conflicting part of this act is inoperative solely to the extent of the conflict and with respect to the agencies directly affected, and this finding does not affect the operation of the remainder of this act in its application to the agencies concerned. Rules adopted under this act must meet federal requirements that are a necessary condition to the receipt of federal funds by the state." [2007 c 315 § 3.]

Findings—Intent—2001 2nd sp.s. c 15: See note following RCW 74.09.540.

Effective date—2001 1st sp.s. c 4: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect July 1, 2001." [2001 1st sp.s. c 4 § 2.]

Short title—Part headings, captions, table of contents not law—Exemptions and waivers from federal law—Conflict with federal

requirements—Severability—1997 c 58: See RCW 74.08A.900 through 74.08A.904.

Effective date—1991 sp.s. c 8: See note following RCW 18.51.050.

Effective dates—1989 c 87: See notes following RCW 11.94.050.

Severability—1981 2nd ex.s. c 3: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1981 2nd ex.s. c 3 § 8.]

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

74.09.515 Medical assistance—Coverage for youth released from confinement. (1) The department shall adopt rules and policies providing that when youth who were enrolled in a medical assistance program immediately prior to confinement are released from confinement, their medical assistance coverage will be fully reinstated on the day of their release, subject to any expedited review of their continued eligibility for medical assistance coverage that is required under federal or state law.

(2) The department, in collaboration with county juvenile court administrators and regional support networks, shall establish procedures for coordination between department field offices, juvenile rehabilitation administration institutions, and county juvenile courts that result in prompt reinstatement of eligibility and speedy eligibility determinations for youth who are likely to be eligible for medical assistance services upon release from confinement. Procedures developed under this subsection must address:

(a) Mechanisms for receiving medical assistance services' applications on behalf of confined youth in anticipation of their release from confinement;

(b) Expedient review of applications filed by or on behalf of confined youth and, to the extent practicable, completion of the review before the youth is released; and

(c) Mechanisms for providing medical assistance services' identity cards to youth eligible for medical assistance services immediately upon their release from confinement.

(3) For purposes of this section, "confined" or "confinement" means detained in a facility operated by or under contract with the department of social and health services, juvenile rehabilitation administration, or detained in a juvenile detention facility operated under chapter 13.04 RCW.

(4) The department shall adopt standardized statewide screening and application practices and forms designed to facilitate the application of a confined youth who is likely to be eligible for a medical assistance program. [2007 c 359 § 8.]

Captions not law—2007 c 359: See note following RCW 71.36.005.

74.09.520 Medical assistance—Care and services included—Funding limitations. (1) The term "medical assistance" may include the following care and services: (a) Inpatient hospital services; (b) outpatient hospital services; (c) other laboratory and X-ray services; (d) nursing facility services; (e) physicians' services, which shall include prescribed medication and instruction on birth control devices; (f) medical care, or any other type of remedial care as may be established by the secretary; (g) home health care services; (h) private duty nursing services; (i) dental services; (j) physical and occupational therapy and related services; (k) pre-

scribed drugs, dentures, and prosthetic devices; and eyeglasses prescribed by a physician skilled in diseases of the eye or by an optometrist, whichever the individual may select; (l) personal care services, as provided in this section; (m) hospice services; (n) other diagnostic, screening, preventive, and rehabilitative services; and (o) like services when furnished to a child by a school district in a manner consistent with the requirements of this chapter. For the purposes of this section, the department may not cut off any prescription medications, oxygen supplies, respiratory services, or other life-sustaining medical services or supplies.

"Medical assistance," notwithstanding any other provision of law, shall not include routine foot care, or dental services delivered by any health care provider, that are not mandated by Title XIX of the social security act unless there is a specific appropriation for these services.

(2) The department shall amend the state plan for medical assistance under Title XIX of the federal social security act to include personal care services, as defined in 42 C.F.R. 440.170(f), in the categorically needy program.

(3) The department shall adopt, amend, or rescind such administrative rules as are necessary to ensure that Title XIX personal care services are provided to eligible persons in conformance with federal regulations.

(a) These administrative rules shall include financial eligibility indexed according to the requirements of the social security act providing for medicaid eligibility.

(b) The rules shall require clients be assessed as having a medical condition requiring assistance with personal care tasks. Plans of care for clients requiring health-related consultation for assessment and service planning may be reviewed by a nurse.

(c) The department shall determine by rule which clients have a health-related assessment or service planning need requiring registered nurse consultation or review. This definition may include clients that meet indicators or protocols for review, consultation, or visit.

(4) The department shall design and implement a means to assess the level of functional disability of persons eligible for personal care services under this section. The personal care services benefit shall be provided to the extent funding is available according to the assessed level of functional disability. Any reductions in services made necessary for funding reasons should be accomplished in a manner that assures that priority for maintaining services is given to persons with the greatest need as determined by the assessment of functional disability.

(5) Effective July 1, 1989, the department shall offer hospice services in accordance with available funds.

(6) For Title XIX personal care services administered by aging and disability services administration of the department, the department shall contract with area agencies on aging:

(a) To provide case management services to individuals receiving Title XIX personal care services in their own home; and

(b) To reassess and reauthorize Title XIX personal care services or other home and community services as defined in RCW 74.39A.009 in home or in other settings for individuals consistent with the intent of this section:

(i) Who have been initially authorized by the department to receive Title XIX personal care services or other home and community services as defined in RCW 74.39A.009; and

(ii) Who, at the time of reassessment and reauthorization, are receiving such services in their own home.

(7) In the event that an area agency on aging is unwilling to enter into or satisfactorily fulfill a contract or an individual consumer's need for case management services will be met through an alternative delivery system, the department is authorized to:

(a) Obtain the services through competitive bid; and

(b) Provide the services directly until a qualified contractor can be found.

(8) Subject to the availability of amounts appropriated for this specific purpose, effective July 1, 2007, the department may offer medicare part D prescription drug copayment coverage to full benefit dual eligible beneficiaries. [2007 c 3 § 1; 2004 c 141 § 2; 2003 c 279 § 1; 1998 c 245 § 145; 1995 1st sp.s. c 18 § 39; 1994 c 21 § 4. Prior: 1993 c 149 § 10; 1993 c 57 § 1; 1991 sp.s. c 8 § 9; prior: 1991 c 233 § 1; 1991 c 119 § 1; prior: 1990 c 33 § 594; 1990 c 25 § 1; prior: 1989 c 427 § 10; 1989 c 400 § 3; 1985 c 5 § 3; 1982 1st ex.s. c 19 § 4; 1981 1st ex.s. c 6 § 21; 1981 c 8 § 20; 1979 c 141 § 344; 1969 ex.s. c 173 § 11; 1967 ex.s. c 30 § 5.]

Conflict with federal requirements—Severability—Effective date—1995 1st sp.s. c 18: See notes following RCW 74.39A.030.

Conflict with federal requirements—Effective date—1994 c 21: See notes following RCW 43.20B.080.

Conflict with federal requirements—Severability—Effective dates—1993 c 149: See notes following RCW 74.09.5241.

Effective date—1991 sp.s. c 8: See note following RCW 18.51.050.

Purpose—Statutory references—Severability—1990 c 33: See RCW 28A.900.100 through 28A.900.102.

Severability—1989 c 427: See RCW 74.39.900.

Intent—1989 c 400: See note following RCW 28A.150.390.

Effective date—1982 1st ex.s. c 19: See note following RCW 74.09.035.

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

Legislative confirmation of effect of 1994 c 21: RCW 43.20B.090.

74.09.521 Medical assistance—Program standards for mental health services for children. (Expires July 1, 2010.)

(1) To the extent that funds are specifically appropriated for this purpose the department shall revise its medicaid healthy options managed care and fee-for-service program standards under medicaid, Title XIX of the federal social security act to improve access to mental health services for children who do not meet the regional support network access to care standards. Effective July 1, 2008, the program standards shall be revised to allow outpatient therapy services to be provided by licensed mental health professionals, as defined in RCW 71.34.020, and up to twenty outpatient therapy hours per calendar year, including family therapy visits integral to a child's treatment.

(2) This section expires July 1, 2010. [2007 c 359 § 11.]

Captions not law—2007 c 359: See note following RCW 71.36.005.

74.09.530 Medical assistance—Powers and duties of department. (1) The amount and nature of medical assistance and the determination of eligibility of recipients for

medical assistance shall be the responsibility of the department of social and health services. The department shall establish reasonable standards of assistance and resource and income exemptions which shall be consistent with the provisions of the Social Security Act and with the regulations of the secretary of health, education and welfare for determining eligibility of individuals for medical assistance and the extent of such assistance to the extent that funds are available from the state and federal government. The department shall not consider resources in determining continuing eligibility for recipients eligible under section 1931 of the social security act.

(2) Individuals eligible for medical assistance under RCW 74.09.510(3) shall be transitioned into coverage under that subsection immediately upon their termination from coverage under RCW 74.09.510(2)(a). The department shall use income eligibility standards and eligibility determinations applicable to children placed in foster care. The department, in consultation with the health care authority, shall provide information regarding basic health plan enrollment and shall offer assistance with the application and enrollment process to individuals covered under RCW 74.09.510(3) who are approaching their twenty-first birthday. [2007 c 315 § 2; 2000 c 218 § 2; 1979 c 141 § 345; 1967 ex.s. c 30 § 6.]

Conflict with federal requirements—2007 c 315: See note following RCW 74.09.510.

74.09.710 Chronic care management programs—Medical homes—Definitions. (1) The department of social and health services, in collaboration with the department of health, shall:

(a) Design and implement medical homes for its aged, blind, and disabled clients in conjunction with chronic care management programs to improve health outcomes, access, and cost-effectiveness. Programs must be evidence based, facilitating the use of information technology to improve quality of care, must acknowledge the role of primary care providers and include financial and other supports to enable these providers to effectively carry out their role in chronic care management, and must improve coordination of primary, acute, and long-term care for those clients with multiple chronic conditions. The department shall consider expansion of existing medical home and chronic care management programs and build on the Washington state collaborative initiative. The department shall use best practices in identifying those clients best served under a chronic care management model using predictive modeling through claims or other health risk information; and

(b) Evaluate the effectiveness of current chronic care management efforts in the health and recovery services administration and the aging and disability services administration, comparison to best practices, and recommendations for future efforts and organizational structure to improve chronic care management.

(2) For purposes of this section:

(a) "Medical home" means a site of care that provides comprehensive preventive and coordinated care centered on the patient needs and assures high quality, accessible, and efficient care.

(b) "Chronic care management" means the department's program that provides care management and coordination

activities for medical assistance clients determined to be at risk for high medical costs. "Chronic care management" provides education and training and/or coordination that assist program participants in improving self-management skills to improve health outcomes and reduce medical costs by educating clients to better utilize services. [2007 c 259 § 4.]

Severability—Subheadings not law—2007 c 259: See notes following RCW 41.05.033.

Chapter 74.09A RCW
MEDICAL ASSISTANCE—COORDINATION
OF BENEFITS—COMPUTERIZED
INFORMATION TRANSFER

Sections

- 74.09A.005 Finding.
- 74.09A.010 Definitions.
- 74.09A.020 Computerized information—Provision to health insurers.
- 74.09A.030 Duties of health insurers—Providing information—Payments—Claims—Costs and fees.

74.09A.005 Finding. The legislature finds that:

(1) Simplification in the administration of payment of health benefits is important for the state, providers, and health insurers;

(2) The state, providers, and health insurers should take advantage of all opportunities to streamline operations through automation and the use of common computer standards;

(3) It is in the best interests of the state, providers, and health insurers to identify all third parties that are obligated to cover the cost of health care coverage of joint beneficiaries; and

(4) Health insurers, as a condition of doing business in Washington, must increase their effort to share information with the department and accept the department's timely claims consistent with 42 U.S.C. 1396a(a)(25).

Therefore, the legislature declares that to improve the coordination of benefits between the department of social and health services and health insurers to ensure that medical insurance benefits are properly utilized, a transfer of information between the department and health insurers should be instituted, and the process for submitting requests for information and claims should be simplified. [2007 c 179 § 1; 1993 c 10 § 1.]

Effective date—2007 c 179: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect July 1, 2007." [2007 c 179 § 5.]

74.09A.010 Definitions. For the purposes of this chapter:

(1) "Department" means the department of social and health services.

(2) "Health insurance coverage" includes any policy, contract, or agreement under which health care items or services are provided, arranged, reimbursed, or paid for by a health insurer.

(3) "Health insurer" means any party that is, by statute, policy, contract, or agreement, legally responsible for payment of a claim for a health care item or service, including, but not limited to, a commercial insurance company provid-

ing disability insurance under chapter 48.20 or 48.21 RCW, a health care service contractor providing health care coverage under chapter 48.44 RCW, a health maintenance organization providing comprehensive health care services under chapter 48.46 RCW, an employer or union self-insured plan, any private insurer, a group health plan, a service benefit plan, a managed care organization, a pharmacy benefit manager, and a third party administrator.

(4) "Computerized" means on-line or batch processing with standardized format via magnetic tape output.

(5) "Joint beneficiary" is an individual who has health insurance coverage and is a recipient of public assistance benefits under chapter 74.09 RCW. [2007 c 179 § 2; 1993 c 10 § 2.]

Effective date—2007 c 179: See note following RCW 74.09A.005.

74.09A.020 Computerized information—Provision to health insurers. (1) The department shall provide routine and periodic computerized information to health insurers regarding client eligibility and coverage information. Health insurers shall use this information to identify joint beneficiaries. Identification of joint beneficiaries shall be transmitted to the department. The department shall use this information to improve accuracy and currency of health insurance coverage and promote improved coordination of benefits.

(2) To the maximum extent possible, necessary data elements and a compatible database shall be developed by affected health insurers and the department. The department shall establish a representative group of health insurers and state agency representatives to develop necessary technical and file specifications to promote a standardized database. The database shall include elements essential to the department and its population's health insurance coverage information.

(3) If the state and health insurers enter into other agreements regarding the use of common computer standards, the database identified in this section shall be replaced by the new common computer standards.

(4) The information provided will be of sufficient detail to promote reliable and accurate benefit coordination and identification of individuals who are also eligible for department programs.

(5) The frequency of updates will be mutually agreed to by each health insurer and the department based on frequency of change and operational limitations. In no event shall the computerized data be provided less than semiannually.

(6) The health insurers and the department shall safeguard and properly use the information to protect records as provided by law, including but not limited to chapters 42.48, 74.09, 74.04, 70.02, and 42.56 RCW, and 42 U.S.C. Sec. 1396a and 42 C.F.R. Sec. 43 et seq. The purpose of this exchange of information is to improve coordination and administration of benefits and ensure that medical insurance benefits are properly utilized.

(7) The department shall target implementation of this section to those health insurers with the highest probability of joint beneficiaries. [2007 c 179 § 3; 2005 c 274 § 350; 1993 c 10 § 3.]

Effective date—2007 c 179: See note following RCW 74.09A.005.

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

[2007 RCW Supp—page 902]

74.09A.030 Duties of health insurers—Providing information—Payments—Claims—Costs and fees. Health insurers, as a condition of doing business in Washington, must:

(1) Provide, with respect to individuals who are eligible for, or are provided, medical assistance under chapter 74.09 RCW, upon the request of the department, information to determine during what period the individual or their spouses or their dependants may be, or may have been, covered by a health insurer and the nature of coverage that is or was provided by the health insurer, including the name, address, and identifying number of the plan, in a manner prescribed by the department;

(2) Accept the department's right to recovery and the assignment to the department of any right of an individual or other entity to payment from the party for an item or service for which payment has been made under chapter 74.09 RCW;

(3) Respond to any inquiry by the department regarding a claim for payment for any health care item or service that is submitted not later than three years after the date of the provision of such health care item or service;

(4) Agree not to deny a claim submitted by the department solely on the basis of the date of submission of the claim, the type or format of the claim form, or a failure to present proper documentation at the point-of-sale that is the basis of the claim, if:

(a) The claim is submitted by the department within the three-year period beginning on the date the item or service was furnished; and

(b) Any action by the department to enforce its rights with respect to such claim is commenced within six years of the department's submission of such claim; and

(5) Agree that the prevailing party in any legal action to enforce this section receives reasonable attorneys' fees as well as related collection fees and costs incurred in the enforcement of this section. [2007 c 179 § 4.]

Effective date—2007 c 179: See note following RCW 74.09A.005.

Chapter 74.13 RCW

CHILD WELFARE SERVICES

Sections

- 74.13.031 Duties of department—Child welfare services—Children's services advisory committee.
- 74.13.0903 Recodified as RCW 43.215.545.
- 74.13.096 Representation of children of color—Advisory committee. (*Expires June 30, 2014.*)
- 74.13.280 Client information.
- 74.13.285 Passports—Information to be provided to foster parents.
- 74.13.330 Responsibilities of foster parents.
- 74.13.650 Foster parent critical support and retention program.
- 74.13.660 Foster parent critical support and retention program—Availability, assessment, training, referral.
- 74.13.670 Care provider immunity for allegation of failure to supervise a sexually reactive, physically assaultive, or physically aggressive youth—Conditions.

74.13.031 Duties of department—Child welfare services—Children's services advisory committee. The department shall have the duty to provide child welfare services and shall:

(1) Develop, administer, supervise, and monitor a coordinated and comprehensive plan that establishes, aids, and

strengthens services for the protection and care of runaway, dependent, or neglected children.

(2) Within available resources, recruit an adequate number of prospective adoptive and foster homes, both regular and specialized, i.e. homes for children of ethnic minority, including Indian homes for Indian children, sibling groups, handicapped and emotionally disturbed, teens, pregnant and parenting teens, and annually report to the governor and the legislature concerning the department's success in: (a) Meeting the need for adoptive and foster home placements; (b) reducing the foster parent turnover rate; (c) completing home studies for legally free children; and (d) implementing and operating the passport program required by RCW 74.13.285. The report shall include a section entitled "Foster Home Turn-Over, Causes and Recommendations."

(3) Investigate complaints of any recent act or failure to act on the part of a parent or caretaker that results in death, serious physical or emotional harm, or sexual abuse or exploitation, or that presents an imminent risk of serious harm, and on the basis of the findings of such investigation, offer child welfare services in relation to the problem to such parents, legal custodians, or persons serving in loco parentis, and/or bring the situation to the attention of an appropriate court, or another community agency: PROVIDED, That an investigation is not required of nonaccidental injuries which are clearly not the result of a lack of care or supervision by the child's parents, legal custodians, or persons serving in loco parentis. If the investigation reveals that a crime against a child may have been committed, the department shall notify the appropriate law enforcement agency.

(4) Offer, on a voluntary basis, family reconciliation services to families who are in conflict.

(5) Monitor out-of-home placements, on a timely and routine basis, to assure the safety, well-being, and quality of care being provided is within the scope of the intent of the legislature as defined in RCW 74.13.010 and 74.15.010, and annually submit a report measuring the extent to which the department achieved the specified goals to the governor and the legislature.

(6) Have authority to accept custody of children from parents and to accept custody of children from juvenile courts, where authorized to do so under law, to provide child welfare services including placement for adoption, to provide for the routine and necessary medical, dental, and mental health care, or necessary emergency care of the children, and to provide for the physical care of such children and make payment of maintenance costs if needed. Except where required by Public Law 95-608 (25 U.S.C. Sec. 1915), no private adoption agency which receives children for adoption from the department shall discriminate on the basis of race, creed, or color when considering applications in their placement for adoption.

(7) Have authority to provide temporary shelter to children who have run away from home and who are admitted to crisis residential centers.

(8) Have authority to purchase care for children; and shall follow in general the policy of using properly approved private agency services for the actual care and supervision of such children insofar as they are available, paying for care of such children as are accepted by the department as eligible for support at reasonable rates established by the department.

(9) Establish a children's services advisory committee which shall assist the secretary in the development of a partnership plan for utilizing resources of the public and private sectors, and advise on all matters pertaining to child welfare, licensing of child care agencies, adoption, and services related thereto. At least one member shall represent the adoption community.

(10)(a) Have authority to provide continued foster care or group care as needed to participate in or complete a high school or vocational school program.

(b)(i) Beginning in 2006, the department has the authority to allow up to fifty youth reaching age eighteen to continue in foster care or group care as needed to participate in or complete a posthigh school academic or vocational program, and to receive necessary support and transition services.

(ii) In 2007 and 2008, the department has the authority to allow up to fifty additional youth per year reaching age eighteen to remain in foster care or group care as provided in (b)(i) of this subsection.

(iii) A youth who remains eligible for such placement and services pursuant to department rules may continue in foster care or group care until the youth reaches his or her twenty-first birthday. Eligibility requirements shall include active enrollment in a posthigh school academic or vocational program and maintenance of a 2.0 grade point average.

(11) Refer cases to the division of child support whenever state or federal funds are expended for the care and maintenance of a child, including a child with a developmental disability who is placed as a result of an action under chapter 13.34 RCW, unless the department finds that there is good cause not to pursue collection of child support against the parent or parents of the child. Cases involving individuals age eighteen through twenty shall not be referred to the division of child support unless required by federal law.

(12) Have authority within funds appropriated for foster care services to purchase care for Indian children who are in the custody of a federally recognized Indian tribe or tribally licensed child-placing agency pursuant to parental consent, tribal court order, or state juvenile court order; and the purchase of such care shall be subject to the same eligibility standards and rates of support applicable to other children for whom the department purchases care.

Notwithstanding any other provision of RCW 13.32A.170 through 13.32A.200 and 74.13.032 through 74.13.036, or of this section all services to be provided by the department of social and health services under subsections (4), (6), and (7) of this section, subject to the limitations of these subsections, may be provided by any program offering such services funded pursuant to Titles II and III of the federal juvenile justice and delinquency prevention act of 1974.

(13) Within amounts appropriated for this specific purpose, provide preventive services to families with children that prevent or shorten the duration of an out-of-home placement.

(14) Have authority to provide independent living services to youths, including individuals who have attained eighteen years of age, and have not attained twenty-one years of age who are or have been in foster care.

(15) Consult at least quarterly with foster parents, including members of the foster parent association of Washington state, for the purpose of receiving information and

comment regarding how the department is performing the duties and meeting the obligations specified in this section and RCW 74.13.250 and 74.13.320 regarding the recruitment of foster homes, reducing foster parent turnover rates, providing effective training for foster parents, and administering a coordinated and comprehensive plan that strengthens services for the protection of children. Consultation shall occur at the regional and statewide levels. [2007 c 413 § 10. Prior: 2006 c 266 § 1; 2006 c 221 § 3; 2004 c 183 § 3; 2001 c 192 § 1; 1999 c 267 § 8; 1998 c 314 § 10; prior: 1997 c 386 § 32; 1997 c 272 § 1; 1995 c 191 § 1; 1990 c 146 § 9; prior: 1987 c 505 § 69; 1987 c 170 § 10; 1983 c 246 § 4; 1982 c 118 § 3; 1981 c 298 § 16; 1979 ex.s. c 165 § 22; 1979 c 155 § 77; 1977 ex.s. c 291 § 22; 1975-'76 2nd ex.s. c 71 § 4; 1973 1st ex.s. c 101 § 2; 1967 c 172 § 17.]

Severability—2007 c 413: See note following RCW 13.34.215.

Construction—2006 c 266: "Nothing in this act shall be construed to create:

- (1) An entitlement to services;
- (2) Judicial authority to extend the jurisdiction of juvenile court in a proceeding under chapter 13.34 RCW to a youth who has attained eighteen years of age or to order the provision of services to the youth; or
- (3) A private right of action or claim on the part of any individual, entity, or agency against the department of social and health services or any contractor of the department." [2006 c 266 § 2.]

Adoption of rules—2006 c 266: "The department of social and health services is authorized to adopt rules establishing eligibility for independent living services and placement for youths under this act." [2006 c 266 § 3.]

Study and report—2006 c 266: "(1) Beginning in July 2008 and subject to the approval of its governing board, the Washington state institute for public policy shall conduct a study measuring the outcomes for foster youth who have received continued support pursuant to RCW 74.13.031(10). The study should include measurements of any savings to the state and local government. The institute shall issue a report containing its preliminary findings to the legislature by December 1, 2008, and a final report by December 1, 2009.

(2) The institute is authorized to accept nonstate funds to conduct the study required in subsection (1) of this section." [2006 c 266 § 4.]

Finding—2006 c 221: See note following RCW 13.34.315.

Effective date—2004 c 183: See note following RCW 13.34.160.

Findings—Intent—Severability—1999 c 267: See notes following RCW 43.20A.790.

Application—Effective date—1997 c 386: See notes following RCW 13.50.010.

Effective date—1997 c 272: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect July 1, 1997." [1997 c 272 § 8.]

Effective date—1987 c 170 §§ 10 and 11: "Sections 10 and 11 of this act shall take effect July 1, 1988." [1987 c 170 § 16.]

Severability—1987 c 170: See note following RCW 13.04.030.

Severability—1981 c 298: See note following RCW 13.32A.040.

Effective dates—Severability—1977 ex.s. c 291: See notes following RCW 13.04.005.

Severability—1967 c 172: See note following RCW 74.15.010.

Declaration of purpose—1967 c 172: See RCW 74.15.010.

Abuse of child: Chapter 26.44 RCW.

Licensing of agencies caring for or placing children, expectant mothers, and individuals with developmental disabilities: Chapter 74.15 RCW.

74.13.0903 Recodified as RCW 43.215.545. See Supplementary Table of Disposition of Former RCW Sections, this volume.

[2007 RCW Supp—page 904]

74.13.096 Representation of children of color—Advisory committee. (Expires June 30, 2014.) (1) The secretary of the department of social and health services shall convene an advisory committee to analyze and make recommendations on the disproportionate representation of children of color in Washington's child welfare system. The department shall collaborate with the Washington institute for public policy and private sector entities to develop a methodology for the advisory committee to follow in conducting a baseline analysis of data from the child welfare system to determine whether racial disproportionality and racial disparity exist in this system. The Washington institute for public policy shall serve as technical staff for the advisory committee. In determining whether racial disproportionality or racial disparity exists, the committee shall utilize existing research and evaluations conducted within Washington state, nationally, and in other states and localities that have similarly analyzed the prevalence of racial disproportionality and disparity in child welfare.

(2) At a minimum, the advisory committee shall examine and analyze: (a) The level of involvement of children of color at each stage in the state's child welfare system, including the points of entry and exit, and each point at which a treatment decision is made; (b) the number of children of color in low-income or single-parent families involved in the state's child welfare system; (c) the family structures of families involved in the state's child welfare system; and (d) the outcomes for children in the existing child welfare system. This analysis shall be disaggregated by racial and ethnic group, and by geographic region.

(3) The committee of not more than fifteen individuals shall consist of experts in social work, law, child welfare, psychology, or related fields, at least two tribal representatives, a representative of the governor's juvenile justice advisory committee, a representative of a community-based organization involved with child welfare issues, a representative of the department of social and health services, a current or former foster care youth, a current or former foster care parent, and a parent previously involved with Washington's child welfare system. Committee members shall be selected as follows: (a) Five members selected by the senate majority leader; (b) five members selected by the speaker of the house of representatives; and (c) five members selected by the secretary of the department of social and health services. The secretary, the senate majority leader, and the speaker of the house of representatives shall coordinate appointments to ensure the representation specified in this subsection is achieved. After the advisory committee appointments are finalized, the committee shall select two individuals to serve as co-chairs of the committee, one of whom shall be a representative from a nongovernmental entity.

(4) The secretary shall make reasonable efforts to seek public and private funding for the advisory committee.

(5) Not later than June 1, 2008, the advisory committee created in subsection (1) of this section shall report to the secretary of the department of social and health services on the results of the analysis. If the results of the analysis indicate disproportionality or disparity exists for any racial or ethnic group in any region of the state, the committee, in conjunction with the secretary of the department of social and health services, shall develop a plan for remedying the disproportion-

tionality or disparity. The remediation plan shall include: (a) Recommendations for administrative and legislative actions related to appropriate programs and services to reduce and eliminate disparities in the system and improve the long-term outcomes for children of color who are served by the system; and (b) performance measures for implementing the remediation plan. To the extent possible and appropriate, the remediation plan shall be developed to integrate the recommendations required in this subsection with the department's existing compliance plans, training efforts, and other practice improvement and reform initiatives in progress. The advisory committee shall be responsible for ongoing evaluation of current and prospective policies and procedures for their contribution to or effect on racial disproportionality and disparity.

(6) Not later than December 1, 2008, the secretary shall report the results of the analysis conducted under subsection (2) of this section and shall describe the remediation plan required under subsection (5) of this section to the appropriate committees of the legislature with jurisdiction over policy and fiscal matters relating to children, families, and human services. Beginning January 1, 2010, the secretary shall report annually to the appropriate committees of the legislature on the implementation of the remediation plan, including any measurable progress made in reducing and eliminating racial disproportionality and disparity in the state's child welfare system. [2007 c 465 § 2.]

Findings—2007 c 465: "The legislature finds that one in five of Washington's one and one-half million children are children of color. Broken out by racial groups, approximately six percent of children are Asian/Pacific Islander, six percent are multiracial, four and one-half percent are African American, and two percent are Native American. Thirteen percent of Washington children are of Hispanic origin, but representation of this group increases in the lower age ranges. For example, seventeen percent of children birth to four years of age are Hispanic.

The legislature also finds that in counties such as Adams, Franklin, Yakima, and Grant, more than half of the births are of Hispanic origin. Three-quarters of the state's African American children and two-thirds of Asian/Pacific Islander children live in King and Pierce counties. The legislature finds further that despite some progress closing the achievement gap in recent years, children of color continue to lag behind their classmates on the Washington assessment of student learning. In 2005 children of color trailed in every category of the fourth-grade reading, writing, and math assessments. On the reading test alone, sixty-nine percent of African American students, sixty-four percent of Native American students, and sixty-one percent of Hispanic students met the standards, compared with eighty-five percent of caucasian students. And, since 1993, the number of Washington students for which English is not their first language has doubled to more than seven percent of students statewide.

The legislature finds further that according to national research, African American children enter the child welfare system at far higher rates than caucasian children, despite no greater incidence of maltreatment in African American families compared to caucasian families. This trend holds true for Washington state, where African American children represent approximately nine and one-half percent of the children in out-of-home care even though they represent slightly more than four percent of the state's total child population. Native American children represent slightly over ten percent of the children in out-of-home care although they represent only two percent of the children in the state. In King county, African American and Native American children are over represented at nearly every decision point in the child welfare system. Although these two groups of children represent only eight percent of the child population in King county, they account for one-third of all children removed from their homes and one-half of children in foster care for more than four years.

The legislature finds also that children of immigrants are the fastest growing component of the United States' child population. While immigrants are eleven percent of the nation's total population, the children of immigrants make up twenty-two percent of the nation's children under six

years of age. These immigrant children are twice as likely as native-born children to be poor." [2007 c 465 § 1.]

Expiration date—2007 c 465: "This act expires June 30, 2014." [2007 c 465 § 3.]

74.13.280 Client information. (1) Except as provided in RCW 70.24.105, whenever a child is placed in out-of-home care by the department or a child-placing agency, the department or agency shall share information known to the department or agency about the child and the child's family with the care provider and shall consult with the care provider regarding the child's case plan. If the child is dependent pursuant to a proceeding under chapter 13.34 RCW, the department or agency shall keep the care provider informed regarding the dates and location of dependency review and permanency planning hearings pertaining to the child.

(2) Information about the child and the child's family shall include information known to the department or agency as to whether the child is a sexually reactive child, has exhibited high-risk behaviors, or is physically assaultive or physically aggressive, as defined in this section.

(3) Information about the child shall also include information known to the department or agency that the child:

(a) Has received a medical diagnosis of fetal alcohol syndrome or fetal alcohol effect;

(b) Has been diagnosed by a qualified mental health professional as having a mental health disorder;

(c) Has witnessed a death or substantial physical violence in the past or recent past; or

(d) Was a victim of sexual or severe physical abuse in the recent past.

(4) Any person who receives information about a child or a child's family pursuant to this section shall keep the information confidential and shall not further disclose or disseminate the information except as authorized by law. Care providers shall agree in writing to keep the information that they receive confidential and shall affirm that the information will not be further disclosed or disseminated, except as authorized by law.

(5) Nothing in this section shall be construed to limit the authority of the department or child-placing agencies to disclose client information or to maintain client confidentiality as provided by law.

(6) As used in this section:

(a) "Sexually reactive child" means a child who exhibits sexual behavior problems including, but not limited to, sexual behaviors that are developmentally inappropriate for their age or are harmful to the child or others.

(b) "High-risk behavior" means an observed or reported and documented history of one or more of the following:

(i) Suicide attempts or suicidal behavior or ideation;

(ii) Self-mutilation or similar self-destructive behavior;

(iii) Fire-setting or a developmentally inappropriate fascination with fire;

(iv) Animal torture;

(v) Property destruction; or

(vi) Substance or alcohol abuse.

(c) "Physically assaultive or physically aggressive" means a child who exhibits one or more of the following behaviors that are developmentally inappropriate and harmful to the child or to others:

- (i) Observed assaultive behavior;
- (ii) Reported and documented history of the child willfully assaulting or inflicting bodily harm; or
- (iii) Attempting to assault or inflict bodily harm on other children or adults under circumstances where the child has the apparent ability or capability to carry out the attempted assaults including threats to use a weapon. [2007 c 409 § 6; 2007 c 220 § 4; 2001 c 318 § 3; 1997 c 272 § 7; 1995 c 311 § 21; 1991 c 340 § 4; 1990 c 284 § 10.]

Reviser's note: This section was amended by 2007 c 220 § 4 and by 2007 c 409 § 6, each without reference to the other. Both amendments are incorporated in the publication of this section under RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

Effective date—2007 c 409: See note following RCW 13.34.096.

Effective date—1997 c 272: See note following RCW 74.13.031.

Finding—Effective date—1990 c 284: See notes following RCW 74.13.250.

74.13.285 Passports—Information to be provided to foster parents. (1) Within available resources, the department shall prepare a passport containing all known and available information concerning the mental, physical, health, and educational status of the child for any child who has been in a foster home for ninety consecutive days or more. The passport shall contain education records obtained pursuant to RCW 28A.150.510. The passport shall be provided to a foster parent at any placement of a child covered by this section. The department shall update the passport during the regularly scheduled court reviews required under chapter 13.34 RCW.

New placements after July 1, 1997, shall have first priority in the preparation of passports. Within available resources, the department may prepare passports for any child in a foster home on July 1, 1997, provided that no time spent in a foster home before July 1, 1997, shall be included in the computation of the ninety days.

(2) In addition to the requirements of subsection (1) of this section, the department shall, within available resources, notify a foster parent before placement of a child of any known health conditions that pose a serious threat to the child and any known behavioral history that presents a serious risk of harm to the child or others.

(3) The department shall hold harmless the provider for any unauthorized disclosures caused by the department.

(4) Any foster parent who receives information about a child or a child's family pursuant to this section shall keep the information confidential and shall not further disclose or disseminate the information, except as authorized by law. Such individuals shall agree in writing to keep the information that they receive confidential and shall affirm that the information will not be further disclosed or disseminated, except as authorized by law. [2007 c 409 § 7; 2000 c 88 § 2; 1997 c 272 § 5.]

Effective date—2007 c 409: See note following RCW 13.34.096.

Effective date—1997 c 272: See note following RCW 74.13.031.

74.13.330 Responsibilities of foster parents. Foster parents are responsible for the protection, care, supervision, and nurturing of the child in placement. As an integral part of the foster care team, foster parents shall, if appropriate and they desire to: Participate in the development of the service plan for the child and the child's family; assist in family visitation, including monitoring; model effective parenting

behavior for the natural family; and be available to help with the child's transition back to the natural family. [2007 c 410 § 7; 1990 c 284 § 23.]

Short title—2007 c 410: See note following RCW 13.34.138.

Finding—Effective date—1990 c 284: See notes following RCW 74.13.250.

74.13.650 Foster parent critical support and retention program. A foster parent critical support and retention program is established to retain foster parents who care for sexually reactive children, physically assaultive children, or children with other high-risk behaviors, as defined in RCW 74.13.280. Services shall consist of short-term therapeutic and educational interventions to support the stability of the placement. The foster parent critical support and retention program is to be implemented under the division of children and family services' contract and supervision. A contractor must demonstrate experience providing in-home case management, as well as experience working with caregivers of children with significant behavioral issues that pose a threat to others or themselves or the stability of the placement. [2007 c 220 § 7; 2006 c 353 § 2.]

Findings—2006 c 353: "The legislature finds that:

(1) Foster parents are able to successfully maintain placements of sexually reactive children, physically assaultive children, or children with other high-risk behaviors when they are provided with proper training and support. Lack of support contributes to placement disruptions and multiple moves between foster homes.

(2) Young children who have experienced repeated early abuse and trauma are at high risk for behavior later in life that is sexually deviant, if left untreated. Placement with a well-trained, prepared, and supported foster family can break this cycle." [2006 c 353 § 1.]

74.13.660 Foster parent critical support and retention program—Availability, assessment, training, referral. Under the foster parent critical support and retention program, foster parents who care for sexually reactive children, physically assaultive children, or children with other high-risk behaviors, as defined in RCW 74.13.280, shall receive:

(1) Availability at any time of the day or night to address specific concerns related to the identified child;

(2) Assessment of risk and development of a safety and supervision plan;

(3) Home-based foster parent training utilizing evidence-based models; and

(4) Referral to relevant community services and training provided by the local children's administration office or community agencies. [2007 c 220 § 8; 2006 c 353 § 3.]

Findings—2006 c 353: See note following RCW 74.13.650.

74.13.670 Care provider immunity for allegation of failure to supervise a sexually reactive, physically assaultive, or physically aggressive youth—Conditions. (1) A care provider may not be found to have abused or neglected a child under chapter 26.44 RCW or be denied a license pursuant to chapter 74.15 RCW and RCW 74.13.031 for any allegations of failure to supervise wherein:

(a) The allegations arise from the child's conduct that is substantially similar to prior behavior of the child, and:

(i) The child is a sexually reactive youth, exhibits high-risk behaviors, or is physically assaultive or physically

aggressive as defined in RCW 74.13.280, and this information and the child's prior behavior was not disclosed to the care provider as required by RCW 74.13.280; and

(ii) The care provider did not know or have reason to know that the child needed supervision as a sexually reactive or physically assaultive or physically aggressive youth, or because of a documented history of high-risk behaviors, as a result of the care provider's involvement with or independent knowledge of the child or training and experience; or

(b) The child was not within the reasonable control of the care provider at the time of the incident that is the subject of the allegation, and the care provider was acting in good faith and did not know or have reason to know that reasonable control or supervision of the child was necessary to prevent harm or risk of harm to the child or other persons.

(2) Allegations of child abuse or neglect that meet the provisions of this section shall be designated as "unfounded" as defined in RCW 26.44.020. [2007 c 220 § 5.]

Chapter 74.15 RCW

CARE OF CHILDREN, EXPECTANT MOTHERS, DEVELOPMENTALLY DISABLED

Sections

74.15.020	Definitions.
74.15.030	Powers and duties of secretary.
74.15.035	Repealed.
74.15.130	Licenses—Denial, suspension, revocation, modification— Procedures—Adjudicative proceedings—Penalties.

74.15.020 Definitions. For the purpose of this chapter and RCW 74.13.031, and unless otherwise clearly indicated by the context thereof, the following terms shall mean:

(1) "Agency" means any person, firm, partnership, association, corporation, or facility which receives children, expectant mothers, or persons with developmental disabilities for control, care, or maintenance outside their own homes, or which places, arranges the placement of, or assists in the placement of children, expectant mothers, or persons with developmental disabilities for foster care or placement of children for adoption, and shall include the following irrespective of whether there is compensation to the agency or to the children, expectant mothers or persons with developmental disabilities for services rendered:

(a) "Child-placing agency" means an agency which places a child or children for temporary care, continued care, or for adoption;

(b) "Community facility" means a group care facility operated for the care of juveniles committed to the department under RCW 13.40.185. A county detention facility that houses juveniles committed to the department under RCW 13.40.185 pursuant to a contract with the department is not a community facility;

(c) "Crisis residential center" means an agency which is a temporary protective residential facility operated to perform the duties specified in chapter 13.32A RCW, in the manner provided in RCW 74.13.032 through 74.13.036;

(d) "Emergency respite center" is an agency that may be commonly known as a crisis nursery, that provides emergency and crisis care for up to seventy-two hours to children who have been admitted by their parents or guardians to pre-

vent abuse or neglect. Emergency respite centers may operate for up to twenty-four hours a day, and for up to seven days a week. Emergency respite centers may provide care for children ages birth through seventeen, and for persons eighteen through twenty with developmental disabilities who are admitted with a sibling or siblings through age seventeen. Emergency respite centers may not substitute for crisis residential centers or HOPE centers, or any other services defined under this section, and may not substitute for services which are required under chapter 13.32A or 13.34 RCW;

(e) "Foster-family home" means an agency which regularly provides care on a twenty-four hour basis to one or more children, expectant mothers, or persons with developmental disabilities in the family abode of the person or persons under whose direct care and supervision the child, expectant mother, or person with a developmental disability is placed;

(f) "Group-care facility" means an agency, other than a foster-family home, which is maintained and operated for the care of a group of children on a twenty-four hour basis;

(g) "HOPE center" means an agency licensed by the secretary to provide temporary residential placement and other services to street youth. A street youth may remain in a HOPE center for thirty days while services are arranged and permanent placement is coordinated. No street youth may stay longer than thirty days unless approved by the department and any additional days approved by the department must be based on the unavailability of a long-term placement option. A street youth whose parent wants him or her returned to home may remain in a HOPE center until his or her parent arranges return of the youth, not longer. All other street youth must have court approval under chapter 13.34 or 13.32A RCW to remain in a HOPE center up to thirty days;

(h) "Maternity service" means an agency which provides or arranges for care or services to expectant mothers, before or during confinement, or which provides care as needed to mothers and their infants after confinement;

(i) "Responsible living skills program" means an agency licensed by the secretary that provides residential and transitional living services to persons ages sixteen to eighteen who are dependent under chapter 13.34 RCW and who have been unable to live in his or her legally authorized residence and, as a result, the minor lived outdoors or in another unsafe location not intended for occupancy by the minor. Dependent minors ages fourteen and fifteen may be eligible if no other placement alternative is available and the department approves the placement;

(j) "Service provider" means the entity that operates a community facility.

(2) "Agency" shall not include the following:

(a) Persons related to the child, expectant mother, or person with developmental disability in the following ways:

(i) Any blood relative, including those of half-blood, and including first cousins, second cousins, nephews or nieces, and persons of preceding generations as denoted by prefixes of grand, great, or great-great;

(ii) Stepfather, stepmother, stepbrother, and stepsister;

(iii) A person who legally adopts a child or the child's parent as well as the natural and other legally adopted children of such persons, and other relatives of the adoptive parents in accordance with state law;

(iv) Spouses of any persons named in (I), (ii), or (iii) of this subsection (2)(a), even after the marriage is terminated;

(v) Relatives, as named in (I), (ii), (iii), or (iv) of this subsection (2)(a), of any half sibling of the child; or

(vi) Extended family members, as defined by the law or custom of the Indian child's tribe or, in the absence of such law or custom, a person who has reached the age of eighteen and who is the Indian child's grandparent, aunt or uncle, brother or sister, brother-in-law or sister-in-law, niece or nephew, first or second cousin, or stepparent who provides care in the family abode on a twenty-four-hour basis to an Indian child as defined in 25 U.S.C. Sec. 1903(4);

(b) Persons who are legal guardians of the child, expectant mother, or persons with developmental disabilities;

(c) Persons who care for a neighbor's or friend's child or children, with or without compensation, where the parent and person providing care on a twenty-four-hour basis have agreed to the placement in writing and the state is not providing any payment for the care;

(d) A person, partnership, corporation, or other entity that provides placement or similar services to exchange students or international student exchange visitors or persons who have the care of an exchange student in their home;

(e) A person, partnership, corporation, or other entity that provides placement or similar services to international children who have entered the country by obtaining visas that meet the criteria for medical care as established by the United States immigration and naturalization service, or persons who have the care of such an international child in their home;

(f) Schools, including boarding schools, which are engaged primarily in education, operate on a definite school year schedule, follow a stated academic curriculum, accept only school-age children and do not accept custody of children;

(g) Hospitals licensed pursuant to chapter 70.41 RCW when performing functions defined in chapter 70.41 RCW, nursing homes licensed under chapter 18.51 RCW and boarding homes licensed under chapter 18.20 RCW;

(h) Licensed physicians or lawyers;

(I) Facilities approved and certified under chapter 71A.22 RCW;

(j) Any agency having been in operation in this state ten years prior to June 8, 1967, and not seeking or accepting moneys or assistance from any state or federal agency, and is supported in part by an endowment or trust fund;

(k) Persons who have a child in their home for purposes of adoption, if the child was placed in such home by a licensed child-placing agency, an authorized public or tribal agency or court or if a replacement report has been filed under chapter 26.33 RCW and the placement has been approved by the court;

(l) An agency operated by any unit of local, state, or federal government or an agency licensed by an Indian tribe pursuant to RCW 74.15.190;

(m) A maximum or medium security program for juvenile offenders operated by or under contract with the department;

(n) An agency located on a federal military reservation, except where the military authorities request that such agency be subject to the licensing requirements of this chapter.

(3) "Department" means the state department of social and health services.

(4) "Family child care licensee" means a person who: (a) Provides regularly scheduled care for a child or children in the home of the provider for periods of less than twenty-four hours or, if necessary due to the nature of the parent's work, for periods equal to or greater than twenty-four hours; (b) does not receive child care subsidies; and (c) is licensed by the state under RCW 74.15.030.

(5) "Juvenile" means a person under the age of twenty-one who has been sentenced to a term of confinement under the supervision of the department under RCW 13.40.185.

(6) "Probationary license" means a license issued as a disciplinary measure to an agency that has previously been issued a full license but is out of compliance with licensing standards.

(7) "Requirement" means any rule, regulation, or standard of care to be maintained by an agency.

(8) "Secretary" means the secretary of social and health services.

(9) "Street youth" means a person under the age of eighteen who lives outdoors or in another unsafe location not intended for occupancy by the minor and who is not residing with his or her parent or at his or her legally authorized residence.

(10) "Transitional living services" means at a minimum, to the extent funds are available, the following:

(a) Educational services, including basic literacy and computational skills training, either in local alternative or public high schools or in a high school equivalency program that leads to obtaining a high school equivalency degree;

(b) Assistance and counseling related to obtaining vocational training or higher education, job readiness, job search assistance, and placement programs;

(c) Counseling and instruction in life skills such as money management, home management, consumer skills, parenting, health care, access to community resources, and transportation and housing options;

(d) Individual and group counseling; and

(e) Establishing networks with federal agencies and state and local organizations such as the United States department of labor, employment and training administration programs including the job training partnership act which administers private industry councils and the job corps; vocational rehabilitation; and volunteer programs. [2007 c 412 § 1. Prior: 2006 c 265 § 401; 2006 c 90 § 1; 2006 c 54 § 7; prior: 2001 c 230 § 1; 2001 c 144 § 1; 2001 c 137 § 3; 1999 c 267 § 11; 1998 c 269 § 3; 1997 c 245 § 7; prior: 1995 c 311 § 18; 1995 c 302 § 3; 1994 c 273 § 21; 1991 c 128 § 14; 1988 c 176 § 912; 1987 c 170 § 12; 1982 c 118 § 5; 1979 c 155 § 83; 1977 ex.s. c 80 § 71; 1967 c 172 § 2.]

Part headings not law—Effective date—Severability—2006 c 265: See RCW 43.215.904 through 43.215.906.

Part headings not law—Severability—Conflict with federal requirements—Short title—2006 c 54: See RCW 41.56.911 through 41.56.914.

Findings—Intent—Severability—1999 c 267: See notes following RCW 43.20A.790.

Alphabetization—1998 c 269: See note following RCW 13.50.010.

Intent—Finding—Effective date—1998 c 269: See notes following RCW 72.05.020.

Intent—1995 c 302: See note following RCW 74.15.010.

Severability—Effective date—1991 c 128: See RCW 19.166.900 and 19.166.901.

Severability—1988 c 176: See RCW 71A.10.900.

Severability—1987 c 170: See note following RCW 13.04.030.

Effective date—Severability—1979 c 155: See notes following RCW 13.04.011.

Purpose—Intent—Severability—1977 ex.s. c 80: See notes following RCW 4.16.190.

74.15.030 Powers and duties of secretary. The secretary shall have the power and it shall be the secretary's duty:

(1) In consultation with the children's services advisory committee, and with the advice and assistance of persons representative of the various type agencies to be licensed, to designate categories of facilities for which separate or different requirements shall be developed as may be appropriate whether because of variations in the ages, sex and other characteristics of persons served, variations in the purposes and services offered or size or structure of the agencies to be licensed hereunder, or because of any other factor relevant thereto;

(2) In consultation with the children's services advisory committee, and with the advice and assistance of persons representative of the various type agencies to be licensed, to adopt and publish minimum requirements for licensing applicable to each of the various categories of agencies to be licensed.

The minimum requirements shall be limited to:

(a) The size and suitability of a facility and the plan of operation for carrying out the purpose for which an applicant seeks a license;

(b) Obtaining background information and any out-of-state equivalent, to determine whether the applicant or service provider is disqualified and to determine the character, competence, and suitability of an agency, the agency's employees, volunteers, and other persons associated with an agency;

(c) Conducting background checks for those who will or may have unsupervised access to children, expectant mothers, or individuals with a developmental disability;

(d) Obtaining child protective services information or records maintained in the department case management information system. No unfounded allegation of child abuse or neglect as defined in RCW 26.44.020 may be disclosed to a child-placing agency, private adoption agency, or any other provider licensed under this chapter;

(e) Submitting a fingerprint-based background check through the Washington state patrol under chapter 10.97 RCW and through the federal bureau of investigation for:

(i) Agencies and their staff, volunteers, students, and interns when the agency is seeking license or relicense;

(ii) Foster care and adoption placements; and

(iii) Any adult living in a home where a child may be placed;

(f) If any adult living in the home has not resided in the state of Washington for the preceding five years, the department shall review any child abuse and neglect registries maintained by any state where the adult has resided over the preceding five years;

(g) The cost of fingerprint background check fees will be paid as required in RCW 43.43.837;

(h) National and state background information must be used solely for the purpose of determining eligibility for a license and for determining the character, suitability, and competence of those persons or agencies, excluding parents, not required to be licensed who are authorized to care for children or expectant mothers;

(i) The number of qualified persons required to render the type of care and treatment for which an agency seeks a license;

(j) The safety, cleanliness, and general adequacy of the premises to provide for the comfort, care and well-being of children, expectant mothers or developmentally disabled persons;

(k) The provision of necessary care, including food, clothing, supervision and discipline; physical, mental and social well-being; and educational, recreational and spiritual opportunities for those served;

(l) The financial ability of an agency to comply with minimum requirements established pursuant to chapter 74.15 RCW and RCW 74.13.031; and

(m) The maintenance of records pertaining to the admission, progress, health and discharge of persons served;

(3) To investigate any person, including relatives by blood or marriage except for parents, for character, suitability, and competence in the care and treatment of children, expectant mothers, and developmentally disabled persons prior to authorizing that person to care for children, expectant mothers, and developmentally disabled persons. However, if a child is placed with a relative under RCW 13.34.065 or 13.34.130, and if such relative appears otherwise suitable and competent to provide care and treatment the criminal history background check required by this section need not be completed before placement, but shall be completed as soon as possible after placement;

(4) On reports of alleged child abuse and neglect, to investigate agencies in accordance with chapter 26.44 RCW, including child day-care centers and family day-care homes, to determine whether the alleged abuse or neglect has occurred, and whether child protective services or referral to a law enforcement agency is appropriate;

(5) To issue, revoke, or deny licenses to agencies pursuant to chapter 74.15 RCW and RCW 74.13.031. Licenses shall specify the category of care which an agency is authorized to render and the ages, sex and number of persons to be served;

(6) To prescribe the procedures and the form and contents of reports necessary for the administration of chapter 74.15 RCW and RCW 74.13.031 and to require regular reports from each licensee;

(7) To inspect agencies periodically to determine whether or not there is compliance with chapter 74.15 RCW and RCW 74.13.031 and the requirements adopted hereunder;

(8) To review requirements adopted hereunder at least every two years and to adopt appropriate changes after consultation with affected groups for child day-care requirements and with the children's services advisory committee for requirements for other agencies; and

(9) To consult with public and private agencies in order to help them improve their methods and facilities for the care of children, expectant mothers and developmentally disabled persons. [2007 c 387 § 5; 2007 c 17 § 14. Prior: 2006 c 265 § 402; 2006 c 54 § 8; 2005 c 490 § 11; prior: 2000 c 162 § 20; 2000 c 122 § 40; 1997 c 386 § 33; 1995 c 302 § 4; 1988 c 189 § 3; prior: 1987 c 524 § 13; 1987 c 486 § 14; 1984 c 188 § 5; 1982 c 118 § 6; 1980 c 125 § 1; 1979 c 141 § 355; 1977 ex.s. c 80 § 72; 1967 c 172 § 3.]

Reviser's note: This section was amended by 2007 c 17 § 14 and by 2007 c 387 § 5, each without reference to the other. Both amendments are incorporated in the publication of this section under RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

Part headings not law—Effective date—Severability—2006 c 265: See RCW 43.215.904 through 43.215.906.

Part headings not law—Severability—Conflict with federal requirements—Short title—2006 c 54: See RCW 41.56.911 through 41.56.914.

Effective date—2005 c 490: See note following RCW 43.215.540.

Application—Effective date—1997 c 386: See notes following RCW 13.50.010.

Intent—1995 c 302: See note following RCW 74.15.010.

Purpose—Intent—Severability—1977 ex.s. c 80: See notes following RCW 4.16.190.

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

74.15.130 Licenses—Denial, suspension, revocation, modification—Procedures—Adjudicative proceedings—Penalties. (1) An agency may be denied a license, or any license issued pursuant to chapter 74.15 RCW and RCW 74.13.031 may be suspended, revoked, modified, or not renewed by the secretary upon proof (a) that the agency has failed or refused to comply with the provisions of chapter 74.15 RCW and RCW 74.13.031 or the requirements promulgated pursuant to the provisions of chapter 74.15 RCW and RCW 74.13.031; or (b) that the conditions required for the issuance of a license under chapter 74.15 RCW and RCW 74.13.031 have ceased to exist with respect to such licenses. RCW 43.20A.205 governs notice of a license denial, revocation, suspension, or modification and provides the right to an adjudicative proceeding.

(2) In any adjudicative proceeding regarding the denial, modification, suspension, or revocation of a foster family home license, the department's decision shall be upheld if there is reasonable cause to believe that:

(a) The applicant or licensee lacks the character, suitability, or competence to care for children placed in out-of-home care, however, no unfounded, inconclusive, or screened-out report of child abuse or neglect may be used to deny employment or a license;

(b) The applicant or licensee has failed or refused to comply with any provision of chapter 74.15 RCW, RCW 74.13.031, or the requirements adopted pursuant to such provisions; or

(c) The conditions required for issuance of a license under chapter 74.15 RCW and RCW 74.13.031 have ceased to exist with respect to such licenses.

(3) In any adjudicative proceeding regarding the denial, modification, suspension, or revocation of any license under this chapter, other than a foster family home license, the

department's decision shall be upheld if it is supported by a preponderance of the evidence.

(4) The department may assess civil monetary penalties upon proof that an agency has failed or refused to comply with the rules adopted under the provisions of this chapter and RCW 74.13.031 or that an agency subject to licensing under this chapter and RCW 74.13.031 is operating without a license except that civil monetary penalties shall not be levied against a licensed foster home. Monetary penalties levied against unlicensed agencies that submit an application for licensure within thirty days of notification and subsequently become licensed will be forgiven. These penalties may be assessed in addition to or in lieu of other disciplinary actions. Civil monetary penalties, if imposed, may be assessed and collected, with interest, for each day an agency is or was out of compliance. Civil monetary penalties shall not exceed two hundred fifty dollars per violation for group homes and child-placing agencies. Each day upon which the same or substantially similar action occurs is a separate violation subject to the assessment of a separate penalty. The department shall provide a notification period before a monetary penalty is effective and may forgive the penalty levied if the agency comes into compliance during this period. The department may suspend, revoke, or not renew a license for failure to pay a civil monetary penalty it has assessed pursuant to this chapter within ten days after such assessment becomes final. Chapter 43.20A RCW governs notice of a civil monetary penalty and provides the right of an adjudicative proceeding. The preponderance of evidence standard shall apply in adjudicative proceedings related to assessment of civil monetary penalties. [2007 c 220 § 6; 2006 c 265 § 404; 2005 c 473 § 6; 1998 c 314 § 6; 1995 c 302 § 5; 1989 c 175 § 149; 1982 c 118 § 12; 1979 c 141 § 362; 1967 c 172 § 13.]

Part headings not law—Effective date—Severability—2006 c 265: See RCW 43.215.904 through 43.215.906.

Purpose—2005 c 473: See note following RCW 74.15.300.

Intent—1995 c 302: See note following RCW 74.15.010.

Effective date—1989 c 175: See note following RCW 34.05.010.

Chapter 74.20 RCW

SUPPORT OF DEPENDENT CHILDREN

Sections

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| 74.20.040 | Duty of department to enforce child support—Requests for support enforcement services—Schedule of fees—Waiver—Rules. |
| 74.20.330 | Payment of public assistance as assignment of rights to support—Department authorized to provide services. |

74.20.040 Duty of department to enforce child support—Requests for support enforcement services—Schedule of fees—Waiver—Rules. (1) Whenever the department receives an application for public assistance on behalf of a child, the department shall take appropriate action under the provisions of this chapter, chapter 74.20A RCW, or other appropriate statutes of this state to establish or enforce support obligations against the parent or other persons owing a duty to pay support moneys.

(2) The secretary may accept a request for support enforcement services on behalf of persons who are not recipients of public assistance and may take appropriate action to

establish or enforce support obligations against the parent or other persons owing a duty to pay moneys. Requests accepted under this subsection may be conditioned upon the payment of a fee as required by subsection (6) of this section or through regulation issued by the secretary. The secretary may establish by regulation, reasonable standards and qualifications for support enforcement services under this subsection.

(3) The secretary may accept requests for support enforcement services from child support enforcement agencies in other states operating child support programs under Title IV-D of the social security act or from foreign countries, and may take appropriate action to establish and enforce support obligations, or to enforce subpoenas, information requests, orders for genetic testing, and collection actions issued by the other agency against the parent or other person owing a duty to pay support moneys, the parent or other person's employer, or any other person or entity properly subject to child support collection or information-gathering processes. The request shall contain and be accompanied by such information and documentation as the secretary may by rule require, and be signed by an authorized representative of the agency. The secretary may adopt rules setting forth the duration and nature of services provided under this subsection.

(4) The department may take action to establish, enforce, and collect a support obligation, including performing related services, under this chapter and chapter 74.20A RCW, or through the attorney general or prosecuting attorney for action under chapter 26.09, 26.18, 26.20, 26.21A, or 26.26 RCW or other appropriate statutes or the common law of this state.

(5) Whenever a support order is filed with the Washington state support registry under chapter 26.23 RCW, the department may take appropriate action under the provisions of this chapter, chapter 26.23 or 74.20A RCW, or other appropriate law of this state to establish or enforce the support obligations contained in that order against the responsible parent or other persons owing a duty to pay support moneys.

(6) The secretary, in the case of an individual who has never received assistance under a state program funded under part A and for whom the state has collected at least five hundred dollars of support, shall impose an annual fee of twenty-five dollars for each case in which services are furnished, which shall be retained by the state from support collected on behalf of the individual, but not from the first five hundred dollars of support. The secretary may, on showing of necessity, waive or defer any such fee or cost.

(7) Fees, due and owing, may be retained from support payments directly or collected as delinquent support moneys utilizing any of the remedies in chapter 74.20 RCW, chapter 74.20A RCW, chapter 26.21A RCW, or any other remedy at law or equity available to the department or any agencies with whom it has a cooperative or contractual arrangement to establish, enforce, or collect support moneys or support obligations.

(8) The secretary may waive the fee, or any portion thereof, as a part of a compromise of disputed claims or may grant partial or total charge off of said fee if the secretary finds there are no available, practical, or lawful means by

which said fee may be collected or to facilitate payment of the amount of delinquent support moneys or fees owed.

(9) The secretary shall adopt rules conforming to federal laws, including but not limited to complying with section 7310 of the federal deficit reduction act of 2005, 42 U.S.C. Sec. 654, and rules and regulations required to be observed in maintaining the state child support enforcement program required under Title IV-D of the federal social security act. The adoption of these rules shall be calculated to promote the cost-effective use of the agency's resources and not otherwise cause the agency to divert its resources from its essential functions. [2007 c 143 § 5; 1997 c 58 § 891; 1989 c 360 § 12; 1985 c 276 § 1; 1984 c 260 § 29; 1982 c 201 § 20; 1973 1st ex.s. c 183 § 1; 1971 ex.s. c 213 § 1; 1963 c 206 § 3; 1959 c 322 § 5.]

Severability—2007 c 143: See note following RCW 26.18.170.

Short title—Part headings, captions, table of contents not law—Exemptions and waivers from federal law—Conflict with federal requirements—Severability—1997 c 58: See RCW 74.08A.900 through 74.08A.904.

Severability—1984 c 260: See RCW 26.18.900.

74.20.330 Payment of public assistance as assignment of rights to support—Department authorized to provide services.

(1) Whenever public assistance is paid under a state program funded under Title IV-A of the federal social security act as amended by the personal responsibility and work opportunity reconciliation act of 1996, and the federal deficit reduction act of 2005, each applicant or recipient is deemed to have made assignment to the department of any rights to a support obligation from any other person the applicant or recipient may have in his or her own behalf or in behalf of any other family member for whom the applicant or recipient is applying for or receiving public assistance, including any unpaid support obligation or support debt which has accrued at the time the assignment is made.

(2) Payment of public assistance under a state-funded program, or a program funded under Title IV-A, IV-E, or XIX of the federal social security act as amended by the personal responsibility and work opportunity reconciliation act of 1996 shall:

(a) Operate as an assignment by operation of law; and

(b) Constitute an authorization to the department to provide the assistance recipient with support enforcement services.

(3) Effective October 1, 2008, whenever public assistance is paid under a state program funded under Title IV-A of the federal social security act as amended by the personal responsibility and work opportunity reconciliation act of 1996, and the federal deficit reduction act of 2005, a member of the family is deemed to have made an assignment to the state any right the family member may have, or on behalf of the family member receiving such assistance, to support from any other person, not exceeding the total amount of assistance paid to the family, which accrues during the period that the family receives assistance under the program. [2007 c 143 § 6; 2000 c 86 § 6; 1997 c 58 § 936; 1989 c 360 § 13; 1988 c 275 § 19; 1985 c 276 § 3; 1979 ex.s. c 171 § 22.]

Severability—2007 c 143: See note following RCW 26.18.170.

Short title—Part headings, captions, table of contents not law—Exemptions and waivers from federal law—Conflict with federal

requirements—Severability—1997 c 58: See RCW 74.08A.900 through 74.08A.904.

Effective dates—Severability—1988 c 275: See notes following RCW 26.19.001.

Severability—1979 ex.s. c 171: See note following RCW 74.20.300.

Chapter 74.20A RCW

SUPPORT OF DEPENDENT CHILDREN— ALTERNATIVE METHOD—1971 ACT

Sections

- 74.20A.030 Department subrogated to rights for support—Enforcement actions—Certain parents exempt.
74.20A.055 Notice and finding of financial responsibility of responsible parent—Service—Hearing—Decisions—Rules.
74.20A.056 Notice and finding of financial responsibility pursuant to an affidavit of paternity—Procedure for contesting—Rules.

74.20A.030 Department subrogated to rights for support—Enforcement actions—Certain parents exempt.

(1) The department shall be subrogated to the right of any dependent child or children or person having the care, custody, and control of said child or children, if public assistance money is paid to or for the benefit of the child, or for the care and maintenance of a child, including a child with a developmental disability if the child has been placed into care as a result of an action under chapter 13.34 RCW, under a state-funded program, or a program funded under Title IV-A or IV-E of the federal social security act as amended by the personal responsibility and work opportunity reconciliation act of 1996, and the federal deficit reduction act of 2005, to prosecute or maintain any support action or execute any administrative remedy existing under the laws of the state of Washington to obtain reimbursement of moneys expended, based on the support obligation of the responsible parent established by a child support order. Distribution of any support moneys shall be made in accordance with RCW 26.23.035.

(2) The department may initiate, continue, maintain, or execute an action to establish, enforce, and collect a support obligation, including establishing paternity and performing related services, under this chapter and chapter 74.20 RCW, or through the attorney general or prosecuting attorney under chapter 26.09, 26.18, 26.20, 26.21A, 26.23, or 26.26 RCW or other appropriate statutes or the common law of this state, for so long as and under such conditions as the department may establish by regulation.

(3) Public assistance moneys shall be exempt from collection action under this chapter except as provided in RCW 74.20A.270.

(4) No collection action shall be taken against parents of children eligible for admission to, or children who have been discharged from, a residential habilitation center as defined by RCW 71A.10.020(8) unless the child with a developmental disability is placed as a result of an action under chapter 13.34 RCW. The child support obligation shall be calculated pursuant to chapter 26.19 RCW. [2007 c 143 § 7; 2004 c 183 § 5; 2000 c 86 § 7; 1997 c 58 § 934; 1993 sp.s. c 24 § 926; 1989 c 360 § 14. Prior: 1988 c 275 § 20; 1988 c 176 § 913; 1987 c 435 § 31; 1985 c 276 § 5; 1984 c 260 § 40; 1979 ex.s. c 171 § 4; 1979 c 141 § 371; 1973 1st ex.s. c 183 § 4; 1971 ex.s. c 164 § 3.]

Severability—2007 c 143: See note following RCW 26.18.170.

Effective date—2004 c 183: See note following RCW 13.34.160.

Short title—Part headings, captions, table of contents not law—Exemptions and waivers from federal law—Conflict with federal requirements—Severability—1997 c 58: See RCW 74.08A.900 through 74.08A.904.

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

Effective dates—Severability—1988 c 275: See notes following RCW 26.19.001.

Severability—1988 c 176: See RCW 71A.10.900.

Effective date—1987 c 435: See RCW 26.23.900.

Severability—1984 c 260: See RCW 26.18.900.

Severability—1979 ex.s. c 171: See note following RCW 74.20.300.

74.20A.055 Notice and finding of financial responsibility of responsible parent—Service—Hearing—Decisions—Rules.

(1) The secretary may, if there is no order that establishes the responsible parent's support obligation or specifically relieves the responsible parent of a support obligation or pursuant to an establishment of paternity under chapter 26.26 RCW, serve on the responsible parent or parents and custodial parent a notice and finding of financial responsibility requiring the parents to appear and show cause in an adjudicative proceeding why the finding of responsibility and/or the amount thereof is incorrect, should not be finally ordered, but should be rescinded or modified. This notice and finding shall relate to the support debt accrued and/or accruing under this chapter and/or RCW 26.16.205, including periodic payments to be made in the future. The hearing shall be held pursuant to this section, chapter 34.05 RCW, the Administrative Procedure Act, and the rules of the department. A custodian who has physical custody of a child has the same rights that a custodial parent has under this section.

(2) The notice and finding of financial responsibility shall be served in the same manner prescribed for the service of a summons in a civil action or may be served on the responsible parent by certified mail, return receipt requested. The receipt shall be prima facie evidence of service. The notice shall be served upon the debtor within sixty days from the date the state assumes responsibility for the support of the dependent child or children on whose behalf support is sought. If the notice is not served within sixty days from such date, the department shall lose the right to reimbursement of payments made after the sixty-day period and before the date of notification: PROVIDED, That if the department exercises reasonable efforts to locate the debtor and is unable to do so the entire sixty-day period is tolled until such time as the debtor can be located. The notice may be served upon the custodial parent who is the nonassistance applicant or public assistance recipient by first-class mail to the last known address. If the custodial parent is not the nonassistance applicant or public assistance recipient, service shall be in the same manner as for the responsible parent.

(3) The notice and finding of financial responsibility shall set forth the amount the department has determined the responsible parent owes, the support debt accrued and/or accruing, and periodic payments to be made in the future. The notice and finding shall also include:

(a) A statement of the name of the custodial parent and the name of the child or children for whom support is sought;

(b) A statement of the amount of periodic future support payments as to which financial responsibility is alleged;

(c) A statement that the responsible parent or custodial parent may object to all or any part of the notice and finding, and file an application for an adjudicative proceeding to show cause why the terms set forth in the notice should not be ordered;

(d) A statement that, if neither the responsible parent nor the custodial parent files in a timely fashion an application for an adjudicative proceeding, the support debt and payments stated in the notice and finding, including periodic support payments in the future, shall be assessed and determined and ordered by the department and that this debt and amounts due under the notice shall be subject to collection action;

(e) A statement that the property of the debtor, without further advance notice or hearing, will be subject to lien and foreclosure, distraint, seizure and sale, order to withhold and deliver, notice of payroll deduction or other collection action to satisfy the debt and enforce the support obligation established under the notice;

(f) A statement that either or both parents are responsible for providing health insurance for his or her child if coverage that can be extended to cover the child is or becomes available to the parent through employment or is union-related as provided under RCW 26.09.105.

(4) A responsible parent or custodial parent who objects to the notice and finding of financial responsibility may file an application for an adjudicative proceeding within twenty days of the date of service of the notice or thereafter as provided under this subsection.

(a) If the responsible parent or custodial parent files the application within twenty days, the office of administrative hearings shall schedule an adjudicative proceeding to hear the parent's or parents' objection and determine the support obligation for the entire period covered by the notice and finding of financial responsibility. The filing of the application stays collection action pending the entry of a final administrative order;

(b) If both the responsible parent and the custodial parent fail to file an application within twenty days, the notice and finding shall become a final administrative order. The amounts for current and future support and the support debt stated in the notice are final and subject to collection, except as provided under (c) and (d) of this subsection;

(c) If the responsible parent or custodial parent files the application more than twenty days after, but within one year of the date of service, the office of administrative hearings shall schedule an adjudicative proceeding to hear the parent's or parents' objection and determine the support obligation for the entire period covered by the notice and finding of financial responsibility. The filing of the application does not stay further collection action, pending the entry of a final administrative order, and does not affect any prior collection action;

(d) If the responsible parent or custodial parent files the application more than one year after the date of service, the office of administrative hearings shall schedule an adjudicative proceeding at which the parent who requested the late hearing must show good cause for failure to file a timely application. The filing of the application does not stay future collection action and does not affect prior collection action:

(i) If the presiding officer finds that good cause exists, the presiding officer shall proceed to hear the parent's objection to the notice and determine the support obligation;

(ii) If the presiding officer finds that good cause does not exist, the presiding officer shall treat the application as a petition for prospective modification of the amount for current and future support established under the notice and finding. In the modification proceeding, the presiding officer shall set current and future support under chapter 26.19 RCW. The petitioning parent need show neither good cause nor a substantial change of circumstances to justify modification of current and future support;

(e) If the responsible parent's support obligation was based upon imputed median net income, the grant standard, or the family need standard, the division of child support may file an application for adjudicative proceeding more than twenty days after the date of service of the notice. The office of administrative hearings shall schedule an adjudicative proceeding and provide notice of the hearing to the responsible parent and the custodial parent. The presiding officer shall determine the support obligation for the entire period covered by the notice, based upon credible evidence presented by the division of child support, the responsible parent, or the custodial parent, or may determine that the support obligation set forth in the notice is correct. The division of child support demonstrates good cause by showing that the responsible parent's support obligation was based upon imputed median net income, the grant standard, or the family need standard. The filing of the application by the division of child support does not stay further collection action, pending the entry of a final administrative order, and does not affect any prior collection action.

(f) The department shall retain and/or shall not refund support money collected more than twenty days after the date of service of the notice. Money withheld as the result of collection action shall be delivered to the department. The department shall distribute such money, as provided in published rules.

(5) If an application for an adjudicative proceeding is filed, the presiding or reviewing officer shall determine the past liability and responsibility, if any, of the alleged responsible parent and shall also determine the amount of periodic payments to be made in the future, which amount is not limited by the amount of any public assistance payment made to or for the benefit of the child. If deviating from the child support schedule in making these determinations, the presiding or reviewing officer shall apply the standards contained in the child support schedule and enter written findings of fact supporting the deviation.

(6) If either the responsible parent or the custodial parent fails to attend or participate in the hearing or other stage of an adjudicative proceeding, upon a showing of valid service, the presiding officer shall enter an order of default against each party who did not appear and may enter an administrative order declaring the support debt and payment provisions stated in the notice and finding of financial responsibility to be assessed and determined and subject to collection action. The parties who appear may enter an agreed settlement or consent order, which may be different than the terms of the department's notice. Any party who appears may choose to proceed to the hearing, after the conclusion of which the pre-

siding officer or reviewing officer may enter an order that is different than the terms stated in the notice, if the obligation is supported by credible evidence presented by any party at the hearing.

(7) The final administrative order establishing liability and/or future periodic support payments shall be superseded upon entry of a superior court order for support to the extent the superior court order is inconsistent with the administrative order.

(8) Debts determined pursuant to this section, accrued and not paid, are subject to collection action under this chapter without further necessity of action by a presiding or reviewing officer.

(9) The department has rule-making authority to enact rules consistent with 42 U.S.C. Sec. 652(f) and 42 U.S.C. Sec. 666(a)(19) as amended by section 7307 of the deficit reduction act of 2005. Additionally, the department has rule-making authority to implement regulations required under parts 45 C.F.R. 302, 303, 304, 305, and 308. [2007 c 143 § 8; 2002 c 199 § 5; 1997 c 58 § 940; 1996 c 21 § 1; 1991 c 367 § 46; 1990 1st ex.s. c 2 § 21; 1989 c 175 § 152; 1988 c 275 § 10; 1982 c 189 § 8; 1979 ex.s. c 171 § 12; 1973 1st ex.s. c 183 § 25.]

Severability—2007 c 143: See note following RCW 26.18.170.

Short title—Part headings, captions, table of contents not law—Exemptions and waivers from federal law—Conflict with federal requirements—Severability—1997 c 58: See RCW 74.08A.900 through 74.08A.904.

Severability—Effective date—Captions not law—1991 c 367: See notes following RCW 26.09.015.

Effective dates—Severability—1990 1st ex.s. c 2: See notes following RCW 26.09.100.

Effective date—1989 c 175: See note following RCW 34.05.010.

Effective dates—Severability—1988 c 275: See notes following RCW 26.19.001.

Effective date—1982 c 189: See note following RCW 34.12.020.

Severability—1979 ex.s. c 171: See note following RCW 74.20.300.

74.20A.056 Notice and finding of financial responsibility pursuant to an affidavit of paternity—Procedure for contesting—Rules. (1) If an alleged father has signed an affidavit acknowledging paternity which has been filed with the state registrar of vital statistics before July 1, 1997, the division of child support may serve a notice and finding of parental responsibility on him and the custodial parent. Procedures for and responsibility resulting from acknowledgments filed after July 1, 1997, are in subsections (8) and (9) of this section. Service of the notice shall be in the same manner as a summons in a civil action or by certified mail, return receipt requested, on the alleged father. The custodial parent shall be served by first-class mail to the last known address. If the custodial parent is not the nonassistance applicant or public assistance recipient, service shall be in the same manner as for the responsible parent. The notice shall have attached to it a copy of the affidavit or certification of birth record information advising of the existence of a filed affidavit, provided by the state registrar of vital statistics, and shall state that:

(a) Either or both parents are responsible for providing health insurance for their child if coverage that can be extended to cover the child is or becomes available to the par-

ent through employment or is union-related as provided under RCW 26.09.105;

(b) The alleged father or custodial parent may file an application for an adjudicative proceeding at which they both will be required to appear and show cause why the amount stated in the notice as to support is incorrect and should not be ordered;

(c) An alleged father or mother, if she is also the custodial parent, may request that a blood or genetic test be administered to determine whether such test would exclude him from being a natural parent and, if not excluded, may subsequently request that the division of child support initiate an action in superior court to determine the existence of the parent-child relationship; and

(d) If neither the alleged father nor the custodial parent requests that a blood or genetic test be administered or files an application for an adjudicative proceeding, the amount of support stated in the notice and finding of parental responsibility shall become final, subject only to a subsequent determination under RCW 26.26.500 through 26.26.630 that the parent-child relationship does not exist.

(2) An alleged father or custodial parent who objects to the amount of support requested in the notice may file an application for an adjudicative proceeding up to twenty days after the date the notice was served. An application for an adjudicative proceeding may be filed within one year of service of the notice and finding of parental responsibility without the necessity for a showing of good cause or upon a showing of good cause thereafter. An adjudicative proceeding under this section shall be pursuant to RCW 74.20A.055. The only issues shall be the amount of the accrued debt, the amount of the current and future support obligation, and the reimbursement of the costs of blood or genetic tests if advanced by the department. A custodian who is not the parent of a child and who has physical custody of a child has the same notice and hearing rights that a custodial parent has under this section.

(3) If the application for an adjudicative proceeding is filed within twenty days of service of the notice, collection action shall be stayed pending a final decision by the department. If no application is filed within twenty days:

(a) The amounts in the notice shall become final and the debt created therein shall be subject to collection action; and

(b) Any amounts so collected shall neither be refunded nor returned if the alleged father is later found not to be a responsible parent.

(4) An alleged father or the mother, if she is also the custodial parent, may request that a blood or genetic test be administered at any time. The request for testing shall be in writing, or as the department may specify by rule, and served on the division of child support. If a request for testing is made, the department shall arrange for the test and, pursuant to rules adopted by the department, may advance the cost of such testing. The department shall mail a copy of the test results by certified mail, return receipt requested, to the alleged father's and mother's, if she is also the custodial parent, last known address.

(5) If the test excludes the alleged father from being a natural parent, the division of child support shall file a copy of the results with the state registrar of vital statistics and shall dismiss any pending administrative collection proceed-

ings based upon the affidavit in issue. The state registrar of vital statistics shall remove the alleged father's name from the birth certificate and change the child's surname to be the same as the mother's maiden name as stated on the birth certificate, or any other name which the mother may select.

(6) The alleged father or mother, if she is also the custodial parent, may, within twenty days after the date of receipt of the test results, request the division of child support to initiate an action under RCW 26.26.500 through 26.26.630 to determine the existence of the parent-child relationship. If the division of child support initiates a superior court action at the request of the alleged father or mother and the decision of the court is that the alleged father is a natural parent, the parent who requested the test shall be liable for court costs incurred.

(7) If the alleged father or mother, if she is also the custodial parent, does not request the division of child support to initiate a superior court action, or fails to appear and cooperate with blood or genetic testing, the notice of parental responsibility shall become final for all intents and purposes and may be overturned only by a subsequent superior court order entered under RCW 26.26.500 through 26.26.630.

(8)(a) Subsections (1) through (7) of this section do not apply to acknowledgments of paternity filed with the state registrar of vital statistics after July 1, 1997.

(b) If an acknowledged father has signed an acknowledgment of paternity that has been filed with the state registrar of vital statistics after July 1, 1997:

(i) The division of child support may serve a notice and finding of financial responsibility under RCW 74.20A.055 based on the acknowledgment. The division of child support shall attach a copy of the acknowledgment or certification of the birth record information advising of the existence of a filed acknowledgment of paternity to the notice;

(ii) The notice shall include a statement that the acknowledged father or any other signatory may commence a proceeding in court to rescind or challenge the acknowledgment or denial of paternity under RCW 26.26.330 and 26.26.335;

(iii) A statement that either or both parents are responsible for providing health insurance for his or her child if coverage that can be extended to cover the child is or becomes available to the parent through employment or is union-related as provided under RCW 26.09.105; and

(iv) The party commencing the action to rescind or challenge the acknowledgment or denial must serve notice on the division of child support and the office of the prosecuting attorney in the county in which the proceeding is commenced. Commencement of a proceeding to rescind or challenge the acknowledgment or denial stays the establishment of the notice and finding of financial responsibility, if the notice has not yet become a final order.

(c) If neither the acknowledged father nor the other party to the notice files an application for an adjudicative proceeding or the signatories to the acknowledgment or denial do not commence a proceeding to rescind or challenge the acknowledgment of paternity, the amount of support stated in the notice and finding of financial responsibility becomes final, subject only to a subsequent determination under RCW 26.26.500 through 26.26.630 that the parent-child relationship does not exist. The division of child support does not

refund nor return any amounts collected under a notice that becomes final under this section or RCW 74.20A.055, even if a court later determines that the acknowledgment is void.

(d) An acknowledged father or other party to the notice who objects to the amount of support requested in the notice may file an application for an adjudicative proceeding up to twenty days after the date the notice was served. An application for an adjudicative proceeding may be filed within one year of service of the notice and finding of parental responsibility without the necessity for a showing of good cause or upon a showing of good cause thereafter. An adjudicative proceeding under this section shall be pursuant to RCW 74.20A.055. The only issues shall be the amount of the accrued debt and the amount of the current and future support obligation.

(i) If the application for an adjudicative proceeding is filed within twenty days of service of the notice, collection action shall be stayed pending a final decision by the department.

(ii) If the application for an adjudicative proceeding is not filed within twenty days of the service of the notice, any amounts collected under the notice shall be neither refunded nor returned if the alleged father is later found not to be a responsible parent.

(e) If neither the acknowledged father nor the custodial parent requests an adjudicative proceeding, or if no timely action is brought to rescind or challenge the acknowledgment or denial after service of the notice, the notice of financial responsibility becomes final for all intents and purposes and may be overturned only by a subsequent superior court order entered under RCW 26.26.500 through 26.26.630.

(9) Acknowledgments of paternity that are filed after July 1, 1997, are subject to requirements of chapters 26.26, the uniform parentage act, and 70.58 RCW.

(10) The department and the department of health may adopt rules to implement the requirements under this section.

(11) The department has rule-making authority to enact rules consistent with 42 U.S.C. Sec. 652(f) and 42 U.S.C. Sec. 666(a)(19) as amended by section 7307 of the deficit reduction act of 2005. Additionally, the department has rule-making authority to implement regulations required under parts 45 C.F.R. 302, 303, 304, 305, and 308. [2007 c 143 § 9. Prior: 2002 c 302 § 707; 2002 c 199 § 6; 1997 c 58 § 941; prior: 1994 c 230 § 19; 1994 c 146 § 5; 1989 c 55 § 3.]

Severability—2007 c 143: See note following RCW 26.18.170.

Application—Construction—Short title—Severability—2002 c 302: See RCW 26.26.903, 26.26.911, and 26.26.912.

Short title—Part headings, captions, table of contents not law—Exemptions and waivers from federal law—Conflict with federal requirements—Severability—1997 c 58: See RCW 74.08A.900 through 74.08A.904.

Birth certificate—Establishing paternity: RCW 70.58.080.

Chapter 74.31 RCW

TRAUMATIC BRAIN INJURIES

Sections

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74.31.060	Traumatic brain injury account.

74.31.005 Findings—Intent. The center for disease control estimates that at least five million three hundred thousand Americans, approximately two percent of the United States population, currently have a long-term or lifelong need for help to perform activities of daily living as a result of a traumatic brain injury. Each year approximately one million four hundred thousand people in this country, including children, sustain traumatic brain injuries as a result of a variety of causes including falls, motor vehicle injuries, being struck by an object, or as a result of an assault and other violent crimes, including domestic violence. Additionally, there are significant numbers of veterans who sustain traumatic brain injuries as a result of their service in the military.

Traumatic brain injury can cause a wide range of functional changes affecting thinking, sensation, language, or emotions. It can also cause epilepsy and increase the risk for conditions such as Alzheimer's disease, Parkinson's disease, and other brain disorders that become more prevalent with age. The impact of a traumatic brain injury on the individual and family can be devastating.

The legislature recognizes that current programs and services are not funded or designed to address the diverse needs of this population. It is the intent of the legislature to develop a comprehensive plan to help individuals with traumatic brain injuries meet their needs. The legislature also recognizes the efforts of many in the private sector who are providing services and assistance to individuals with traumatic brain injuries. The legislature intends to bring together those in both the public and private sectors with expertise in this area to address the needs of this growing population. [2007 c 356 § 1.]

Short title—2007 c 356: "This act may be known and cited as the Tommy Manning act." [2007 c 356 § 11.]

74.31.010 Definitions. The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

(1) "Department" means the department of social and health services.

(2) "Department of health" means the Washington state department of health created pursuant to RCW 43.70.020.

(3) "Secretary" means the secretary of social and health services.

(4) "Traumatic brain injury" means injury to the brain caused by physical trauma resulting from, but not limited to, incidents involving motor vehicles, sporting events, falls, and physical assaults. Documentation of traumatic brain injury shall be based on adequate medical history, neurological examination, mental status testing, or neuropsychological evaluation. A traumatic brain injury shall be of sufficient severity to result in impairments in one or more of the following areas: Cognition; language memory; attention; reasoning; abstract thinking; judgment; problem solving; sensory, perceptual, and motor abilities; psychosocial behavior; physical functions; or information processing. The term does not apply to brain injuries that are congenital or degenerative, or to brain injuries induced by birth trauma.

(5) "Traumatic brain injury account" means the account established under RCW 74.31.060.

(6) "Council" means the Washington traumatic brain injury strategic partnership advisory council created under RCW 74.31.020. [2007 c 356 § 2.]

Short title—2007 c 356: See note following RCW 74.31.005.

74.31.020 Washington traumatic brain injury strategic partnership advisory council—Members—Expenses—Appointment—Duties. (1) The Washington traumatic brain injury strategic partnership advisory council is established as an advisory council to the governor, the legislature, and the secretary of the department of social and health services.

(2) The council shall be composed of the following members who shall be appointed by the governor:

(a) The secretary or the secretary's designee, and representatives from the following: Children's administration, mental health division, aging and disability services administration, and vocational rehabilitation;

(b) The executive director of a state brain injury association;

(c) A representative from a nonprofit organization serving individuals with traumatic brain injury;

(d) The secretary of the department of health or the secretary's designee;

(e) The secretary of the department of corrections or the secretary's designee;

(f) A representative of the department of community, trade, and economic development;

(g) A representative from an organization serving veterans;

(h) A representative from the national guard;

(i) A representative of a Native American tribe located in Washington;

(j) The executive director of the Washington protection and advocacy system;

(k) A neurologist who has experience working with individuals with traumatic brain injuries;

(l) A neuropsychologist who has experience working with persons with traumatic brain injuries;

(m) A social worker or clinical psychologist who has experience in working with persons who have sustained traumatic brain injuries;

(n) A rehabilitation specialist, such as a speech pathologist, vocational rehabilitation counselor, occupational therapist, or physical therapist who has experience working with persons with traumatic brain injuries;

(o) Two persons who are individuals with a traumatic brain injury;

(p) Two persons who are family members of individuals with traumatic brain injuries; and

(q) Two members of the public who have experience with issues related to the causes of traumatic brain injuries.

(3) Councilmembers shall not be compensated for serving on the council, but may be reimbursed for all reasonable expenses related to costs incurred in participating in meetings for the council.

(4) Initial appointments to the council shall be made by July 30, 2007. The terms of appointed council members shall

be three years, except that the terms of the appointed members who are initially appointed shall be staggered by the governor to end as follows:

- (a) Four members on June 30, 2008;
 - (b) Three members on June 30, 2009; and
 - (c) Three members on June 30, 2010.
- (5) No member may serve more than two consecutive terms.
- (6) The appointed members of the council shall, to the extent possible, represent rural and urban areas of the state.
- (7) A chairperson shall be elected every two years by majority vote from among the councilmembers. The chairperson shall act as the presiding officer of the council.
- (8) The duties of the council include:
- (a) Collaborating with the department to develop a comprehensive statewide plan to address the needs of individuals with traumatic brain injuries;
 - (b) By November 1, 2007, providing recommendations to the department on criteria to be used to select programs facilitating support groups for individuals with traumatic brain injuries and their families under RCW 74.31.050;
 - (c) By December 1, 2007, submitting a report to the legislature and the governor on the following:
 - (i) The development of a comprehensive statewide information and referral network for individuals with traumatic brain injuries;
 - (ii) The development of a statewide registry to collect data regarding individuals with traumatic brain injuries, including the potential to utilize the department of information services to develop the registry;
 - (iii) The efforts of the department to provide services for individuals with traumatic brain injuries;
 - (d) By December 30, 2007, reviewing the preliminary comprehensive statewide plan developed by the department to meet the needs of individuals with traumatic brain injuries as required in RCW 74.31.030 and submitting a report to the legislature and the governor containing comments and recommendations regarding the plan.
- (9) The council may utilize the advice or services of a nationally recognized expert, or other individuals as the council deems appropriate, to assist the council in carrying out its duties under this section. [2007 c 356 § 3.]

Short title—2007 c 356: See note following RCW 74.31.005.

74.31.030 Designation of staff person—Department duties—Reports. (1) By July 30, 2007, the department shall designate a staff person who shall be responsible for the following:

- (a) Coordinating policies, programs, and services for individuals with traumatic brain injuries; and
 - (b) Providing staff support to the council created in RCW 74.31.020.
- (2) The department shall provide data and information to the council established under RCW 74.31.020 that is requested by the council and is in the possession or control of the department.
- (3) By December 1, 2007, the department shall provide a preliminary report to the legislature and the governor, and shall provide a final report by December 1, 2008, containing recommendations for a comprehensive statewide plan to

address the needs of individuals with traumatic brain injuries, including the use of public-private partnerships and a public awareness campaign. The comprehensive plan should be created in collaboration with the council and should consider the following:

- (a) Building provider capacity and provider training;
 - (b) Improving the coordination of services;
 - (c) The feasibility of establishing agreements with private sector agencies to develop services for individuals with traumatic brain injuries; and
 - (d) Other areas the council deems appropriate.
- (4) By December 1, 2007, the department shall:
- (a) Provide information and referral services to individuals with traumatic brain injuries until the statewide referral and information network is developed. The referral services may be funded from the traumatic brain injury account established under RCW 74.31.060; and
 - (b) Encourage and facilitate the following:
 - (i) Collaboration among state agencies that provide services to individuals with traumatic brain injuries;
 - (ii) Collaboration among organizations and entities that provide services to individuals with traumatic brain injuries; and
 - (iii) Community participation in program implementation.
- (5) By December 1, 2007, and by December 1st each year thereafter, the department shall issue a report to the governor and the legislature containing the following:
- (a) A summary of action taken by the department to meet the needs of individuals with traumatic brain injuries; and
 - (b) Recommendations for improvements in services to address the needs of individuals with traumatic brain injuries. [2007 c 356 § 4.]

Short title—2007 c 356: See note following RCW 74.31.005.

74.31.040 Public awareness campaign. By December 1, 2007, in collaboration with the council, the department shall institute a public awareness campaign that utilizes funding from the traumatic brain injury account to leverage a private advertising campaign to persuade Washington residents to be aware and concerned about the issues facing individuals with traumatic brain injuries through all forms of media including television, radio, and print. [2007 c 356 § 5.]

Short title—2007 c 356: See note following RCW 74.31.005.

74.31.050 Support group programs—Funding—Recommendations. (1) By March 1, 2008, the department shall provide funding to programs that facilitate support groups to individuals with traumatic brain injuries and their families.

- (2) The department shall use a request for proposal process to select the programs to receive funding. The council shall provide recommendations to the department on the criteria to be used in selecting the programs.
- (3) The programs shall be funded solely from the traumatic brain injury account established in RCW 74.31.060, to the extent that funds are available. [2007 c 356 § 6.]

Short title—2007 c 356: See note following RCW 74.31.005.

74.31.060 Traumatic brain injury account. The traumatic brain injury account is created in the state treasury. Two dollars of the fee imposed under RCW 46.63.110(7)(c) must be deposited into the account. Moneys in the account may be spent only after appropriation, and may be used only to provide a public awareness campaign and services relating to traumatic brain injury under RCW 74.31.040 and 74.31.050, for information and referral services, and for costs of required department staff who are providing support for the council and information and referral services under RCW 74.31.020 and 74.31.030. The secretary of the department of social and health services has the authority to administer the funds. [2007 c 356 § 7.]

***Reviser's note:** 2007 c 356 § 7 directed that this section be added to chapter 46.20 RCW. Since this placement appears inappropriate, this section has been codified as part of chapter 74.31 RCW.

Short title—2007 c 356: See note following RCW 74.31.005.

Chapter 74.34 RCW

ABUSE OF VULNERABLE ADULTS

Sections

74.34.020	Definitions.
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74.34.145	Protection of vulnerable adults—Notice of criminal penalties for violation—Enforcement under RCW 26.50.110.
74.34.150	Protection of vulnerable adults—Department may seek relief.
74.34.163	Application to modify or vacate order.
74.34.210	Order for protection or action for damages—Standing—Jurisdiction.

74.34.020 Definitions. Unless the context clearly requires otherwise, the definitions in this section apply throughout this chapter.

(1) "Abandonment" means action or inaction by a person or entity with a duty of care for a vulnerable adult that leaves the vulnerable person without the means or ability to obtain necessary food, clothing, shelter, or health care.

(2) "Abuse" means the willful action or inaction that inflicts injury, unreasonable confinement, intimidation, or punishment on a vulnerable adult. In instances of abuse of a vulnerable adult who is unable to express or demonstrate physical harm, pain, or mental anguish, the abuse is presumed to cause physical harm, pain, or mental anguish. Abuse includes sexual abuse, mental abuse, physical abuse, and exploitation of a vulnerable adult, which have the following meanings:

(a) "Sexual abuse" means any form of nonconsensual sexual contact, including but not limited to unwanted or inappropriate touching, rape, sodomy, sexual coercion, sexually explicit photographing, and sexual harassment. Sexual abuse includes any sexual contact between a staff person, who is not also a resident or client, of a facility or a staff person of a program authorized under chapter 71A.12 RCW, and a vulnerable adult living in that facility or receiving service from a

program authorized under chapter 71A.12 RCW, whether or not it is consensual.

(b) "Physical abuse" means the willful action of inflicting bodily injury or physical mistreatment. Physical abuse includes, but is not limited to, striking with or without an object, slapping, pinching, choking, kicking, shoving, prodding, or the use of chemical restraints or physical restraints unless the restraints are consistent with licensing requirements, and includes restraints that are otherwise being used inappropriately.

(c) "Mental abuse" means any willful action or inaction of mental or verbal abuse. Mental abuse includes, but is not limited to, coercion, harassment, inappropriately isolating a vulnerable adult from family, friends, or regular activity, and verbal assault that includes ridiculing, intimidating, yelling, or swearing.

(d) "Exploitation" means an act of forcing, compelling, or exerting undue influence over a vulnerable adult causing the vulnerable adult to act in a way that is inconsistent with relevant past behavior, or causing the vulnerable adult to perform services for the benefit of another.

(3) "Consent" means express written consent granted after the vulnerable adult or his or her legal representative has been fully informed of the nature of the services to be offered and that the receipt of services is voluntary.

(4) "Department" means the department of social and health services.

(5) "Facility" means a residence licensed or required to be licensed under chapter 18.20 RCW, boarding homes; chapter 18.51 RCW, nursing homes; chapter 70.128 RCW, adult family homes; chapter 72.36 RCW, soldiers' homes; or chapter 71A.20 RCW, residential habilitation centers; or any other facility licensed by the department.

(6) "Financial exploitation" means the illegal or improper use of the property, income, resources, or trust funds of the vulnerable adult by any person for any person's profit or advantage other than for the vulnerable adult's profit or advantage.

(7) "Incapacitated person" means a person who is at a significant risk of personal or financial harm under RCW 11.88.010(1) (a), (b), (c), or (d).

(8) "Individual provider" means a person under contract with the department to provide services in the home under chapter 74.09 or 74.39A RCW.

(9) "Interested person" means a person who demonstrates to the court's satisfaction that the person is interested in the welfare of the vulnerable adult, that the person has a good faith belief that the court's intervention is necessary, and that the vulnerable adult is unable, due to incapacity, undue influence, or duress at the time the petition is filed, to protect his or her own interests.

(10) "Mandated reporter" is an employee of the department; law enforcement officer; social worker; professional school personnel; individual provider; an employee of a facility; an operator of a facility; an employee of a social service, welfare, mental health, adult day health, adult day care, home health, home care, or hospice agency; county coroner or medical examiner; Christian Science practitioner; or health care provider subject to chapter 18.130 RCW.

(11) "Neglect" means (a) a pattern of conduct or inaction by a person or entity with a duty of care that fails to provide

the goods and services that maintain physical or mental health of a vulnerable adult, or that fails to avoid or prevent physical or mental harm or pain to a vulnerable adult; or (b) an act or omission that demonstrates a serious disregard of consequences of such a magnitude as to constitute a clear and present danger to the vulnerable adult's health, welfare, or safety, including but not limited to conduct prohibited under RCW 9A.42.100.

(12) "Permissive reporter" means any person, including, but not limited to, an employee of a financial institution, attorney, or volunteer in a facility or program providing services for vulnerable adults.

(13) "Protective services" means any services provided by the department to a vulnerable adult with the consent of the vulnerable adult, or the legal representative of the vulnerable adult, who has been abandoned, abused, financially exploited, neglected, or in a state of self-neglect. These services may include, but are not limited to case management, social casework, home care, placement, arranging for medical evaluations, psychological evaluations, day care, or referral for legal assistance.

(14) "Self-neglect" means the failure of a vulnerable adult, not living in a facility, to provide for himself or herself the goods and services necessary for the vulnerable adult's physical or mental health, and the absence of which impairs or threatens the vulnerable adult's well-being. This definition may include a vulnerable adult who is receiving services through home health, hospice, or a home care agency, or an individual provider when the neglect is not a result of inaction by that agency or individual provider.

(15) "Vulnerable adult" includes a person:

- (a) Sixty years of age or older who has the functional, mental, or physical inability to care for himself or herself; or
- (b) Found incapacitated under chapter 11.88 RCW; or
- (c) Who has a developmental disability as defined under RCW 71A.10.020; or
- (d) Admitted to any facility; or
- (e) Receiving services from home health, hospice, or home care agencies licensed or required to be licensed under chapter 70.127 RCW; or
- (f) Receiving services from an individual provider. [2007 c 312 § 1; 2006 c 339 § 109; 2003 c 230 § 1; 1999 c 176 § 3; 1997 c 392 § 523; 1995 1st sp.s. c 18 § 84; 1984 c 97 § 8.]

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

Effective date—2003 c 230: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately [May 12, 2003]." [2003 c 230 § 3.]

Findings—Purpose—Severability—Conflict with federal requirements—1999 c 176: See notes following RCW 74.34.005.

Short title—Findings—Construction—Conflict with federal requirements—Part headings and captions not law—1997 c 392: See notes following RCW 74.39A.009.

Conflict with federal requirements—Severability—Effective date—1995 1st sp.s. c 18: See notes following RCW 74.39A.030.

74.34.067 Investigations—Interviews—Ongoing case planning—Conclusion of investigation. (1) Where appropriate, an investigation by the department may include a private interview with the vulnerable adult regarding the alleged

abandonment, abuse, financial exploitation, neglect, or self-neglect.

(2) In conducting the investigation, the department shall interview the complainant, unless anonymous, and shall use its best efforts to interview the vulnerable adult or adults harmed, and, consistent with the protection of the vulnerable adult shall interview facility staff, any available independent sources of relevant information, including if appropriate the family members of the vulnerable adult.

(3) The department may conduct ongoing case planning and consultation with: (a) Those persons or agencies required to report under this chapter or submit a report under this chapter; (b) consultants designated by the department; and (c) designated representatives of Washington Indian tribes if client information exchanged is pertinent to cases under investigation or the provision of protective services. Information considered privileged by statute and not directly related to reports required by this chapter must not be divulged without a valid written waiver of the privilege.

(4) The department shall prepare and keep on file a report of each investigation conducted by the department for a period of time in accordance with policies established by the department.

(5) If the department has reason to believe that the vulnerable adult has suffered from abuse, neglect, self-neglect, abandonment, or financial exploitation, and lacks the ability or capacity to consent, and needs the protection of a guardian, the department may bring a guardianship action under chapter 11.88 RCW.

(6) When the investigation is completed and the department determines that an incident of abandonment, abuse, financial exploitation, neglect, or self-neglect has occurred, the department shall inform the vulnerable adult of their right to refuse protective services, and ensure that, if necessary, appropriate protective services are provided to the vulnerable adult, with the consent of the vulnerable adult. The vulnerable adult has the right to withdraw or refuse protective services.

(7) The department may photograph a vulnerable adult or their environment for the purpose of providing documentary evidence of the physical condition of the vulnerable adult or his or her environment. When photographing the vulnerable adult, the department shall obtain permission from the vulnerable adult or his or her legal representative unless immediate photographing is necessary to preserve evidence. However, if the legal representative is alleged to have abused, neglected, abandoned, or exploited the vulnerable adult, consent from the legal representative is not necessary. No such consent is necessary when photographing the physical environment.

(8) When the investigation is complete and the department determines that the incident of abandonment, abuse, financial exploitation, or neglect has occurred, the department shall inform the facility in which the incident occurred, consistent with confidentiality requirements concerning the vulnerable adult, witnesses, and complainants. [2007 c 312 § 2; 1999 c 176 § 9.]

Findings—Purpose—Severability—Conflict with federal requirements—1999 c 176: See notes following RCW 74.34.005.

74.34.110 Protection of vulnerable adults—Petition for protective order. An action known as a petition for an order for protection of a vulnerable adult in cases of abandonment, abuse, financial exploitation, or neglect is created.

(1) A vulnerable adult, or interested person on behalf of the vulnerable adult, may seek relief from abandonment, abuse, financial exploitation, or neglect, or the threat thereof, by filing a petition for an order for protection in superior court.

(2) A petition shall allege that the petitioner, or person on whose behalf the petition is brought, is a vulnerable adult and that the petitioner, or person on whose behalf the petition is brought, has been abandoned, abused, financially exploited, or neglected, or is threatened with abandonment, abuse, financial exploitation, or neglect by respondent.

(3) A petition shall be accompanied by affidavit made under oath, or a declaration signed under penalty of perjury, stating the specific facts and circumstances which demonstrate the need for the relief sought. If the petition is filed by an interested person, the affidavit or declaration must also include a statement of why the petitioner qualifies as an interested person.

(4) A petition for an order may be made whether or not there is a pending lawsuit, complaint, petition, or other action pending that relates to the issues presented in the petition for an order for protection.

(5) Within ninety days of receipt of the master copy from the administrative office of the courts, all court clerk's offices shall make available the standardized forms and instructions required by RCW 74.34.115.

(6) Any assistance or information provided by any person, including, but not limited to, court clerks, employees of the department, and other court facilitators, to another to complete the forms provided by the court in subsection (5) of this section does not constitute the practice of law.

(7) A petitioner is not required to post bond to obtain relief in any proceeding under this section.

(8) An action under this section shall be filed in the county where the vulnerable adult resides; except that if the vulnerable adult has left or been removed from the residence as a result of abandonment, abuse, financial exploitation, or neglect, or in order to avoid abandonment, abuse, financial exploitation, or neglect, the petitioner may bring an action in the county of either the vulnerable adult's previous or new residence.

(9) No filing fee may be charged to the petitioner for proceedings under this section. Standard forms and written instructions shall be provided free of charge. [2007 c 312 § 3; 1999 c 176 § 12; 1986 c 187 § 5.]

Findings—Purpose—Severability—Conflict with federal requirements—1999 c 176: See notes following RCW 74.34.005.

74.34.115 Protection of vulnerable adults—Administrative office of the courts—Standard petition—Order for protection—Standard notice—Court staff handbook.

(1) The administrative office of the courts shall develop and prepare standard petition, temporary order for protection, and permanent order for protection forms, a standard notice form to provide notice to the vulnerable adult if the vulnerable adult is not the petitioner, instructions, and a court staff handbook on the protection order process. The standard petition

and order for protection forms must be used after October 1, 2007, for all petitions filed and orders issued under this chapter. The administrative office of the courts, in preparing the instructions, forms, notice, and handbook, may consult with attorneys from the elder law section of the Washington state bar association, judges, the department, the Washington protection and advocacy system, and law enforcement personnel.

(a) The instructions shall be designed to assist petitioners in completing the petition, and shall include a sample of the standard petition and order for protection forms.

(b) The order for protection form shall include, in a conspicuous location, notice of criminal penalties resulting from violation of the order.

(c) The standard notice form shall be designed to explain to the vulnerable adult in clear, plain language the purpose and nature of the petition and that the vulnerable adult has the right to participate in the hearing and to either support or object to the petition.

(2) The administrative office of the courts shall distribute a master copy of the standard forms, instructions, and court staff handbook to all court clerks and shall distribute a master copy of the standard forms to all superior, district, and municipal courts.

(3) The administrative office of the courts shall determine the significant non-English-speaking or limited-English-speaking populations in the state. The administrator shall then arrange for translation of the instructions required by this section, which shall contain a sample of the standard forms, into the languages spoken by those significant non-English-speaking populations, and shall distribute a master copy of the translated instructions to all court clerks by December 31, 2007.

(4) The administrative office of the courts shall update the instructions, standard forms, and court staff handbook when changes in the law make an update necessary. The updates may be made in consultation with the persons and entities specified in subsection (1) of this section.

(5) For purposes of this section, "court clerks" means court administrators in courts of limited jurisdiction and elected court clerks. [2007 c 312 § 4.]

74.34.120 Protection of vulnerable adults—Hearing.

(1) The court shall order a hearing on a petition under RCW 74.34.110 not later than fourteen days from the date of filing the petition.

(2) Personal service shall be made upon the respondent not less than six court days before the hearing. When good faith attempts to personally serve the respondent have been unsuccessful, the court shall permit service by mail or by publication.

(3) When a petition under RCW 74.34.110 is filed by someone other than the vulnerable adult, notice of the petition and hearing must be personally served upon the vulnerable adult not less than six court days before the hearing. In addition to copies of all pleadings filed by the petitioner, the petitioner shall provide a written notice to the vulnerable adult using the standard notice form developed under RCW 74.34.115. When good faith attempts to personally serve the vulnerable adult have been unsuccessful, the court shall per-

mit service by mail, or by publication if the court determines that personal service and service by mail cannot be obtained.

(4) If timely service under subsections (2) and (3) of this section cannot be made, the court shall continue the hearing date until the substitute service approved by the court has been satisfied.

(5)(a) A petitioner may move for temporary relief under chapter 7.40 RCW. The court may continue any temporary order for protection granted under chapter 7.40 RCW until the hearing on a petition under RCW 74.34.110 is held.

(b) Written notice of the request for temporary relief must be provided to the respondent, and to the vulnerable adult if someone other than the vulnerable adult filed the petition. A temporary protection order may be granted without written notice to the respondent and vulnerable adult if it clearly appears from specific facts shown by affidavit or declaration that immediate and irreparable injury, loss, or damage would result to the vulnerable adult before the respondent and vulnerable adult can be served and heard, or that show the respondent and vulnerable adult cannot be served with notice, the efforts made to serve them, and the reasons why prior notice should not be required. [2007 c 312 § 5; 1986 c 187 § 6.]

74.34.130 Protection of vulnerable adults—Judicial relief. The court may order relief as it deems necessary for the protection of the vulnerable adult, including, but not limited to the following:

(1) Restraining respondent from committing acts of abandonment, abuse, neglect, or financial exploitation against the vulnerable adult;

(2) Excluding the respondent from the vulnerable adult's residence for a specified period or until further order of the court;

(3) Prohibiting contact with the vulnerable adult by respondent for a specified period or until further order of the court;

(4) Prohibiting the respondent from knowingly coming within, or knowingly remaining within, a specified distance from a specified location;

(5) Requiring an accounting by respondent of the disposition of the vulnerable adult's income or other resources;

(6) Restraining the transfer of the respondent's and/or vulnerable adult's property for a specified period not exceeding ninety days; and

(7) Requiring the respondent to pay a filing fee and court costs, including service fees, and to reimburse the petitioner for costs incurred in bringing the action, including a reasonable attorney's fee.

Any relief granted by an order for protection, other than a judgment for costs, shall be for a fixed period not to exceed five years. The clerk of the court shall enter any order for protection issued under this section into the judicial information system. [2007 c 312 § 6. Prior: 2000 c 119 § 27; 2000 c 51 § 2; 1999 c 176 § 13; 1986 c 187 § 7.]

Application—2000 c 119: See note following RCW 26.50.021.

Findings—Purpose—Severability—Conflict with federal requirements—1999 c 176: See notes following RCW 74.34.005.

74.34.135 Protection of vulnerable adults—Filings by others—Dismissal of petition or order—Testimony or evidence—Additional evidentiary hearings—Temporary order. (1) When a petition for protection under RCW 74.34.110 is filed by someone other than the vulnerable adult or the vulnerable adult's full guardian over either the person or the estate, or both, and the vulnerable adult for whom protection is sought advises the court at the hearing that he or she does not want all or part of the protection sought in the petition, then the court may dismiss the petition or the provisions that the vulnerable adult objects to and any protection order issued under RCW 74.34.120 or 74.34.130, or the court may take additional testimony or evidence, or order additional evidentiary hearings to determine whether the vulnerable adult is unable, due to incapacity, undue influence, or duress, to protect his or her person or estate in connection with the issues raised in the petition or order. If an additional evidentiary hearing is ordered and the court determines that there is reason to believe that there is a genuine issue about whether the vulnerable adult is unable to protect his or her person or estate in connection with the issues raised in the petition or order, the court may issue a temporary order for protection of the vulnerable adult pending a decision after the evidentiary hearing.

(2) An evidentiary hearing on the issue of whether the vulnerable adult is unable, due to incapacity, undue influence, or duress, to protect his or her person or estate in connection with the issues raised in the petition or order, shall be held within fourteen days of entry of the temporary order for protection under subsection (1) of this section. If the court did not enter a temporary order for protection, the evidentiary hearing shall be held within fourteen days of the prior hearing on the petition. Notice of the time and place of the evidentiary hearing shall be personally served upon the vulnerable adult and the respondent not less than six court days before the hearing. When good faith attempts to personally serve the vulnerable adult and the respondent have been unsuccessful, the court shall permit service by mail, or by publication if the court determines that personal service and service by mail cannot be obtained. If timely service cannot be made, the court may set a new hearing date. A hearing under this subsection is not necessary if the vulnerable adult has been determined to be fully incapacitated over either the person or the estate, or both, under the guardianship laws, chapter 11.88 RCW. If a hearing is scheduled under this subsection, the protection order shall remain in effect pending the court's decision at the subsequent hearing.

(3) At the hearing scheduled by the court, the court shall give the vulnerable adult, the respondent, the petitioner, and in the court's discretion other interested persons, the opportunity to testify and submit relevant evidence.

(4) If the court determines that the vulnerable adult is capable of protecting his or her person or estate in connection with the issues raised in the petition, and the individual continues to object to the protection order, the court shall dismiss the order or may modify the order if agreed to by the vulnerable adult. If the court determines that the vulnerable adult is not capable of protecting his or her person or estate in connection with the issues raised in the petition or order, and that the individual continues to need protection, the court shall order relief consistent with RCW 74.34.130 as it deems nec-

essary for the protection of the vulnerable adult. In the entry of any order that is inconsistent with the expressed wishes of the vulnerable adult, the court's order shall be governed by the legislative findings contained in RCW 74.34.005. [2007 c 312 § 9.]

74.34.145 Protection of vulnerable adults—Notice of criminal penalties for violation—Enforcement under RCW 26.50.110. (1) An order for protection of a vulnerable adult issued under this chapter which restrains the respondent or another person from committing acts of abuse, prohibits contact with the vulnerable adult, excludes the person from any specified location, or prohibits the person from coming within a specified distance from a location, shall prominently bear on the front page of the order the legend: VIOLATION OF THIS ORDER WITH ACTUAL NOTICE OF ITS TERMS IS A CRIMINAL OFFENSE UNDER CHAPTER 26.50 RCW AND WILL SUBJECT A VIOLATOR TO ARREST.

(2) Whenever an order for protection of a vulnerable adult is issued under this chapter, and the respondent or person to be restrained knows of the order, a violation of a provision restraining the person from committing acts of abuse, prohibiting contact with the vulnerable adult, excluding the person from any specified location, or prohibiting the person from coming within a specified distance of a location, shall be punishable under RCW 26.50.110, regardless of whether the person is a family or household member as defined in RCW 26.50.010. [2007 c 312 § 7; 2000 c 119 § 2.]

Application—2000 c 119: See note following RCW 26.50.021.

74.34.150 Protection of vulnerable adults—Department may seek relief. The department of social and health services, in its discretion, may seek relief under RCW 74.34.110 through 74.34.140 on behalf of and with the consent of any vulnerable adult. When the department has reason to believe a vulnerable adult lacks the ability or capacity to consent, the department, in its discretion, may seek relief under RCW 74.34.110 through 74.34.140 on behalf of the vulnerable adult. Neither the department of social and health services nor the state of Washington shall be liable for seeking or failing to seek relief on behalf of any persons under this section. [2007 c 312 § 8; 1986 c 187 § 9.]

74.34.163 Application to modify or vacate order. Any vulnerable adult who has not been adjudicated fully incapacitated under chapter 11.88 RCW, or the vulnerable adult's guardian, at any time subsequent to entry of a permanent protection order under this chapter, may apply to the court for an order to modify or vacate the order. In a hearing on an application to dismiss or modify the protection order, the court shall grant such relief consistent with RCW 74.34.110 as it deems necessary for the protection of the vulnerable adult, including dismissal or modification of the protection order. [2007 c 312 § 10.]

74.34.210 Order for protection or action for damages—Standing—Jurisdiction. A petition for an order for protection may be brought by the vulnerable adult, the vulnerable adult's guardian or legal fiduciary, the department, or

any interested person as defined in RCW 74.34.020. An action for damages under this chapter may be brought by the vulnerable adult, or where necessary, by his or her family members and/or guardian or legal fiduciary. The death of the vulnerable adult shall not deprive the court of jurisdiction over a petition or claim brought under this chapter. Upon petition, after the death of the vulnerable adult, the right to initiate or maintain the action shall be transferred to the executor or administrator of the deceased, for recovery of all damages for the benefit of the deceased person's beneficiaries set forth in chapter 4.20 RCW or if there are no beneficiaries, then for recovery of all economic losses sustained by the deceased person's estate. [2007 c 312 § 11; 1995 1st sp.s. c 18 § 86.]

Conflict with federal requirements—Severability—Effective date—1995 1st sp.s. c 18: See notes following RCW 74.39A.030.

Chapter 74.39A RCW

LONG-TERM CARE SERVICES OPTIONS—EXPANSION

Sections

- 74.39A.009 Definitions.
- 74.39A.190 Repealed.
- 74.39A.270 Collective bargaining—Circumstances in which individual providers are considered public employees—Exceptions. *(Effective until March 1, 2008.)*
- 74.39A.270 Collective bargaining—Circumstances in which individual providers are considered public employees—Exceptions. *(Effective March 1, 2008.)*
- 74.39A.310 Contract for individual home care services providers—Cost of increase in wages and benefits funded—Formula. *(Effective March 1, 2008.)*
- 74.39A.330 Peer mentoring.
- 74.39A.340 Continuing education.
- 74.39A.350 Advanced training.
- 74.39A.360 Training partnership.

74.39A.009 Definitions. Unless the context clearly requires otherwise, the definitions in this section apply throughout this chapter.

(1) "Adult family home" means a home licensed under chapter 70.128 RCW.

(2) "Adult residential care" means services provided by a boarding home that is licensed under chapter 18.20 RCW and that has a contract with the department under RCW 74.39A.020 to provide personal care services.

(3) "Assisted living services" means services provided by a boarding home that has a contract with the department under RCW 74.39A.010 to provide personal care services, intermittent nursing services, and medication administration services, and the resident is housed in a private apartment-like unit.

(4) "Boarding home" means a facility licensed under chapter 18.20 RCW.

(5) "Cost-effective care" means care provided in a setting of an individual's choice that is necessary to promote the most appropriate level of physical, mental, and psychosocial well-being consistent with client choice, in an environment that is appropriate to the care and safety needs of the individual, and such care cannot be provided at a lower cost in any other setting. But this in no way precludes an individual from choosing a different residential setting to achieve his or her desired quality of life.

(6) "Department" means the department of social and health services.

(7) "Enhanced adult residential care" means services provided by a boarding home that is licensed under chapter 18.20 RCW and that has a contract with the department under RCW 74.39A.010 to provide personal care services, intermittent nursing services, and medication administration services.

(8) "Functionally disabled person" or "person who is functionally disabled" is synonymous with chronic functionally disabled and means a person who because of a recognized chronic physical or mental condition or disease, including chemical dependency, is impaired to the extent of being dependent upon others for direct care, support, supervision, or monitoring to perform activities of daily living. "Activities of daily living", in this context, means self-care abilities related to personal care such as bathing, eating, using the toilet, dressing, and transfer. Instrumental activities of daily living may also be used to assess a person's functional abilities as they are related to the mental capacity to perform activities in the home and the community such as cooking, shopping, house cleaning, doing laundry, working, and managing personal finances.

(9) "Home and community services" means adult family homes, in-home services, and other services administered or provided by contract by the department directly or through contract with area agencies on aging or similar services provided by facilities and agencies licensed by the department.

(10) "Long-term care" is synonymous with chronic care and means care and supports delivered indefinitely, intermittently, or over a sustained time to persons of any age disabled by chronic mental or physical illness, disease, chemical dependency, or a medical condition that is permanent, not reversible or curable, or is long-lasting and severely limits their mental or physical capacity for self-care. The use of this definition is not intended to expand the scope of services, care, or assistance by any individuals, groups, residential care settings, or professions unless otherwise expressed by law.

(11)(a) "Long-term care workers" includes all persons who are long-term care workers for the elderly or persons with disabilities, including but not limited to individual providers of home care services, direct care employees of home care agencies, providers of home care services to persons with developmental disabilities under Title 71 RCW, all direct care workers in state-licensed boarding homes, assisted living facilities, and adult family homes, respite care providers, community residential service providers, and any other direct care worker providing home or community-based services to the elderly or persons with functional disabilities or developmental disabilities.

(b) "Long-term care workers" do not include persons employed in nursing homes subject to chapter 18.51 RCW, hospitals or other acute care settings, hospice agencies subject to chapter 70.127 RCW, adult day care centers, and adult day health care centers.

(12) "Nursing home" means a facility licensed under chapter 18.51 RCW.

(13) "Secretary" means the secretary of social and health services.

(14) "Training partnership" means a joint partnership or trust established and maintained jointly by the office of the governor and the exclusive bargaining representative of indi-

vidual providers under RCW 74.39A.270 to provide training, peer mentoring, and examinations required under this chapter, and educational, career development, or other services to individual providers.

(15) "Tribally licensed boarding home" means a boarding home licensed by a federally recognized Indian tribe which home provides services similar to boarding homes licensed under chapter 18.20 RCW. [2007 c 361 § 2; 2004 c 142 § 14; 1997 c 392 § 103.]

Construction—2007 c 361: "The provisions of this act are to be liberally construed to effectuate the intent, policies, and purposes of this act." [2007 c 361 § 11.]

Severability—2007 c 361: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [2007 c 361 § 12.]

Captions not law—2007 c 361: "Captions used in this act are not any part of the law." [2007 c 361 § 15.]

Short title—2007 c 361: "This act may be known and cited as the establishing quality in long-term care services act." [2007 c 361 § 16.]

Effective dates—2004 c 142: See note following RCW 18.20.020.

Short title—1997 c 392: "This act shall be known and may be cited as the Clara act." [1997 c 392 § 101.]

Findings—1997 c 392: "The legislature finds and declares that the state's current fragmented categorical system for administering services to persons with disabilities and the elderly is not client and family-centered and has created significant organizational barriers to providing high quality, safe, and effective care and support. The present fragmented system results in uncoordinated enforcement of regulations designed to protect the health and safety of disabled persons, lacks accountability due to the absence of management information systems' client tracking data, and perpetuates difficulty in matching client needs and services to multiple categorical funding sources.

The legislature further finds that Washington's chronically functionally disabled population of all ages is growing at a rapid pace due to a population of the very old and increased incidence of disability due in large measure to technological improvements in acute care causing people to live longer. Further, to meet the significant and growing long-term care needs into the near future, rapid, fundamental changes must take place in the way we finance, organize, and provide long-term care services to the chronically functionally disabled.

The legislature further finds that the public demands that long-term care services be safe, client and family-centered, and designed to encourage individual dignity, autonomy, and development of the fullest human potential at home or in other residential settings, whenever practicable." [1997 c 392 § 102.]

Construction—Conflict with federal requirements—1997 c 392: "Any section or provision of this act that may be susceptible to more than one construction shall be interpreted in favor of the construction most likely to comply with federal laws entitling this state to receive federal funds for the various programs of the department of health or the department of social and health services. If any section of this act is found to be in conflict with federal requirements that are a prescribed condition of the allocation of federal funds to the state, or to any departments or agencies thereof, the conflicting part is declared to be inoperative solely to the extent of the conflict. The rules issued under this act shall meet federal requirements that are a necessary condition to the receipt of federal funds by the state." [1997 c 392 § 504.]

Part headings and captions not law—1997 c 392: "Part headings and captions used in this act are not part of the law." [1997 c 392 § 531.]

74.39A.190 Repealed. See Supplementary Table of Disposition of Former RCW Sections, this volume.

74.39A.270 Collective bargaining—Circumstances in which individual providers are considered public employees—Exceptions. (Effective until March 1, 2008.)

(1) Solely for the purposes of collective bargaining and as

expressly limited under subsections (2) and (3) of this section, the governor is the public employer, as defined in chapter 41.56 RCW, of individual providers, who, solely for the purposes of collective bargaining, are public employees as defined in chapter 41.56 RCW. To accommodate the role of the state as payor for the community-based services provided under this chapter and to ensure coordination with state employee collective bargaining under chapter 41.80 RCW and the coordination necessary to implement RCW 74.39A.300, the public employer shall be represented for bargaining purposes by the governor or the governor's designee appointed under chapter 41.80 RCW. The governor or governor's designee shall periodically consult with the authority during the collective bargaining process to allow the authority to communicate issues relating to the long-term in-home care services received by consumers. The governor or the governor's designee shall consult the authority on all issues for which the exclusive bargaining representative requests to engage in collective bargaining under subsection (6) of this section. The authority shall work with the developmental disabilities council, the governor's committee on disability issues and employment, the state council on aging, and other consumer advocacy organizations to obtain informed input from consumers on their interests, including impacts on consumer choice, for all issues proposed for collective bargaining under subsection (6) of this section.

(2) Chapter 41.56 RCW governs the collective bargaining relationship between the governor and individual providers, except as otherwise expressly provided in this chapter and except as follows:

(a) The only unit appropriate for the purpose of collective bargaining under RCW 41.56.060 is a statewide unit of all individual providers;

(b) The showing of interest required to request an election under RCW 41.56.060 is ten percent of the unit, and any intervener seeking to appear on the ballot must make the same showing of interest;

(c) The mediation and interest arbitration provisions of RCW 41.56.430 through 41.56.470 and 41.56.480 apply, except that:

(i) With respect to commencement of negotiations between the governor and the bargaining representative of individual providers, negotiations shall be commenced by May 1st of any year prior to the year in which an existing collective bargaining agreement expires; and

(ii) The decision of the arbitration panel is not binding on the legislature and, if the legislature does not approve the request for funds necessary to implement the compensation and fringe benefit provisions of the arbitrated collective bargaining agreement, is not binding on the authority or the state;

(d) Individual providers do not have the right to strike; and

(e) Individual providers who are related to, or family members of, consumers or prospective consumers are not, for that reason, exempt from this chapter or chapter 41.56 RCW.

(3) Individual providers who are public employees solely for the purposes of collective bargaining under subsection (1) of this section are not, for that reason, employees of the state, its political subdivisions, or an area agency on aging for any purpose. Chapter 41.56 RCW applies only to the

governance of the collective bargaining relationship between the employer and individual providers as provided in subsections (1) and (2) of this section.

(4) Consumers and prospective consumers retain the right to select, hire, supervise the work of, and terminate any individual provider providing services to them. Consumers may elect to receive long-term in-home care services from individual providers who are not referred to them by the authority.

(5) In implementing and administering this chapter, neither the authority nor any of its contractors may reduce or increase the hours of service for any consumer below or above the amount determined to be necessary under any assessment prepared by the department or an area agency on aging.

(6) Except as expressly limited in this section and RCW 74.39A.300, the wages, hours, and working conditions of individual providers are determined solely through collective bargaining as provided in this chapter. No agency or department of the state may establish policies or rules governing the wages or hours of individual providers. However, this subsection does not modify:

(a) The department's authority to establish a plan of care for each consumer or its core responsibility to manage long-term in-home care services under this chapter, including determination of the level of care that each consumer is eligible to receive. However, at the request of the exclusive bargaining representative, the governor or the governor's designee appointed under chapter 41.80 RCW shall engage in collective bargaining, as defined in RCW 41.56.030(4), with the exclusive bargaining representative over how the department's core responsibility affects hours of work for individual providers. This subsection shall not be interpreted to require collective bargaining over an individual consumer's plan of care;

(b) The department's authority to terminate its contracts with individual providers who are not adequately meeting the needs of a particular consumer, or to deny a contract under RCW 74.39A.095(8);

(c) The consumer's right to assign hours to one or more individual providers selected by the consumer within the maximum hours determined by his or her plan of care;

(d) The consumer's right to select, hire, terminate, supervise the work of, and determine the conditions of employment for each individual provider providing services to the consumer under this chapter;

(e) The department's obligation to comply with the federal medicaid statute and regulations and the terms of any community-based waiver granted by the federal department of health and human services and to ensure federal financial participation in the provision of the services; and

(f) The legislature's right to make programmatic modifications to the delivery of state services under this title, including standards of eligibility of consumers and individual providers participating in the programs under this title, and the nature of services provided. The governor shall not enter into, extend, or renew any agreement under this chapter that does not expressly reserve the legislative rights described in this subsection (6)(f).

(7)(a) The state, the department, the authority, the area agencies on aging, or their contractors under this chapter may

not be held vicariously or jointly liable for the action or inaction of any individual provider or prospective individual provider, whether or not that individual provider or prospective individual provider was included on the authority's referral registry or referred to a consumer or prospective consumer. The existence of a collective bargaining agreement, the placement of an individual provider on the referral registry, or the development or approval of a plan of care for a consumer who chooses to use the services of an individual provider and the provision of case management services to that consumer, by the department or an area agency on aging, does not constitute a special relationship with the consumer.

(b) The members of the board are immune from any liability resulting from implementation of this chapter.

(8) Nothing in this section affects the state's responsibility with respect to unemployment insurance for individual providers. However, individual providers are not to be considered, as a result of the state assuming this responsibility, employees of the state. [2007 c 278 § 3; 2006 c 106 § 1; 2004 c 3 § 1; 2002 c 3 § 6 (Initiative Measure No. 775, approved November 6, 2001).]

Effective date—2006 c 106: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately [March 17, 2006]." [2006 c 106 § 2.]

Severability—2004 c 3: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [2004 c 3 § 8.]

Effective date—2004 c 3: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately [March 9, 2004]." [2004 c 3 § 9.]

Findings—Captions not law—Severability—2002 c 3 (Initiative Measure No. 775): See RCW 74.39A.220 and notes following.

74.39A.270 Collective bargaining—Circumstances in which individual providers are considered public employees—Exceptions. (Effective March 1, 2008.) (1) Solely for the purposes of collective bargaining and as expressly limited under subsections (2) and (3) of this section, the governor is the public employer, as defined in chapter 41.56 RCW, of individual providers, who, solely for the purposes of collective bargaining, are public employees as defined in chapter 41.56 RCW. To accommodate the role of the state as payor for the community-based services provided under this chapter and to ensure coordination with state employee collective bargaining under chapter 41.80 RCW and the coordination necessary to implement RCW 74.39A.300, the public employer shall be represented for bargaining purposes by the governor or the governor's designee appointed under chapter 41.80 RCW. The governor or governor's designee shall periodically consult with the authority during the collective bargaining process to allow the authority to communicate issues relating to the long-term in-home care services received by consumers. The governor or the governor's designee shall consult the authority on all issues for which the exclusive bargaining representative requests to engage in collective bargaining under subsections (6) and (7) of this section. The authority shall work with the developmental disabilities council, the governor's committee on disability issues and employment, the state council on aging,

and other consumer advocacy organizations to obtain informed input from consumers on their interests, including impacts on consumer choice, for all issues proposed for collective bargaining under subsections (6) and (7) of this section.

(2) Chapter 41.56 RCW governs the collective bargaining relationship between the governor and individual providers, except as otherwise expressly provided in this chapter and except as follows:

(a) The only unit appropriate for the purpose of collective bargaining under RCW 41.56.060 is a statewide unit of all individual providers;

(b) The showing of interest required to request an election under RCW 41.56.060 is ten percent of the unit, and any intervener seeking to appear on the ballot must make the same showing of interest;

(c) The mediation and interest arbitration provisions of RCW 41.56.430 through 41.56.470 and 41.56.480 apply, except that:

(i) With respect to commencement of negotiations between the governor and the bargaining representative of individual providers, negotiations shall be commenced by May 1st of any year prior to the year in which an existing collective bargaining agreement expires; and

(ii) The decision of the arbitration panel is not binding on the legislature and, if the legislature does not approve the request for funds necessary to implement the compensation and fringe benefit provisions of the arbitrated collective bargaining agreement, is not binding on the authority or the state;

(d) Individual providers do not have the right to strike; and

(e) Individual providers who are related to, or family members of, consumers or prospective consumers are not, for that reason, exempt from this chapter or chapter 41.56 RCW.

(3) Individual providers who are public employees solely for the purposes of collective bargaining under subsection (1) of this section are not, for that reason, employees of the state, its political subdivisions, or an area agency on aging for any purpose. Chapter 41.56 RCW applies only to the governance of the collective bargaining relationship between the employer and individual providers as provided in subsections (1) and (2) of this section.

(4) Consumers and prospective consumers retain the right to select, hire, supervise the work of, and terminate any individual provider providing services to them. Consumers may elect to receive long-term in-home care services from individual providers who are not referred to them by the authority.

(5) In implementing and administering this chapter, neither the authority nor any of its contractors may reduce or increase the hours of service for any consumer below or above the amount determined to be necessary under any assessment prepared by the department or an area agency on aging.

(6) Except as expressly limited in this section and RCW 74.39A.300, the wages, hours, and working conditions of individual providers are determined solely through collective bargaining as provided in this chapter. No agency or department of the state may establish policies or rules governing the

wages or hours of individual providers. However, this subsection does not modify:

(a) The department's authority to establish a plan of care for each consumer or its core responsibility to manage long-term in-home care services under this chapter, including determination of the level of care that each consumer is eligible to receive. However, at the request of the exclusive bargaining representative, the governor or the governor's designee appointed under chapter 41.80 RCW shall engage in collective bargaining, as defined in RCW 41.56.030(4), with the exclusive bargaining representative over how the department's core responsibility affects hours of work for individual providers. This subsection shall not be interpreted to require collective bargaining over an individual consumer's plan of care;

(b) The department's authority to terminate its contracts with individual providers who are not adequately meeting the needs of a particular consumer, or to deny a contract under RCW 74.39A.095(8);

(c) The consumer's right to assign hours to one or more individual providers selected by the consumer within the maximum hours determined by his or her plan of care;

(d) The consumer's right to select, hire, terminate, supervise the work of, and determine the conditions of employment for each individual provider providing services to the consumer under this chapter;

(e) The department's obligation to comply with the federal medicaid statute and regulations and the terms of any community-based waiver granted by the federal department of health and human services and to ensure federal financial participation in the provision of the services; and

(f) The legislature's right to make programmatic modifications to the delivery of state services under this title, including standards of eligibility of consumers and individual providers participating in the programs under this title, and the nature of services provided. The governor shall not enter into, extend, or renew any agreement under this chapter that does not expressly reserve the legislative rights described in this subsection (6)(f).

(7) At the request of the exclusive bargaining representative, the governor or the governor's designee appointed under chapter 41.80 RCW shall engage in collective bargaining, as defined in RCW 41.56.030(4), with the exclusive bargaining representative over employer contributions to the training partnership for the costs of: (a) Meeting all training and peer mentoring required under this chapter; and (b) other training intended to promote the career development of individual providers.

(8)(a) The state, the department, the authority, the area agencies on aging, or their contractors under this chapter may not be held vicariously or jointly liable for the action or inaction of any individual provider or prospective individual provider, whether or not that individual provider or prospective individual provider was included on the authority's referral registry or referred to a consumer or prospective consumer. The existence of a collective bargaining agreement, the placement of an individual provider on the referral registry, or the development or approval of a plan of care for a consumer who chooses to use the services of an individual provider and the provision of case management services to that

consumer, by the department or an area agency on aging, does not constitute a special relationship with the consumer.

(b) The members of the board are immune from any liability resulting from implementation of this chapter.

(9) Nothing in this section affects the state's responsibility with respect to unemployment insurance for individual providers. However, individual providers are not to be considered, as a result of the state assuming this responsibility, employees of the state. [2007 c 361 § 7; 2007 c 278 § 3; 2006 c 106 § 1; 2004 c 3 § 1; 2002 c 3 § 6 (Initiative Measure No. 775, approved November 6, 2001).]

Reviser's note: This section was amended by 2007 c 278 § 3 and by 2007 c 361 § 7, each without reference to the other. Both amendments are incorporated in the publication of this section under RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

Effective date—2007 c 361 §§ 7 and 8: "Sections 7 and 8 of this act take effect March 1, 2008." [2007 c 361 § 14.]

Construction—Severability—Captions not law—Short title—2007 c 361: See notes following RCW 74.39A.009.

Effective date—2006 c 106: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately [March 17, 2006]." [2006 c 106 § 2.]

Severability—2004 c 3: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [2004 c 3 § 8.]

Effective date—2004 c 3: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately [March 9, 2004]." [2004 c 3 § 9.]

Findings—Captions not law—Severability—2002 c 3 (Initiative Measure No. 775): See RCW 74.39A.220 and notes following.

74.39A.310 Contract for individual home care services providers—Cost of increase in wages and benefits funded—Formula. (Effective March 1, 2008.)

(1) The department shall create a formula that converts the cost of the increase in wages and benefits negotiated and funded in the contract for individual providers of home care services pursuant to RCW 74.39A.270 and 74.39A.300, into a per-hour amount, excluding those benefits defined in subsection (2) of this section. That per-hour amount shall be added to the statewide home care agency vendor rate and shall be used exclusively for improving the wages and benefits of home care agency workers who provide direct care. The formula shall account for:

(a) All types of wages, benefits, and compensation negotiated and funded each biennium, including but not limited to:

- (i) Regular wages;
- (ii) Benefit pay, such as vacation, sick, and holiday pay;
- (iii) Taxes on wages/benefit pay;
- (iv) Mileage; and
- (v) Contributions to a training partnership; and

(b) The increase in the average cost of worker's compensation for home care agencies and application of the increases identified in (a) of this subsection to all hours required to be paid, including travel time, of direct service workers under the wage and hour laws and associated employer taxes.

(2) The contribution rate for health care benefits, including but not limited to medical, dental, and vision benefits, for eligible agency home care workers shall be paid by the department to home care agencies at the same rate as negoti-

ated and funded in the collective bargaining agreement for individual providers of home care services. [2007 c 361 § 8; 2006 c 9 § 1.]

Effective date—2007 c 361 §§ 7 and 8: See note following RCW 74.39A.270.

Construction—Severability—Captions not law—Short title—2007 c 361: See notes following RCW 74.39A.009.

Temporary rate increase—2006 c 9: "For the fiscal year ending June 30, 2007, the per-hour amount added to the home care agency vendor rate pursuant to section 1(1)(a) of this act shall be limited to the cost of: (1) A \$0.02 per-hour increase in wages, plus the employer share of unemployment and social security taxes on the amount of the increase; and (2) the cost of annual leave benefits negotiated and funded for individual providers of home care services. This section expires June 30, 2007." [2006 c 9 § 2.]

Effective date—2006 c 9: "This act takes effect July 1, 2006." [2006 c 9 § 3.]

74.39A.330 Peer mentoring. Long-term care workers shall be offered on-the-job training or peer mentorship for at least one hour per week in the first ninety days of work from a long-term care worker who has completed at least twelve hours of mentor training and is mentoring no more than ten other workers at any given time. This requirement applies to long-term care workers who begin work on or after January 1, 2010. [2007 c 361 § 3.]

Construction—Severability—Captions not law—Short title—2007 c 361: See notes following RCW 74.39A.009.

74.39A.340 Continuing education. Long-term care workers shall complete twelve hours of continuing education training in advanced training topics each year. This requirement applies beginning on January 1, 2010. [2007 c 361 § 4.]

Construction—Severability—Captions not law—Short title—2007 c 361: See notes following RCW 74.39A.009.

74.39A.350 Advanced training. The department shall offer, directly or through contract, training opportunities sufficient for a long-term care worker to accumulate sixty-five hours of training within a reasonable time period. For individual providers represented by an exclusive bargaining representative under RCW 74.39A.270, the training opportunities shall be offered through a contract with the training partnership established under RCW 74.39A.360. Training topics shall include, but are not limited to: Client rights; personal care; mental illness; dementia; developmental disabilities; depression; medication assistance; advanced communication skills; positive client behavior support; developing or improving client-centered activities; dealing with wandering or aggressive client behaviors; medical conditions; nurse delegation core training; peer mentor training; and advocacy for quality care training. The department may not require long-term care workers to obtain the training described in this section. This requirement to offer advanced training applies beginning January 1, 2010. [2007 c 361 § 5.]

Construction—Severability—Captions not law—Short title—2007 c 361: See notes following RCW 74.39A.009.

74.39A.360 Training partnership. Beginning January 1, 2010, for individual providers represented by an exclusive bargaining representative under RCW 74.39A.270, all training and peer mentoring required under this chapter shall be provided by a training partnership. Contributions to the part-

nership pursuant to a collective bargaining agreement negotiated under this chapter shall be made beginning July 1, 2009. The training partnership shall provide reports as required by the department verifying that all individual providers have complied with all training requirements. The exclusive bargaining representative shall designate the training partnership. [2007 c 361 § 6.]

Construction—Severability—Captions not law—Short title—2007 c 361: See notes following RCW 74.39A.009.

Chapter 74.46 RCW

NURSING FACILITY MEDICAID PAYMENT SYSTEM

Sections

74.46.020	Definitions.
74.46.410	Unallowable costs.
74.46.431	Nursing facility medicaid payment rate allocations—Components—Minimum wage—Rules.
74.46.506	Direct care component rate allocations—Determination—Quarterly updates—Fines.
74.46.511	Therapy care component rate allocation—Determination.
74.46.521	Operations component rate allocation—Determination.
74.46.533	Combined and estimated rebased rates—Determination—Hold harmless provision.

74.46.020 Definitions. Unless the context clearly requires otherwise, the definitions in this section apply throughout this chapter.

(1) "Accrual method of accounting" means a method of accounting in which revenues are reported in the period when they are earned, regardless of when they are collected, and expenses are reported in the period in which they are incurred, regardless of when they are paid.

(2) "Appraisal" means the process of estimating the fair market value or reconstructing the historical cost of an asset acquired in a past period as performed by a professionally designated real estate appraiser with no pecuniary interest in the property to be appraised. It includes a systematic, analytic determination and the recording and analyzing of property facts, rights, investments, and values based on a personal inspection and inventory of the property.

(3) "Arm's-length transaction" means a transaction resulting from good-faith bargaining between a buyer and seller who are not related organizations and have adverse positions in the market place. Sales or exchanges of nursing home facilities among two or more parties in which all parties subsequently continue to own one or more of the facilities involved in the transactions shall not be considered as arm's-length transactions for purposes of this chapter. Sale of a nursing home facility which is subsequently leased back to the seller within five years of the date of sale shall not be considered as an arm's-length transaction for purposes of this chapter.

(4) "Assets" means economic resources of the contractor, recognized and measured in conformity with generally accepted accounting principles.

(5) "Audit" or "department audit" means an examination of the records of a nursing facility participating in the medicaid payment system, including but not limited to: The contractor's financial and statistical records, cost reports and all supporting documentation and schedules, receivables, and

resident trust funds, to be performed as deemed necessary by the department and according to department rule.

(6) "Bad debts" means amounts considered to be uncollectible from accounts and notes receivable.

(7) "Beneficial owner" means:

(a) Any person who, directly or indirectly, through any contract, arrangement, understanding, relationship, or otherwise has or shares:

(i) Voting power which includes the power to vote, or to direct the voting of such ownership interest; and/or

(ii) Investment power which includes the power to dispose, or to direct the disposition of such ownership interest;

(b) Any person who, directly or indirectly, creates or uses a trust, proxy, power of attorney, pooling arrangement, or any other contract, arrangement, or device with the purpose or effect of divesting himself or herself of beneficial ownership of an ownership interest or preventing the vesting of such beneficial ownership as part of a plan or scheme to evade the reporting requirements of this chapter;

(c) Any person who, subject to (b) of this subsection, has the right to acquire beneficial ownership of such ownership interest within sixty days, including but not limited to any right to acquire:

(i) Through the exercise of any option, warrant, or right;

(ii) Through the conversion of an ownership interest;

(iii) Pursuant to the power to revoke a trust, discretionary account, or similar arrangement; or

(iv) Pursuant to the automatic termination of a trust, discretionary account, or similar arrangement;

except that, any person who acquires an ownership interest or power specified in (c)(i), (ii), or (iii) of this subsection with the purpose or effect of changing or influencing the control of the contractor, or in connection with or as a participant in any transaction having such purpose or effect, immediately upon such acquisition shall be deemed to be the beneficial owner of the ownership interest which may be acquired through the exercise or conversion of such ownership interest or power;

(d) Any person who in the ordinary course of business is a pledgee of ownership interest under a written pledge agreement shall not be deemed to be the beneficial owner of such pledged ownership interest until the pledgee has taken all formal steps necessary which are required to declare a default and determines that the power to vote or to direct the vote or to dispose or to direct the disposition of such pledged ownership interest will be exercised; except that:

(i) The pledge agreement is bona fide and was not entered into with the purpose nor with the effect of changing or influencing the control of the contractor, nor in connection with any transaction having such purpose or effect, including persons meeting the conditions set forth in (b) of this subsection; and

(ii) The pledge agreement, prior to default, does not grant to the pledgee:

(A) The power to vote or to direct the vote of the pledged ownership interest; or

(B) The power to dispose or direct the disposition of the pledged ownership interest, other than the grant of such power(s) pursuant to a pledge agreement under which credit is extended and in which the pledgee is a broker or dealer.

(8) "Capitalization" means the recording of an expenditure as an asset.

(9) "Case mix" means a measure of the intensity of care and services needed by the residents of a nursing facility or a group of residents in the facility.

(10) "Case mix index" means a number representing the average case mix of a nursing facility.

(11) "Case mix weight" means a numeric score that identifies the relative resources used by a particular group of a nursing facility's residents.

(12) "Certificate of capital authorization" means a certification from the department for an allocation from the biennial capital financing authorization for all new or replacement building construction, or for major renovation projects, receiving a certificate of need or a certificate of need exemption under chapter 70.38 RCW after July 1, 2001.

(13) "Contractor" means a person or entity licensed under chapter 18.51 RCW to operate a medicare and medicare-certified nursing facility, responsible for operational decisions, and contracting with the department to provide services to medicaid recipients residing in the facility.

(14) "Default case" means no initial assessment has been completed for a resident and transmitted to the department by the cut-off date, or an assessment is otherwise past due for the resident, under state and federal requirements.

(15) "Department" means the department of social and health services (DSHS) and its employees.

(16) "Depreciation" means the systematic distribution of the cost or other basis of tangible assets, less salvage, over the estimated useful life of the assets.

(17) "Direct care" means nursing care and related care provided to nursing facility residents. Therapy care shall not be considered part of direct care.

(18) "Direct care supplies" means medical, pharmaceutical, and other supplies required for the direct care of a nursing facility's residents.

(19) "Entity" means an individual, partnership, corporation, limited liability company, or any other association of individuals capable of entering enforceable contracts.

(20) "Equity" means the net book value of all tangible and intangible assets less the recorded value of all liabilities, as recognized and measured in conformity with generally accepted accounting principles.

(21) "Essential community provider" means a facility which is the only nursing facility within a commuting distance radius of at least forty minutes duration, traveling by automobile.

(22) "Facility" or "nursing facility" means a nursing home licensed in accordance with chapter 18.51 RCW, excepting nursing homes certified as institutions for mental diseases, or that portion of a multiservice facility licensed as a nursing home, or that portion of a hospital licensed in accordance with chapter 70.41 RCW which operates as a nursing home.

(23) "Fair market value" means the replacement cost of an asset less observed physical depreciation on the date for which the market value is being determined.

(24) "Financial statements" means statements prepared and presented in conformity with generally accepted accounting principles including, but not limited to, balance sheet, statement of operations, statement of changes in financial position, and related notes.

(25) "Generally accepted accounting principles" means accounting principles approved by the financial accounting standards board (FASB).

(26) "Goodwill" means the excess of the price paid for a nursing facility business over the fair market value of all net identifiable tangible and intangible assets acquired, as measured in accordance with generally accepted accounting principles.

(27) "Grouper" means a computer software product that groups individual nursing facility residents into case mix classification groups based on specific resident assessment data and computer logic.

(28) "High labor-cost county" means an urban county in which the median allowable facility cost per case mix unit is more than ten percent higher than the median allowable facility cost per case mix unit among all other urban counties, excluding that county.

(29) "Historical cost" means the actual cost incurred in acquiring and preparing an asset for use, including feasibility studies, architect's fees, and engineering studies.

(30) "Home and central office costs" means costs that are incurred in the support and operation of a home and central office. Home and central office costs include centralized services that are performed in support of a nursing facility. The department may exclude from this definition costs that are nonduplicative, documented, ordinary, necessary, and related to the provision of care services to authorized patients.

(31) "Imprest fund" means a fund which is regularly replenished in exactly the amount expended from it.

(32) "Joint facility costs" means any costs which represent resources which benefit more than one facility, or one facility and any other entity.

(33) "Lease agreement" means a contract between two parties for the possession and use of real or personal property or assets for a specified period of time in exchange for specified periodic payments. Elimination (due to any cause other than death or divorce) or addition of any party to the contract, expiration, or modification of any lease term in effect on January 1, 1980, or termination of the lease by either party by any means shall constitute a termination of the lease agreement. An extension or renewal of a lease agreement, whether or not pursuant to a renewal provision in the lease agreement, shall be considered a new lease agreement. A strictly formal change in the lease agreement which modifies the method, frequency, or manner in which the lease payments are made, but does not increase the total lease payment obligation of the lessee, shall not be considered modification of a lease term.

(34) "Medical care program" or "medicaid program" means medical assistance, including nursing care, provided under RCW 74.09.500 or authorized state medical care services.

(35) "Medical care recipient," "medicaid recipient," or "recipient" means an individual determined eligible by the department for the services provided under chapter 74.09 RCW.

(36) "Minimum data set" means the overall data component of the resident assessment instrument, indicating the strengths, needs, and preferences of an individual nursing facility resident.

(37) "Net book value" means the historical cost of an asset less accumulated depreciation.

(38) "Net invested funds" means the net book value of tangible fixed assets employed by a contractor to provide services under the medical care program, including land, buildings, and equipment as recognized and measured in conformity with generally accepted accounting principles.

(39) "Nonurban county" means a county which is not located in a metropolitan statistical area as determined and defined by the United States office of management and budget or other appropriate agency or office of the federal government.

(40) "Operating lease" means a lease under which rental or lease expenses are included in current expenses in accordance with generally accepted accounting principles.

(41) "Owner" means a sole proprietor, general or limited partners, members of a limited liability company, and beneficial interest holders of five percent or more of a corporation's outstanding stock.

(42) "Ownership interest" means all interests beneficially owned by a person, calculated in the aggregate, regardless of the form which such beneficial ownership takes.

(43) "Patient day" or "resident day" means a calendar day of care provided to a nursing facility resident, regardless of payment source, which will include the day of admission and exclude the day of discharge; except that, when admission and discharge occur on the same day, one day of care shall be deemed to exist. A "medicaid day" or "recipient day" means a calendar day of care provided to a medicaid recipient determined eligible by the department for services provided under chapter 74.09 RCW, subject to the same conditions regarding admission and discharge applicable to a patient day or resident day of care.

(44) "Professionally designated real estate appraiser" means an individual who is regularly engaged in the business of providing real estate valuation services for a fee, and who is deemed qualified by a nationally recognized real estate appraisal educational organization on the basis of extensive practical appraisal experience, including the writing of real estate valuation reports as well as the passing of written examinations on valuation practice and theory, and who by virtue of membership in such organization is required to subscribe and adhere to certain standards of professional practice as such organization prescribes.

(45) "Qualified therapist" means:

(a) A mental health professional as defined by chapter 71.05 RCW;

(b) A mental retardation professional who is a therapist approved by the department who has had specialized training or one year's experience in treating or working with the mentally retarded or developmentally disabled;

(c) A speech pathologist who is eligible for a certificate of clinical competence in speech pathology or who has the equivalent education and clinical experience;

(d) A physical therapist as defined by chapter 18.74 RCW;

(e) An occupational therapist who is a graduate of a program in occupational therapy, or who has the equivalent of such education or training; and

(f) A respiratory care practitioner certified under chapter 18.89 RCW.

(46) "Rate" or "rate allocation" means the medicaid per-patient-day payment amount for medicaid patients calculated

in accordance with the allocation methodology set forth in part E of this chapter.

(47) "Real property," whether leased or owned by the contractor, means the building, allowable land, land improvements, and building improvements associated with a nursing facility.

(48) "Rebased rate" or "cost-rebased rate" means a facility-specific component rate assigned to a nursing facility for a particular rate period established on desk-reviewed, adjusted costs reported for that facility covering at least six months of a prior calendar year designated as a year to be used for cost-rebasing payment rate allocations under the provisions of this chapter.

(49) "Records" means those data supporting all financial statements and cost reports including, but not limited to, all general and subsidiary ledgers, books of original entry, and transaction documentation, however such data are maintained.

(50) "Related organization" means an entity which is under common ownership and/or control with, or has control of, or is controlled by, the contractor.

(a) "Common ownership" exists when an entity is the beneficial owner of five percent or more ownership interest in the contractor and any other entity.

(b) "Control" exists where an entity has the power, directly or indirectly, significantly to influence or direct the actions or policies of an organization or institution, whether or not it is legally enforceable and however it is exercisable or exercised.

(51) "Related care" means only those services that are directly related to providing direct care to nursing facility residents. These services include, but are not limited to, nursing direction and supervision, medical direction, medical records, pharmacy services, activities, and social services.

(52) "Resident assessment instrument," including federally approved modifications for use in this state, means a federally mandated, comprehensive nursing facility resident care planning and assessment tool, consisting of the minimum data set and resident assessment protocols.

(53) "Resident assessment protocols" means those components of the resident assessment instrument that use the minimum data set to trigger or flag a resident's potential problems and risk areas.

(54) "Resource utilization groups" means a case mix classification system that identifies relative resources needed to care for an individual nursing facility resident.

(55) "Restricted fund" means those funds the principal and/or income of which is limited by agreement with or direction of the donor to a specific purpose.

(56) "Secretary" means the secretary of the department of social and health services.

(57) "Support services" means food, food preparation, dietary, housekeeping, and laundry services provided to nursing facility residents.

(58) "Therapy care" means those services required by a nursing facility resident's comprehensive assessment and plan of care, that are provided by qualified therapists, or support personnel under their supervision, including related costs as designated by the department.

(59) "Title XIX" or "medicaid" means the 1965 amendments to the social security act, P.L. 89-07, as amended and the medicaid program administered by the department.

(60) "Urban county" means a county which is located in a metropolitan statistical area as determined and defined by the United States office of management and budget or other appropriate agency or office of the federal government.

(61) "Vital local provider" means a facility that meets the following qualifications:

(a) It reports a home office with an address located in Washington state; and

(b) The sum of medicaid days for all Washington facilities reporting that home office as their home office was greater than two hundred fifteen thousand in 2003; and

(c) The facility was recognized as a "vital local provider" by the department as of April 1, 2007.

The definition of "vital local provider" shall expire, and have no force or effect, after June 30, 2007. After that date, no facility's payments under this chapter shall in any way be affected by its prior determination or recognition as a vital local provider. [2007 c 508 § 7; 2006 c 258 § 1; 2001 1st sp.s. c 8 § 1; 1999 c 353 § 1; 1998 c 322 § 2; 1995 1st sp.s. c 18 § 90; 1993 sp.s. c 13 § 1; 1991 sp.s. c 8 § 11; 1989 c 372 § 17; 1987 c 476 § 6; 1985 c 361 § 16; 1982 c 117 § 1; 1980 c 177 § 2.]

Effective date—2007 c 508: See note following RCW 74.46.410.

Effective date—2006 c 258: "This act takes effect July 1, 2006." [2006 c 258 § 8.]

Severability—2001 1st sp.s. c 8: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [2001 1st sp.s. c 8 § 21.]

Effective dates—2001 1st sp.s. c 8: "(1) Sections 1 through 19 of this act are necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and take effect July 1, 2001.

(2) Section 20 of this act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect June 29, 2001." [2001 1st sp.s. c 8 § 22.]

Effective dates—1999 c 353: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions. Section 11 of this act takes effect immediately [May 17, 1999], and sections 1 through 10 and 12 through 17 take effect July 1, 1999." [1999 c 353 § 18.]

Conflict with federal requirements—Severability—Effective date—1995 1st sp.s. c 18: See notes following RCW 74.39A.030.

Effective date—1993 sp.s. c 13: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and shall take effect July 1, 1993." [1993 sp.s. c 13 § 21.]

Effective date—1991 sp.s. c 8: See note following RCW 18.51.050.

Savings—1985 c 361: "This act shall not be construed as affecting any existing right acquired or any obligation or liability incurred under the statutes amended or repealed by this act or any rule, regulation, or order adopted under those sections, nor as affecting any proceeding instituted under those sections." [1985 c 361 § 20.]

74.46.410 Unallowable costs. (1) Costs will be unallowable if they are not documented, necessary, ordinary, and related to the provision of care services to authorized patients.

(2) Unallowable costs include, but are not limited to, the following:

- (a) Costs of items or services not covered by the medical care program. Costs of such items or services will be unallowable even if they are indirectly reimbursed by the department as the result of an authorized reduction in patient contribution;
- (b) Costs of services and items provided to recipients which are covered by the department's medical care program but not included in the medicaid per-resident day payment rate established by the department under this chapter;
- (c) Costs associated with a capital expenditure subject to section 1122 approval (part 100, Title 42 C.F.R.) if the department found it was not consistent with applicable standards, criteria, or plans. If the department was not given timely notice of a proposed capital expenditure, all associated costs will be unallowable up to the date they are determined to be reimbursable under applicable federal regulations;
- (d) Costs associated with a construction or acquisition project requiring certificate of need approval, or exemption from the requirements for certificate of need for the replacement of existing nursing home beds, pursuant to chapter 70.38 RCW if such approval or exemption was not obtained;
- (e) Interest costs other than those provided by RCW 74.46.290 on and after January 1, 1985;
- (f) Salaries or other compensation of owners, officers, directors, stockholders, partners, principals, participants, and others associated with the contractor or its home office, including all board of directors' fees for any purpose, except reasonable compensation paid for service related to patient care;
- (g) Costs in excess of limits or in violation of principles set forth in this chapter;
- (h) Costs resulting from transactions or the application of accounting methods which circumvent the principles of the payment system set forth in this chapter;
- (i) Costs applicable to services, facilities, and supplies furnished by a related organization in excess of the lower of the cost to the related organization or the price of comparable services, facilities, or supplies purchased elsewhere;
- (j) Bad debts of non-Title XIX recipients. Bad debts of Title XIX recipients are allowable if the debt is related to covered services, it arises from the recipient's required contribution toward the cost of care, the provider can establish that reasonable collection efforts were made, the debt was actually uncollectible when claimed as worthless, and sound business judgment established that there was no likelihood of recovery at any time in the future;
- (k) Charity and courtesy allowances;
- (l) Cash, assessments, or other contributions, excluding dues, to charitable organizations, professional organizations, trade associations, or political parties, and costs incurred to improve community or public relations;
- (m) Vending machine expenses;
- (n) Expenses for barber or beautician services not included in routine care;
- (o) Funeral and burial expenses;
- (p) Costs of gift shop operations and inventory;
- (q) Personal items such as cosmetics, smoking materials, newspapers and magazines, and clothing, except those used in patient activity programs;
- (r) Fund-raising expenses, except those directly related to the patient activity program;
- (s) Penalties and fines;
- (t) Expenses related to telephones, radios, and similar appliances in patients' private accommodations;
- (u) Televisions acquired prior to July 1, 2001;
- (v) Federal, state, and other income taxes;
- (w) Costs of special care services except where authorized by the department;
- (x) Expenses of an employee benefit not in fact made available to all employees on an equal or fair basis, for example, key-man insurance and other insurance or retirement plans;
- (y) Expenses of profit-sharing plans;
- (z) Expenses related to the purchase and/or use of private or commercial airplanes which are in excess of what a prudent contractor would expend for the ordinary and economic provision of such a transportation need related to patient care;
- (aa) Personal expenses and allowances of owners or relatives;
- (bb) All expenses of maintaining professional licenses or membership in professional organizations;
- (cc) Costs related to agreements not to compete;
- (dd) Amortization of goodwill, lease acquisition, or any other intangible asset, whether related to resident care or not, and whether recognized under generally accepted accounting principles or not;
- (ee) Expenses related to vehicles which are in excess of what a prudent contractor would expend for the ordinary and economic provision of transportation needs related to patient care;
- (ff) Legal and consultant fees in connection with a fair hearing against the department where a decision is rendered in favor of the department or where otherwise the determination of the department stands;
- (gg) Legal and consultant fees of a contractor or contractors in connection with a lawsuit against the department;
- (hh) Lease acquisition costs, goodwill, the cost of bed rights, or any other intangible assets;
- (ii) All rental or lease costs other than those provided in RCW 74.46.300 on and after January 1, 1985;
- (jj) Postsurvey charges incurred by the facility as a result of subsequent inspections under RCW 18.51.050 which occur beyond the first postsurvey visit during the certification survey calendar year;
- (kk) Compensation paid for any purchased nursing care services, including registered nurse, licensed practical nurse, and nurse assistant services, obtained through service contract arrangement in excess of the amount of compensation paid for such hours of nursing care service had they been paid at the average hourly wage, including related taxes and benefits, for in-house nursing care staff of like classification at the same nursing facility, as reported in the most recent cost report period;
- (ll) For all partial or whole rate periods after July 17, 1984, costs of land and depreciable assets that cannot be reimbursed under the Deficit Reduction Act of 1984 and implementing state statutory and regulatory provisions;
- (mm) Costs reported by the contractor for a prior period to the extent such costs, due to statutory exemption, will not be incurred by the contractor in the period to be covered by the rate;

(nn) Costs of outside activities, for example, costs allocated to the use of a vehicle for personal purposes or related to the part of a facility leased out for office space;

(oo) Travel expenses outside the states of Idaho, Oregon, and Washington and the province of British Columbia. However, travel to or from the home or central office of a chain organization operating a nursing facility is allowed whether inside or outside these areas if the travel is necessary, ordinary, and related to resident care;

(pp) Moving expenses of employees in the absence of demonstrated, good-faith effort to recruit within the states of Idaho, Oregon, and Washington, and the province of British Columbia;

(qq) Depreciation in excess of four thousand dollars per year for each passenger car or other vehicle primarily used by the administrator, facility staff, or central office staff;

(rr) Costs for temporary health care personnel from a nursing pool not registered with the secretary of the department of health;

(ss) Payroll taxes associated with compensation in excess of allowable compensation of owners, relatives, and administrative personnel;

(tt) Costs and fees associated with filing a petition for bankruptcy;

(uu) All advertising or promotional costs, except reasonable costs of help wanted advertising;

(vv) Outside consultation expenses required to meet department-required minimum data set completion proficiency;

(ww) Interest charges assessed by any department or agency of this state for failure to make a timely refund of overpayments and interest expenses incurred for loans obtained to make the refunds;

(xx) All home office or central office costs, whether on or off the nursing facility premises, and whether allocated or not to specific services, in excess of the median of those adjusted costs for all facilities reporting such costs for the most recent report period;

(yy) Tax expenses that a nursing facility has never incurred; and

(zz) Effective July 1, 2007, and for all future rate settings, any costs associated with the quality maintenance fee repealed by chapter 241, Laws of 2006. [2007 c 508 § 1; 2001 1st sp.s. c 8 § 3; 1998 c 322 § 17; 1995 1st sp.s. c 18 § 97; 1993 sp.s. c 13 § 6; 1991 sp.s. c 8 § 15; 1989 c 372 § 2; 1986 c 175 § 3; 1983 1st ex.s. c 67 § 17; 1980 c 177 § 41.]

Effective date—2007 c 508: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect July 1, 2007." [2007 c 508 § 8.]

Severability—Effective dates—2001 1st sp.s. c 8: See notes following RCW 74.46.020.

Conflict with federal requirements—Severability—Effective date—1995 1st sp.s. c 18: See notes following RCW 74.39A.030.

Effective date—1993 sp.s. c 13: See note following RCW 74.46.020.

Effective date—1991 sp.s. c 8: See note following RCW 18.51.050.

Effective date—1989 c 372 § 2: "Section 2 of this act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and shall take effect July 1, 1989." [1989 c 372 § 19.]

[2007 RCW Supp—page 932]

74.46.431 Nursing facility medicaid payment rate allocations—Components—Minimum wage—Rules. (1) Effective July 1, 1999, nursing facility medicaid payment rate allocations shall be facility-specific and shall have seven components: Direct care, therapy care, support services, operations, property, financing allowance, and variable return. The department shall establish and adjust each of these components, as provided in this section and elsewhere in this chapter, for each medicaid nursing facility in this state.

(2) Component rate allocations in therapy care, support services, variable return, operations, property, and financing allowance for essential community providers as defined in this chapter shall be based upon a minimum facility occupancy of eighty-five percent of licensed beds, regardless of how many beds are set up or in use. For all facilities other than essential community providers, effective July 1, 2001, component rate allocations in direct care, therapy care, support services, variable return, operations, property, and financing allowance shall continue to be based upon a minimum facility occupancy of eighty-five percent of licensed beds. For all facilities other than essential community providers, effective July 1, 2002, the component rate allocations in operations, property, and financing allowance shall be based upon a minimum facility occupancy of ninety percent of licensed beds, regardless of how many beds are set up or in use. For all facilities, effective July 1, 2006, the component rate allocation in direct care shall be based upon actual facility occupancy.

(3) Information and data sources used in determining medicaid payment rate allocations, including formulas, procedures, cost report periods, resident assessment instrument formats, resident assessment methodologies, and resident classification and case mix weighting methodologies, may be substituted or altered from time to time as determined by the department.

(4)(a) Direct care component rate allocations shall be established using adjusted cost report data covering at least six months. Adjusted cost report data from 1996 will be used for October 1, 1998, through June 30, 2001, direct care component rate allocations; adjusted cost report data from 1999 will be used for July 1, 2001, through June 30, 2006, direct care component rate allocations. Adjusted cost report data from 2003 will be used for July 1, 2006, through June 30, 2007, direct care component rate allocations. Adjusted cost report data from 2005 will be used for July 1, 2007, through June 30, 2009, direct care component rate allocations. Effective July 1, 2009, the direct care component rate allocation shall be rebased biennially, and thereafter for each odd-numbered year beginning July 1st, using the adjusted cost report data for the calendar year two years immediately preceding the rate rebase period, so that adjusted cost report data for calendar year 2007 is used for July 1, 2009, through June 30, 2011, and so forth.

(b) Direct care component rate allocations based on 1996 cost report data shall be adjusted annually for economic trends and conditions by a factor or factors defined in the biennial appropriations act. A different economic trends and conditions adjustment factor or factors may be defined in the biennial appropriations act for facilities whose direct care component rate is set equal to their adjusted June 30, 1998, rate, as provided in RCW 74.46.506(5)(i).

(c) Direct care component rate allocations based on 1999 cost report data shall be adjusted annually for economic trends and conditions by a factor or factors defined in the biennial appropriations act. A different economic trends and conditions adjustment factor or factors may be defined in the biennial appropriations act for facilities whose direct care component rate is set equal to their adjusted June 30, 1998, rate, as provided in RCW 74.46.506(5)(i).

(d) Direct care component rate allocations based on 2003 cost report data shall be adjusted annually for economic trends and conditions by a factor or factors defined in the biennial appropriations act. A different economic trends and conditions adjustment factor or factors may be defined in the biennial appropriations act for facilities whose direct care component rate is set equal to their adjusted June 30, 2006, rate, as provided in RCW 74.46.506(5)(i).

(e) Direct care component rate allocations shall be adjusted annually for economic trends and conditions by a factor or factors defined in the biennial appropriations act.

(5)(a) Therapy care component rate allocations shall be established using adjusted cost report data covering at least six months. Adjusted cost report data from 1996 will be used for October 1, 1998, through June 30, 2001, therapy care component rate allocations; adjusted cost report data from 1999 will be used for July 1, 2001, through June 30, 2005, therapy care component rate allocations. Adjusted cost report data from 1999 will continue to be used for July 1, 2005, through June 30, 2007, therapy care component rate allocations. Adjusted cost report data from 2005 will be used for July 1, 2007, through June 30, 2009, therapy care component rate allocations. Effective July 1, 2009, and thereafter for each odd-numbered year beginning July 1st, the therapy care component rate allocation shall be cost rebased biennially, using the adjusted cost report data for the calendar year two years immediately preceding the rate rebase period, so that adjusted cost report data for calendar year 2007 is used for July 1, 2009, through June 30, 2011, and so forth.

(b) Therapy care component rate allocations shall be adjusted annually for economic trends and conditions by a factor or factors defined in the biennial appropriations act.

(6)(a) Support services component rate allocations shall be established using adjusted cost report data covering at least six months. Adjusted cost report data from 1996 shall be used for October 1, 1998, through June 30, 2001, support services component rate allocations; adjusted cost report data from 1999 shall be used for July 1, 2001, through June 30, 2005, support services component rate allocations. Adjusted cost report data from 1999 will continue to be used for July 1, 2005, through June 30, 2007, support services component rate allocations. Adjusted cost report data from 2005 will be used for July 1, 2007, through June 30, 2009, support services component rate allocations. Effective July 1, 2009, and thereafter for each odd-numbered year beginning July 1st, the support services component rate allocation shall be cost rebased biennially, using the adjusted cost report data for the calendar year two years immediately preceding the rate rebase period, so that adjusted cost report data for calendar year 2007 is used for July 1, 2009, through June 30, 2011, and so forth.

(b) Support services component rate allocations shall be adjusted annually for economic trends and conditions by a factor or factors defined in the biennial appropriations act.

(7)(a) Operations component rate allocations shall be established using adjusted cost report data covering at least six months. Adjusted cost report data from 1996 shall be used for October 1, 1998, through June 30, 2001, operations component rate allocations; adjusted cost report data from 1999 shall be used for July 1, 2001, through June 30, 2006, operations component rate allocations. Adjusted cost report data from 2003 will be used for July 1, 2006, through June 30, 2007, operations component rate allocations. Adjusted cost report data from 2005 will be used for July 1, 2007, through June 30, 2009, operations component rate allocations. Effective July 1, 2009, and thereafter for each odd-numbered year beginning July 1st, the operations component rate allocation shall be cost rebased biennially, using the adjusted cost report data for the calendar year two years immediately preceding the rate rebase period, so that adjusted cost report data for calendar year 2007 is used for July 1, 2009, through June 30, 2011, and so forth.

(b) Operations component rate allocations shall be adjusted annually for economic trends and conditions by a factor or factors defined in the biennial appropriations act. A different economic trends and conditions adjustment factor or factors may be defined in the biennial appropriations act for facilities whose operations component rate is set equal to their adjusted June 30, 2006, rate, as provided in RCW 74.46.521(4).

(8) For July 1, 1998, through September 30, 1998, a facility's property and return on investment component rates shall be the facility's June 30, 1998, property and return on investment component rates, without increase. For October 1, 1998, through June 30, 1999, a facility's property and return on investment component rates shall be rebased utilizing 1997 adjusted cost report data covering at least six months of data.

(9) Total payment rates under the nursing facility Medicaid payment system shall not exceed facility rates charged to the general public for comparable services.

(10) Medicaid contractors shall pay to all facility staff a minimum wage of the greater of the state minimum wage or the federal minimum wage.

(11) The department shall establish in rule procedures, principles, and conditions for determining component rate allocations for facilities in circumstances not directly addressed by this chapter, including but not limited to: The need to prorate inflation for partial-period cost report data, newly constructed facilities, existing facilities entering the Medicaid program for the first time or after a period of absence from the program, existing facilities with expanded new bed capacity, existing Medicaid facilities following a change of ownership of the nursing facility business, facilities banking beds or converting beds back into service, facilities temporarily reducing the number of set-up beds during a remodel, facilities having less than six months of either resident assessment, cost report data, or both, under the current contractor prior to rate setting, and other circumstances.

(12) The department shall establish in rule procedures, principles, and conditions, including necessary threshold costs, for adjusting rates to reflect capital improvements or

new requirements imposed by the department or the federal government. Any such rate adjustments are subject to the provisions of RCW 74.46.421.

(13) Effective July 1, 2001, medicaid rates shall continue to be revised downward in all components, in accordance with department rules, for facilities converting banked beds to active service under chapter 70.38 RCW, by using the facility's increased licensed bed capacity to recalculate minimum occupancy for rate setting. However, for facilities other than essential community providers which bank beds under chapter 70.38 RCW, after May 25, 2001, medicaid rates shall be revised upward, in accordance with department rules, in direct care, therapy care, support services, and variable return components only, by using the facility's decreased licensed bed capacity to recalculate minimum occupancy for rate setting, but no upward revision shall be made to operations, property, or financing allowance component rates. The direct care component rate allocation shall be adjusted, without using the minimum occupancy assumption, for facilities that convert banked beds to active service, under chapter 70.38 RCW, beginning on July 1, 2006.

(14) Facilities obtaining a certificate of need or a certificate of need exemption under chapter 70.38 RCW after June 30, 2001, must have a certificate of capital authorization in order for (a) the depreciation resulting from the capitalized addition to be included in calculation of the facility's property component rate allocation; and (b) the net invested funds associated with the capitalized addition to be included in calculation of the facility's financing allowance rate allocation. [2007 c 508 § 2; 2006 c 258 § 2; 2005 c 518 § 944; 2004 c 276 § 913; 2001 1st sp.s. c 8 § 5; 1999 c 353 § 4; 1998 c 322 § 19.]

Effective date—2007 c 508: See note following RCW 74.46.410.

Effective date—2006 c 258: See note following RCW 74.46.020.

Severability—Effective date—2005 c 518: See notes following RCW 28A.305.210.

Severability—Effective date—2004 c 276: See notes following RCW 43.330.167.

Severability—Effective dates—2001 1st sp.s. c 8: See notes following RCW 74.46.020.

Effective dates—1999 c 353: See note following RCW 74.46.020.

74.46.506 Direct care component rate allocations—Determination—Quarterly updates—Fines. (1) The direct care component rate allocation corresponds to the provision of nursing care for one resident of a nursing facility for one day, including direct care supplies. Therapy services and supplies, which correspond to the therapy care component rate, shall be excluded. The direct care component rate includes elements of case mix determined consistent with the principles of this section and other applicable provisions of this chapter.

(2) Beginning October 1, 1998, the department shall determine and update quarterly for each nursing facility serving medicaid residents a facility-specific per-resident day direct care component rate allocation, to be effective on the first day of each calendar quarter. In determining direct care component rates the department shall utilize, as specified in this section, minimum data set resident assessment data for each resident of the facility, as transmitted to, and if necessary corrected by, the department in the resident assessment

instrument format approved by federal authorities for use in this state.

(3) The department may question the accuracy of assessment data for any resident and utilize corrected or substitute information, however derived, in determining direct care component rates. The department is authorized to impose civil fines and to take adverse rate actions against a contractor, as specified by the department in rule, in order to obtain compliance with resident assessment and data transmission requirements and to ensure accuracy.

(4) Cost report data used in setting direct care component rate allocations shall be for rate periods as specified in RCW 74.46.431(4)(a).

(5) Beginning October 1, 1998, the department shall rebase each nursing facility's direct care component rate allocation as described in RCW 74.46.431, adjust its direct care component rate allocation for economic trends and conditions as described in RCW 74.46.431, and update its medicaid average case mix index, consistent with the following:

(a) Reduce total direct care costs reported by each nursing facility for the applicable cost report period specified in RCW 74.46.431(4)(a) to reflect any department adjustments, and to eliminate reported resident therapy costs and adjustments, in order to derive the facility's total allowable direct care cost;

(b) Divide each facility's total allowable direct care cost by its adjusted resident days for the same report period, increased if necessary to a minimum occupancy of eighty-five percent; that is, the greater of actual or imputed occupancy at eighty-five percent of licensed beds, to derive the facility's allowable direct care cost per resident day. However, effective July 1, 2006, each facility's allowable direct care costs shall be divided by its adjusted resident days without application of a minimum occupancy assumption;

(c) Adjust the facility's per resident day direct care cost by the applicable factor specified in RCW 74.46.431(4) to derive its adjusted allowable direct care cost per resident day;

(d) Divide each facility's adjusted allowable direct care cost per resident day by the facility average case mix index for the applicable quarters specified by RCW 74.46.501(7)(b) to derive the facility's allowable direct care cost per case mix unit;

(e) Effective for July 1, 2001, rate setting, divide nursing facilities into at least two and, if applicable, three peer groups: Those located in nonurban counties; those located in high labor-cost counties, if any; and those located in other urban counties;

(f) Array separately the allowable direct care cost per case mix unit for all facilities in nonurban counties; for all facilities in high labor-cost counties, if applicable; and for all facilities in other urban counties, and determine the median allowable direct care cost per case mix unit for each peer group;

(g) Except as provided in (i) of this subsection, from October 1, 1998, through June 30, 2000, determine each facility's quarterly direct care component rate as follows:

(i) Any facility whose allowable cost per case mix unit is less than eighty-five percent of the facility's peer group median established under (f) of this subsection shall be assigned a cost per case mix unit equal to eighty-five percent of the facility's peer group median, and shall have a direct

care component rate allocation equal to the facility's assigned cost per case mix unit multiplied by that facility's medicaid average case mix index from the applicable quarter specified in RCW 74.46.501(7)(c);

(ii) Any facility whose allowable cost per case mix unit is greater than one hundred fifteen percent of the peer group median established under (f) of this subsection shall be assigned a cost per case mix unit equal to one hundred fifteen percent of the peer group median, and shall have a direct care component rate allocation equal to the facility's assigned cost per case mix unit multiplied by that facility's medicaid average case mix index from the applicable quarter specified in RCW 74.46.501(7)(c);

(iii) Any facility whose allowable cost per case mix unit is between eighty-five and one hundred fifteen percent of the peer group median established under (f) of this subsection shall have a direct care component rate allocation equal to the facility's allowable cost per case mix unit multiplied by that facility's medicaid average case mix index from the applicable quarter specified in RCW 74.46.501(7)(c);

(h) Except as provided in (i) of this subsection, from July 1, 2000, through June 30, 2006, determine each facility's quarterly direct care component rate as follows:

(i) Any facility whose allowable cost per case mix unit is less than ninety percent of the facility's peer group median established under (f) of this subsection shall be assigned a cost per case mix unit equal to ninety percent of the facility's peer group median, and shall have a direct care component rate allocation equal to the facility's assigned cost per case mix unit multiplied by that facility's medicaid average case mix index from the applicable quarter specified in RCW 74.46.501(7)(c);

(ii) Any facility whose allowable cost per case mix unit is greater than one hundred ten percent of the peer group median established under (f) of this subsection shall be assigned a cost per case mix unit equal to one hundred ten percent of the peer group median, and shall have a direct care component rate allocation equal to the facility's assigned cost per case mix unit multiplied by that facility's medicaid average case mix index from the applicable quarter specified in RCW 74.46.501(7)(c);

(iii) Any facility whose allowable cost per case mix unit is between ninety and one hundred ten percent of the peer group median established under (f) of this subsection shall have a direct care component rate allocation equal to the facility's allowable cost per case mix unit multiplied by that facility's medicaid average case mix index from the applicable quarter specified in RCW 74.46.501(7)(c);

(i)(i) Between October 1, 1998, and June 30, 2000, the department shall compare each facility's direct care component rate allocation calculated under (g) of this subsection with the facility's nursing services component rate in effect on September 30, 1998, less therapy costs, plus any exceptional care offsets as reported on the cost report, adjusted for economic trends and conditions as provided in RCW 74.46.431. A facility shall receive the higher of the two rates.

(ii) Between July 1, 2000, and June 30, 2002, the department shall compare each facility's direct care component rate allocation calculated under (h) of this subsection with the facility's direct care component rate in effect on June 30, 2000. A facility shall receive the higher of the two rates.

Between July 1, 2001, and June 30, 2002, if during any quarter a facility whose rate paid under (h) of this subsection is greater than either the direct care rate in effect on June 30, 2000, or than that facility's allowable direct care cost per case mix unit calculated in (d) of this subsection multiplied by that facility's medicaid average case mix index from the applicable quarter specified in RCW 74.46.501(7)(c), the facility shall be paid in that and each subsequent quarter pursuant to (h) of this subsection and shall not be entitled to the greater of the two rates.

(iii) Between July 1, 2002, and June 30, 2006, all direct care component rate allocations shall be as determined under (h) of this subsection.

(iv) Effective July 1, 2006, for all providers, except vital local providers as defined in this chapter, all direct care component rate allocations shall be as determined under (j) of this subsection.

(v) Effective July 1, 2006, through June 30, 2007, for vital local providers, as defined in this chapter, direct care component rate allocations shall be determined as follows:

(A) The department shall calculate:

(I) The sum of each facility's July 1, 2006, direct care component rate allocation calculated under (j) of this subsection and July 1, 2006, operations component rate calculated under RCW 74.46.521; and

(II) The sum of each facility's June 30, 2006, direct care and operations component rates.

(B) If the sum calculated under (i)(v)(A)(I) of this subsection is less than the sum calculated under (i)(v)(A)(II) of this subsection, the facility shall have a direct care component rate allocation equal to the facility's June 30, 2006, direct care component rate allocation.

(C) If the sum calculated under (i)(v)(A)(I) of this subsection is greater than or equal to the sum calculated under (i)(v)(A)(II) of this subsection, the facility's direct care component rate shall be calculated under (j) of this subsection;

(j) Except as provided in (i) of this subsection, from July 1, 2006, forward, and for all future rate setting, determine each facility's quarterly direct care component rate as follows:

(i) Any facility whose allowable cost per case mix unit is greater than one hundred twelve percent of the peer group median established under (f) of this subsection shall be assigned a cost per case mix unit equal to one hundred twelve percent of the peer group median, and shall have a direct care component rate allocation equal to the facility's assigned cost per case mix unit multiplied by that facility's medicaid average case mix index from the applicable quarter specified in RCW 74.46.501(7)(c);

(ii) Any facility whose allowable cost per case mix unit is less than or equal to one hundred twelve percent of the peer group median established under (f) of this subsection shall have a direct care component rate allocation equal to the facility's allowable cost per case mix unit multiplied by that facility's medicaid average case mix index from the applicable quarter specified in RCW 74.46.501(7)(c).

(6) The direct care component rate allocations calculated in accordance with this section shall be adjusted to the extent necessary to comply with RCW 74.46.421.

(7) Costs related to payments resulting from increases in direct care component rates, granted under authority of RCW

74.46.508(1) for a facility's exceptional care residents, shall be offset against the facility's examined, allowable direct care costs, for each report year or partial period such increases are paid. Such reductions in allowable direct care costs shall be for rate setting, settlement, and other purposes deemed appropriate by the department. [2007 c 508 § 3; 2006 c 258 § 6; 2001 1st sp.s. c 8 § 10. Prior: 1999 c 353 § 5; 1999 c 181 § 1; 1998 c 322 § 25.]

Effective date—2007 c 508: See note following RCW 74.46.410.

Effective date—2006 c 258: See note following RCW 74.46.020.

Severability—Effective dates—2001 1st sp.s. c 8: See notes following RCW 74.46.020.

Effective dates—1999 c 353: See note following RCW 74.46.020.

74.46.511 Therapy care component rate allocation—

Determination. (1) The therapy care component rate allocation corresponds to the provision of medicaid one-on-one therapy provided by a qualified therapist as defined in this chapter, including therapy supplies and therapy consultation, for one day for one medicaid resident of a nursing facility. The therapy care component rate allocation for October 1, 1998, through June 30, 2001, shall be based on adjusted therapy costs and days from calendar year 1996. The therapy component rate allocation for July 1, 2001, through June 30, 2007, shall be based on adjusted therapy costs and days from calendar year 1999. Effective July 1, 2007, the therapy care component rate allocation shall be based on adjusted therapy costs and days as described in RCW 74.46.431(5). The therapy care component rate shall be adjusted for economic trends and conditions as specified in RCW 74.46.431(5), and shall be determined in accordance with this section.

(2) In rebasing, as provided in RCW 74.46.431(5)(a), the department shall take from the cost reports of facilities the following reported information:

(a) Direct one-on-one therapy charges for all residents by payer including charges for supplies;

(b) The total units or modules of therapy care for all residents by type of therapy provided, for example, speech or physical. A unit or module of therapy care is considered to be fifteen minutes of one-on-one therapy provided by a qualified therapist or support personnel; and

(c) Therapy consulting expenses for all residents.

(3) The department shall determine for all residents the total cost per unit of therapy for each type of therapy by dividing the total adjusted one-on-one therapy expense for each type by the total units provided for that therapy type.

(4) The department shall divide medicaid nursing facilities in this state into two peer groups:

(a) Those facilities located within urban counties; and

(b) Those located within nonurban counties.

The department shall array the facilities in each peer group from highest to lowest based on their total cost per unit of therapy for each therapy type. The department shall determine the median total cost per unit of therapy for each therapy type and add ten percent of median total cost per unit of therapy. The cost per unit of therapy for each therapy type at a nursing facility shall be the lesser of its cost per unit of therapy for each therapy type or the median total cost per unit plus ten percent for each therapy type for its peer group.

(5) The department shall calculate each nursing facility's therapy care component rate allocation as follows:

(a) To determine the allowable total therapy cost for each therapy type, the allowable cost per unit of therapy for each type of therapy shall be multiplied by the total therapy units for each type of therapy;

(b) The medicaid allowable one-on-one therapy expense shall be calculated taking the allowable total therapy cost for each therapy type times the medicaid percent of total therapy charges for each therapy type;

(c) The medicaid allowable one-on-one therapy expense for each therapy type shall be divided by total adjusted medicaid days to arrive at the medicaid one-on-one therapy cost per patient day for each therapy type;

(d) The medicaid one-on-one therapy cost per patient day for each therapy type shall be multiplied by total adjusted patient days for all residents to calculate the total allowable one-on-one therapy expense. The lesser of the total allowable therapy consultant expense for the therapy type or a reasonable percentage of allowable therapy consultant expense for each therapy type, as established in rule by the department, shall be added to the total allowable one-on-one therapy expense to determine the allowable therapy cost for each therapy type;

(e) The allowable therapy cost for each therapy type shall be added together, the sum of which shall be the total allowable therapy expense for the nursing facility;

(f) The total allowable therapy expense will be divided by the greater of adjusted total patient days from the cost report on which the therapy expenses were reported, or patient days at eighty-five percent occupancy of licensed beds. The outcome shall be the nursing facility's therapy care component rate allocation.

(6) The therapy care component rate allocations calculated in accordance with this section shall be adjusted to the extent necessary to comply with RCW 74.46.421.

(7) The therapy care component rate shall be suspended for medicaid residents in qualified nursing facilities designated by the department who are receiving therapy paid by the department outside the facility daily rate under RCW 74.46.508(2). [2007 c 508 § 4; 2001 1st sp.s. c 8 § 11. Prior: 1999 c 353 § 6; 1999 c 181 § 3; 1998 c 322 § 26.]

Effective date—2007 c 508: See note following RCW 74.46.410.

Severability—Effective dates—2001 1st sp.s. c 8: See notes following RCW 74.46.020.

Effective dates—1999 c 353: See note following RCW 74.46.020.

74.46.521 Operations component rate allocation—

Determination. (1) The operations component rate allocation corresponds to the general operation of a nursing facility for one resident for one day, including but not limited to management, administration, utilities, office supplies, accounting and bookkeeping, minor building maintenance, minor equipment repairs and replacements, and other supplies and services, exclusive of direct care, therapy care, support services, property, financing allowance, and variable return.

(2) Except as provided in subsection (4) of this section, beginning October 1, 1998, the department shall determine each medicaid nursing facility's operations component rate allocation using cost report data specified by RCW 74.46.431(7)(a). Effective July 1, 2002, operations compo-

ment rates for all facilities except essential community providers shall be based upon a minimum occupancy of ninety percent of licensed beds, and no operations component rate shall be revised in response to beds banked on or after May 25, 2001, under chapter 70.38 RCW.

(3) Except as provided in subsection (4) of this section, to determine each facility's operations component rate the department shall:

(a) Array facilities' adjusted general operations costs per adjusted resident day, as determined by dividing each facility's total allowable operations cost by its adjusted resident days for the same report period, increased if necessary to a minimum occupancy of ninety percent; that is, the greater of actual or imputed occupancy at ninety percent of licensed beds, for each facility from facilities' cost reports from the applicable report year, for facilities located within urban counties and for those located within nonurban counties and determine the median adjusted cost for each peer group;

(b) Set each facility's operations component rate at the lower of:

(i) The facility's per resident day adjusted operations costs from the applicable cost report period adjusted if necessary to a minimum occupancy of eighty-five percent of licensed beds before July 1, 2002, and ninety percent effective July 1, 2002; or

(ii) The adjusted median per resident day general operations cost for that facility's peer group, urban counties or nonurban counties; and

(c) Adjust each facility's operations component rate for economic trends and conditions as provided in RCW 74.46.431(7)(b).

(4)(a) Effective July 1, 2006, through June 30, 2007, for any facility whose direct care component rate allocation is set equal to its June 30, 2006, direct care component rate allocation, as provided in RCW 74.46.506(5), the facility's operations component rate allocation shall also be set equal to the facility's June 30, 2006, operations component rate allocation.

(b) The operations component rate allocation for facilities whose operations component rate is set equal to their June 30, 2006, operations component rate, shall be adjusted for economic trends and conditions as provided in RCW 74.46.431(7)(b).

(5) The operations component rate allocations calculated in accordance with this section shall be adjusted to the extent necessary to comply with RCW 74.46.421. [2007 c 508 § 5; 2006 c 258 § 7; 2001 1st sp.s. c 8 § 13; 1999 c 353 § 8; 1998 c 322 § 28.]

Effective date—2007 c 508: See note following RCW 74.46.410.

Effective date—2006 c 258: See note following RCW 74.46.020.

Severability—Effective dates—2001 1st sp.s. c 8: See notes following RCW 74.46.020.

Effective dates—1999 c 353: See note following RCW 74.46.020.

74.46.533 Combined and estimated rebased rates—Determination—Hold harmless provision. (1) For the purposes of comparison, the department shall determine the following during the rate-setting periods for fiscal years 2008 and 2009:

(a) Each facility's June 30, 2007, combined rate for the direct care, support services, therapy, and operations components, less the quality maintenance fee; and

(b) Each facility's estimated rebased rates for the July 1, 2007, and July 1, 2008, rate-setting periods, for the direct care, support services, therapy, and operations rate components, less the quality maintenance fee, adjusted for economic trends and conditions under the 2007-2009 biennial appropriations act.

(2) For the 2007-2009 fiscal biennium, the department shall include a "hold harmless" provision after rebasing to 2005 costs for the July 1, 2007, through June 30, 2008, rate-setting period and the July 1, 2008, through June 30, 2009, rate-setting period. This "hold harmless" provision shall apply to facilities that meet both of the following conditions:

(a) Facilities whose estimated rebased rates calculated under subsection (1)(b) of this section are less than their June 30, 2007, rates calculated under subsection (1)(a) of this section; and

(b) Facilities whose combined adjusted costs per adjusted resident day in the direct care, support services, therapy, and operations cost centers were greater than the combined per resident day reimbursement rates for these cost centers in either calendar years 2004 or 2005.

For those facilities that meet the conditions in this subsection, the "hold harmless" provision shall ensure that for the July 1, 2007, through June 30, 2008, rate-setting period and for the July 1, 2008, through June 30, 2009, rate-setting period, the department shall set each facility's component rates in direct care, support services, therapy, and operations to the facility's June 30, 2007, rate, less the quality maintenance fee, adjusted for economic trends and conditions specified in the 2007-2009 biennial appropriations act. [2007 c 508 § 6.]

Effective date—2007 c 508: See note following RCW 74.46.410.

Title 76

FORESTS AND FOREST PRODUCTS

Chapters

- 76.04 Forest protection.**
- 76.06 Forest insect and disease control.**
- 76.09 Forest practices.**
- 76.48 Specialized forest products.**

Chapter 76.04 RCW

FOREST PROTECTION

Sections

- 76.04.005 Definitions.
- 76.04.610 Forest fire protection assessment.
- 76.04.660 Additional fire hazards—Extreme fire hazard areas—Abatement, isolation or reduction—Summary action—Recovery of costs—Inspection of property.

76.04.005 Definitions. As used in this chapter, the following terms have the meanings indicated unless the context clearly requires otherwise.

(1) "Additional fire hazard" means a condition existing on any land in the state:

(a) Covered wholly or in part by forest debris which is likely to further the spread of fire and thereby endanger life or property; or

(b) When, due to the effects of disturbance agents, broken, down, dead, or dying trees exist on forest land in sufficient quantity to be likely to further the spread of fire within areas covered by a forest health hazard warning or order issued by the commissioner of public lands under RCW 76.06.180. The term "additional fire hazard" does not include green trees or snags left standing in upland or riparian areas under the provisions of RCW 76.04.465 or chapter 76.09 RCW.

(2) "Closed season" means the period between April 15 and October 15, unless the department designates different dates because of prevailing fire weather conditions.

(3) "Department" means the department of natural resources, or its authorized representatives, as defined in chapter 43.30 RCW.

(4) "Department protected lands" means all lands subject to the forest protection assessment under RCW 76.04.610 or covered under contract or agreement pursuant to RCW 76.04.135 by the department.

(5) "Disturbance agent" means those forces that damage or kill significant numbers of forest trees, such as insects, diseases, wind storms, ice storms, and fires.

(6) "Emergency fire costs" means those costs incurred or approved by the department for emergency forest fire suppression, including the employment of personnel, rental of equipment, and purchase of supplies over and above costs regularly budgeted and provided for nonemergency fire expenses for the biennium in which the costs occur.

(7) "Forest debris" includes forest slash, chips, and any other vegetative residue resulting from activities on forest land.

(8) "Forest fire service" includes all wardens, rangers, and other persons employed especially for preventing or fighting forest fires.

(9) "Forest land" means any unimproved lands which have enough trees, standing or down, or flammable material, to constitute in the judgment of the department, a fire menace to life or property. Sagebrush and grass areas east of the summit of the Cascade mountains may be considered forest lands when such areas are adjacent to or intermingled with areas supporting tree growth. Forest land, for protection purposes, does not include structures.

(10) "Forest landowner," "owner of forest land," "landowner," or "owner" means the owner or the person in possession of any public or private forest land.

(11) "Forest material" means forest slash, chips, timber, standing or down, or other vegetation.

(12) "Landowner operation" means every activity, and supporting activities, of a forest landowner and the landowner's agents, employees, or independent contractors or permittees in the management and use of forest land subject to the forest protection assessment under RCW 76.04.610 for the primary benefit of the owner. The term includes, but is not limited to, the growing and harvesting of forest products, the development of transportation systems, the utilization of minerals or other natural resources, and the clearing of land. The term does not include recreational and/or residential activities not associated with these enumerated activities.

(13) "Participating landowner" means an owner of forest land whose land is subject to the forest protection assessment under RCW 76.04.610.

(14) "Slash" means organic forest debris such as tree tops, limbs, brush, and other dead flammable material remaining on forest land as a result of a landowner operation.

(15) "Slash burning" means the planned and controlled burning of forest debris on forest lands by broadcast burning, underburning, pile burning, or other means, for the purposes of silviculture, hazard abatement, or reduction and prevention or elimination of a fire hazard.

(16) "Suppression" means all activities involved in the containment and control of forest fires, including the patrolling thereof until such fires are extinguished or considered by the department to pose no further threat to life or property.

(17) "Unimproved lands" means those lands that will support grass, brush and tree growth, or other flammable material when such lands are not cleared or cultivated and, in the opinion of the department, are a fire menace to life and property. [2007 c 480 § 12; 1992 c 52 § 24; 1986 c 100 § 1.]

76.04.610 Forest fire protection assessment. (1)(a) If any owner of forest land within a forest protection zone neglects or fails to provide adequate fire protection as required by RCW 76.04.600, the department shall provide such protection and shall annually impose the following assessments on each parcel of such land: (i) A flat fee assessment of seventeen dollars and fifty cents; and (ii) twenty-seven cents on each acre exceeding fifty acres.

(b) Assessors may, at their option, collect the assessment on tax exempt lands. If the assessor elects not to collect the assessment, the department may bill the landowner directly.

(2) An owner who has paid assessments on two or more parcels, each containing fewer than fifty acres and each within the same county, may obtain the following refund:

(a) If all the parcels together contain less than fifty acres, then the refund is equal to the flat fee assessments paid, reduced by the total of (i) seventeen dollars and (ii) the total of the amounts retained by the county from such assessments under subsection (5) of this section.

(b) If all the parcels together contain fifty or more acres, then the refund is equal to the flat fee assessments paid, reduced by the total of (i) seventeen dollars, (ii) twenty-seven cents for each acre exceeding fifty acres, and (iii) the total of the amounts retained by the county from such assessments under subsection (5) of this section.

Applications for refunds shall be submitted to the department on a form prescribed by the department and in the same year in which the assessments were paid. The department may not provide refunds to applicants who do not provide verification that all assessments and property taxes on the property have been paid. Applications may be made by mail.

In addition to the procedures under this subsection, property owners with multiple parcels in a single county who qualify for a refund under this section may apply to the department on an application listing all the parcels owned in order to have the assessment computed on all parcels but billed to a single parcel. Property owners with the following number of parcels may apply to the department in the year indicated:

Year	Number of Parcels
2002	10 or more parcels
2003	8 or more parcels
2004 and thereafter	6 or more parcels

The department must compute the correct assessment and allocate one parcel in the county to use to collect the assessment. The county must then bill the forest fire protection assessment on that one allocated identified parcel. The landowner is responsible for notifying the department of any changes in parcel ownership.

(3) Beginning January 1, 1991, under the administration and at the discretion of the department up to two hundred thousand dollars per year of this assessment shall be used in support of those rural fire districts assisting the department in fire protection services on forest lands.

(4) For the purpose of this chapter, the department may divide the forest lands of the state, or any part thereof, into districts, for fire protection and assessment purposes, may classify lands according to the character of timber prevailing, and the fire hazard existing, and place unprotected lands under the administration of the proper district. Amounts paid or contracted to be paid by the department for protection of forest lands from funds at its disposal shall be a lien upon the property protected, unless reimbursed by the owner within ten days after October 1st of the year in which they were incurred. The department shall be prepared to make statement thereof, upon request, to a forest owner whose own protection has not been previously approved as to its adequacy, the department shall report the same to the assessor of the county in which the property is situated. The assessor shall extend the amounts upon the tax rolls covering the property, and upon authorization from the department shall levy the forest protection assessment against the amounts of unimproved land as shown in each ownership on the county assessor's records. The assessor may then segregate on the records to provide that the improved land and improvements thereon carry the millage levy designed to support the rural fire protection districts as provided for in RCW 52.16.170.

(5) The amounts assessed shall be collected at the time, in the same manner, by the same procedure, and with the same penalties attached that general state and county taxes on the same property are collected, except that errors in assessments may be corrected at any time by the department certifying them to the treasurer of the county in which the land involved is situated. Assessments shall be known and designated as assessments of the year in which the amounts became reimbursable. Upon the collection of assessments the county treasurer shall place fifty cents of the total assessments paid on a parcel for fire protection into the county current expense fund to defray the costs of listing, billing, and collecting these assessments. The treasurer shall then transmit the balance to the department. Collections shall be applied against expenses incurred in carrying out the provisions of this section, including necessary and reasonable administrative costs incurred by the department in the enforcement of these provisions. The department may also expend sums collected from owners of forest lands or received from any other source for necessary administrative costs in connection with the enforcement of RCW 76.04.660.

(6) When land against which forest protection assessments are outstanding is acquired for delinquent taxes and sold at public auction, the state shall have a prior lien on the proceeds of sale over and above the amount necessary to satisfy the county's delinquent tax judgment. The county treasurer, in case the proceeds of sale exceed the amount of the delinquent tax judgment, shall immediately remit to the department the amount of the outstanding forest protection assessments.

(7) All nonfederal public bodies owning or administering forest land included in a forest protection zone shall pay the forest protection assessments provided in this section and the special forest fire suppression account assessments under RCW 76.04.630. The forest protection assessments and special forest fire suppression account assessments shall be payable by nonfederal public bodies from available funds within thirty days following receipt of the written notice from the department which is given after October 1st of the year in which the protection was provided. Unpaid assessments are not a lien against the nonfederal publicly owned land but shall constitute a debt by the nonfederal public body to the department and are subject to interest charges at the legal rate.

(8) A public body, having failed to previously pay the forest protection assessments required of it by this section, which fails to suppress a fire on or originating from forest lands owned or administered by it, is liable for the costs of suppression incurred by the department or its agent and is not entitled to reimbursement of costs incurred by the public body in the suppression activities.

(9) The department may adopt rules to implement this section, including, but not limited to, rules on levying and collecting forest protection assessments. [2007 c 110 § 1; 2004 c 216 § 1; 2001 c 279 § 2; 1993 c 36 § 1; 1989 c 362 § 1; 1988 c 273 § 3; 1986 c 100 § 35.]

Effective date—1993 c 36: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and shall take effect immediately [April 15, 1993]." [1993 c 36 § 3.]

76.04.660 Additional fire hazards—Extreme fire hazard areas—Abatement, isolation or reduction—Summary action—Recovery of costs—Inspection of property.

(1) The owner of land on which there is an additional fire hazard, when the hazard is the result of a landowner operation or the land is within an area covered by a forest health hazard warning issued under RCW 76.06.180, shall take reasonable measures to reduce the danger of fire spreading from the area and may abate the hazard by burning or other satisfactory means.

(2) An extreme fire hazard shall exist within areas covered by a forest health hazard order issued by the commissioner of public lands under RCW 76.06.180 in which there is an additional fire hazard caused by disturbance agents and the landowner has failed to take such action as required by the forest health hazard order. The duties and liability of such landowner under this chapter are as described in subsections (5), (6), and (7) of this section.

(3) The department shall adopt rules defining areas of extreme fire hazard that the owner and person responsible shall abate. The areas shall include but are not limited to high

risk areas such as where life or buildings may be endangered, areas adjacent to public highways, and areas of frequent public use.

(4) The department may adopt rules, after consultation with the forest fire advisory board, defining other conditions of extreme fire hazard with a high potential for fire spreading to lands in other ownerships. The department may prescribe additional measures that shall be taken by the owner and person responsible to isolate or reduce the extreme fire hazard.

(5) The owner or person responsible for the existence of the extreme fire hazard is required to abate, isolate, or reduce the hazard. The duty to abate, isolate, or reduce, and liability under this chapter, arise upon creation of the extreme fire hazard. Liability shall include but not be limited to all fire suppression expenses incurred by the department, regardless of fire cause.

(6) If the owner or person responsible for the existence of the extreme fire hazard or forest debris subject to RCW 76.04.650 refuses, neglects, or unsuccessfully attempts to abate, isolate, or reduce the same, the department may summarily abate, isolate, or reduce the hazard as required by this chapter and recover twice the actual cost thereof from the owner or person responsible. Landowner contingency forest fire suppression account moneys may be used by the department, when available, for this purpose. Moneys recovered by the department pursuant to this section shall be returned to the landowner contingency forest fire suppression account.

(7) Such costs shall include all salaries and expenses of people and equipment incurred therein, including those of the department. All such costs shall also be a lien upon the land enforceable in the same manner with the same effect as a mechanic's lien.

(8) The summary action may be taken only after ten days' notice in writing has been given to the owner or reputed owner of the land on which the extreme fire hazard or forest debris subject to RCW 76.04.650 exists. The notice shall include a suggested method of abatement and estimated cost thereof. The notice shall be by personal service or by registered or certified mail addressed to the owner or reputed owner at the owner's last known place of residence.

(9) A landowner or manager may make a written request to the department to inspect their property and provide a written notice that they have complied with a forest health hazard warning or forest health hazard order, or otherwise adequately abated, isolated, or reduced an additional or extreme fire hazard. An additional or extreme fire hazard shall be considered to continue to exist unless and until the department, in its sole discretion, issues such notice. [2007 c 480 § 13; 1986 c 100 § 39.]

Chapter 76.06 RCW

FOREST INSECT AND DISEASE CONTROL

Sections

76.06.020	Definitions.
76.06.030	Administration—Comprehensive forest health program—Limited liability.
76.06.040	Maintenance of forest lands in healthy condition.
76.06.050	through 76.06.110 Repealed.
76.06.140	Forest health problems—Findings.
76.06.160	Forest health issues—Tiered system.
76.06.170	Forest health technical advisory committee.

76.06.180	Forest health hazard warning—Forest health hazard order—Notice—Appeal.
76.06.190	Chapter 480, Laws of 2007 subject to the provisions of chapter 76.09 RCW.
76.06.900	Severability.

76.06.020 Definitions. The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

(1) "Agent" means the recognized legal representative, representatives, agent, or agents for any owner.

(2) "Commissioner" means the commissioner of public lands.

(3) "Department" means the department of natural resources.

(4) "Disturbance agent" means those forces that damage or kill significant numbers of forest trees, such as insects, diseases, wind storms, ice storms, and fires.

(5) "Exotic" means not native to forest lands in Washington state.

(6) "Forest health" means, for the purposes of this chapter, the condition of a forest being sound in ecological function, sustainable, resilient, and resistant to insects, diseases, fire, and other disturbance, and having the capacity to meet landowner objectives.

(7) "Forest health emergency" means the introduction of, or an outbreak of, an exotic forest insect or disease that poses an imminent danger of damage to the environment by threatening the survivability of native tree species.

(8) "Forest insect or disease" means a living stage of an insect, other invertebrate animal, or disease-causing organism or agent that can directly or indirectly injure or cause disease or damage in trees, or parts of trees, or in processed or manufactured wood, or other products of trees.

(9) "Forest land" means any land on which there are sufficient numbers and distribution of trees and associated species to, in the judgment of the department, contribute to the spread of forest insect or forest disease outbreaks that could be detrimental to forest health.

(10) "Integrated pest management" means a strategy that uses various combinations of pest control methods, including biological, cultural, and chemical methods, in a compatible manner to achieve satisfactory control and ensure favorable economic and environmental consequences.

(11) "Native" means having populated Washington's forested lands prior to European settlement.

(12) "Outbreak" means a rapidly expanding population of insects or diseases with potential to spread.

(13) "Owner" means and includes persons or their agents.

(14) "Person" means any individual, partnership, private, public, or municipal corporation, county, federal, state, or local governmental agency, tribes, or association of individuals of whatever nature.

(15) "Timber land" means any land on which there is a sufficient number of trees, standing or down, to constitute, in the judgment of the department, a forest insect or forest disease breeding ground of a nature to constitute a menace, injurious and dangerous to permanent forest growth in the district under consideration.

(16) "Uncharacteristic" means ecologically atypical for a forest or vegetation type or plant association and refers to

fire, insect, or disease events that are not within a natural range of variability. [2007 c 480 § 2; 2003 c 314 § 2; 2000 c 11 § 2; 1988 c 128 § 15; 1951 c 233 § 2.]

Findings—2003 c 314: See note following RCW 17.24.220.

76.06.030 Administration—Comprehensive forest health program—Limited liability. (1) This chapter shall be administered by the department.

(2) The department has the lead role in developing a comprehensive forest health program to achieve the goals of chapter 480, Laws of 2007. Within available funding, the department shall:

(a) Develop, gather, and disseminate information on forest health conditions, monitor forest health conditions and changes over time, and coordinate and enter agreements with interested and affected parties;

(b) Coordinate with universities, university extension services, federal and state agencies, private, public, and tribal forest landowners, consulting foresters, and forest managers to monitor forest fuel buildup, forest insect and disease outbreaks, and wind and ice storm events; and

(c) Coordinate with universities, university extension services, and state and federal agencies to provide education and technical assistance to private, public, and tribal forest landowners on silvicultural and forest management science, techniques, and technology to maintain forests in conditions that are resilient and resistant to disturbance agents.

(3) The department may implement a technical committee to advise on subjects and procedures for monitoring forest health conditions and program activities.

(4) The department may coordinate, support, and assist in establishing cooperative forest health projects to address outbreaks of insects or diseases. Priority for assistance authorized under this section shall be given to areas under forest health hazard warnings and areas where forest health decline has resulted in increased risk to public safety from fire.

(5) The state and its officers and employees are not liable for damages to a person or their property to the extent that liability is asserted to arise from providing or failing to provide assistance under chapter 480, Laws of 2007. [2007 c 480 § 3; 1988 c 128 § 16; 1951 c 233 § 3.]

76.06.040 Maintenance of forest lands in healthy condition. Landowners and managers are encouraged to maintain their forest lands in a healthy condition in order to meet their individual ownership objectives, protect public resources as defined in chapter 76.09 RCW, and avoid contributing to forest insect or disease outbreaks or increasing the risk of uncharacteristic fire. [2007 c 480 § 4; 1951 c 233 § 4.]

76.06.050 through 76.06.110 Repealed. See Supplementary Table of Disposition of Former RCW Sections, this volume.

76.06.140 Forest health problems—Findings. The legislature finds as follows:

(1) Washington faces serious forest health problems, primarily in eastern Washington, where forests are overcrowded

or trees lack sufficient resilience to insects, diseases, wind, ice storms, and fire. The causes of and contributions to these conditions include fire suppression, past timber harvesting and silvicultural practices, altered species composition and stand structure, and the amplified risks that occur when the urban interface penetrates forest land.

(2) There is a private and public interest in addressing uncharacteristic outbreaks of native, naturalized, and nonnative insects and diseases, and reducing the risk of significant loss due to ice storms, wind storms, and uncharacteristic fire. The public interest is in protecting forest productivity on forests managed for commodity production; restoring and maintaining forest ecosystem vitality and natural forest processes and functions; reducing the cost of fire suppression and the resulting public expenditures; protecting, restoring, and enhancing fish and wildlife habitat, including the habitat of threatened or endangered species; and protecting drinking water supplies and water quality.

(3) Well managed forests are the first line of defense in reducing the likelihood of uncharacteristic fire, insect, and disease events, and supporting conservation and restoration of desired plants and animals. Active management of forests, consistent with landowner objectives and the protection of public resources, is the most economical and effective way to promote forest health and protect communities. Fire, native insects, and diseases perform important ecological functions when their occurrence does not present a material threat to long-term forest productivity and increase the likelihood of uncharacteristic fire.

(4) Forest health problems may exist on forest land regardless of ownership, and the state should pursue collaboration with the federal government to address common health deficiencies. [2007 c 480 § 1; 2004 c 218 § 1.]

Effective date—2004 c 218: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately [March 29, 2004]." [2004 c 218 § 11.]

76.06.160 Forest health issues—Tiered system. Forest health issues shall be addressed by a tiered system.

(1) The first tier is intended to maintain forest health and protect forests from disturbance agents through the voluntary efforts of landowners. Tier 1 is the desired status. Consistent with landowner objectives and the protection of public resources, forests should be managed in ways that create, restore, or maintain healthy forest ecosystems so that disturbance agents occur or exist at nonepidemic levels. To the extent of available funding, information and technical assistance will be made available to forest landowners so they can plan for and implement necessary forest health maintenance and restoration activities.

(2) The second tier is intended to manage the development of threats to forest health, or address existing threats to forest health, due to disturbance agents. Actions by landowners to address such threats to forest health are voluntary except as required under chapter 76.04 RCW to reduce the danger of the spread of fire. Actions suggested to reduce threats to forest health are specified in forest health hazard warnings issued by the commissioner of public lands under RCW 76.06.180. Within available funding, site-specific information, technical assistance, and project coordination

services shall be offered as determined appropriate by the department.

(3) The third tier is intended to address significant threats to forest health due to disturbance agents that have spread to multiple forest ownerships or increased forest fuel that is likely to further the spread of fire. Actions required to reduce significant threats to forest health are specified in forest health hazard orders issued by the commissioner of public lands under RCW 76.06.180(5). Within available funding, site-specific information, technical assistance, and project coordination services shall be offered as determined appropriate by the department. Landowners who are provided notice of a forest health hazard order under RCW 76.06.180(5) and fail to take the action required under such order may be subject to increased liability for the spread of fire as described in RCW 76.04.495 and 76.04.660. However, a private landowner need not take actions required under the third tier, and may not be held liable for the failure to take such actions, where the disturbance agents on the private landowner's land spread from state or federal lands or where the presence of disturbance agents on state or federal lands would limit the effectiveness of actions required on the private landowner's land under the third tier. [2007 c 480 § 5.]

76.06.170 Forest health technical advisory committee. (1) The commissioner of public lands may appoint a forest health technical advisory committee when the commissioner determines that forest lands in any area of the state appear to be threatened by a forest health condition of such a nature, extent, or timing that action to reduce the threat may be necessary.

(a) The committee shall consist of one scientist chosen for expertise in forest ecology, one scientist chosen for expertise in aquatic ecology, one scientist chosen for expertise in wildlife biology, two scientists chosen for expertise relative to the attendant risk, one specialist in wildfire protection, one specialist in fuels management, one forester with extensive silvicultural experience in the affected forest type, and a chairperson who shall represent the commissioner. The departments of fish and wildlife, ecology, and natural resources shall provide technical assistance to the committee in the areas of fish and wildlife, water quality, and forest practices, but shall not be members of the committee. The director of forest health protection of region 6 of the United States department of agriculture forest service or their named designee shall be invited to be an ex officio member of the committee. In the event the area affected contains substantial acreage of tribal or federally owned lands, representatives of the affected agencies and tribes shall be invited to participate in the proceedings of the committee.

(b) The commissioner may disband the committee when he or she deems appropriate.

(2) The committee shall evaluate the threat to forest health and make a timely report to the commissioner on its nature, extent, and location.

(a) In its deliberations, the committee shall consider the need for action to reduce the threat and alternative methods of achieving the desired results, including the environmental risks associated with the alternatives and the risks associated with taking no action.

(b) The committee shall also recommend potential approaches to achieve the desired results for forest land ownerships of fewer than ten acres and for forests owned for scientific, study, recreational, or other uses not compatible with active management.

(c) The committee shall recommend to the commissioner whether a forest health hazard warning or forest health hazard order is warranted based on the factors in RCW 76.06.180(2) or when otherwise determined by the committee to be warranted.

(d) When the commissioner issues a forest health hazard warning or forest health hazard order, the committee shall monitor the progress and results of activities to address the hazard, and periodically report its findings to the commissioner.

(3) The exercise by forest health technical advisory committee members of their authority under this section shall not imply or create any liability on their part. Advisory committee members shall be compensated as provided in RCW 43.03.250 and shall receive reimbursement for travel expenses as provided by RCW 43.03.050 and 43.03.060. Costs associated with the committee may be paid from the general fund appropriation made available to the department of natural resources for fire suppression. [2007 c 480 § 6.]

76.06.180 Forest health hazard warning—Forest health hazard order—Notice—Appeal. (1) Prior to issuing a forest health hazard warning or forest health hazard order, the commissioner shall consider the findings and recommendations of the forest health technical advisory committee and shall consult with county government officials, forest landowners and forest land managers, consulting foresters, and other interested parties to gather information on the threat, opportunities or constraints on treatment options, and other information they may provide. The commissioner, or a designee, shall conduct a public hearing in a county within the geographical area being considered.

(2) The commissioner of public lands may issue a forest health hazard warning when he or she deems such action is necessary to manage the development of a threat to forest health or address an existing threat to forest health. A decision to issue a forest health hazard warning may be based on existing forest stand conditions and:

(a) The presence of an uncharacteristic insect or disease outbreak that has or is likely to (i) spread to multiple forest ownerships and cause extensive damage to forests; or (ii) significantly increase forest fuel that is likely to further the spread of uncharacteristic fire;

(b) When, due to extensive physical damage from wind or ice storm or other cause, there are (i) insect populations building up to large scale levels; or (ii) significantly increased forest fuels that are likely to further the spread of uncharacteristic fire; or

(c) When otherwise determined by the commissioner to be appropriate.

(3) The commissioner of public lands may issue a forest health hazard order when he or she deems such action is necessary to address a significant threat to forest health. A decision to issue a forest health hazard order may be based on existing forest stand conditions and:

(a) The presence of an uncharacteristic insect or disease outbreak that has (i) spread to multiple forest ownerships and has caused and is likely to continue to cause extensive damage to forests; or (ii) significantly increased forest fuels that are likely to further the spread of uncharacteristic fire;

(b) When, due to extensive physical damage from wind or ice storm or other cause (i) insect populations are causing extensive damage to forests; or (ii) significantly increased forest fuels are likely to further the spread of uncharacteristic fire;

(c) Insufficient landowner action under a forest health hazard warning; or

(d) When otherwise determined by the commissioner to be appropriate.

(4) A forest health hazard warning or forest health hazard order shall be issued by use of a commissioner's order. General notice of the commissioner's order shall be published in a newspaper of general circulation in each county within the area covered by the order and on the department's web site. The order shall specify the boundaries of the area affected, including federal and tribal lands, the forest stand conditions that would make a parcel subject to the provisions of the order, and the actions landowners or land managers should take to reduce the hazard.

(5) Written notice of a forest health hazard warning or forest health hazard order shall be provided to forest landowners of specifically affected property.

(a) The notice shall set forth:

(i) The reasons for the action;

(ii) The boundaries of the area affected, including federal and tribal lands;

(iii) Suggested actions that should be taken by the forest landowner under a forest health hazard warning or the actions that must be taken by a forest landowner under a forest health hazard order;

(iv) The time within which such actions should or must be taken;

(v) How to obtain information or technical assistance on forest health conditions and treatment options;

(vi) The right to request mitigation under subsection (6) of this section and appeal under subsection (7) of this section;

(vii) These requirements are advisory only for federal and tribal lands.

(b) The notice shall be served by personal service or by mail to the latest recorded real property owner, as shown by the records of the county recording officer as defined in RCW 65.08.060. Service by mail is effective on the date of mailing. Proof of service shall be by affidavit or declaration under penalty of perjury.

(6) Forest landowners who have been issued a forest health hazard order under subsection (5) of this section may apply to the department for the remission or mitigation of such order. The application shall be made to the department within fifteen days after notice of the order has been served. Upon receipt of the application, the department may remit or mitigate the order upon whatever terms the department in its discretion deems proper, provided the department deems the remission or mitigation to be in the best interests of carrying out the purposes of this chapter. The department may ascertain the facts regarding all such applications in such reasonable manner and under such rule as it deems proper.

(7) Forest landowners who have been issued a forest health hazard order under subsection (5) of this section may appeal the order to the forest practices appeals board.

(a) The appeal shall be filed within thirty days after notice of the order has been served, unless application for mitigation has been made to the department. When such an application for mitigation is made, such appeal shall be filed within thirty days after notice of the disposition of the application for mitigation has been served.

(b) The appeal must set forth:

(i) The name and mailing address of the appellant;

(ii) The name and mailing address of the appellant's attorney, if any;

(iii) A duplicate copy of the forest health hazard order;

(iv) A separate and concise statement of each error alleged to have been committed;

(v) A concise statement of facts upon which the appellant relies to sustain the statement of error; and

(vi) A statement of the relief requested.

(8) A forest health hazard order issued under subsection (5) of this section is effective thirty days after date of service unless application for remission or mitigation is made or an appeal is filed. When an application for remission or mitigation is made, the order is effective thirty days after notice setting forth the disposition of the application is served unless an appeal is filed from such disposition. Whenever an appeal of the order is filed, the order shall become effective only upon completion of all administrative and judicial review proceedings and the issuance of a final decision confirming the order in whole or in part.

(9) Upon written request, the department may certify as adequate a forest health management plan developed by a forest landowner, before or in response to a forest health hazard warning or forest health hazard order, if the plan is likely to achieve the desired result and the terms of the plan are being diligently followed by the forest landowner. The certification of adequacy shall be determined by the department in its sole discretion, and be provided to the requestor in writing. [2007 c 480 § 7.]

76.06.190 Chapter 480, Laws of 2007 subject to the provisions of chapter 76.09 RCW. Nothing in chapter 480, Laws of 2007 shall exempt actions specified under the authority of chapter 480, Laws of 2007 from the application of the provisions of chapter 76.09 RCW and rules adopted thereunder which govern forest practices. [2007 c 480 § 9.]

76.06.900 Severability. If any part of this chapter or requirements imposed upon landowners pursuant to this chapter are found to conflict with requirements of other statutes or rules, the conflicting part of this chapter or requirements imposed pursuant to this chapter shall be inoperative solely to the extent of the conflict. The finding or determination shall not affect the operation of the remainder of this chapter or such requirements. [2007 c 480 § 10.]

Chapter 76.09 RCW
FOREST PRACTICES

Sections

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76.09.060 Form and contents of notification and application—Reforestation requirements—Conversion of forest land to other use—New applications—Approval—Emergencies. (1) The department shall prescribe the form and contents of the notification and application. The forest practices rules shall specify by whom and under what conditions the notification and application shall be signed or otherwise certified as acceptable. Activities conducted by the department or a contractor under the direction of the department under the provisions of RCW 76.04.660, shall be exempt from the landowner signature requirement on any forest practice application required to be filed. The application or notification shall be delivered in person to the department, sent by first class mail to the department or electronically filed in a form defined by the department. The form for electronic filing shall be readily convertible to a paper copy, which shall be available to the public pursuant to chapter 42.56 RCW. The information required may include, but is not limited to:

- (a) Name and address of the forest landowner, timber owner, and operator;
- (b) Description of the proposed forest practice or practices to be conducted;
- (c) Legal description and tax parcel identification numbers of the land on which the forest practices are to be conducted;
- (d) Planimetric and topographic maps showing location and size of all lakes and streams and other public waters in and immediately adjacent to the operating area and showing all existing and proposed roads and major tractor roads;
- (e) Description of the silvicultural, harvesting, or other forest practice methods to be used, including the type of equipment to be used and materials to be applied;
- (f) Proposed plan for reforestation and for any revegetation necessary to reduce erosion potential from roadsides and yarding roads, as required by the forest practices rules;
- (g) Soil, geological, and hydrological data with respect to forest practices;

(h) The expected dates of commencement and completion of all forest practices specified in the application;

(i) Provisions for continuing maintenance of roads and other construction or other measures necessary to afford protection to public resources;

(j) An affirmation that the statements contained in the notification or application are true; and

(k) All necessary application or notification fees.

(2) Long range plans may be submitted to the department for review and consultation.

(3) The application for a forest practice or the notification of a forest practice is subject to the reforestation requirement of RCW 76.09.070.

(a) If the application states that any land will be or is intended to be converted:

(i) The reforestation requirements of this chapter and of the forest practices rules shall not apply if the land is in fact converted unless applicable alternatives or limitations are provided in forest practices rules issued under RCW 76.09.070;

(ii) Completion of such forest practice operations shall be deemed conversion of the lands to another use for purposes of chapters 84.33 and 84.34 RCW unless the conversion is to a use permitted under a current use tax agreement permitted under chapter 84.34 RCW;

(iii) The forest practices described in the application are subject to applicable county, city, town, and regional governmental authority permitted under RCW 76.09.240 as well as the forest practices rules.

(b) Except as provided elsewhere in this section, if the landowner harvests without an approved application or notification or the landowner does not state that any land covered by the application or notification will be or is intended to be converted, and the department or the county, city, town, or regional governmental entity becomes aware of conversion activities to a use other than commercial timber operations, as that term is defined in RCW 76.09.020, then the department shall send to the department of ecology and the appropriate county, city, town, and regional governmental entities the following documents:

(i) A notice of a conversion to nonforestry use;

(ii) A copy of the applicable forest practices application or notification, if any; and

(iii) Copies of any applicable outstanding final orders or decisions issued by the department related to the forest practices application or notification.

(c) Failure to comply with the reforestation requirements contained in any final order or decision shall constitute a removal of designation under the provisions of RCW 84.33.140, and a change of use under the provisions of RCW 84.34.080, and, if applicable, shall subject such lands to the payments and/or penalties resulting from such removals or changes.

(d) Conversion to a use other than commercial forest product operations within six years after approval of the forest practices application or notification without the consent of the county, city, or town shall constitute a violation of each of the county, municipal city, town, and regional authorities to which the forest practice operations would have been subject if the application had stated an intent to convert.

(e) Land that is the subject of a notice of conversion to a nonforestry use produced by the department and sent to the department of ecology and a local government under this subsection is subject to the development prohibition and conditions provided in RCW 76.09.460.

(f) Landowners who have not stated an intent to convert the land covered by an application or notification and who decide to convert the land to a nonforestry use within six years of receiving an approved application or notification must do so in a manner consistent with RCW 76.09.470.

(g) The application or notification must include a statement requiring an acknowledgment by the forest landowner of his or her intent with respect to conversion and acknowledging that he or she is familiar with the effects of this subsection.

(4) Whenever an approved application authorizes a forest practice which, because of soil condition, proximity to a water course or other unusual factor, has a potential for causing material damage to a public resource, as determined by the department, the applicant shall, when requested on the approved application, notify the department two days before the commencement of actual operations.

(5) Before the operator commences any forest practice in a manner or to an extent significantly different from that described in a previously approved application or notification, there shall be submitted to the department a new application or notification form in the manner set forth in this section.

(6) Except as provided in RCW 76.09.350(4), the notification to or the approval given by the department to an application to conduct a forest practice shall be effective for a term of two years from the date of approval or notification and shall not be renewed unless a new application is filed and approved or a new notification has been filed. At the option of the applicant, an application or notification may be submitted to cover a single forest practice or a number of forest practices within reasonable geographic or political boundaries as specified by the department. An application or notification that covers more than one forest practice may have an effective term of more than two years. The board shall adopt rules that establish standards and procedures for approving an application or notification that has an effective term of more than two years. Such rules shall include extended time periods for application or notification approval or disapproval. On an approved application with a term of more than two years, the applicant shall inform the department before commencing operations.

(7) Notwithstanding any other provision of this section, no prior application or notification shall be required for any emergency forest practice necessitated by fire, flood, windstorm, earthquake, or other emergency as defined by the board, but the operator shall submit an application or notification, whichever is applicable, to the department within forty-eight hours after commencement of such practice or as required by local regulations.

(8) Forest practices applications or notifications are not required for forest practices conducted to control exotic forest insect or disease outbreaks, when conducted by or under the direction of the department of agriculture in carrying out an order of the governor or director of the department of agriculture to implement pest control measures as authorized

under chapter 17.24 RCW, and are not required when conducted by or under the direction of the department in carrying out emergency measures under a forest health emergency declaration by the commissioner of public lands as provided in RCW 76.06.130.

(a) For the purposes of this subsection, exotic forest insect or disease has the same meaning as defined in RCW 76.06.020.

(b) In order to minimize adverse impacts to public resources, control measures must be based on integrated pest management, as defined in RCW 17.15.010, and must follow forest practices rules relating to road construction and maintenance, timber harvest, and forest chemicals, to the extent possible without compromising control objectives.

(c) Agencies conducting or directing control efforts must provide advance notice to the appropriate regulatory staff of the department of the operations that would be subject to exemption from forest practices application or notification requirements.

(d) When the appropriate regulatory staff of the department are notified under (c) of this subsection, they must consult with the landowner, interested agencies, and affected tribes, and assist the notifying agencies in the development of integrated pest management plans that comply with forest practices rules as required under (b) of this subsection.

(e) Nothing under this subsection relieves agencies conducting or directing control efforts from requirements of the federal clean water act as administered by the department of ecology under RCW 90.48.260.

(f) Forest lands where trees have been cut as part of an exotic forest insect or disease control effort under this subsection are subject to reforestation requirements under RCW 76.09.070.

(g) The exemption from obtaining approved forest practices applications or notifications does not apply to forest practices conducted after the governor, the director of the department of agriculture, or the commissioner of public lands have declared that an emergency no longer exists because control objectives have been met, that there is no longer an imminent threat, or that there is no longer a good likelihood of control. [2007 c 480 § 11; 2007 c 106 § 1; 2005 c 274 § 357; 2003 c 314 § 5. Prior: 1997 c 290 § 3; 1997 c 173 § 3; 1993 c 443 § 4; 1992 c 52 § 22; 1990 1st ex.s. c 17 § 62; 1975 1st ex.s. c 200 § 3; 1974 ex.s. c 137 § 6.]

Reviser's note: This section was amended by 2007 c 106 § 1 and by 2007 c 480 § 11, each without reference to the other. Both amendments are incorporated in the publication of this section under RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

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

Findings—2003 c 314: See note following RCW 17.24.220.

Effective date—1993 c 443: See note following RCW 76.09.010.

Effective date—1992 c 52 § 22: "Section 22 of this act shall take effect August 1, 1992." [1992 c 52 § 27.]

Severability—Part, section headings not law—1990 1st ex.s. c 17: See RCW 36.70A.900 and 36.70A.901.

76.09.067 Application for forest practices—Owner of perpetual timber rights. Notwithstanding any other provision of this chapter to the contrary, for the purposes of RCW 76.09.050(1) and 76.09.060, where timber rights have been

transferred by deed to a perpetual owner who is different from the forest landowner, the owner of perpetual timber rights may sign the forest practices application or notification. The forest practices application is not complete until the holder of perpetual timber rights has submitted evidence to the department that the signed forest practices application or notification has been received by the forest landowner. [2007 c 106 § 5; 1998 c 100 § 1.]

76.09.070 Reforestation—Requirements—Procedures—Notification on sale or transfer. (1) After the completion of a logging operation, satisfactory reforestation, as defined by the rules and regulations promulgated by the board, shall be completed within three years. However:

(a) A longer period may be authorized if seed or seedlings are not available;

(b) A period of up to five years may be allowed where a natural regeneration plan is approved by the department; and

(c) The department may identify low-productivity lands on which it may allow for a period of up to ten years for natural regeneration.

(2)(a) Upon the completion of a reforestation operation a report on such operation shall be filed with the department of natural resources.

(b) Within twelve months of receipt of such a report the department shall inspect the reforestation operation, and shall determine either that the reforestation operation has been properly completed or that further reforestation and inspection is necessary.

(3) Satisfactory reforestation is the obligation of the owner of the land as defined by forest practices regulations, except the owner of perpetual rights to cut timber owned separately from the land is responsible for satisfactory reforestation. The reforestation obligation shall become the obligation of a new owner if the land or perpetual timber rights are sold or otherwise transferred.

(4)(a) Prior to the sale or transfer of land or perpetual timber rights subject to a reforestation obligation or to a notice of conversion to a nonforestry use issued under RCW 76.09.060, the seller shall notify the buyer of the existence and nature of the obligation and the buyer shall sign a notice indicating the buyer's knowledge of all obligations.

(b) The notice shall be on a form prepared by the department and shall be sent to the department by the seller at the time of sale or transfer of the land or perpetual timber rights.

(c) If the seller fails to notify the buyer about the reforestation obligation or the notice of conversion to a nonforestry use, the seller shall pay the buyer's costs related to reforestation or mitigation under RCW 76.09.470, including all legal costs which include reasonable attorneys' fees, incurred by the buyer in enforcing the reforestation obligation or mitigation requirements against the seller.

(d) Failure by the seller to send the required notice to the department at the time of sale shall be prima facie evidence, in an action by the buyer against the seller for costs related to reforestation or mitigation, that the seller did not notify the buyer of the reforestation obligation or potential mitigation requirements prior to sale.

(5) The forest practices regulations may provide alternatives to or limitations on the applicability of reforestation requirements with respect to forest lands being converted in

whole or in part to another use which is compatible with timber growing. The forest practices regulations may identify classifications and/or areas of forest land that have the likelihood of future conversion to urban development within a ten year period. The reforestation requirements may be modified or eliminated on such lands. However, such identification and/or such conversion to urban development must be consistent with any local or regional land use plans or ordinances. [2007 c 106 § 4; 1987 c 95 § 10; 1982 c 173 § 1; 1975 1st ex.s. c 200 § 4; 1974 ex.s. c 137 § 7.]

Effective date—1982 c 173: "This act shall take effect July 1, 1982." [1982 c 173 § 2.]

76.09.220 Forest practices appeals board—Compensation—Travel expenses—Chair—Office—Quorum—Powers and duties—Jurisdiction—Review. (1) The appeals board shall operate on either a part-time or a full-time basis, as determined by the governor. If it is determined that the appeals board shall operate on a full-time basis, each member shall receive an annual salary to be determined by the governor. If it is determined that the appeals board shall operate on a part-time basis, each member shall be compensated in accordance with RCW 43.03.250. The director of the environmental hearings office shall make the determination, required under RCW 43.03.250, as to what statutorily prescribed duties, in addition to attendance at a hearing or meeting of the board, shall merit compensation. This compensation shall not exceed ten thousand dollars in a fiscal year. Each member shall receive reimbursement for travel expenses incurred in the discharge of his or her duties in accordance with the provisions of RCW 43.03.050 and 43.03.060.

(2) The appeals board shall as soon as practicable after the initial appointment of the members thereof, meet and elect from among its members a chair, and shall at least biennially thereafter meet and elect or reelect a chair.

(3) The principal office of the appeals board shall be at the state capital, but it may sit or hold hearings at any other place in the state. A majority of the appeals board shall constitute a quorum for making orders or decisions, adopting rules necessary for the conduct of its powers and duties, or transacting other official business, and may act though one position on the board be vacant. One or more members may hold hearings and take testimony to be reported for action by the board when authorized by rule or order of the board. The appeals board shall perform all the powers and duties granted to it in this chapter or as otherwise provided by law.

(4) The appeals board shall make findings of fact and prepare a written decision in each case decided by it, and such findings and decision shall be effective upon being signed by two or more members and upon being filed at the appeals board's principal office, and shall be open to public inspection at all reasonable times.

(5) The appeals board shall either publish at its expense or make arrangements with a publishing firm for the publication of those of its findings and decisions which are of general public interest, in such form as to assure reasonable distribution thereof.

(6) The appeals board shall maintain at its principal office a journal which shall contain all official actions of the appeals board, with the exception of findings and decisions,

together with the vote of each member on such actions. The journal shall be available for public inspection at the principal office of the appeals board at all reasonable times.

(7) The forest practices appeals board shall have exclusive jurisdiction to hear appeals arising from an action or determination by the department, and the department of fish and wildlife, and the department of ecology with respect to management plans provided for under RCW 76.09.350.

(8)(a) Any person aggrieved by the approval or disapproval of an application to conduct a forest practice or the approval or disapproval of any landscape plan or permit or watershed analysis may, except as otherwise provided in chapter 43.21L RCW, seek review from the appeals board by filing a request for the same within thirty days of the approval or disapproval. Concurrently with the filing of any request for review with the board as provided in this section, the requestor shall file a copy of his or her request with the department and the attorney general. The attorney general may intervene to protect the public interest and ensure that the provisions of this chapter are complied with.

(b) The review proceedings authorized in (a) of this subsection are subject to the provisions of chapter 34.05 RCW pertaining to procedures in adjudicative proceedings.

(9) The forest practices appeals board shall have exclusive jurisdiction to hear appeals of forest health hazard orders issued by the commissioner under RCW 76.06.180(5). Such proceedings are subject to the provisions of chapter 34.05 RCW pertaining to procedures in adjudicative proceedings. [2007 c 480 § 8; 2003 c 393 § 20; 1999 sp.s. c 4 § 902; 1999 c 90 § 1. Prior: 1997 c 423 § 2; 1997 c 290 § 5; 1989 c 175 § 164; 1984 c 287 § 109; 1979 ex.s. c 47 § 5; 1975-'76 2nd ex.s. c 34 § 174; 1975 1st ex.s. c 200 § 10; 1974 ex.s. c 137 § 22.]

Implementation—Effective date—2003 c 393: See RCW 43.21L.900 and 43.21L.901.

Part headings not law—1999 sp.s. c 4: See note following RCW 77.85.180.

Finding—1997 c 423: "The legislature finds that the functions of the forest practices appeals board have overriding sensitivity and are of importance to the public welfare and operation of state government." [1997 c 423 § 1.]

Effective date—1997 c 423: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect July 1, 1997." [1997 c 423 § 3.]

Effective date—1989 c 175: See note following RCW 34.05.010.

Legislative findings—Severability—Effective date—1984 c 287: See notes following RCW 43.03.220.

Intent—1979 ex.s. c 47: See note following RCW 43.21B.005.

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

76.09.240 Forest practices—County, city, or town to regulate—When—Adoption of development regulations—Enforcement—Technical assistance—Exceptions and limitations—Verification that land not subject to a notice of conversion to nonforestry uses—Reporting of information to the department of revenue. (1) On or before December 31, 2008:

(a) Counties planning under RCW 36.70A.040, and the cities and towns within those counties, where more than a total of twenty-five Class IV forest practices applications, as

defined in RCW 76.09.050(1) Class IV (a) through (d), have been filed with the department between January 1, 2003, and December 31, 2005, shall adopt and enforce ordinances or regulations as provided in subsection (2) of this section for the following:

(i) Forest practices classified as Class I, II, III, and IV that are within urban growth areas designated under RCW 36.70A.110, except for forest practices on ownerships of contiguous forest land equal to or greater than twenty acres where the forest landowner provides, to the department and the county, a written statement of intent, signed by the forest landowner, not to convert to a use other than growing commercial timber for ten years. This statement must be accompanied by either:

(A) A written forest management plan acceptable to the department; or

(B) Documentation that the land is enrolled as forest land of long-term commercial significance under the provisions of chapter 84.33 RCW; and

(ii) Forest practices classified as Class IV, outside urban growth areas designated under RCW 36.70A.110, involving either timber harvest or road construction, or both on:

(A) Lands platted after January 1, 1960, as provided in chapter 58.17 RCW;

(B) Lands that have or are being converted to another use; or

(C) Lands which, under RCW 76.09.070, are not to be reforested because of the likelihood of future conversion to urban development;

(b) Counties planning under RCW 36.70A.040, and the cities and towns within those counties, not included in (a) of this subsection, may adopt and enforce ordinances or regulations as provided in (a) of this subsection; and

(c) Counties not planning under RCW 36.70A.040, and the cities and towns within those counties, may adopt and enforce ordinances or regulations as provided in subsection (2) of this section for forest practices classified as Class IV involving either timber harvest or road construction, or both on:

(i) Lands platted after January 1, 1960, as provided in chapter 58.17 RCW;

(ii) Lands that have or are being converted to another use; or

(iii) Lands which, under RCW 76.09.070, are not to be reforested because of the likelihood of future conversion to urban development.

(2) Before a county, city, or town may regulate forest practices under subsection (1) of this section, it shall ensure that its critical areas and development regulations are in compliance with RCW 36.70A.130 and, if applicable, RCW 36.70A.215. The county, city, or town shall notify the department and the department of ecology in writing sixty days prior to adoption of the development regulations required in this section. The transfer of jurisdiction shall not occur until the county, city, or town has notified the department, the department of revenue, and the department of ecology in writing of the effective date of the regulations. Ordinances and regulations adopted under subsection (1) of this section and this subsection must be consistent with or supplement development regulations that protect critical areas pursuant to RCW 36.70A.060, and shall at a minimum include:

(a) Provisions that require appropriate approvals for all phases of the conversion of forest lands, including land clearing and grading; and

(b) Procedures for the collection and administration of permit and recording fees.

(3) Activities regulated by counties, cities, or towns as provided in subsections (1) and (2) of this section shall be administered and enforced by those counties, cities, or towns. The department shall not regulate these activities under this chapter.

(4) The board shall continue to adopt rules and the department shall continue to administer and enforce those rules in each county, city, or town for all forest practices as provided in this chapter until such a time as the county, city, or town has updated its development regulations as required by RCW 36.70A.130 and, if applicable, RCW 36.70A.215, and has adopted ordinances or regulations under subsections (1) and (2) of this section. However, counties, cities, and towns that have adopted ordinances or regulations regarding forest practices prior to July 22, 2007, are not required to readopt their ordinances or regulations in order to satisfy the requirements of this section.

(5) Upon request, the department shall provide technical assistance to all counties, cities, and towns while they are in the process of adopting the regulations required by this section, and after the regulations become effective.

(6) For those forest practices over which the board and the department maintain regulatory authority no county, city, municipality, or other local or regional governmental entity shall adopt or enforce any law, ordinance, or regulation pertaining to forest practices, except that to the extent otherwise permitted by law, such entities may exercise any:

(a) Land use planning or zoning authority: PROVIDED, That exercise of such authority may regulate forest practices only: (i) Where the application submitted under RCW 76.09.060 as now or hereafter amended indicates that the lands have been or will be converted to a use other than commercial forest product production; or (ii) on lands which have been platted after January 1, 1960, as provided in chapter 58.17 RCW: PROVIDED, That no permit system solely for forest practices shall be allowed; that any additional or more stringent regulations shall not be inconsistent with the forest practices regulations enacted under this chapter; and such local regulations shall not unreasonably prevent timber harvesting;

(b) Taxing powers;

(c) Regulatory authority with respect to public health; and

(d) Authority granted by chapter 90.58 RCW, the "Shoreline Management Act of 1971."

(7) All counties and cities adopting or enforcing regulations or ordinances under this section shall include in the regulation or ordinance a requirement that a verification accompany every permit issued for forest land by that county or city associated with the conversion to a use other than commercial timber operation, as that term is defined in RCW 76.09.020, that verifies that the land in question is not or has not been subject to a notice of conversion to nonforestry uses under RCW 76.09.060 during the six-year period prior to the submission of a permit application.

(8) To improve the administration of the forest excise tax created in chapter 84.33 RCW, a county, city, or town that regulates forest practices under this section shall report permit information to the department of revenue for all approved forest practices permits. The permit information shall be reported to the department of revenue no later than sixty days after the date the permit was approved and shall be in a form and manner agreed to by the county, city, or town and the department of revenue. Permit information includes the landowner's legal name, address, telephone number, and parcel number. [2007 c 236 § 1; 2007 c 106 § 6; 2002 c 121 § 2; 1997 c 173 § 5; 1975 1st ex.s. c 200 § 11; 1974 ex.s. c 137 § 24.]

Reviser's note: This section was amended by 2007 c 106 § 6 and by 2007 c 236 § 1, each without reference to the other. Both amendments are incorporated in the publication of this section under RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

76.09.405 Forest and fish support account—Created.

The forest and fish support account is hereby created in the state treasury. Receipts from appropriations, the surcharge imposed under RCW 82.04.261, and other sources must be deposited into the account. Expenditures from the account shall be used for activities pursuant to the state's implementation of the forests and fish report as defined in this chapter and related activities including, but not limited to, adaptive management, monitoring, and participation grants to tribes, state and local agencies, and not-for-profit public interest organizations. Expenditures from the account may be made only after appropriation by the legislature. [2007 c 54 § 3; 2007 c 48 § 1; 2006 c 300 § 3.]

Reviser's note: This section was amended by 2007 c 48 § 1 and by 2007 c 54 § 3, each without reference to the other. Both amendments are incorporated in the publication of this section under RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

Severability—2007 c 54: See note following RCW 82.04.050.

Effective date—2007 c 48: See note following RCW 82.04.260.

Effective dates—Contingent effective date—2006 c 300: See note following RCW 82.04.261.

76.09.460 Notice of conversion to nonforestry use—Denial of permits or approvals by the county, city, town, or regional governmental entity—Enforcement. If a county, city, town, or regional governmental entity receives a notice of conversion to nonforestry use by the department under RCW 76.09.060, then the county, city, town, or regional governmental entity must deny all applications for permits or approvals, including building permits and subdivision approvals, relating to nonforestry uses of the land that is the subject of the notification. The prohibition created by this section must be enforced by the county, city, town, or regional governmental entity:

(1) For a period of six years from the approval date of the applicable forest practices application or notification or the date that the department was made aware of the harvest activities; or

(2) Until the following activities are completed for the land that is the subject of the notice of conversion to a nonforestry use:

(a) Full compliance with chapter 43.21C RCW, if applicable;

(b) The department has notified the county, city, town, or regional governmental entity that the landowner has resolved any outstanding final orders or decisions issued by the department; and

(c) A determination is made by the county, city, town, or regional governmental entity as to whether or not the condition of the land in question is in full compliance with local ordinances and regulations. If full compliance is not found, a mitigation plan to address violations of local ordinances or regulations must be required for the parcel in question by the county, city, town, or regional governmental entity. Required mitigation plans must be prepared by the landowner and approved by the county, city, town, or regional governmental entity. Once approved, the mitigation plan must be implemented by the landowner. Mitigation measures that may be required include, but are not limited to, revegetation requirements to plant and maintain trees of sufficient maturity and appropriate species composition to restore critical area and buffer function or to be in compliance with applicable local government regulations. [2007 c 106 § 2.]

76.09.470 Conversion of land to nonforestry use—Action required of landowner—Action required of county, city, town, or regional governmental entity. (1) If a landowner who did not state an intent to convert his or her land to a nonforestry use decides to convert his or her land to a nonforestry use within six years of receiving an approved forest practices application or notification under this chapter, the landowner must:

(a) Stop all forest practices activities on the parcels subject to the proposed land use conversion to a nonforestry use;

(b) Contact the department of ecology and the applicable county, city, town, or regional governmental entity to begin the permitting process; and

(c) Notify the department and withdraw any applicable applications or notifications or request a new application for conversion.

(2) Upon being contacted by a landowner under this section, the county, city, town, or regional governmental entity must:

(a) Notify the department and request from the department the status of any applicable forest practices applications, notifications, or final orders or decisions; and

(b) Complete the following activities:

(i) Require that the landowner be in full compliance with chapter 43.21C RCW, if applicable;

(ii) Receive notification from the department that the landowner has resolved any outstanding final orders or decisions issued by the department; and

(iii) Make a determination as to whether or not the condition of the land in question is in full compliance with local ordinances and regulations. If full compliance is not found, a mitigation plan to address violations of local ordinances or regulations must be required for the parcel in question by the county, city, town, or regional governmental entity. Required mitigation plans must be prepared by the landowner and approved by the county, city, town, or regional governmental entity. Once approved, the mitigation plan must be implemented by the landowner. Mitigation measures that may be required include, but are not limited to, revegetation requirements to plant and maintain trees of sufficient maturity and appropriate species composition to restore critical area and buffer function or to be in compliance with applicable local government regulations. [2007 c 106 § 3.]

and appropriate species composition to restore critical area and buffer function or to be in compliance with applicable local government regulations. [2007 c 106 § 3.]

Chapter 76.48 RCW

SPECIALIZED FOREST PRODUCTS

Sections

76.48.020	Definitions.
76.48.030	Unlawful acts.
76.48.130	Penalties—Affirmative defense.

76.48.020 Definitions. The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

(1) "Authorization" means a properly completed pre-printed form authorizing the transportation or possession of Christmas trees which contains the information required by RCW 76.48.080, a sample of which is filed before the harvesting occurs with the sheriff of the county in which the harvesting is to occur.

(2) "Bill of lading" means a written or printed itemized list or statement of particulars pertinent to the transportation or possession of a specialized forest product.

(3) "Cascara bark" means the bark of a Cascara tree.

(4) "Cedar processor" means any person who purchases, takes, or retains possession of cedar products or cedar salvage for later sale in the same or modified form following removal and delivery from the land where harvested.

(5) "Cedar products" means cedar shakeboards, shake and shingle bolts, and rounds one to three feet in length.

(6) "Cedar salvage" means cedar chunks, slabs, stumps, and logs having a volume greater than one cubic foot and being harvested or transported from areas not associated with the concurrent logging of timber stands (a) under a forest practices application approved or notification received by the department of natural resources, or (b) under a contract or permit issued by an agency of the United States government.

(7) "Christmas trees" means any evergreen trees or the top thereof, commonly known as Christmas trees, with limbs and branches, with or without roots, including fir, pine, spruce, cedar, and other coniferous species.

(8) "Cut or picked evergreen foliage," commonly known as brush, means evergreen boughs, huckleberry foliage, salal, fern, Oregon grape, rhododendron, mosses, bear grass, scotch broom (*Cytisus scoparius*), and other cut or picked evergreen products. "Cut or picked evergreen foliage" does not mean cones, berries, any foliage that does not remain green year-round, or seeds.

(9) "Harvest" means to separate, by cutting, prying, picking, peeling, breaking, pulling, splitting, or otherwise removing, a specialized forest product (a) from its physical connection or contact with the land or vegetation upon which it is or was growing or (b) from the position in which it is lying upon the land.

(10) "Harvest site" means each location where one or more persons are engaged in harvesting specialized forest products close enough to each other that communication can be conducted with an investigating law enforcement officer in a normal conversational tone.

(11) "Huckleberry" means the following species of edible berries, if they are not nursery grown: *Vaccinium membranaceum*, *Vaccinium deliciosum*, *Vaccinium ovatum*, *Vaccinium parvifolium*, *Vaccinium globulare*, *Vaccinium ovalifolium*, *Vaccinium alaskaense*, *Vaccinium caespitosum*, *Vaccinium occidentale*, *Vaccinium uliginosum*, *Vaccinium myrtilloides*, and *Vaccinium scoparium*.

(12) "Landowner" means, with regard to real property, the private owner, the state of Washington or any political subdivision, the federal government, or a person who by deed, contract, or lease has authority to harvest and sell forest products of the property. "Landowner" does not include the purchaser or successful high bidder at a public or private timber sale.

(13) "Native ornamental trees and shrubs" means any trees or shrubs which are not nursery grown and which have been removed from the ground with the roots intact.

(14) "Permit area" means a designated tract of land that may contain single or multiple harvest sites.

(15) "Person" includes the plural and all corporations, foreign or domestic, copartnerships, firms, and associations of persons.

(16) "Processed cedar products" means cedar shakes, shingles, fence posts, hop poles, pickets, stakes, rails, or rounds less than one foot in length.

(17) "Sheriff" means, for the purpose of validating specialized forest products permits, the county sheriff, deputy sheriff, or an authorized employee of the sheriff's office or an agent of the office.

(18) "Specialized forest products" means Christmas trees, native ornamental trees and shrubs, cut or picked evergreen foliage, cedar products, cedar salvage, processed cedar products, specialty wood, wild edible mushrooms, and Casara bark.

(19) "Specialized forest products permit" means a printed document in a form printed by the department of natural resources, or true copy thereof, that is signed by a landowner or his or her authorized agent or representative, referred to in this chapter as "permitters" and validated by the county sheriff and authorizes a designated person, referred to in this chapter as "permittee," who has also signed the permit, to harvest and transport a designated specialized forest product from land owned or controlled and specified by the permitter and that is located in the county where the permit is issued.

(20) "Specialty wood" means wood that is:

(a) In logs less than eight feet in length, chunks, slabs, stumps, or burls; and

(b) One or more of the following:

(i) Of the species western red cedar, Englemann spruce, Sitka spruce, big leaf maple, or western red alder;

(ii) Without knots in a portion of the surface area at least twenty-one inches long and seven and a quarter inches wide when measured from the outer surface toward the center; or

(iii) Suitable for the purposes of making musical instruments or ornamental boxes.

(21) "Specialty wood buyer" means the first person that receives any specialty wood product after it leaves the harvest site.

(22) "Specialty wood processor" means any person who purchases, takes, or retains possession of specialty wood

products or specialty wood salvage for later sale in the same or modified form following removal and delivery from the land where harvested.

(23) "Transportation" means the physical conveyance of specialized forest products outside or off of a harvest site by any means.

(24) "True copy" means a replica of a validated specialized forest products permit as reproduced by a copy machine capable of effectively reproducing the information contained on the permittee's copy of the specialized forest products permit. A copy is made true by the permittee or the permittee and permittor signing in the space provided on the face of the copy. A true copy will be effective until the expiration date of the specialized forest products permit unless the permittee or the permittee and permittor specify an earlier date. A permittor may require the actual signatures of both the permittee and permittor for execution of a true copy by so indicating in the space provided on the original copy of the specialized forest products permit. A permittee, or, if so indicated, the permittee and permittor, may condition the use of the true copy to harvesting only, transportation only, possession only, or any combination thereof.

(25) "Wild edible mushrooms" means edible mushrooms not cultivated or propagated by artificial means. [2007 c 392 § 3; 2005 c 401 § 1; 2000 c 11 § 18; 1995 c 366 § 1; 1992 c 184 § 1; 1979 ex.s. c 94 § 1; 1977 ex.s. c 147 § 1; 1967 ex.s. c 47 § 3.]

Severability—1995 c 366: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1995 c 366 § 19.]

76.48.030 Unlawful acts. It is unlawful for any person to:

(1) Harvest specialized forest products as described in RCW 76.48.020, in the quantities specified in RCW 76.48.060, without first obtaining a validated specialized forest products permit;

(2) Engage in activities or phases of harvesting specialized forest products not authorized by the permit;

(3) Harvest specialized forest products in any lesser quantities than those specified in RCW 76.48.060, as now or hereafter amended, without first obtaining permission from the landowner or his or her duly authorized agent or representative; or

(4) Harvest huckleberries in any amount using a rake, mechanical device, or any other method that damages the huckleberry bush. [2007 c 392 § 4; 1995 c 366 § 2; 1979 ex.s. c 94 § 2; 1977 ex.s. c 147 § 2; 1967 ex.s. c 47 § 4.]

Severability—1995 c 366: See note following RCW 76.48.020.

76.48.130 Penalties—Affirmative defense. (1) A person who violates a provision of this chapter, other than the provisions contained in RCW 76.48.120, as now or hereafter amended, is guilty of a gross misdemeanor and upon conviction thereof shall be punished by a fine of not more than one thousand dollars or by imprisonment in the county jail for not to exceed one year or by both a fine and imprisonment.

(2) In any prosecution for a violation of this chapter's requirements to obtain or possess a specialized forest products permit or true copy thereof, an authorization, sales

invoice, or bill of lading, it is an affirmative defense, if established by the defendant by a preponderance of the evidence, that: (a) The specialized forest products were harvested from the defendant's own land; or (b) the specialized forest products were harvested with the permission of the landowner. [2007 c 392 § 1; 1995 c 366 § 13; 1977 ex.s. c 147 § 10; 1967 ex.s. c 47 § 14.]

Severability—1995 c 366: See note following RCW 76.48.020.

Title 77

FISH AND WILDLIFE

(Formerly: Game and game fish)

Chapters

77.04	Department of fish and wildlife.
77.08	General terms defined.
77.12	Powers and duties.
77.15	Fish and wildlife enforcement code.
77.32	Licenses.
77.60	Shellfish.
77.65	Food fish and shellfish—Commercial licenses.
77.85	Salmon recovery.
77.115	Aquaculture disease control.
77.120	Ballast water management.

Chapter 77.04 RCW

DEPARTMENT OF FISH AND WILDLIFE

Sections

77.04.145 Notification requirements.

77.04.145 Notification requirements. Actions under this chapter are subject to the notification requirements of RCW 43.17.400. [2007 c 62 § 7.]

Finding—Intent—Severability—2007 c 62: See notes following RCW 43.17.400.

Chapter 77.08 RCW

GENERAL TERMS DEFINED

Sections

77.08.010 Definitions.

77.08.010 Definitions. As used in this title or rules adopted under this title, unless the context clearly requires otherwise:

- (1) "Director" means the director of fish and wildlife.
- (2) "Department" means the department of fish and wildlife.
- (3) "Commission" means the state fish and wildlife commission.
- (4) "Person" means and includes an individual; a corporation; a public or private entity or organization; a local, state, or federal agency; all business organizations, including corporations and partnerships; or a group of two or more individuals acting with a common purpose whether acting in an individual, representative, or official capacity.
- (5) "Fish and wildlife officer" means a person appointed and commissioned by the director, with authority to enforce this title and rules adopted pursuant to this title, and other

statutes as prescribed by the legislature. Fish and wildlife officer includes a person commissioned before June 11, 1998, as a wildlife agent or a fisheries patrol officer.

(6) "Ex officio fish and wildlife officer" means a commissioned officer of a municipal, county, state, or federal agency having as its primary function the enforcement of criminal laws in general, while the officer is in the appropriate jurisdiction. The term "ex officio fish and wildlife officer" includes special agents of the national marine fisheries service, state parks commissioned officers, United States fish and wildlife special agents, department of natural resources enforcement officers, and United States forest service officers, while the agents and officers are within their respective jurisdictions.

(7) "To hunt" and its derivatives means an effort to kill, injure, capture, or harass a wild animal or wild bird.

(8) "To trap" and its derivatives means a method of hunting using devices to capture wild animals or wild birds.

(9) "To fish," "to harvest," and "to take," and their derivatives means an effort to kill, injure, harass, or catch a fish or shellfish.

(10) "Open season" means those times, manners of taking, and places or waters established by rule of the commission for the lawful hunting, fishing, taking, or possession of game animals, game birds, game fish, food fish, or shellfish that conform to the special restrictions or physical descriptions established by rule of the commission or that have otherwise been deemed legal to hunt, fish, take, harvest, or possess by rule of the commission. "Open season" includes the first and last days of the established time.

(11) "Closed season" means all times, manners of taking, and places or waters other than those established by rule of the commission as an open season. "Closed season" also means all hunting, fishing, taking, or possession of game animals, game birds, game fish, food fish, or shellfish that do not conform to the special restrictions or physical descriptions established by rule of the commission as an open season or that have not otherwise been deemed legal to hunt, fish, take, harvest, or possess by rule of the commission as an open season.

(12) "Closed area" means a place where the hunting of some or all species of wild animals or wild birds is prohibited.

(13) "Closed waters" means all or part of a lake, river, stream, or other body of water, where fishing or harvesting is prohibited.

(14) "Game reserve" means a closed area where hunting for all wild animals and wild birds is prohibited.

(15) "Bag limit" means the maximum number of game animals, game birds, or game fish which may be taken, caught, killed, or possessed by a person, as specified by rule of the commission for a particular period of time, or as to size, sex, or species.

(16) "Wildlife" means all species of the animal kingdom whose members exist in Washington in a wild state. This includes but is not limited to mammals, birds, reptiles, amphibians, fish, and invertebrates. The term "wildlife" does not include feral domestic mammals, old world rats and mice of the family Muridae of the order Rodentia, or those fish, shellfish, and marine invertebrates classified as food fish or shellfish by the director. The term "wildlife" includes all

stages of development and the bodily parts of wildlife members.

(17) "Wild animals" means those species of the class Mammalia whose members exist in Washington in a wild state and the species *Rana catesbeiana* (bullfrog). The term "wild animal" does not include feral domestic mammals or old world rats and mice of the family Muridae of the order Rodentia.

(18) "Wild birds" means those species of the class Aves whose members exist in Washington in a wild state.

(19) "Protected wildlife" means wildlife designated by the commission that shall not be hunted or fished.

(20) "Endangered species" means wildlife designated by the commission as seriously threatened with extinction.

(21) "Game animals" means wild animals that shall not be hunted except as authorized by the commission.

(22) "Fur-bearing animals" means game animals that shall not be trapped except as authorized by the commission.

(23) "Game birds" means wild birds that shall not be hunted except as authorized by the commission.

(24) "Predatory birds" means wild birds that may be hunted throughout the year as authorized by the commission.

(25) "Deleterious exotic wildlife" means species of the animal kingdom not native to Washington and designated as dangerous to the environment or wildlife of the state.

(26) "Game farm" means property on which wildlife is held or raised for commercial purposes, trade, or gift. The term "game farm" does not include publicly owned facilities.

(27) "Fish" includes all species classified as game fish or food fish by statute or rule, as well as all fin fish not currently classified as food fish or game fish if such species exist in state waters. The term "fish" includes all stages of development and the bodily parts of fish species.

(28) "Raffle" means an activity in which tickets bearing an individual number are sold for not more than twenty-five dollars each and in which a permit or permits are awarded to hunt or for access to hunt big game animals or wild turkeys on the basis of a drawing from the tickets by the person or persons conducting the raffle.

(29) "Youth" means a person fifteen years old for fishing and under sixteen years old for hunting.

(30) "Senior" means a person seventy years old or older.

(31) "License year" means the period of time for which a recreational license is valid. The license year begins April 1st, and ends March 31st.

(32) "Saltwater" means those marine waters seaward of river mouths.

(33) "Freshwater" means all waters not defined as saltwater including, but not limited to, rivers upstream of the river mouth, lakes, ponds, and reservoirs.

(34) "State waters" means all marine waters and fresh waters within ordinary high water lines and within the territorial boundaries of the state.

(35) "Offshore waters" means marine waters of the Pacific Ocean outside the territorial boundaries of the state, including the marine waters of other states and countries.

(36) "Concurrent waters of the Columbia river" means those waters of the Columbia river that coincide with the Washington-Oregon state boundary.

(37) "Resident" means:

(a) A person who has maintained a permanent place of abode within the state for at least ninety days immediately preceding an application for a license, has established by formal evidence an intent to continue residing within the state, and who is not licensed to hunt or fish as a resident in another state; and

(b) A person age eighteen or younger who does not qualify as a resident under (a) of this subsection, but who has a parent that qualifies as a resident under (a) of this subsection.

(38) "Nonresident" means a person who has not fulfilled the qualifications of a resident.

(39) "Shellfish" means those species of marine and freshwater invertebrates that have been classified and that shall not be taken except as authorized by rule of the commission. The term "shellfish" includes all stages of development and the bodily parts of shellfish species.

(40) "Commercial" means related to or connected with buying, selling, or bartering.

(41) "To process" and its derivatives mean preparing or preserving fish, wildlife, or shellfish.

(42) "Personal use" means for the private use of the individual taking the fish or shellfish and not for sale or barter.

(43) "Angling gear" means a line attached to a rod and reel capable of being held in hand while landing the fish or a hand-held line operated without rod or reel.

(44) "Fishery" means the taking of one or more particular species of fish or shellfish with particular gear in a particular geographical area.

(45) "Limited-entry license" means a license subject to a license limitation program established in chapter 77.70 RCW.

(46) "Seaweed" means marine aquatic plant species that are dependent upon the marine aquatic or tidal environment, and exist in either an attached or free floating form, and includes but is not limited to marine aquatic plants in the classes Chlorophyta, Phaeophyta, and Rhodophyta.

(47) "Trafficking" means offering, attempting to engage, or engaging in sale, barter, or purchase of fish, shellfish, wildlife, or deleterious exotic wildlife.

(48) "Invasive species" means a plant species or a nonnative animal species that either:

(a) Causes or may cause displacement of, or otherwise threatens, native species in their natural communities;

(b) Threatens or may threaten natural resources or their use in the state;

(c) Causes or may cause economic damage to commercial or recreational activities that are dependent upon state waters; or

(d) Threatens or harms human health.

(49) "Prohibited aquatic animal species" means an invasive species of the animal kingdom that has been classified as a prohibited aquatic animal species by the commission.

(50) "Regulated aquatic animal species" means a potentially invasive species of the animal kingdom that has been classified as a regulated aquatic animal species by the commission.

(51) "Unregulated aquatic animal species" means a nonnative animal species that has been classified as an unregulated aquatic animal species by the commission.

(52) "Unlisted aquatic animal species" means a nonnative animal species that has not been classified as a prohibited

aquatic animal species, a regulated aquatic animal species, or an unregulated aquatic animal species by the commission.

(53) "Aquatic plant species" means an emergent, submersed, partially submersed, free-floating, or floating-leaving plant species that grows in or near a body of water or wetland.

(54) "Retail-eligible species" means commercially harvested salmon, crab, and sturgeon.

(55) "Aquatic invasive species" means any invasive, prohibited, regulated, unregulated, or unlisted aquatic animal or plant species as defined under subsections (48) through (53) of this section, aquatic noxious weeds as defined under RCW 17.26.020(5)(c), and aquatic nuisance species as defined under RCW 77.60.130(1).

(56) "Recreational and commercial watercraft" includes the boat, as well as equipment used to transport the boat, and any auxiliary equipment such as attached or detached outboard motors. [2007 c 350 § 2; 2007 c 254 § 1; 2005 c 104 § 1; 2003 c 387 § 1; 2002 c 281 § 2; 2001 c 253 § 10; 2000 c 107 § 207; 1998 c 190 § 111; 1996 c 207 § 2; 1993 sp.s. c 2 § 66; 1989 c 297 § 7; 1987 c 506 § 11; 1980 c 78 § 9; 1955 c 36 § 77.08.010. Prior: 1947 c 275 § 9; Rem. Supp. 1947 § 5992-19.]

Reviser's note: This section was amended by 2007 c 254 § 1 and by 2007 c 350 § 2, each without reference to the other. Both amendments are incorporated in the publication of this section under RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

Purpose—2002 c 281: "The legislature recognizes the potential economic and environmental damage that can occur from the introduction of invasive aquatic species. The purpose of this act is to increase public awareness of invasive aquatic species and enhance the department of fish and wildlife's regulatory capability to address threats posed by these species." [2002 c 281 § 1.]

Intent—1996 c 207: "It is the intent of the legislature to clarify hunting and fishing laws in light of the decision in *State v. Bailey*, 77 Wn. App. 732 (1995). The fish and wildlife commission has the authority to establish hunting and fishing seasons. These seasons are defined by limiting the times, manners of taking, and places or waters for lawful hunting, fishing, or possession of game animals, game birds, or game fish, as well as by limiting the physical characteristics of the game animals, game birds, or game fish which may be lawfully taken at those times, in those manners, and at those places or waters." [1996 c 207 § 1.]

Effective date—1993 sp.s. c 2 §§ 1-6, 8-59, and 61-79: See RCW 43.300.900.

Severability—1993 sp.s. c 2: See RCW 43.300.901.

Legislative findings and intent—1987 c 506: See note following RCW 77.04.020.

Effective date—Intent, construction—Savings—Severability—1980 c 78: See notes following RCW 77.04.010.

Chapter 77.12 RCW

POWERS AND DUTIES

Sections

77.12.038	Notification requirements.
77.12.071	Sampling of fish, wildlife, or shellfish by department employees.
77.12.467	Wildlife rehabilitation program—Requirements to receive funding—Reports accounting for all expenditures of state funds—Permitted expenditures—Adoption of rules.
77.12.469	Renewal of wildlife rehabilitation licenses—Adoption of rules.
77.12.471	Wildlife rehabilitation account.
77.12.702	Rockfish research and stock assessment program—Report to the legislature—Rockfish research account.
77.12.879	Aquatic invasive species prevention account—Aquatic invasive species prevention program for recreational and com-

mercial watercraft—Enforcement program—Check stations—Training—Report to the legislature.

77.12.882 Aquatic invasive species—Inspection of recreational and commercial watercraft—Rules—Signage.

77.12.885 Reported predatory wildlife interactions—Web site posting.

77.12.038 Notification requirements. Actions under this chapter are subject to the notification requirements of RCW 43.17.400. [2007 c 62 § 8.]

Finding—Intent—Severability—2007 c 62: See notes following RCW 43.17.400.

77.12.071 Sampling of fish, wildlife, or shellfish by department employees. (1) Department employees, in carrying out their duties under this title on public lands or state waters, may:

(a) Collect samples of tissue, fluids, or other bodily parts of fish, wildlife, or shellfish; or

(b) Board vessels in state waters engaged in commercial and recreational harvest activities to collect samples of fish, wildlife, or shellfish.

(i) Department employees shall ask permission from the owner or his or her agent before boarding vessels in state waters.

(ii) If an employee of the department is denied access to any vessel where access was sought for the purposes of (b) of this subsection, the department employee may contact an enforcement officer for assistance in applying for a search warrant authorizing access to the vessel in order to carry out the department employee's duties under this section.

(2) Department employees must have official identification, announce their presence and intent, and perform their duties in a safe and professional manner while carrying out the activities in this section.

(3) This section does not apply to the harvest of private sector cultured aquatic products as defined in RCW 15.85.020.

(4) This section does not apply to fish and wildlife officers and ex officio fish and wildlife officers carrying out their duties under this title. [2007 c 337 § 2.]

Intent—Finding—2007 c 337: "The legislature intends that sampling of fish, wildlife, and shellfish by department of fish and wildlife employees will ensure the conservation and management of fish, shellfish, and wildlife. Because the harvest of fish and wildlife is regulated by the department, the legislature finds that sampling by departmental employees will benefit the resource, and will further the department's research related to fish, wildlife, and shellfish. This section and RCW 77.12.071 do not apply to the harvest of private sector cultured aquatic products as defined in RCW 15.85.020." [2007 c 337 § 1.]

77.12.467 Wildlife rehabilitation program—Requirements to receive funding—Reports accounting for all expenditures of state funds—Permitted expenditures—Adoption of rules. (1) The director shall establish a wildlife rehabilitation program to help support the critical role licensed wildlife rehabilitators play in protecting the public by capturing, testing for disease, and caring for sick, injured, and orphaned wildlife in Washington state. The director shall contract for wildlife rehabilitation services with up to four people in each of the department's six administrative regions. Applicants may submit only one request every two years and must reside in the administrative region for

which they have applied. The contracts must be for a term of two years.

(2) In order to receive funding, the wildlife rehabilitator must: (a) Be properly licensed in wildlife rehabilitation under state and federal law; and (b) furnish information concerning his or her identity, including fingerprints for submission to the Washington state patrol to include a national criminal background check. The applicant must pay for the cost of the criminal background check. If the background check reveals that the applicant has been convicted of a felony or gross misdemeanor, the applicant is ineligible to receive funding.

(3) The department must require that contractors submit detailed reports accounting for all expenditures of state funds. The reports must be submitted to the department on a quarterly basis. The department may require the contractor to submit to an inspection of the rehabilitation facility to ensure compliance with department rules governing wildlife rehabilitation. Expenditures that are permitted under this program as they specifically relate to wildlife rehabilitation include: (a) Reimbursement for diagnostic and lab support services; (b) purchase and maintenance of proper restraints and equipment used in the capture, transportation, temporary housing, and release of wildlife; (c) reimbursement of contracted veterinary services; (d) reimbursement of the cost of food, medication, and other consumables; and (e) reimbursement of the cost of continuing education. The department shall give priority to applications submitted that provide for the rehabilitation of endangered or threatened species. Funds may not be used to rehabilitate either nonnative species or nuisance animals, or both, including, but not limited to the following: Eastern gray squirrels (*Sciurus carolinensis*); opossum (*Didelphis virginiana*); raccoons (*Procyon lotor*); striped skunk (*Mephitis mephitis*); spotted skunk (*Spilogale putorius*); Eastern cottontail rabbit (*Sylvilagus floridanus*); domestic rabbit (*Oryctolagus cuniculus*); European starling (*Sturnus vulgaris*); and house sparrow (*Passer domesticus*).

(4) The department may adopt any rules as are necessary to carry out this section. [2007 c 246 § 4.]

Finding—2007 c 246: "The legislature finds that licensed wildlife rehabilitators often work closely with local law enforcement, animal control officers, wildlife enforcement officers, and wildlife biologists at the state and federal levels to aid in the safe capture, testing for disease, medical treatment, rehabilitation, and release of wildlife. The state recognizes the critical role licensed wildlife rehabilitators play in capturing and caring for the sick, injured, and orphaned wildlife of Washington state." [2007 c 246 § 1.]

77.12.469 Renewal of wildlife rehabilitation licenses—Adoption of rules. The department must develop a process for renewing wildlife rehabilitation licenses. All wildlife rehabilitation licenses issued by the department prior to January 1, 2006, must be renewed by January 1, 2010. The department may adopt rules as necessary to implement this section. [2007 c 246 § 5.]

Finding—2007 c 246: See note following RCW 77.12.467.

77.12.471 Wildlife rehabilitation account. The wildlife rehabilitation account is created in the state treasury. All receipts from moneys directed to the account from RCW 46.16.606 must be deposited into the account. Moneys in the account may be spent only after appropriation. Expenditures from the account may be used only for the support of the

wildlife rehabilitation program created under RCW 77.12.467. [2007 c 246 § 3.]

Finding—2007 c 246: See note following RCW 77.12.467.

77.12.702 Rockfish research and stock assessment program—Report to the legislature—Rockfish research account. (1) The department is directed to develop and implement a rockfish research and stock assessment program. Using funds from the rockfish research account created in subsection (2) of this section, the department must conduct Puget Sound basin and coastal surveys with new and existing technology to estimate the current abundance and future recovery of rockfish populations and other groundfish species. The stock assessment must include an evaluation of the potential for marine fish enhancement. Beginning December 2008, and every two years thereafter, the department shall report to the appropriate committees of the legislature on the status of the stock assessment program.

(2) The rockfish research account is created in the custody of the state treasurer. All receipts from surcharges assessed on commercial and recreational fishing licenses for the purposes of rockfish research must be deposited into the account. Expenditures from the account may be used only for rockfish research, including stock assessments. Only the director of the department or the director's designee may authorize expenditures from the account. The account is subject to allotment procedures under chapter 43.88 RCW, but an appropriation is not required for expenditures. [2007 c 442 § 2.]

Findings—Intent—2007 c 442: "(1) The legislature finds that:

(a) Seven rockfish stocks, including canary and yelloweye rockfish, have been designated under federal law by the national marine fisheries services as overfished on the west coast.

(b) The department of fish and wildlife has classified certain rockfish species within Puget Sound as critically depressed. These common species of rockfish have undergone dramatic declines in Puget Sound and the coast during the past three decades.

(c) The Pacific fishery management council and the department of fish and wildlife have eliminated the directed commercial fisheries and greatly reduced the recreational fishing opportunity for these species.

(d) Due to the interactions of these depleted stocks with the healthier ones, commercial and recreational fisheries have been severely constrained in recent years in order to rebuild the populations of these overfished rockfish. For many of these stocks there have been no recent stock assessments, or the current assessments are based on poor data. Improved survey information is essential for assessing abundance and to monitor progress toward rebuilding efforts on the coast and in Puget Sound.

(e) Department of fish and wildlife staff have been developing underwater robot technology or remote operated vehicles to scientifically estimate the abundance of rockfish populations in both the nearshore and in deep waters. These new assessment techniques, coupled with existing bottom trawl surveys, will be used to estimate current abundance and future recovery of rockfish populations along the coast of Washington and in Puget Sound.

(2) Therefore, the legislature intends to implement a targeted surcharge on commercial licenses issued by the department of fish and wildlife that provides for the retention or landing of ground fish, and a targeted surcharge on recreational saltwater fishing licenses. Funds derived from the surcharge will be used by the department of fish and wildlife solely for the purpose of conducting rockfish research and stock assessments." [2007 c 442 § 1.]

Effective date—2007 c 442: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately [May 11, 2007]." [2007 c 442 § 6.]

77.12.879 Aquatic invasive species prevention account—Aquatic invasive species prevention program for recreational and commercial watercraft—Enforcement program—Check stations—Training—Report to the legislature. (1) The aquatic invasive species prevention account is created in the state treasury. Moneys directed to the account from RCW 88.02.050 must be deposited in the account. Expenditures from the account may only be used as provided in this section. Moneys in the account may be spent only after appropriation.

(2) Funds in the aquatic invasive species prevention account may be appropriated to the department to develop an aquatic invasive species prevention program for recreational and commercial watercraft. Funds must be expended as follows:

- (a) To inspect recreational and commercial watercraft;
- (b) To educate general law enforcement officers on how to enforce state laws relating to preventing the spread of aquatic invasive species;
- (c) To evaluate and survey the risk posed by recreational and commercial watercraft in spreading aquatic invasive species into Washington state waters;
- (d) To evaluate the risk posed by float planes in spreading aquatic invasive species into Washington state waters; and
- (e) To implement an aquatic invasive species early detection and rapid response plan. The plan must address the treatment and immediate response to the introduction to Washington waters of aquatic invasive species. Agency and public review of the plan must be conducted under chapter 43.21C RCW, the state environmental policy act. If the implementation measures or actions would have a probable significant adverse environmental impact, a detailed statement under chapter 43.21C RCW must be prepared on the plan.

(3) Funds in the aquatic invasive species enforcement account created in RCW 43.43.400 may be appropriated to the department and Washington state patrol to develop an aquatic invasive species enforcement program for recreational and commercial watercraft. The department shall provide training to Washington state patrol employees working at port of entry weigh stations on how to inspect recreational and commercial watercraft for the presence of aquatic invasive species. The department is authorized to require persons transporting recreational and commercial watercraft to stop at check stations. Check stations must be plainly marked by signs, operated by at least one uniformed fish and wildlife officer, and operated in a safe manner. Any person stopped at a check station who possesses a recreational or commercial watercraft that is contaminated with aquatic invasive species is exempt from the criminal penalties found in RCW 77.15.253 and 77.15.290, and forfeiture under RCW 77.15.070, if that person complies with all department directives for the proper decontamination of the watercraft and equipment.

(4) The department shall submit a biennial report to the appropriate legislative committees describing the actions taken to implement this section along with suggestions on how to better fulfill the intent of chapter 464, Laws of 2005. The first report is due December 1, 2007. [2007 c 350 § 3; 2005 c 464 § 3.]

Findings—Intent—2005 c 464: See note following RCW 88.02.050.

77.12.882 Aquatic invasive species—Inspection of recreational and commercial watercraft—Rules—Signage. (1) The department shall adopt rules governing how and when the owners of recreational and commercial watercraft may request an inspection of the watercraft for the presence of aquatic invasive species. The department may coordinate with other states on inspection requirements and may determine when other state inspections meet Washington standards.

(2) The department shall develop and post signs warning vessel owners of the threat of aquatic invasive species, the penalties associated with introduction of an aquatic invasive species, and the contact information for obtaining a free inspection. The signs should provide enough information for the public to discern whether the vessel has been operated in an area that would warrant the need for an inspection. The department shall consult with the state patrol and the department of transportation regarding proper placement and authorization for sign posting.

(3) All port districts, privately or publicly owned marinas, state parks, and all state agencies or political subdivisions that own or lease a boat launch must display a sign provided by the department as described under subsection (2) of this section. Signs must be posted in a location near the boat launch to provide maximum visibility to the public.

(4) The department must coordinate with the Washington state parks and recreation commission to include such information in all boating publications provided to the public. The department shall also include the information on the department's internet site. [2007 c 350 § 4.]

77.12.885 Reported predatory wildlife interactions—Web site posting. The department shall post on its internet web site all reported predatory wildlife interactions, including reported human safety confrontations or sightings as well as the known details of reported depredations by predatory wildlife on humans, pets, or livestock, within ten days of receiving the report. The posted material must include, but is not limited to, the location and time, the known details, and a running summary of such reported interactions by identified specie and interaction type within each affected county. For the purposes of this section and RCW 42.56.430, "predatory wildlife" means grizzly bears, wolves, and cougars. [2007 c 293 § 2.]

Chapter 77.15 RCW

FISH AND WILDLIFE ENFORCEMENT CODE

Sections

77.15.253	Unlawful use of prohibited aquatic animal species—Penalty.
77.15.290	Unlawful transportation of fish or wildlife—Unlawful transport of aquatic plants—Penalty.
77.15.293	Unlawfully avoiding aquatic invasive species check stations—Penalty.
77.15.360	Unlawful interfering in department operations—Penalty.
77.15.568	Secondary commercial fish receiver's failure to account for commercial harvest—Penalty.
77.15.700	Grounds for department revocation and suspension of privileges.

77.15.253 Unlawful use of prohibited aquatic animal species—Penalty. (1) A person is guilty of unlawful use of a prohibited aquatic animal species if he or she possesses, imports, purchases, sells, propagates, transports, or releases a prohibited aquatic animal species within the state, except as provided in this section.

(2) Unless otherwise prohibited by law, a person may:

(a) Transport prohibited aquatic animal species to the department, or to another destination designated by the director, in a manner designated by the director, for purposes of identifying a species or reporting the presence of a species;

(b) Possess a prohibited aquatic animal species if he or she is in the process of removing it from watercraft or equipment in a manner specified by the department;

(c) Release a prohibited aquatic animal species if the species was caught while fishing and it is being immediately returned to the water from which it came; or

(d) Possess, transport, or release a prohibited aquatic animal species as the commission may otherwise prescribe.

(3) Unlawful use of a prohibited aquatic animal species is a gross misdemeanor. A subsequent violation of subsection (1) of this section within five years is a class C felony.

(4) A person is guilty of unlawful release of a regulated aquatic animal species if he or she releases a regulated aquatic animal species into state waters, unless allowed by the commission.

(5) Unlawful release of a regulated aquatic animal species is a gross misdemeanor.

(6) A person is guilty of unlawful release of an unlisted aquatic animal species if he or she releases an unlisted aquatic animal species into state waters without requesting a commission designation under RCW 77.12.020.

(7) Unlawful release of an unlisted aquatic animal species is a gross misdemeanor.

(8) This section does not apply to:

(a) The transportation or release of organisms in ballast water;

(b) A person stopped at an aquatic invasive species check station who possesses a recreational or commercial watercraft that is contaminated with an aquatic invasive species, if that person complies with all department directives for the proper decontamination of the watercraft and equipment; or

(c) A person who has voluntarily submitted a recreational or commercial watercraft for inspection by the department and has received a receipt verifying that the watercraft has not been contaminated since its last use. [2007 c 350 § 5; 2002 c 281 § 4.]

Purpose—2002 c 281: See note following RCW 77.08.010.

77.15.290 Unlawful transportation of fish or wildlife—Unlawful transport of aquatic plants—Penalty. (1) A person is guilty of unlawful transportation of fish or wildlife in the second degree if the person:

(a) Knowingly imports, moves within the state, or exports fish, shellfish, or wildlife in violation of any rule of the commission or the director governing the transportation or movement of fish, shellfish, or wildlife and the transportation does not involve big game, endangered fish or wildlife, deleterious exotic wildlife, or fish, shellfish, or wildlife having a value greater than two hundred fifty dollars; or

(b) Possesses but fails to affix or notch a big game transport tag as required by rule of the commission or director.

(2) A person is guilty of unlawful transportation of fish or wildlife in the first degree if the person:

(a) Knowingly imports, moves within the state, or exports fish, shellfish, or wildlife in violation of any rule of the commission or the director governing the transportation or movement of fish, shellfish, or wildlife and the transportation involves big game, endangered fish or wildlife, deleterious exotic wildlife, or fish, shellfish, or wildlife with a value of two hundred fifty dollars or more; or

(b) Knowingly transports shellfish, shellstock, or equipment used in commercial culturing, taking, handling, or processing shellfish without a permit required by authority of this title.

(3)(a) Unlawful transportation of fish or wildlife in the second degree is a misdemeanor.

(b) Unlawful transportation of fish or wildlife in the first degree is a gross misdemeanor.

(4) A person is guilty of unlawful transport of aquatic plants if the person transports aquatic plants on any state or public road, including forest roads, except as provided in this section.

(5) Unless otherwise prohibited by law, a person may transport aquatic plants:

(a) To the department, or to another destination designated by the director, in a manner designated by the department, for purposes of identifying a species or reporting the presence of a species;

(b) When legally obtained for aquarium use, wetland or lakeshore restoration, or ornamental purposes;

(c) When transporting a commercial aquatic plant harvester to a suitable location for purposes of removing aquatic plants;

(d) In a manner that prevents their unintentional dispersal, to a suitable location for disposal, research, or educational purposes; or

(e) As the commission may otherwise prescribe.

(6) Unlawful transport of aquatic plants is a misdemeanor.

(7) This section does not apply to: (a) Any person stopped at an aquatic invasive species check station who possesses a recreational or commercial watercraft that is contaminated with an aquatic invasive species if that person complies with all department directives for the proper decontamination of the watercraft and equipment; or (b) any person who has voluntarily submitted a recreational or commercial watercraft for inspection by the department or its designee and has received a receipt verifying that the watercraft has not been contaminated since its last use. [2007 c 350 § 6; 2002 c 281 § 7; 2001 c 253 § 35; 1998 c 190 § 48.]

Purpose—2002 c 281: See note following RCW 77.08.010.

77.15.293 Unlawfully avoiding aquatic invasive species check stations—Penalty. (1) A person is guilty of unlawfully avoiding aquatic invasive species check stations if the person fails to:

(a) Obey check station signs; or

(b) Stop and report at a check station if directed to do so by a uniformed fish and wildlife officer.

(2) Unlawfully avoiding aquatic invasive species check stations is a gross misdemeanor. [2007 c 350 § 7.]

77.15.360 Unlawful interfering in department operations—Penalty. (1) A person is guilty of unlawful interfering in department operations if the person prevents department employees from carrying out duties authorized by this title, including but not limited to interfering:

(a) In the operation of department vehicles, vessels, or aircraft; or

(b) With the collection of samples of tissue, fluids, or other bodily parts of fish, wildlife, and shellfish under RCW 77.12.071.

(2) Unlawful interfering in department operations is a gross misdemeanor. [2007 c 337 § 3; 2000 c 107 § 243; 1998 c 190 § 61.]

Intent—Finding—2007 c 337: See note following RCW 77.12.071.

77.15.568 Secondary commercial fish receiver's failure to account for commercial harvest—Penalty. (1) A person is guilty of a secondary commercial fish receiver's failure to account for commercial harvest if:

(a) The person sells fish or shellfish at retail, stores or holds fish or shellfish for another in exchange for valuable consideration, ships fish or shellfish in exchange for valuable consideration, or brokers fish or shellfish in exchange for valuable consideration;

(b) The fish or shellfish were required to be entered on a Washington fish receiving ticket or a Washington aquatic farm production annual report; and

(c) The person fails to maintain records of each receipt of fish or shellfish, as required under subsections (3) through (5) of this section, at the location where the fish or shellfish are being sold, at the location where the fish or shellfish are being stored or held, or at the principal place of business of the shipper or broker.

(2) This section does not apply to a wholesale fish dealer, a fisher selling under a direct retail sale endorsement, or a registered aquatic farmer.

(3) Records of the receipt of fish or shellfish required to be kept under this section must be in the English language and be maintained for three years from the date fish or shellfish are received, shipped, or brokered.

(4) Records maintained by persons that retail or broker must include the following:

(a) The name, address, and phone number of the wholesale fish dealer, fisher selling under a direct retail sale endorsement, or aquatic farmer or shellstock shipper from whom the fish or shellfish were purchased or received;

(b) The Washington fish receiving ticket number documenting original receipt or aquatic farm production quarterly report documenting production, if available;

(c) The date of purchase or receipt; and

(d) The amount and species of fish or shellfish purchased or received.

(5) Records maintained by persons that store, hold, or ship fish or shellfish for others must state the following:

(a) The name, address, and phone number of the person and business from whom the fish or shellfish were received;

(b) The date of receipt; and

(c) The amount and species of fish or shellfish received.

(6) A secondary commercial fish receiver's failure to account for commercial harvest is a misdemeanor. [2007 c 337 § 4; 2003 c 336 § 1.]

Intent—Finding—2007 c 337: See note following RCW 77.12.071.

77.15.700 Grounds for department revocation and suspension of privileges. The department shall impose revocation and suspension of privileges in the following circumstances:

(1) Upon conviction, if directed by statute for an offense;

(2) Upon conviction, if the department finds that actions of the defendant demonstrated a willful or wanton disregard for conservation of fish or wildlife. Such suspension of privileges may be permanent. This subsection (2) does not apply to violations involving commercial fishing;

(3) If a person is convicted twice within ten years for a violation involving unlawful hunting, killing, or possessing big game, the department shall order revocation and suspension of all hunting privileges for two years. RCW 77.12.722 or *77.16.050 as it existed before June 11, 1998, may comprise one of the convictions constituting the basis for revocation and suspension under this subsection;

(4)(a) If a person is convicted of an offense, has an uncontested notice of infraction, fails to appear at a hearing to contest an infraction, or is found to have committed an infraction three times in ten years involving any violation of recreational hunting or fishing laws or rules, the department shall order a revocation and suspension of all recreational hunting and fishing privileges for two years.

(b) A violation punishable as an infraction counts towards the revocation and suspension of recreational hunting and fishing privileges only where that violation is:

(i) Punishable as a crime on July 24, 2005, and is subsequently decriminalized; or

(ii) One of the following violations, as they exist on July 24, 2005: RCW 77.15.160 (1) or (2); WAC 220-56-116; WAC 220-56-315(11); or WAC 220-56-355 (1) through (4).

(c) The commission may, by rule, designate additional infractions that do not count towards the revocation and suspension of recreational hunting and fishing privileges.

(5) If either the deferred education licensee or the required nondeferred accompanying person, hunting under the authority of RCW 77.32.155(2), is convicted of a violation of this title, except for a violation of RCW 77.15.400 (1) through (3), the department may revoke all hunting licenses and tags and may order a suspension of one or both the deferred education licensee and the nondeferred accompanying person's hunting privileges for one year. [2007 c 163 § 2; 2005 c 321 § 1; 2003 c 386 § 2; 2001 c 253 § 46; 1998 c 190 § 66.]

***Reviser's note:** RCW 77.16.050 was repealed by 1998 c 190 § 124.

Findings—Intent—2003 c 386: "(1)(a) The legislature finds that existing law as it relates to the suspension of commercial fishing licenses does not take into account the real-life circumstances faced by the state's commercial fishing fleets. The nature of the commercial fishing industry, together with the complexity of fisheries regulations, is such that honest mistakes can be made by well-meaning and otherwise law-abiding fishers. Commercial fishing violations that occur within an acceptable margin of error should not result in the suspension of fishing privileges. Likewise, fishers facing the possibility of license suspension or revocation deserve the opportunity to explain any extenuating circumstances prior to having his or her professional

privileges suspended.

(b) The legislature intends, by creating the license suspension review committee, to provide a fisher with the opportunity to explain any extenuating circumstances that led to a commercial fishing violation. The legislature intends for the license suspension review committee to give serious considerations to the case-specific facts and scenarios leading up to a violation, and for license suspensions to issue only when the facts indicate a willful act that undermines the conservation of fish stocks. Frivolous violations should not result in the suspension of privileges, and should be punished only by the criminal sanctions attached to the underlying crime.

(2)(a) The legislature further finds that gross abuses of fish stocks should not be tolerated. Individuals convicted of even one violation that is egregious in nature, causing serious detriment to a fishery or the competitive disposition of other fishers, should have his or her license suspended and revoked.

(b) The legislature intends for the license suspension review committee to take egregious fisheries' violations seriously. When dealing with individuals convicted of only one violation, the license suspension review committee should only consider suspension for individuals that are convicted of violations that are of a severe magnitude and show a wanton disregard for the public's resource." [2003 c 386 § 1.]

Chapter 77.32 RCW

LICENSES

Sections

77.32.155	Hunter education training program—Certificate—Deferral—Adoption of rules—Fee.
77.32.237	Disabled hunter permits for persons with a disability.
77.32.238	Adoption of rules defining a person with a disability—Shooting from a motor vehicle—Assistance from licensed hunter.
77.32.400	Persons with a disability—Designated harvester card—Fish and shellfish.
77.32.470	Personal use fishing licenses—Fees—Temporary fishing license—Family fishing weekend license—Rules.
77.32.480	Reduced rate licenses.
77.32.490	Repealed.
77.32.520	Personal use shellfish and seaweed license—Razor clam license—Fees—License available for inspection.
77.32.550	Group fishing permit.

77.32.155 Hunter education training program—Certificate—Deferral—Adoption of rules—Fee. (1)(a) When purchasing any hunting license, persons under the age of eighteen shall present certification of completion of a course of instruction of at least ten hours in the safe handling of firearms, safety, conservation, and sportsmanship. All persons purchasing any hunting license for the first time, if born after January 1, 1972, shall present such certification.

(b) The director may establish a program for training persons in the safe handling of firearms, conservation, and sportsmanship and shall prescribe the type of instruction and the qualifications of the instructors. The director may cooperate with the National Rifle Association, organized sportsmen's groups, or other public or private organizations when establishing the training program.

(c) Upon the successful completion of a course established under this section, the trainee shall receive a hunter education certificate signed by an authorized instructor. The certificate is evidence of compliance with this section.

(d) The director may accept certificates from other states that persons have successfully completed firearm safety, hunter education, or similar courses as evidence of compliance with this section.

(2)(a) The director may authorize a once in a lifetime, one license year deferral of hunter education training for individuals who are accompanied by a nondeferred Washington-licensed hunter who has held a Washington hunting license

for the prior three years and is over eighteen years of age. The commission shall adopt rules for the administration of this subsection to avoid potential fraud and abuse.

(b) The director is authorized to collect an application fee, not to exceed twenty dollars, for obtaining the once in a lifetime, one license year deferral of hunter education training from the department. This fee must be deposited into the fish and wildlife enforcement reward account and must be used exclusively to administer the deferral program created in this subsection.

(c) For the purposes of this subsection, "accompanied" means to go along with another person while staying within a range of the other person that permits continual unaided visual and auditory communication.

(3) To encourage the participation of an adequate number of instructors for the training program, the commission shall develop nonmonetary incentives available to individuals who commit to serving as an instructor. The incentives may include additional hunting opportunities for instructors. [2007 c 163 § 1; 2006 c 23 § 1; 1998 c 191 § 17; 1993 c 85 § 1; 1987 c 506 § 81; 1981 c 310 § 21; 1980 c 78 § 104; 1957 c 17 § 1. Formerly RCW 77.32.015.]

Effective date—1998 c 191: See note following RCW 77.32.400.

Legislative findings and intent—1987 c 506: See note following RCW 77.04.020.

Effective dates—Legislative intent—1981 c 310: See notes following RCW 77.12.170.

Effective date—Intent, construction—Savings—Severability—1980 c 78: See notes following RCW 77.04.010.

77.32.237 Disabled hunter permits for persons with a disability. The commission shall attempt to enhance the hunting opportunities for persons with a disability. The commission shall authorize the director to issue disabled hunter permits to persons with a disability. The commission shall adopt rules governing the conduct of persons with a disability who hunt and their designated licensed hunter. [2007 c 254 § 6; 1989 c 297 § 1.]

77.32.238 Adoption of rules defining a person with a disability—Shooting from a motor vehicle—Assistance from licensed hunter. (1) The commission shall adopt rules defining who is a person with a disability and governing the conduct of persons with a disability who hunt and their designated licensed hunters. It is unlawful for any person to possess a loaded firearm in or on a motor vehicle except a person with a disability who possesses a disabled hunter permit and all appropriate hunting licenses may discharge a firearm or other legal hunting device from a nonmoving motor vehicle that has the engine turned off. A person with a disability who possesses a disabled hunter permit shall not be exempt from permit requirements for carrying concealed weapons, or from rules, laws, or ordinances concerning the discharge of these weapons. No hunting shall be permitted from a motor vehicle that is parked on or beside the maintained portion of a public road, except as authorized by the commission by rule.

(2) A person with a disability holding a disabled hunter permit may be accompanied by one licensed hunter who may assist the person with a disability by killing game wounded by the person with a disability, and by tagging and retrieving game killed by the person with a disability or the designated

licensed hunter. A nondisabled hunter shall not possess a loaded gun in, or shoot from, a motor vehicle. [2007 c 254 § 5; 1989 c 297 § 2.]

77.32.400 Persons with a disability—Designated harvester card—Fish and shellfish. (1) The commission shall authorize the director to issue designated harvester cards to persons with a disability. The commission shall adopt rules defining who is a person with a disability and rules governing the conduct of persons with a disability who fish and harvest shellfish and their designated harvesters.

(2) It is lawful for a designated harvester to fish for, take, or possess the personal-use daily bag limit of fish or shellfish for a person with a disability if the harvester is licensed and has a designated harvester card, and if the person with a disability is present on site and in possession of the appropriate fishing license issued under this chapter. Except as provided in subsection (4) of this section, the person with a disability must be present and participating in the fishing activity.

(3) A designated harvester card will be issued to such a person with a disability upon written application to the director. The application must be submitted on a department official form and must be accompanied by a licensed medical doctor's certification of disability.

(4) A person with a disability utilizing the services of a designated harvester is not required to be present at the location where the designated harvester is harvesting shellfish for the person with a disability. The person with a disability is required to be in the direct line of sight of the designated harvester who is harvesting shellfish for him or her, unless it is not possible to be in a direct line of sight because of a physical obstruction or other barrier. If such a barrier or obstruction exists, the person with a disability is required to be within one-quarter mile of the designated harvester who is harvesting shellfish for him or her. [2007 c 254 § 2; 1998 c 191 § 1. Prior: 1993 sp.s. c 17 § 5; 1993 sp.s. c 2 § 42; 1993 c 201 § 1; 1989 c 305 § 4; 1983 1st ex.s. c 46 § 92; 1980 c 81 § 2. Formerly RCW 75.25.080.]

Effective date—1998 c 191: "Sections 1 through 9, 11 through 23, 25 through 30, 34 through 36, 38 through 42, and 44 of this act take effect January 1, 1999." [1998 c 191 § 48.]

Finding—Contingent effective date—Severability—1993 sp.s. c 17: See notes following RCW 77.32.520.

Effective date—1993 sp.s. c 2 §§ 1-6, 8-59, and 61-79: See RCW 43.300.900.

Severability—1993 sp.s. c 2: See RCW 43.300.901.

Effective date—1980 c 81: "This act shall take effect on July 1, 1980." [1980 c 81 § 3.]

77.32.470 Personal use fishing licenses—Fees—Temporary fishing license—Family fishing weekend license—Rules. (1) A personal use saltwater, freshwater, combination, temporary, or family fishing weekend license is required for all persons fifteen years of age or older to fish for or possess fish taken for personal use from state waters or offshore waters.

(2) The fees for annual personal use saltwater, freshwater, or combination licenses are as follows:

(a) A combination license allows the holder to fish for or possess fish, shellfish, and seaweed from state waters or offshore waters. The fee for this license is thirty-six dollars for

residents, seventy-two dollars for nonresidents, and five dollars for youth. There is an additional fifty-cent surcharge for this license, to be deposited in the rockfish research account created [in] RCW 77.12.702.

(b) A saltwater license allows the holder to fish for or possess fish taken from saltwater areas. The fee for this license is eighteen dollars for residents, thirty-six dollars for nonresidents, and five dollars for resident seniors. There is an additional fifty-cent surcharge for this license, to be deposited in the rockfish research account created [in] RCW 77.12.702.

(c) A freshwater license allows the holder to fish for, take, or possess food fish or game fish species in all freshwater areas. The fee for this license is twenty dollars for residents, forty dollars for nonresidents, and five dollars for resident seniors.

(3)(a) A temporary combination fishing license is valid for one to five consecutive days and allows the holder to fish for or possess fish, shellfish, and seaweed taken from state waters or offshore waters. The fee for this temporary fishing license is:

(i) One day - Seven dollars for residents and fourteen dollars for nonresidents;

(ii) Two days - Ten dollars for residents and twenty dollars for nonresidents;

(iii) Three days - Thirteen dollars for residents and twenty-six dollars for nonresidents;

(iv) Four days - Fifteen dollars for residents and thirty dollars for nonresidents; and

(v) Five days - Seventeen dollars for residents and thirty-four dollars for nonresidents.

(b) The fee for a charter stamp is seven dollars for a one-day temporary combination fishing license for residents and nonresidents for use on a charter boat as defined in RCW 77.65.150.

(c) A transaction fee to support the automated licensing system will be taken from the amounts set forth in this subsection for temporary licenses.

(d) Except for active duty military personnel serving in any branch of the United States armed forces, the temporary combination fishing license is not valid on game fish species for an eight-consecutive-day period beginning on the opening day of the lowland lake fishing season.

(e) There is an additional fifty-cent surcharge on the temporary combination fishing license and the associated charter stamp, to be deposited in the rockfish research account created in RCW 77.12.702.

(4) A family fishing weekend license allows for a maximum of six anglers: One resident and five youth; two residents and four youth; or one resident, one nonresident, and four youth. This license allows the holders to fish for or possess fish taken from state waters or offshore waters. The fee for this license is twenty dollars. This license is only valid during periods as specified by rule of the department.

(5) The commission may adopt rules to create and sell combination licenses for all hunting and fishing activities at or below a fee equal to the total cost of the individual license contained within any combination. [2007 c 442 § 5; 2005 c 192 § 1; 2003 c 181 § 1; 1998 c 191 § 16.]

Findings—Intent—Effective date—2007 c 442: See notes following RCW 77.12.702.

Effective date—2003 c 181: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately [May 9, 2003]." [2003 c 181 § 2.]

Effective date—1998 c 191: See note following RCW 77.32.400.

77.32.480 Reduced rate licenses. Upon written application, a combination fishing license shall be issued at the reduced rate of five dollars, and all hunting licenses shall, be issued at the reduced rate of a youth hunting license fee for the following individuals:

(1) A resident sixty-five years old or older who is an honorably discharged veteran of the United States armed forces having a service-connected disability;

(2) A resident who is an honorably discharged veteran of the United States armed forces with a thirty percent or more service-connected disability;

(3) A resident with a disability who permanently uses a wheelchair;

(4) A resident who is blind or visually impaired; and

(5) A resident with a developmental disability as defined in RCW 71A.10.020 with documentation of the disability certified by a physician licensed to practice in this state. [2007 c 254 § 3; 1998 c 191 § 18.]

Effective date—1998 c 191: See note following RCW 77.32.400.

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

77.32.520 Personal use shellfish and seaweed license—Razor clam license—Fees—License available for inspection. (1) A personal use shellfish and seaweed license is required for all persons other than residents or non-residents under fifteen years of age to fish for, take, dig for, or possess seaweed or shellfish, including razor clams, for personal use from state waters or offshore waters including national park beaches.

(2) A razor clam license allows a person to harvest only razor clams for personal use from state waters, including national park beaches.

(3) The fees for annual personal use shellfish and seaweed licenses are:

(a) For a resident fifteen years of age or older, seven dollars;

(b) For a nonresident fifteen years of age or older, twenty dollars; and

(c) For a senior, five dollars.

(4) The fee for an annual razor clam license is five dollars and fifty cents for residents and eleven dollars for nonresidents.

(5) The fee for a three-day razor clam license is three dollars and fifty cents for both residents and nonresidents.

(6) A personal use shellfish and seaweed license or razor clam license must be in immediate possession of the licensee and available for inspection while a licensee is harvesting shellfish or seaweed. However, the license does not need to be visible at all times. [2007 c 336 § 1; 2004 c 248 § 1; 2000 c 107 § 27; 1999 c 243 § 3; 1998 c 191 § 2; 1994 c 255 § 4; 1993 sp.s. c 17 § 3. Formerly RCW 75.25.092.]

Report—2007 c 336: "The department of fish and wildlife shall monitor the sale of personal use shellfish and seaweed licenses and razor clam

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licenses for four years from July 22, 2007. If in any of the four years the number of license sales drop more than ten percent from July 22, 2007, then the department of fish and wildlife shall report the sales and revenue data for the licenses along with any relevant information regarding the reasons for the decrease to the legislature." [2007 c 336 § 2.]

Finding—Effective date—1999 c 243: See notes following RCW 77.32.050.

Effective date—1998 c 191: See note following RCW 77.32.400.

Effective date—1994 c 255 §§ 1-13: "Sections 1 through 13 of this act shall take effect January 1, 1995." [1994 c 255 § 23.]

Finding—1993 sp.s. c 17: "The legislature finds that additional cost savings can be realized by simplifying the department of fisheries recreational licensing system. The legislature finds that significant benefits will accrue to recreational fishers from streamlining the department of fisheries recreational licensing system. The legislature finds recreational license fees and commercial landing taxes have not been increased in recent years. The legislature finds that reduction in important department of fisheries programs can be avoided by increasing license fees and commercial landing taxes. The legislature finds that it is in the best interest of the state to avoid significant reductions in current department of fisheries activities." [1993 sp.s. c 17 § 1.]

Contingent effective date—1993 sp.s. c 17: "This act shall take effect January 1, 1994, except that sections 13 through 30 of this act shall take effect only if Senate Bill No. 5124 does not become law by August 1, 1993." [1993 sp.s. c 17 § 32.] Senate Bill No. 5124 [1993 c 340] did become law; sections 13 through 30 of 1993 sp.s. c 17 did not become law.

Severability—1993 sp.s. c 17: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1993 sp.s. c 17 § 53.]

77.32.550 Group fishing permit. (1) A group fishing permit allows a group of individuals to fish, and harvest shellfish, without individual licenses or the payment of individual license fees.

(2) The director must issue a group fishing permit on a seasonal basis to a state-operated facility or state-licensed nonprofit facility or program for persons with physical or mental disabilities, hospital patients, seriously or terminally ill persons, persons who are dependent on the state because of emotional or physical developmental disabilities, or senior citizens who are in the care of the facility. The permit is valid only for use during open season.

(3) The director may set conditions and issue a group fishing permit to groups working in partnership with and participating in department outdoor education programs. At the discretion of the director, a processing fee may be applied.

(4) The commission may adopt rules that provide the conditions under which a group fishing permit is issued. [2007 c 254 § 4; 2006 c 16 § 1; 2002 c 266 § 1.]

Chapter 77.60 RCW SHELLFISH

Sections

77.60.130 Aquatic nuisance species committee.
77.60.160 Oyster reserve land account.

77.60.130 Aquatic nuisance species committee. (1) The aquatic nuisance species committee is created for the purpose of fostering state, federal, tribal, and private cooperation on aquatic nuisance species issues. The mission of the committee is to minimize the unauthorized or accidental introduction of nonnative aquatic species and give special emphasis to preventing the introduction and spread of aquatic

nuisance species. The term "aquatic nuisance species" means a nonnative aquatic plant or animal species that threatens the diversity or abundance of native species, the ecological stability of infested waters, or commercial, agricultural, or recreational activities dependent on such waters.

(2) The committee consists of representatives from each of the following state agencies: Department of fish and wildlife, department of ecology, department of agriculture, department of health, department of natural resources, Puget Sound partnership, state patrol, state noxious weed control board, and Washington sea grant program. The committee shall encourage and solicit participation by: Federally recognized tribes of Washington, federal agencies, Washington conservation organizations, environmental groups, and representatives from industries that may either be affected by the introduction of an aquatic nuisance species or that may serve as a pathway for their introduction.

(3) The committee has the following duties:

(a) Periodically revise the state of Washington aquatic nuisance species management plan, originally published in June 1998;

(b) Make recommendations to the legislature on statutory provisions for classifying and regulating aquatic nuisance species;

(c) Recommend to the state noxious weed control board that a plant be classified under the process designated by RCW 17.10.080 as an aquatic noxious weed;

(d) Coordinate education, research, regulatory authorities, monitoring and control programs, and participate in regional and national efforts regarding aquatic nuisance species;

(e) Consult with representatives from industries and other activities that may serve as a pathway for the introduction of aquatic nuisance species to develop practical strategies that will minimize the risk of new introductions; and

(f) Prepare a biennial report to the legislature with the first report due by December 1, 2001, making recommendations for better accomplishing the purposes of this chapter, and listing the accomplishments of this chapter to date.

(4) The committee shall accomplish its duties through the authority and cooperation of its member agencies. Implementation of all plans and programs developed by the committee shall be through the member agencies and other cooperating organizations. [2007 c 341 § 59; 2000 c 149 § 1.]

Severability—Effective date—2007 c 341: See RCW 90.71.906 and 90.71.907.

77.60.160 Oyster reserve land account. (1) The oyster reserve land account is created in the state treasury. All receipts from revenues from the lease of land or sale of shellfish from oyster reserve lands must be deposited into the account. Moneys in the account may be spent only after appropriation. Expenditures from the account may be used only as provided in this section.

(2) Funds in the account shall be used for the purposes provided for in this subsection:

(a) Up to forty percent for the management expenses incurred by the department that are directly attributable to the management of the oyster reserve lands and for the expenses associated with new research and development activities at the Pt. Whitney and Nahcotta shellfish laboratories managed

by the department. As used in this subsection, "new research and development activities" includes an emphasis on the control of aquatic nuisance species and burrowing shrimp;

(b) Up to ten percent may be deposited into the state general fund; and

(c) Except as provided in subsection (3) of this section, all remaining funds in the account shall be used for the shellfish - on-site sewage grant program established in RCW 70.118.140.

(3)(a) No later than January 1st of each year, from revenues received from the Willapa bay oyster reserve, the department shall transfer one hundred thousand dollars to the on-site sewage grant program established in RCW 70.118.140.

(b) All remaining revenues received from the Willapa bay oyster reserve shall be used to fund research activities as specified in subsection (2)(a) of this section. [2007 c 341 § 44; 2001 c 273 § 2.]

Severability—Effective date—2007 c 341: See RCW 90.71.906 and 90.71.907.

**Chapter 77.65 RCW
FOOD FISH AND SHELLFISH—
COMMERCIAL LICENSES**

Sections

77.65.150 Charter licenses and angler permits—Fees—"Charter boat" defined—Oregon charter boats—Salmon charter license renewal.

77.65.210 Nonlimited entry delivery license—Limitations—Fee.

77.65.150 Charter licenses and angler permits—Fees—"Charter boat" defined—Oregon charter boats—Salmon charter license renewal. (1) The director shall issue the charter licenses and angler permits listed in this section according to the requirements of this title. The licenses and permits and their annual fees and surcharges are:

License or Permit	Annual Fee		Governing Section
	(RCW 77.95.090 Surcharge) (RCW 77.12.702 Surcharge)		
	Resident	Nonresident	
(a) Non-salmon charter	\$225 (plus \$35 for RCW 77.12.702 Surcharge)	\$375 (plus \$35 for RCW 77.12.702 Surcharge)	
(b) Salmon charter	\$380 (plus \$100) (plus \$35 for RCW 77.12.702 Surcharge)	\$685 (plus \$100) (plus \$35 for RCW 77.12.702 Surcharge)	RCW 77.70.050
(c) Salmon angler	\$ 0	\$ 0	RCW 77.70.060
(d) Salmon roe	\$ 95	\$ 95	RCW 77.65.350

(2) A salmon charter license designating a vessel is required to operate a charter boat from which persons may, for a fee, fish for salmon, other food fish, and shellfish. The director may issue a salmon charter license only to a person who meets the qualifications of RCW 77.70.050.

(3) A nonsalmon charter license designating a vessel is required to operate a charter boat from which persons may, for a fee, fish for food fish other than salmon, albacore tuna, and shellfish.

(4)(a) "Charter boat" means a vessel from which persons may, for a fee, fish for food fish or shellfish for personal use in those state waters set forth in (b) of this subsection. "Charter boat" also means a vessel from which persons may, for a fee, fish for food fish or shellfish for personal use in offshore waters or in the waters of other states. The director may specify by rule when a vessel is a "charter boat" within this definition.

(b) A person may not operate a vessel from which persons may, for a fee, fish for food fish or shellfish in Puget Sound, Grays Harbor, Willapa Bay, Pacific Ocean waters, Lake Washington, or the Columbia river below the bridge at Longview unless the vessel is designated on a charter boat license.

(5) A charter boat licensed in Oregon may fish without a Washington charter license under the same rules as Washington charter boat operators in ocean waters within the jurisdiction of Washington state from the southern border of the state of Washington to Leadbetter Point, as long as the Oregon vessel does not take on or discharge passengers for any purpose from any Washington port, the Washington shore, or a dock, landing, or other point in Washington. The provisions of this subsection shall be in effect as long as the state of Oregon has reciprocal laws and regulations.

(6) A salmon charter license under subsection (1)(b) of this section may be renewed if the license holder notifies the department by May 1st of that year that he or she will not participate in the fishery during that calendar year. The license holder must pay the one hundred-dollar enhancement surcharge and a thirty-five dollar surcharge to be deposited in the rockfish research account created in RCW 77.12.702, plus a fifteen-dollar handling charge, in order to be considered a valid renewal and eligible to renew the license the following year. [2007 c 442 § 3; 2006 c 186 § 1; 2000 c 107 § 36; 1998 c 190 § 95; 1997 c 76 § 2; 1995 c 104 § 1; 1993 sp.s. c 17 § 41. Prior: (1993 c 340 § 21 repealed by 1993 sp.s. c 17 § 47); 1989 c 316 § 2; 1989 c 147 § 1; 1989 c 47 § 2; 1988 c 9 § 1; 1983 1st ex.s. c 46 § 112; 1979 c 60 § 1; 1977 ex.s. c 327 § 5; 1971 ex.s. c 283 § 15; 1969 c 90 § 1. Formerly RCW 75.28.095.]

Findings—Intent—Effective date—2007 c 442: See notes following RCW 77.12.702.

Effective date—1997 c 76: See note following RCW 77.65.160.

Contingent effective date—1993 sp.s. c 17 §§ 34-47: See note following RCW 77.65.020.

Finding—Contingent effective date—Severability—1993 sp.s. c 17: See notes following RCW 77.32.520.

Severability—1979 c 60: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1979 c 60 § 4.]

Legislative intent—Funding of salmon enhancement facilities—Use of license fees—1977 ex.s. c 327: "The long range economic development goals for the state of Washington shall include the restoration of salmon runs to provide an increased supply of this valuable renewable resource for the benefit of commercial and recreational users and the economic well-being of the state. For the purpose of providing funds for the planning, acquisition, construction, improvement, and operation of salmon enhancement facilities within the state it is the intent of the legislature that the revenues received

from fees from the issuance of vessel delivery permits, charter boat licenses, trolling gear licenses, gill net gear licenses, purse seine gear licenses, reef net gear licenses, anadromous salmon angling licenses and all moneys received from all privilege fees and fish sales taxes collected on fresh or frozen salmon or parts thereof be utilized to fund such costs.

The salmon enhancement program funded by commercial and recreational fishing fees and taxes shall be for the express benefit of all persons whose fishing activities fall under the management authority of the Washington department of fisheries and who actively participate in the funding of the enhancement costs through the fees and taxes set forth in chapters 75.28 and 82.27 RCW or through other adequate funding methods." [1980 c 98 § 8; 1977 ex.s. c 327 § 1. Formerly RCW 75.18.100.]

Declaration of state policy—1977 ex.s. c 327: "The legislature, recognizing that anadromous salmon within the waters of the state and offshore waters are fished for both recreational and commercial purposes and that the recreational anadromous salmon fishery is a major recreational and economic asset to the state and improves the quality of life for all residents of the state, declares that it is the policy of the state to enhance and improve recreational anadromous salmon fishing in the state." [1977 ex.s. c 327 § 10. Formerly RCW 75.28.600.]

Severability—1977 ex.s. c 327: "If any provision of this 1977 amendatory act, or its application to any person or circumstance is held invalid, the remainder of the act, or the application of the provision to other persons or circumstances is not affected." [1977 ex.s. c 327 § 34.]

Effective date—1977 ex.s. c 327: "This 1977 amendatory act shall take effect on January 1, 1978." [1977 ex.s. c 327 § 35.]

Effective dates—1971 ex.s. c 283: See note following RCW 77.65.170.

Limitation on issuance of salmon charter boat licenses: RCW 77.70.050.

Salmon charter boats—Angler permit, when required: RCW 77.70.060.

77.65.210 Nonlimited entry delivery license—Limitations—Fee. (1) Except as provided in subsection (2) of this section, a person may not use a commercial fishing vessel to deliver food fish or shellfish taken for commercial purposes in offshore waters to a port in the state without a nonlimited entry delivery license. As used in this section, "deliver" and "delivery" mean arrival at a place or port, and include arrivals from offshore waters to waters within the state and arrivals ashore from offshore waters. As used in this section, "food fish" does not include salmon. As used in this section, "shellfish" does not include ocean pink shrimp, coastal crab, or fish or shellfish taken under an emerging commercial fisheries license if taken from off-shore waters. The annual license fee for a nonlimited entry delivery license is one hundred ten dollars for residents and two hundred dollars for nonresidents, and an additional thirty-five dollar surcharge for both residents and nonresidents to be deposited in the rockfish research account created in RCW 77.12.702.

(2) Holders of salmon troll fishery licenses issued under RCW 77.65.160, salmon delivery licenses issued under RCW 77.65.170, crab pot fishery licenses issued under RCW 77.65.220, food fish trawl—Non-Puget Sound fishery licenses, and emerging commercial fishery licenses issued under RCW 77.65.200, Dungeness crab—coastal fishery licenses, ocean pink shrimp delivery licenses, shrimp trawl—Non-Puget Sound fishery licenses, and emerging commercial fishery licenses issued under RCW 77.65.220 may deliver food fish or shellfish taken in offshore waters without a nonlimited entry delivery license.

(3) A nonlimited entry delivery license authorizes no taking of food fish or shellfish from state waters. [2007 c 442 § 4; 2005 c 20 § 4; 2000 c 107 § 42; 1998 c 190 § 97; 1994 c 260 § 21. Prior: 1993 sp.s. c 17 § 39; 1993 c 376 § 3; (1993 c 340 § 16 repealed by 1993 sp.s. c 17 § 47); 1989 c 316 § 7;

1983 1st ex.s. c 46 § 119; 1971 ex.s. c 283 § 5; 1965 ex.s. c 73 § 1; 1959 c 309 § 5. Formerly RCW 75.28.125, 75.28.085.]

Findings—Intent—Effective date—2007 c 442: See notes following RCW 77.12.702.

Finding—Severability—1994 c 260: See notes following RCW 77.70.280.

Effective date—1994 c 260 §§ 1-5, 9-19, and 21-24: See note following RCW 77.70.280.

Contingent effective date—1993 sp.s. c 17 §§ 34-47: See note following RCW 77.65.020.

Finding—Contingent effective date—Severability—1993 sp.s. c 17: See notes following RCW 77.32.520.

Findings—Effective date—1993 c 376: See notes following RCW 77.65.380.

Effective dates—1971 ex.s. c 283: See note following RCW 77.65.170.

Chapter 77.85 RCW SALMON RECOVERY

Sections

77.85.010	Definitions.
77.85.020	Report to the legislature and governor.
77.85.030	Governor's salmon recovery office—Creation—Purpose and duties. (<i>Expires June 30, 2015.</i>)
77.85.040	Independent science panel on salmon recovery—Purpose.
77.85.090	Southwest Washington salmon recovery region—Created—Recognition as a regional recovery organization—Puget Sound salmon recovery organizations.
77.85.110	Salmon recovery funding board—Creation—Membership.
77.85.120	Board responsibilities—Grants and loans administration assistance.
77.85.130	Allocation of funds—Procedures and criteria.
77.85.140	Habitat project lists—Tracking of funds—Report.
77.85.150	Statewide salmon recovery strategy—Prospective application.
77.85.240	Puget Sound partners.
77.85.250	Findings—Forum on monitoring salmon recovery and watershed health—Creation—Duties—Report to the governor and legislature. (<i>Expires June 30, 2015.</i>)

77.85.010 Definitions. The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

(1) "Adaptive management" means reliance on scientific methods to test the results of actions taken so that the management and related policy can be changed promptly and appropriately.

(2) "Critical pathways methodology" means a project scheduling and management process for examining interactions between habitat projects and salmonid species, prioritizing habitat projects, and assuring positive benefits from habitat projects.

(3) "Habitat project list" is the list of projects resulting from the critical pathways methodology under RCW 77.85.060(2). Each project on the list must have a written agreement from the landowner on whose land the project will be implemented. Projects include habitat restoration projects, habitat protection projects, habitat projects that improve water quality, habitat projects that protect water quality, habitat-related mitigation projects, and habitat project maintenance and monitoring activities.

(4) "Habitat work schedule" means those projects from the habitat project list that will be implemented during the current funding cycle. The schedule shall also include a list of the entities and individuals implementing projects, the start

date, duration, estimated date of completion, estimated cost, and funding sources for the projects.

(5) "Limiting factors" means conditions that limit the ability of habitat to fully sustain populations of salmon. These factors are primarily fish passage barriers and degraded estuarine areas, riparian corridors, stream channels, and wetlands.

(6) "Project sponsor" is a county, city, special district, tribal government, state agency, a combination of such governments through interlocal or interagency agreements, a nonprofit organization, regional fisheries enhancement group, or one or more private citizens. A project sponsored by a state agency may be funded by the board only if it is included on the habitat project list submitted by the lead entity for that area and the state agency has a local partner that would otherwise qualify as a project sponsor.

(7) "Regional recovery organization" or "regional salmon recovery organization" means an entity formed under RCW 77.85.090 for the purpose of recovering salmon, which is recognized in statute or by the governor's salmon recovery office created in RCW 77.85.030.

(8) "Salmon" includes all species of the family Salmonidae which are capable of self-sustaining, natural production.

(9) "Salmon recovery plan" means a state or regional plan developed in response to a proposed or actual listing under the federal endangered species act that addresses limiting factors including, but not limited to harvest, hatchery, hydropower, habitat, and other factors of decline.

(10) "Salmon recovery region" means geographic areas of the state identified or formed under RCW 77.85.090 that encompass groups of watersheds in the state with common stocks of salmon identified for recovery activities, and that generally are consistent with the geographic areas within the state identified by the national oceanic and atmospheric administration or the United States fish and wildlife service for activities under the federal endangered species act.

(11) "Salmon recovery strategy" means the strategy adopted under RCW 77.85.150 and includes the compilation of all subbasin and regional salmon recovery plans developed in response to a proposed or actual listing under the federal endangered species act with state hatchery, harvest, and hydropower plans compiled in accordance with RCW 77.85.150.

(12) "Tribe" or "tribes" means federally recognized Indian tribes.

(13) "WRIA" means a water resource inventory area established in chapter 173-500 WAC as it existed on January 1, 1997.

(14) "Owner" means the person holding title to the land or the person under contract with the owner to lease or manage the legal owner's property. [2007 c 444 § 1; 2005 c 309 § 2; 2002 c 210 § 1; 2000 c 107 § 92; 1998 c 246 § 2. Formerly RCW 75.46.010.]

77.85.020 Report to the legislature and governor. (1) No later than January 31, 2009, and every odd-numbered year until and including 2015, the governor's salmon recovery office shall submit a biennial state of the salmon report to the legislature and the governor regarding the implementation of

the state's salmon recovery strategy. The report must include the following:

(a) A summary of habitat projects including but not limited to:

(i) A summary of accomplishments in removing barriers to salmon passage and an identification of existing barriers;

(ii) A summary of salmon restoration efforts undertaken in the past two years;

(iii) A summary of the role which private volunteer initiatives contribute in salmon habitat restoration efforts; and

(iv) A summary of efforts taken to protect salmon habitat;

(b) A summary of harvest and hatchery management activities affecting salmon recovery;

(c) A summary of the number and types of violations of existing laws pertaining to salmon. The summary may include information about the types of sanctions imposed for these violations.

(2) The report may include the following:

(a) A description of the amount of in-kind financial contributions, including volunteer, private, state, federal, tribal, as available, and local government funds directly spent on salmon recovery in response to endangered species act listings; and

(b) Information on the estimated carrying capacity of new habitat created pursuant to chapter 246, Laws of 1998.

(3) The report shall summarize the monitoring data coordinated by the forum on monitoring salmon recovery and watershed health. The summary may include but is not limited to data and analysis related to:

(a) Measures of progress in fish recovery;

(b) Measures of factors limiting recovery as well as trends in such factors; and

(c) The status of implementation of projects and activities.

(4) The department, the department of ecology, the department of natural resources, the state conservation commission, and the forum on monitoring salmon recovery and watershed health shall provide to the governor's salmon recovery office information requested by the office necessary to prepare the state of the salmon report and other reports produced by the office. [2007 c 444 § 2; 2005 c 309 § 3; 1998 c 246 § 4. Formerly RCW 75.46.030.]

77.85.030 Governor's salmon recovery office—Creation—Purpose and duties. (Expires June 30, 2015.) (1) The governor's salmon recovery office is created within the office of the governor to coordinate state strategy to allow for salmon recovery to healthy sustainable population levels with productive commercial and recreational fisheries. The primary purpose of the office is to coordinate and assist in the development, implementation, and revision of regional salmon recovery plans as an integral part of a statewide strategy developed consistent with the guiding principles and procedures under RCW 77.85.150.

(2) The governor's salmon recovery office is responsible for maintaining the statewide salmon recovery strategy to reflect applicable provisions of regional recovery plans, habitat protection and restoration plans, water quality plans, and other private, local, regional, state agency and federal plans, projects, and activities that contribute to salmon recovery.

(3) The governor's salmon recovery office shall also gather regional recovery plans from regional recovery organizations and submit the plans to the federal fish services for adoption as federal recovery plans. The governor's salmon recovery office shall also work with regional salmon recovery organizations on salmon recovery issues in order to ensure a coordinated and consistent statewide approach to salmon recovery. The governor's salmon recovery office shall work with federal agencies to accomplish implementation of federal commitments in the recovery plans.

(4) The governor's salmon recovery office may also:

(a) Assist state agencies, local governments, landowners, and other interested parties in obtaining federal assurances that plans, programs, or activities are consistent with fish recovery under the federal endangered species act;

(b) Act as liaison to local governments, the state congressional delegation, the United States congress, federally recognized tribes, and the federal executive branch agencies for issues related to the state's salmon recovery plans;

(c) Provide periodic reports pursuant to RCW 77.85.020;

(d) Provide, as appropriate, technical and administrative support to the independent science panel or other science-related panels on issues pertaining to salmon recovery;

(e) In cooperation with the regional recovery organizations, prepare a timeline and implementation plan that, together with a schedule and recommended budget, identifies specific actions in regional recovery plans for state agency actions and assistance necessary to implement local and regional recovery plans; and

(f) As necessary, provide recommendations to the legislature that would further the success of salmon recovery, including recommendations for state agency actions in the succeeding biennium and state financial and technical assistance for projects and activities to be undertaken in local and regional salmon recovery plans. The recommendations may include:

(i) The need to expand or improve nonregulatory programs and activities; and

(ii) The need for state funding assistance to recovery activities and projects.

(5) This section expires June 30, 2015. [2007 c 444 § 3; 2005 c 309 § 4; 2000 c 107 § 93; 1999 sp.s. c 13 § 8; 1998 c 246 § 5. Formerly RCW 75.46.040.]

Effective date—2007 c 444 § 3: "Section 3 of this act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect June 30, 2007." [2007 c 444 § 9.]

Severability—Effective date—1999 sp.s. c 13: See notes following RCW 77.85.005.

77.85.040 Independent science panel on salmon recovery—Purpose. (1) The governor may request the Washington academy of sciences, when organized pursuant to chapter 305, Laws of 2005, to impanel an independent science panel on salmon recovery to respond to requests for review pursuant to subsection (2) of this section. The panel shall reflect expertise in habitat requirements of salmon, protection and restoration of salmon populations, artificial propagation of salmon, hydrology, or geomorphology.

Based upon available funding, the governor's salmon recovery office may contract for services of the independent science panel for compensation under chapter 39.29 RCW.

(2) The independent science panel shall be governed by guidelines and practices governing the activities of the Washington academy of sciences. The purpose of the independent science panel is to help ensure that sound science is used in salmon recovery efforts. The governor's salmon recovery office may, during the time it is constituted, request that the panel review, investigate, and provide its findings on scientific questions relating to the state's salmon recovery efforts. The science panel does not have the authority to review individual projects or habitat project lists developed under RCW 77.85.050 or 77.85.060 or to make policy decisions. The panel shall submit its findings and recommendations under this subsection to the legislature and the governor. [2007 c 444 § 4; 2005 c 309 § 5; 2000 c 107 § 94; 1999 sp.s. c 13 § 10; 1998 c 246 § 6. Formerly RCW 75.46.050.]

Severability—Effective date—1999 sp.s. c 13: See notes following RCW 77.85.005.

77.85.090 Southwest Washington salmon recovery region—Created—Recognition as a regional recovery organization—Puget Sound salmon recovery organizations. (1) The southwest Washington salmon recovery region, whose boundaries are provided in chapter 60, Laws of 1998, is created.

(2) Lead entities within a salmon recovery region that agree to form a regional salmon recovery organization may be recognized by the governor's salmon recovery office created in RCW 77.85.030, during the time it is constituted, as a regional recovery organization. The regional recovery organization may plan, coordinate, and monitor the implementation of a regional recovery plan in accordance with RCW 77.85.150. Regional recovery organizations existing as of July 24, 2005, that have developed draft recovery plans approved by the governor's salmon recovery office by July 1, 2005, may continue to plan, coordinate, and monitor the implementation of regional recovery plans.

(3) Beginning January 1, 2008, the leadership council, created under chapter 90.71 RCW, shall serve as the regional salmon recovery organization for Puget Sound salmon species, except for the program known as the Hood Canal summer chum evolutionarily significant unit area, which the Hood Canal coordinating council shall continue to administer under chapter 90.88 RCW. [2007 c 444 § 5; 2007 c 341 § 49; 2005 c 309 § 7; 2000 c 107 § 99; 1998 c 246 § 12. Formerly RCW 75.46.110.]

Reviser's note: This section was amended by 2007 c 341 § 49 and by 2007 c 444 § 5, each without reference to the other. Both amendments are incorporated in the publication of this section under RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

Severability—Effective date—2007 c 341: See RCW 90.71.906 and 90.71.907.

77.85.110 Salmon recovery funding board—Creation—Membership. (1) The salmon recovery funding board is created consisting of ten members.

(2) Five members of the board shall be voting members who are appointed by the governor, subject to confirmation by the senate. One of these voting members shall be a cabi-

net-level appointment as the governor's representative to the board. Board members who represent the general public shall not have a financial or regulatory interest in salmon recovery. The governor shall appoint one of the general public members of the board as the chair. The voting members of the board shall be appointed for terms of four years, except that two members initially shall be appointed for terms of two years and three members shall initially be appointed for terms of three years. In making the appointments, the governor shall seek a board membership that collectively provide the expertise necessary to provide strong fiscal oversight of salmon recovery expenditures, and that provide extensive knowledge of local government processes and functions and an understanding of issues relevant to salmon recovery in Washington state. The governor shall appoint at least three of the voting members of the board no later than ninety days after July 1, 1999. Vacant positions on the board shall be filled in the same manner as the original appointments. The governor may remove members of the board for good cause.

In addition to the five voting members of the board, the following five state officials shall serve as ex officio nonvoting members of the board: The director of the department of fish and wildlife, the executive director of the conservation commission, the secretary of transportation, the director of the department of ecology, and the commissioner of public lands. The state officials serving in an ex officio capacity may designate a representative of their respective agencies to serve on the board in their behalf. Such designations shall be made in writing and in such manner as is specified by the board.

(3) Staff support to the board shall be provided by the recreation and conservation office. For administrative purposes, the board shall be located with the recreation and conservation office.

(4) Members of the board who do not represent state agencies shall be compensated as provided by RCW 43.03.250. Members of the board shall be reimbursed for travel expenses as provided by RCW 43.03.050 and 43.03.060. [2007 c 241 § 20; 1999 sp.s. c 13 § 3. Formerly RCW 75.46.150.]

Intent—Effective date—2007 c 241: See notes following RCW 79A.25.005.

Severability—Effective date—1999 sp.s. c 13: See notes following RCW 77.85.005.

77.85.120 Board responsibilities—Grants and loans administration assistance. (1) The salmon recovery funding board is responsible for making grants and loans for salmon habitat projects and salmon recovery activities from the amounts appropriated to the board for this purpose. To accomplish this purpose the board may:

(a) Provide assistance to grant applicants regarding the procedures and criteria for grant and loan awards;

(b) Make and execute all manner of contracts and agreements with public and private parties as the board deems necessary, consistent with the purposes of this chapter;

(c) Accept any gifts, grants, or loans of funds, property, or financial or other aid in any form from any other source on any terms that are not in conflict with this chapter;

(d) Adopt rules under chapter 34.05 RCW as necessary to carry out the purposes of this chapter; and

(e) Do all acts and things necessary or convenient to carry out the powers expressly granted or implied under this chapter.

(2) The recreation and conservation office shall provide all necessary grants and loans administration assistance to the board, and shall distribute funds as provided by the board in RCW 77.85.130. [2007 c 241 § 21; 2000 c 107 § 101; 1999 sp.s. c 13 § 4. Formerly RCW 75.46.160.]

Intent—Effective date—2007 c 241: See notes following RCW 79A.25.005.

Severability—Effective date—1999 sp.s. c 13: See notes following RCW 77.85.005.

77.85.130 Allocation of funds—Procedures and criteria. (1) The salmon recovery funding board shall develop procedures and criteria for allocation of funds for salmon habitat projects and salmon recovery activities on a statewide basis to address the highest priorities for salmon habitat protection and restoration. To the extent practicable the board shall adopt an annual allocation of funding. The allocation should address both protection and restoration of habitat, and should recognize the varying needs in each area of the state on an equitable basis. The board has the discretion to partially fund, or to fund in phases, salmon habitat projects. The board may annually establish a maximum amount of funding available for any individual project, subject to available funding. No projects required solely as a mitigation or a condition of permitting are eligible for funding.

(2)(a) In evaluating, ranking, and awarding funds for projects and activities the board shall give preference to projects that:

(i) Are based upon the limiting factors analysis identified under RCW 77.85.060;

(ii) Provide a greater benefit to salmon recovery based upon the stock status information contained in the department of fish and wildlife salmonid stock inventory (SASSI), the salmon and steelhead habitat inventory and assessment project (SSHAP), and any comparable science-based assessment when available;

(iii) Will benefit listed species and other fish species;

(iv) Will preserve high quality salmonid habitat;

(v) Are included in a regional or watershed-based salmon recovery plan that accords the project, action, or area a high priority for funding;

(vi) Are, except as provided in RCW 77.85.240, sponsored by an entity that is a Puget Sound partner, as defined in RCW 90.71.010; and

(vii) Are projects referenced in the action agenda developed by the Puget Sound partnership under RCW 90.71.310.

(b) In evaluating, ranking, and awarding funds for projects and activities the board shall also give consideration to projects that:

(i) Are the most cost-effective;

(ii) Have the greatest matched or in-kind funding;

(iii) Will be implemented by a sponsor with a successful record of project implementation;

(iv) Involve members of the veterans conservation corps established in RCW 43.60A.150; and

(v) Are part of a regionwide list developed by lead entities.

(3) The board may reject, but not add, projects from a habitat project list submitted by a lead entity for funding.

(4) The board shall establish criteria for determining when block grants may be made to a lead entity. The board may provide block grants to the lead entity to implement habitat project lists developed under RCW 77.85.050, subject to available funding. The board shall determine an equitable minimum amount of project funds for each recovery region, and shall distribute the remainder of funds on a competitive basis. The board may also provide block grants to the lead entity or regional recovery organization to assist in carrying out functions described under this chapter. Block grants must be expended consistent with the priorities established for the board in subsection (2) of this section. Lead entities or regional recovery organizations receiving block grants under this subsection shall provide an annual report to the board summarizing how funds were expended for activities consistent with this chapter, including the types of projects funded, project outcomes, monitoring results, and administrative costs.

(5) The board may waive or modify portions of the allocation procedures and standards adopted under this section in the award of grants or loans to conform to legislative appropriations directing an alternative award procedure or when the funds to be awarded are from federal or other sources requiring other allocation procedures or standards as a condition of the board's receipt of the funds. The board shall develop an integrated process to manage the allocation of funding from federal and state sources to minimize delays in the award of funding while recognizing the differences in state and legislative appropriation timing.

(6) The board may award a grant or loan for a salmon recovery project on private or public land when the landowner has a legal obligation under local, state, or federal law to perform the project, when expedited action provides a clear benefit to salmon recovery, and there will be harm to salmon recovery if the project is delayed. For purposes of this subsection, a legal obligation does not include a project required solely as a mitigation or a condition of permitting.

(7) Property acquired or improved by a project sponsor may be conveyed to a federal agency if: (a) The agency agrees to comply with all terms of the grant or loan to which the project sponsor was obligated; or (b) the board approves: (i) Changes in the terms of the grant or loan, and the revision or removal of binding deed of right instruments; and (ii) a memorandum of understanding or similar document ensuring that the facility or property will retain, to the extent feasible, adequate habitat protections; and (c) the appropriate legislative authority of the county or city with jurisdiction over the project area approves the transfer and provides notification to the board.

(8) Any project sponsor receiving funding from the salmon recovery funding board that is not subject to disclosure under chapter 42.56 RCW must, as a mandatory contractual prerequisite to receiving the funding, agree to disclose any information in regards to the expenditure of that funding as if the project sponsor was subject to the requirements of chapter 42.56 RCW.

(9) After January 1, 2010, any project designed to address the restoration of Puget Sound may be funded under this chapter only if the project is not in conflict with the

action agenda developed by the Puget Sound partnership under RCW 90.71.310. [2007 c 341 § 36; 2007 c 257 § 1. Prior: 2005 c 309 § 8; 2005 c 271 § 1; 2005 c 257 § 3; prior: 2000 c 107 § 102; 2000 c 15 § 1; 1999 sp.s. c 13 § 5. Formerly RCW 75.46.170.]

Reviser's note: This section was amended by 2007 c 257 § 1 and by 2007 c 341 § 36, each without reference to the other. Both amendments are incorporated in the publication of this section under RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

Severability—Effective date—2007 c 341: See RCW 90.71.906 and 90.71.907.

Findings—Purpose—2005 c 257: See note following RCW 43.60A.150.

Severability—Effective date—1999 sp.s. c 13: See notes following RCW 77.85.005.

77.85.140 Habitat project lists—Tracking of funds—Report. (1) Habitat project lists shall be submitted to the salmon recovery funding board for funding at least once a year on a schedule established by the board. The board shall provide the legislature with a list of the proposed projects and a list of the projects funded by October 1st of each year for informational purposes. Project sponsors who complete salmon habitat projects approved for funding from habitat project lists and have met grant application deadlines will be paid by the salmon recovery funding board within thirty days of project completion.

(2) The recreation and conservation office shall track all funds allocated for salmon habitat projects and salmon recovery activities on behalf of the board, including both funds allocated by the board and funds allocated by other state or federal agencies for salmon recovery or water quality improvement.

(3) Beginning in December 2000, the board shall provide a biennial report to the governor and the legislature on salmon recovery expenditures. This report shall be coordinated with the state of the salmon report required under RCW 77.85.020. [2007 c 241 § 22; 2001 c 303 § 1; 2000 c 107 § 103; 1999 sp.s. c 13 § 6. Formerly RCW 75.46.180.]

Intent—Effective date—2007 c 241: See notes following RCW 79A.25.005.

Severability—Effective date—1999 sp.s. c 13: See notes following RCW 77.85.005.

77.85.150 Statewide salmon recovery strategy—Prospective application. (1) The governor shall, with the assistance of the governor's salmon recovery office, during the time it is constituted, maintain and revise, as appropriate, a statewide salmon recovery strategy.

(2) The governor and the salmon recovery office shall be guided by the following considerations in maintaining and revising the strategy:

(a) The strategy should identify statewide initiatives and responsibilities with regional recovery plans and local watershed initiatives as the principal means for implementing the strategy;

(b) The strategy should emphasize collaborative, incentive-based approaches;

(c) The strategy should address all factors limiting the recovery of Washington's listed salmon stocks, including habitat and water quality degradation, harvest and hatchery management, inadequate streamflows, and other barriers to

fish passage. Where other limiting factors are beyond the state's jurisdictional authorities to respond to, such as some natural predators and high seas fishing, the strategy shall include the state's requests for federal action to effectively address these factors;

(d) The strategy should identify immediate actions necessary to prevent extinction of a listed salmon stock, establish performance measures to determine if restoration efforts are working, recommend effective monitoring and data management, and recommend to the legislature clear and certain measures to be implemented if performance goals are not met;

(e) The strategy shall rely on the best scientific information available and provide for incorporation of new information as it is obtained;

(f) The strategy should seek a fair allocation of the burdens and costs upon economic and social sectors of the state whose activities may contribute to limiting the recovery of salmon; and

(g) The strategy should seek clear measures and procedures from the appropriate federal agencies for removing Washington's salmon stocks from listing under the federal act.

(3) If the strategy is updated, an active and thorough public involvement process, including early and meaningful opportunity for public comment, must be utilized. In obtaining public comment, the governor's salmon recovery office shall work with regional salmon recovery organizations throughout the state and shall encourage regional and local recovery planning efforts to ensure an active public involvement process.

(4) This section shall apply prospectively only and not retroactively. Nothing in this section shall be construed to invalidate actions taken in recovery planning at the local, regional, or state level prior to July 1, 1999. [2007 c 444 § 6; 2005 c 309 § 9; 1999 sp.s. c 13 § 9. Formerly RCW 75.46.190.]

Severability—Effective date—1999 sp.s. c 13: See notes following RCW 77.85.005.

77.85.240 Puget Sound partners. When administering funds under this chapter, the board shall give preference only to Puget Sound partners, as defined in RCW 90.71.010, in comparison to other entities that are eligible to be included in the definition of Puget Sound partner. Entities that are not eligible to be a Puget Sound partner due to geographic location, composition, exclusion from the scope of the Puget Sound action agenda developed by the Puget Sound partnership under RCW 90.71.310, or for any other reason, shall not be given less preferential treatment than Puget Sound partners. [2007 c 341 § 37.]

Severability—Effective date—2007 c 341: See RCW 90.71.906 and 90.71.907.

77.85.250 Findings—Forum on monitoring salmon recovery and watershed health—Creation—Duties—Report to the governor and legislature. (Expires June 30, 2015.) (1) The legislature finds that pursuant to chapter 298, Laws of 2001, and acting upon recommendations of the state's independent science panel, the monitoring oversight committee developed recommendations for a comprehensive

statewide strategy for monitoring watershed health, with a focus upon salmon recovery, entitled *The Washington Comprehensive Monitoring Strategy and Action Plan for Watershed Health and Salmon Recovery*. The legislature further finds that funding to begin implementing the strategy and action plan was provided in the 2003-2005 biennial budget, and that executive order 04-03 was issued to coordinate state agency implementation activities. It is therefore the purpose of this section to adopt the strategy and action plan and to provide guidance to ensure that the coordination activities directed by executive order 04-03 are effectively carried out.

(2) The forum on monitoring salmon recovery and watershed health is created. The governor shall appoint a person with experience and expertise in natural resources and environmental quality monitoring to chair the forum. The chair shall serve four-year terms and may serve successive terms. The forum shall include representatives of the following state agencies and regional entities that have responsibilities related to monitoring of salmon recovery and watershed health:

- (a) Department of ecology;
- (b) Salmon recovery funding board;
- (c) Salmon recovery office;
- (d) Department of fish and wildlife;
- (e) Department of natural resources;
- (f) Puget Sound action team, or a successor state agency;
- (g) Conservation commission;
- (h) Department of agriculture;
- (i) Department of transportation; and
- (j) Each of the regional salmon recovery organizations.

(3) The forum on monitoring salmon recovery and watershed health shall provide a multiagency venue for coordinating technical and policy issues and actions related to monitoring salmon recovery and watershed health.

(4) The forum on monitoring salmon recovery and watershed health shall recommend a set of measures for use by the governor's salmon recovery office in the state of the salmon report to convey results and progress on salmon recovery and watershed health in ways that are easily understood by the general public.

(5) The forum on monitoring salmon recovery and watershed health shall invite the participation of federal, tribal, regional, and local agencies and entities that carry out salmon recovery and watershed health monitoring, and work toward coordination and standardization of measures used.

(6) The forum on monitoring salmon recovery and watershed health shall periodically report to the governor and the appropriate standing committees of the senate and house of representatives on the forum's activities and recommendations for improving monitoring programs by state agencies, coordinating with the governor's salmon recovery office biennial report as required by RCW 77.85.020.

(7) The forum shall review pilot monitoring programs including those that integrate (a) data collection, management, and access; and (b) information regarding habitat projects and project management.

(8) The forum on monitoring salmon recovery and watershed health shall review and make recommendations to the office of financial management and the appropriate legislative committees on agency budget requests related to monitoring salmon recovery and watershed health. These recom-

mendations must be made no later than September 15th of each year. The goal of this review is to prioritize and integrate budget requests across agencies.

(9) This section expires June 30, 2015. [2007 c 444 § 8.]

Chapter 77.115 RCW

AQUACULTURE DISEASE CONTROL

Sections

77.115.040 Registration of aquatic farmers.

77.115.040 Registration of aquatic farmers. (1) All aquatic farmers, as defined in RCW 15.85.020, shall register with the department. The director shall assign each aquatic farm a unique registration number and develop and maintain in an electronic database a registration list of all aquaculture farms. The department shall establish procedures to annually update the aquatic farmer information contained in the registration list. The department shall coordinate with the department of health using shellfish growing area certification data when updating the registration list.

(2) Registered aquaculture farms shall provide the department with the following information:

- (a) The name of the aquatic farmer;
- (b) The address of the aquatic farmer;
- (c) Contact information such as telephone, fax, web site, and e-mail address, if available;
- (d) The number and location of acres under cultivation, including a map displaying the location of the cultivated acres;
- (e) The name of the landowner of the property being cultivated or otherwise used in the aquatic farming operation;
- (f) The private sector cultured aquatic product being propagated, farmed, or cultivated; and
- (g) Statistical production data.

(3) The state veterinarian shall be provided with registration and statistical data by the department. [2007 c 216 § 6; 1993 sp.s. c 2 § 58; 1988 c 36 § 45; 1985 c 457 § 11. Formerly RCW 75.58.040.]

Effective date—1993 sp.s. c 2 §§ 1-6, 8-59, and 61-79: See RCW 43.300.900.

Severability—1993 sp.s. c 2: See RCW 43.300.901.

Chapter 77.120 RCW

BALLAST WATER MANAGEMENT

Sections

77.120.010 Definitions.
 77.120.020 Application of chapter.
 77.120.030 Authorized ballast water discharge—Adoption of standards by rule.
 77.120.060 Repealed.
 77.120.070 Violation of chapter—Penalties—Rules.
 77.120.080 Repealed.
 77.120.090 Repealed.
 77.120.100 Department may assess fee for exemptions—Rules.
 77.120.110 Ballast water management account.
 77.120.120 Special operating authorization—Rules.

77.120.010 Definitions. The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

(1) "Ballast tank" means any tank or hold on a vessel used for carrying ballast water, whether or not the tank or hold was designed for that purpose.

(2) "Ballast water" means any water and matter taken on board a vessel to control or maintain trim, draft, stability, or stresses of the vessel, without regard to the manner in which it is carried.

(3) "Empty/refill exchange" means to pump out, until the tank is empty or as close to empty as the master or operator determines is safe, the ballast water taken on in ports, estuarine, or territorial waters, and then refilling the tank with open sea waters.

(4) "Exchange" means to replace the water in a ballast tank using either flow through exchange, empty/refill exchange, or other exchange methodology recommended or required by the United States coast guard.

(5) "Flow through exchange" means to flush out ballast water by pumping in midocean water at the bottom of the tank and continuously overflowing the tank from the top until three full volumes of water have been changed to minimize the number of original organisms remaining in the tank.

(6) "Nonindigenous species" means any species or other viable biological material that enters an ecosystem beyond its natural range.

(7) "Open sea exchange" means an exchange that occurs fifty or more nautical miles offshore. If the United States coast guard requires a vessel to conduct an exchange further offshore, then that distance is the required distance for purposes of compliance with this chapter.

(8) "Recognized marine trade association" means those trade associations in Washington state that promote improved ballast water management practices by educating their members on the provisions of this chapter, participating in regional ballast water coordination through the Pacific ballast water group, assisting the department in the collection of ballast water exchange forms, and the monitoring of ballast water. This includes members of the Puget Sound marine committee for Puget Sound and the Columbia river steamship operators association for the Columbia river.

(9) "Sediments" means any matter settled out of ballast water within a vessel.

(10) "Untreated ballast water" includes exchanged or unexchanged ballast water that has not undergone treatment.

(11) "Vessel" means a ship, boat, barge, or other floating craft of three hundred gross tons or more, United States and foreign, carrying, or capable of carrying, ballast water into the coastal waters of the state after operating outside of the coastal waters of the state, except those vessels described in RCW 77.120.020.

(12) "Voyage" means any transit by a vessel destined for any Washington port.

(13) "Waters of the state" means any surface waters, including internal waters contiguous to state shorelines within the boundaries of the state. [2007 c 350 § 8; 2000 c 108 § 2.]

77.120.020 Application of chapter. (1) This chapter applies to all vessels transiting into the waters of the state from a voyage, except:

(a) A vessel of the United States department of defense or United States coast guard subject to the requirements of

section 1103 of the national invasive species act of 1996, or any vessel of the armed forces, as defined in 33 U.S.C. Sec. 1322(a)(14), that is subject to the uniform national discharge standards for vessels of the armed forces under 33 U.S.C. Sec. 1322(n);

(b) A vessel that discharges ballast water or sediments only at the location where the ballast water or sediments originated, if the ballast water or sediments do not mix with ballast water or sediments from areas other than open sea waters; and

(c) A vessel in innocent passage, merely traversing the territorial sea of the United States and not entering or departing a United States port, or not navigating the internal waters of the United States, and that does not discharge ballast water into the waters of the state.

(2) This chapter does not authorize the discharge of oil or noxious liquid substances in a manner prohibited by state, federal, or international laws or regulations. Ballast water containing oil, noxious liquid substances, or any other pollutant shall be discharged in accordance with the applicable requirements.

(3) The master or operator in charge of a vessel is responsible for the safety of the vessel, its crew, and its passengers. Nothing in this chapter relieves the master or operator in charge of a vessel of the responsibility for ensuring the safety and stability of the vessel or the safety of the crew and passengers. [2007 c 350 § 9; 2000 c 108 § 3.]

77.120.030 Authorized ballast water discharge—Adoption of standards by rule. (1) The owner or operator in charge of any vessel covered by this chapter is required to ensure that the vessel under their ownership or control does not discharge ballast water into the waters of the state except as authorized by this section.

(2) Discharge of ballast water into waters of the state is authorized only if there has been an open sea exchange, or if the vessel has treated its ballast water, to meet standards set by the department consistent with applicable state and federal laws. (3) The department, in consultation with the *ballast water work group, or similar collaborative forum, shall adopt by rule standards for the discharge of ballast water into the waters of the state and their implementation timelines. The standards are intended to ensure that the discharge of ballast water poses minimal risk of introducing nonindigenous species. In developing these standards, the department shall consider the extent to which the requirement is technologically and practically feasible. Where practical and appropriate, the standards must be compatible with standards set by the United States coast guard, the federal clean water act (33 U.S.C. Sec. 1251-1387), or the international maritime organization.

(4) The master, operator, or person in charge of a vessel is not required to conduct an open sea exchange or treatment of ballast water if the master, operator, or person in charge of a vessel determines that the operation would threaten the safety of the vessel, its crew, or its passengers, because of adverse weather, vessel design limitations, equipment failure, or any other extraordinary conditions. A master, operator, or person in charge of a vessel who relies on this exemption must file documentation defined by the department, subject to: (a) Payment of a fee not to exceed five thousand dollars;

(b) discharging only the minimal amount of ballast water operationally necessary; (c) ensuring that ballast water records accurately reflect any reasons for not complying with the mandatory requirements; and (d) any other requirements identified by the department by rule as provided in subsections (3) and (6) of this section.

(5) For treatment technologies requiring shipyard modification, the department may enter into a compliance plan with the vessel owner. The compliance plan must include a timeline consistent with drydock and shipyard schedules for completion of the modification. The department shall adopt rules for compliance plans under this subsection.

(6) For an exemption claimed in subsection (4) of this section, the department shall adopt rules for defining exemption conditions, requirements, compliance plans, or alternative ballast water management strategies to meet the intent of this section.

(7) The department shall make every effort to align ballast water standards with adopted international and federal standards while ensuring that the goals of this chapter are met.

(8) The requirements of this section do not apply to a vessel discharging ballast water or sediments that originated solely within the waters of Washington state, the Columbia river system, or the internal waters of British Columbia south of latitude fifty degrees north, including the waters of the Straits of Georgia and Juan de Fuca.

(9) Open sea exchange is an exchange that occurs fifty or more nautical miles offshore. If the United States coast guard requires a vessel to conduct an exchange further offshore, then that distance is the required distance for purposes of compliance with this chapter. [2007 c 350 § 10; 2004 c 227 § 3; 2002 c 282 § 2; 2000 c 108 § 4.]

***Reviser's note:** The ballast water work group expired June 30, 2007, pursuant to 2004 c 227 § 2.

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

77.120.070 Violation of chapter—Penalties—Rules.

(1) The department may establish by rule schedules for any penalty allowed in this chapter. The schedules may provide for the incremental assessment of a penalty based on criteria established by rule.

(2) The director or the director's designee may impose a civil penalty or warning for a violation of the requirements of this chapter on the owner or operator in charge of a vessel who fails to comply with the requirements imposed under RCW 77.120.030 and 77.120.040. The penalty shall not exceed twenty-seven thousand five hundred dollars for each day of a continuing violation. In determining the amount of a civil penalty, the department shall set standards by rule that consider if the violation was intentional, negligent, or without any fault, and shall consider the quality and nature of risks created by the violation. The owner or operator subject to such a penalty may contest the determination by requesting an adjudicative proceeding within twenty days. Any determination not timely contested is final and may be reduced to a judgment enforceable in any court with jurisdiction. If the department prevails using any judicial process to collect a

penalty under this section, the department shall also be awarded its costs and reasonable attorneys' fees.

(3) The department, in cooperation with the United States coast guard, may enforce the requirements of this chapter. [2007 c 350 § 12; 2000 c 108 § 8.]

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

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

77.120.100 Department may assess fee for exemptions—Rules. The department may assess a fee for any exemptions allowed under this chapter. Such a fee may not exceed five thousand dollars. The department may establish by rule schedules for any fee allowed in this chapter. The schedules may provide for the incremental assessment of a penalty based on criteria established by rule. [2007 c 350 § 13.]

77.120.110 Ballast water management account. (1) The ballast water management account is created in the state treasury. All receipts from legislative appropriations, gifts, grants, donations, penalties, and fees received under this chapter must be deposited into the account.

(2) Moneys in the account may be spent only after appropriation. Expenditures from the account may be used only to carry out the purposes of this chapter or support the goals of this chapter through research and monitoring except:

(a) Expenditures may not be used for the salaries of permanent department employees; and

(b) Penalties deposited into the account may be used, in consultation with the *ballast water work group created in section 11 of this act, only to support basic and applied research and carry out education and outreach related to the state's ballast water management. [2007 c 350 § 14.]

***Reviser's note:** Section 11 of this act was vetoed by the governor. The ballast water work group expired June 30, 2007, pursuant to 2004 c 227 § 2.

77.120.120 Special operating authorization—Rules. The department may issue a special operating authorization for passenger vessels conducting or assisting in research and testing activities to determine the presence of invasive species in ballast water collected in the waters of southeast Alaska north of latitude fifty-four degrees thirty minutes north to sixty-one degrees ten minutes north, extending to longitude one hundred forty-nine degrees thirty minutes west. Such testing and research shall be reviewed by the *ballast water work group, who may make recommendations to the department. The department may adopt rules for defining special operating authorization conditions, requirements, limitations, and fees as necessary to implement this section, consistent with the intent of this chapter. [2007 c 350 § 15.]

***Reviser's note:** The ballast water work group expired June 30, 2007, pursuant to 2004 c 227 § 2.

Title 78

MINES, MINERALS, AND PETROLEUM

Chapters

78.44 Surface mining.

78.60 Geothermal resources.

Chapter 78.44 RCW
SURFACE MINING

Sections

78.44.190	Deficiencies—Order to rectify—Time extension.
78.44.210	Suspension of a reclamation permit.
78.44.370	Notice of correction.
78.44.380	Stop work orders.
78.44.390	Cancellation of a reclamation permit.

78.44.190 Deficiencies—Order to rectify—Time extension. (1) The department may issue an order to rectify deficiencies to the following: (a) Any permit holder, miner, or other person who authorizes, directs, violates, or who directly benefits by contracting with or employing another to violate this chapter, the rules adopted by the department, a reclamation permit, or a reclamation plan; or (b) a permit holder whose surface mine is out of compliance with the provisions of this chapter, the rules adopted by the department, or the permit holder's current and valid reclamation permit or reclamation plan.

(2) The order shall describe the deficiencies and shall initially require the order recipient to correct all deficiencies by a date that is no later than sixty days after the department's issuance of the order. The department may extend the period to correct deficiencies for delays clearly beyond the order recipient's control, but only when the person is, in the opinion of the department, making every reasonable effort to comply. This order becomes final and effective after being upheld upon completion of all administrative and judicial review proceedings or following notice and a failure to timely request a hearing. [2007 c 192 § 2; 1993 c 518 § 26.]

Captions—Severability—Effective date—1993 c 518: See notes following RCW 78.44.010.

78.44.210 Suspension of a reclamation permit. The department, through the state geologist or assistant state geologist, may suspend a reclamation permit whenever a permit holder or surface mine is out of compliance with a final department order. The suspension order must be served on the permit holder by certified mail with return receipt requested or by personal service. The order must specify the final order alleged to be violated, the facts upon which the conclusion of violation is based, and the conclusions of law. This order becomes final and effective after being upheld upon completion of all administrative review proceedings or following notice and a failure to timely request a hearing. No surface mining or reclamation may occur while a permit is suspended unless under the express written authority of the department. [2007 c 192 § 5; 1993 c 518 § 28.]

Captions—Severability—Effective date—1993 c 518: See notes following RCW 78.44.010.

78.44.370 Notice of correction. (1) The department may issue a notice of correction to the following: (a) Any permit holder, miner, or other person who authorizes, directs, violates, or who directly benefits by contracting with or employing another to violate this chapter, the rules adopted by the department, a reclamation permit, or a reclamation plan; or (b) a permit holder whose surface mine is out of compliance with the provisions of this chapter, the rules adopted by the department, or the permit holder's current or valid reclamation permit or reclamation plan. The department's authority to issue or its issuance of a notice of correction does not limit the department's authority to pursue enforcement actions, except as stated in other laws.

(2) The notice of correction must describe the items that need correction and must provide a reasonable time for the recipient to make corrections. The notice of correction must identify when, where, and to whom a request to extend the time to achieve compliance may be filed. The department may grant an extension when there is good cause for the request. This notice of correction is not an enforcement action and is not subject to administrative or judicial appeal. [2007 c 192 § 1.]

78.44.380 Stop work orders. (1) The department may issue an order to stop all surface mining to any permit holder, miner, or other person who authorizes, directs, or conducts such activities without a valid surface mine reclamation permit. This order is effective upon issuance unless otherwise stated in the order. Administrative appeal of the order to stop work does not stay the stop work requirement. The department shall notify the local jurisdiction of record when a stop work order has been issued for operating without a valid reclamation permit.

(2) The department may issue an order to stop surface mining occurring outside of any permit area to a permit holder that does not have a legal right to occupy the affected area. This order is effective upon issuance unless otherwise stated in the order. An administrative appeal of the order to stop work does not stay the stop work requirement.

(3) Where a permit holder is conducting surface mining activities outside of its permit boundary, but within land that it has the right to occupy, the department may issue an order to stop surface mining or mining-related activities occurring outside of the authorized area after the permit holder fails to comply with a notice of correction. The notice of correction must specify the corrections necessary as per the violation and provide a reasonable time to do so. This order is effective upon issuance unless otherwise stated in the order. An administrative appeal of the order to stop work does not stay the stop work requirement.

(4) Stop work orders must be in writing, delivered by United States certified mail with return receipt requested, facsimile, or by hand to the permit holder of record. The order must state the facts supporting the violation, the law being violated, and the specific activities being stopped. Stop work orders must be signed by the state geologist or an assistant state geologist. The department shall proceed as quickly as feasible to complete any requested adjudicative proceedings unless the parties stipulate to an appeal timeline or the department's stop work order states that it is not effective until after the administrative review process. If the recipient appeals the

order, the recipient may file a motion for stay with the presiding officer, which will be reviewed under preliminary injunction standards. [2007 c 192 § 3.]

78.44.390 Cancellation of a reclamation permit. (1) In addition to the department's other authority to cancel a reclamation permit, a permit holder may seek cancellation of its reclamation permit in favor of a local development or construction permit. A permit holder may request cancellation of its reclamation permit and release of its performance security when:

(a) The permit holder has received an approved development or construction permit covering all of the existing permit area from a local jurisdiction;

(b) The local jurisdiction and the landowner agree with the permit holder's request to cancel the reclamation permit and to release the performance security; and

(c) The local jurisdiction provides assurance in writing that the construction or development permit is being actively implemented by the permit holder.

(2) The department is not responsible for overseeing a site's development or reclamation when a reclamation permit is cancelled under this section. [2007 c 192 § 4.]

Chapter 78.60 RCW GEOTHERMAL RESOURCES

Sections

78.60.070	Drilling permits—Applications—Hearing—Fees.
78.60.100	Plugging and abandonment of wells or core holes—Transfer of jurisdiction to department of ecology.
78.60.130	Performance bond or other security—Required.
78.60.200	Drilling records, etc., to be maintained—Inspection—Filing.
78.60.210	Filing of logs and surveys with department upon completion, plugging, abandonment, or suspension of operations.
78.60.230	Confidentiality of records—Preservation in an electronic data system.

78.60.070 Drilling permits—Applications—Hearing—Fees. (1) Any person proposing to drill a well or redrill an abandoned well for geothermal resources shall file with the department a written application for a permit to commence such drilling or redrilling on a form prescribed by the department accompanied by a permit fee of two hundred dollars. The department shall forward a duplicate copy to the department of ecology within ten days of filing.

(2) Upon receipt of a proper application relating to drilling or redrilling the department shall set a date, time, and place for a public hearing on the application, which hearing shall be in the county in which the drilling or redrilling is proposed to be made, and shall instruct the applicant to publish notices of such application and hearing by such means and within such time as the department shall prescribe. The department shall require that the notice so prescribed shall be published twice in a newspaper of general circulation within the county in which the drilling or redrilling is proposed to be made and in such other appropriate information media as the department may direct.

(3) Any person proposing to drill a core hole for the purpose of gathering geothermal data, including but not restricted to heat flow, temperature gradients, and rock conductivity, shall be required to obtain a single permit for each

core hole according to subsection (1) of this section, including a permit fee for each core hole, but no notice need be published, and no hearing need be held. Such core holes that penetrate more than seven hundred and fifty feet into bedrock shall be deemed geothermal test wells and subject to the payment of a permit fee and to the requirement in subsection (2) of this section for public notices and hearing. In the event geothermal energy is discovered in a core hole, the hole shall be deemed a geothermal well and subject to the permit fee, notices, and hearing. Such core holes as described by this subsection are subject to all other provisions of this chapter, including a bond or other security as specified in RCW 78.60.130.

(4) All moneys paid to the department under this section shall be deposited with the state treasurer for credit to the general fund. [2007 c 338 § 1; 1974 ex.s. c 43 § 7. Formerly RCW 79.76.070.]

78.60.100 Plugging and abandonment of wells or core holes—Transfer of jurisdiction to department of ecology. Any well or core hole drilled under authority of this chapter from which:

(1) It is not technologically practical to derive the energy to produce electricity commercially, or the owner or operator has no intention of deriving energy to produce electricity commercially, and

(2) Usable minerals cannot be derived, or the owner or operator has no intention of deriving usable minerals, shall be plugged and abandoned as provided in this chapter or, upon the owner's or operator's written application to the department of natural resources and with the concurrence and approval of the department of ecology, jurisdiction over the well may be transferred to the department of ecology and, in such case, the well shall no longer be subject to the provisions of this chapter but shall be subject to any applicable laws and rules relating to wells drilled for appropriation and use of ground waters. If an application is made to transfer jurisdiction, a copy of all logs, records, histories, and descriptions shall be provided to the department of ecology by the applicant. [2007 c 338 § 2; 1974 ex.s. c 43 § 10. Formerly RCW 79.76.100.]

78.60.130 Performance bond or other security—Required. Every operator who engages in the drilling, redrilling, or deepening of any well or core hole shall file with the department a reasonable bond or bonds with good and sufficient surety, or the equivalent thereof, acceptable to the department, conditioned on compliance with the provisions of this chapter and all rules and permit conditions adopted pursuant to this chapter. This performance bond shall be executed in favor of and approved by the department.

In lieu of a bond the operator may file with the department a cash deposit, negotiable securities acceptable to the department, or an assignment of a savings account in a Washington bank on an assignment form prescribed by the department. The department, in its discretion, may accept a single surety or security arrangement covering more than one well or core hole. [2007 c 338 § 3; 1974 ex.s. c 43 § 13. Formerly RCW 79.76.130.]

78.60.200 Drilling records, etc., to be maintained—Inspection—Filing. (1) The owner or operator of any well or core hole shall keep or cause to be kept careful and accurate logs, including but not restricted to heat flow, temperature gradients, and rock conductivity logs, records, descriptions, and histories of the drilling, re-drilling, or deepening of the well.

(2) All logs, including but not restricted to heat flow, temperature gradients, and rock conductivity logs, records, histories, and descriptions referred to in subsection (1) of this section shall be kept in the local office of the owner or operator, and together with other reports of the owner or operator shall be subject during business hours to inspection by the department. Each owner or operator, upon written request from the department, shall file with the department one paper and one electronic copy of the logs, including but not restricted to heat flow, temperature gradients, and rock conductivity logs, records, histories, descriptions, or other records or portions thereof pertaining to the geothermal drilling or operation underway or suspended. [2007 c 338 § 4; 1974 ex.s. c 43 § 20. Formerly RCW 79.76.200.]

78.60.210 Filing of logs and surveys with department upon completion, plugging, abandonment, or suspension of operations. Upon completion or plugging and abandonment of any well or core hole or upon the suspension of operations conducted with respect to any well or core hole for a period of at least six months, one paper and one electronic copy of logs, including but not restricted to heat flow, temperature gradients, and rock conductivity logs, core, electric log, history, and all other logs and surveys that may have been run on the well, shall be filed with the department within thirty days after such completion, plugging and abandonment, or six months' suspension. [2007 c 338 § 5; 1974 ex.s. c 43 § 21. Formerly RCW 79.76.210.]

78.60.230 Confidentiality of records—Preservation in an electronic data system. (1) The records of any owner or operator, when filed with the department as provided in this chapter, shall be confidential and shall be open to inspection only to personnel of the department for the purpose of carrying out the provisions of this chapter and to those authorized in writing by such owner or operator, until the expiration of a twenty-four month confidential period to begin at the date of commencement of production or of abandonment of the well or core hole. After expiration of the twenty-four month confidential period, the department shall ensure all logs and surveys that may have been run on the well or core hole are preserved in an electronic data system and made available to the public.

(2) Such records shall in no case, except as provided in this chapter, be available as evidence in court proceedings. No officer, employee, or member of the department shall be allowed to give testimony as to the contents of such records, except as provided in this chapter for the review of a decision of the department or in any proceeding initiated for the enforcement of an order of the department, for the enforcement of a lien created by the enforcement of this chapter, or for use as evidence in criminal proceedings arising out of such records or the statements upon which they are based.

[2007 c 338 § 6; 1974 ex.s. c 43 § 23. Formerly RCW 79.76.230.]

Title 79

PUBLIC LANDS

Chapters

- 79.10** Land management authorities and policies.
- 79.11** State land sales.
- 79.13** Land leases.
- 79.15** Sale of valuable materials.
- 79.17** Land transfers.
- 79.22** Acquisition, management, and disposition of state forest lands.
- 79.64** Funds for managing and administering lands.
- 79.70** Natural area preserves.
- 79.100** Derelict vessels.
- 79.105** Aquatic lands—General.
- 79.135** Aquatic lands—Oysters, geoducks, shellfish, other aquacultural uses, and marine aquatic plants.

Chapter 79.10 RCW

LAND MANAGEMENT AUTHORITIES AND POLICIES

Sections

- 79.10.140 Outdoor recreation—Construction, operation, and maintenance of primitive facilities—Right-of-way and public access—Use of state and federal outdoor recreation funds.

79.10.140 Outdoor recreation—Construction, operation, and maintenance of primitive facilities—Right-of-way and public access—Use of state and federal outdoor recreation funds. The department is authorized:

(1) To construct, operate, and maintain primitive outdoor recreation and conservation facilities on lands under its jurisdiction which are of primitive character when deemed necessary by the department to achieve maximum effective development of such lands and resources consistent with the purposes for which the lands are held. This authority shall be exercised only after review by the recreation and conservation funding board and determination by the recreation and conservation funding board that the department is the most appropriate agency to undertake such construction, operation, and maintenance. Such review is not required for campgrounds designated and prepared or approved by the department;

(2) To acquire right-of-way and develop public access to lands under the jurisdiction of the department and suitable for public outdoor recreation and conservation purposes;

(3) To receive and expend funds from federal and state outdoor recreation funding measures for the purposes of this section and RCW 79A.50.110. [2007 c 241 § 23; 2003 c 334 § 122; 1987 c 472 § 13; 1986 c 100 § 51; 1967 ex.s. c 64 § 1. Formerly RCW 43.30.300.]

Intent—Effective date—2007 c 241: See notes following RCW 79A.25.005.

Intent—2003 c 334: See note following RCW 79.02.010.

Severability—1987 c 472: See RCW 79.71.900.

Construction—1967 ex.s. c 64: "Nothing in this act shall be construed as affecting the jurisdiction or responsibility of any other state or local governmental agency, except as provided in section 1 of this act." [1967 ex.s. c 64 § 4.]

Severability—1967 ex.s. c 64: "If any provision of sections 1 through 4 of this act, or its application to any person or circumstances is held invalid, the remainder of the act, or the application of the provision to other persons or circumstances is not affected." [1967 ex.s. c 64 § 3.]

Exchange of lands to secure private lands for parks and recreation purposes: RCW 79A.50.110.

Recreation and conservation funding board: Chapter 79A.25 RCW.

Chapter 79.11 RCW STATE LAND SALES

Sections

79.11.135 Notification requirements.

79.11.135 Notification requirements. Actions under this chapter are subject to the notification requirements of RCW 43.17.400. [2007 c 62 § 3.]

Finding—Intent—Severability—2007 c 62: See notes following RCW 43.17.400.

Chapter 79.13 RCW LAND LEASES

Sections

79.13.010 Lease of state lands—General.

79.13.060 Lease terms.

79.13.110 Types of lease authorization.

79.13.010 Lease of state lands—General. (1) Subject to other provisions of this chapter and subject to rules adopted by the board, the department may lease state lands for purposes it deems advisable, including, but not limited to, commercial, industrial, residential, agricultural, and recreational purposes in order to obtain a fair market rental return to the state or the appropriate constitutional or statutory trust, and if the lease is in the best interest of the state or affected trust.

(2) Notwithstanding any provision in this chapter to the contrary, in leases for residential purposes, the board may waive or modify any conditions of the lease if the waiver or modification is necessary to enable any federal agency or lending institution authorized to do business in this state or elsewhere in the United States to participate in any loan secured by a security interest in a leasehold interest.

(3) Any land granted to the state by the United States may be leased for any lawful purpose in such minimum acreage as may be fixed by the department.

(4) The department shall exercise general supervision and control over the lease of state lands for any lawful purpose.

(5) State lands leased or for which permits are issued or contracts are entered into for the prospecting and extraction of valuable materials, coal, oil, gas, or other hydrocarbons are subject to the provisions of chapter 79.14 RCW.

(6) The department may also lease or lease development rights on state lands held for the benefit of the common schools to public agencies, as defined in RCW 79.17.200.

[2007 RCW Supp—page 974]

[2007 c 504 § 1; 2003 c 334 § 366; 1984 c 222 § 12; 1979 ex.s. c 109 § 10. Formerly RCW 79.01.242.]

Reviser's note: This section does not apply to state tidelands, shorelands, harbor areas, and the beds of navigable waters. See RCW 79.02.095.

Savings—2007 c 504: "This act does not affect any existing right acquired or liability or obligation incurred under the sections amended or under any rule or order adopted under those sections, nor does it affect any proceeding instituted under those sections." [2007 c 504 § 4.]

Severability—2007 c 504: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [2007 c 504 § 5.]

Intent—2003 c 334: See note following RCW 79.02.010.

Severability—Effective date—1984 c 222: See RCW 79.19.900 and 79.19.901.

Severability—Effective date—1979 ex.s. c 109: See notes following RCW 79.11.040.

79.13.060 Lease terms. (1) State lands may be leased not to exceed ten years with the following exceptions:

(a) The lands may be leased for agricultural purposes not to exceed twenty-five years, except:

(i) Leases that authorize tree fruit or grape production may be for up to fifty-five years;

(ii) Share crop leases may not exceed ten years;

(b) The lands may be leased for commercial, industrial, business, or recreational purposes not to exceed fifty-five years;

(c) The lands may be leased for public school, college, or university purposes not to exceed seventy-five years;

(d) The lands may be leased for residential purposes not to exceed ninety-nine years; and

(e) The lands and development rights on state lands held for the benefit of the common schools may be leased to public agencies, as defined in RCW 79.17.200, not to exceed ninety-nine years. The leases may include provisions for renewal of lease terms.

(2) No lessee of state lands may remain in possession of the land after the termination or expiration of the lease without the written consent of the department.

(a) The department may authorize a lease extension for a specific period beyond the term of the lease for cropping improvements for the purpose of crop rotation. These improvements shall be deemed authorized improvements under RCW 79.13.030.

(b) Upon expiration of the lease term, the department may allow the lessee to continue to hold the land for a period not exceeding one year upon such rent, terms, and conditions as the department may prescribe, if the leased land is not otherwise utilized.

(c) Upon expiration of the one-year lease extension, the department may issue a temporary permit to the lessee upon terms and conditions it prescribes if the department has not yet determined the disposition of the land for other purposes.

(d) The temporary permit shall not extend beyond a five-year period.

(3) If during the term of the lease of any state lands for agricultural, grazing, commercial, residential, business, or recreational purposes, in the opinion of the department it is in the best interest of the state so to do, the department may, on the application of the lessee and in agreement with the lessee, alter and amend the terms and conditions of the lease. The

sum total of the original lease term and any extension thereof shall not exceed the limits provided in this section. [2007 c 504 § 2; 2003 c 334 § 323.]

Savings—Severability—2007 c 504: See notes following RCW 79.13.010.

Intent—2003 c 334: See note following RCW 79.02.010.

79.13.110 Types of lease authorization. (1) The department may authorize the use of state land by lease at state auction for initial leases or by negotiation for existing leases.

(2) Leases that authorize commercial, industrial, or residential uses may be entered into by public auction or negotiations at the option of the department. Negotiations are subject to rules approved by the board.

(3) Leases to public agencies, as defined in RCW 79.17.200, may be entered into by negotiations. Property subject to lease agreements under this section must be appraised at fair market value. The leases may allow for a lump sum payment for the entire term of the lease at the beginning of the lease. The department shall calculate lump sum payments using professional appraisal standards. Renewal terms for the leases must include provisions for calculating appropriate payments upon renewal. [2007 c 504 § 3; 2003 c 334 § 368.]

Savings—Severability—2007 c 504: See notes following RCW 79.13.010.

Intent—2003 c 334: See note following RCW 79.02.010.

Chapter 79.15 RCW

SALE OF VALUABLE MATERIALS

Sections

79.15.540 Intent—Contract harvesting—State trust forest land with identified forest health deficiencies.

79.15.540 Intent—Contract harvesting—State trust forest land with identified forest health deficiencies. (1) The legislature intends to ensure, to the extent feasible given all applicable trust responsibilities, that trust beneficiaries receive long-term income from timber lands through improved forest conditions and by reducing the threat of forest fire to state trust forest lands.

(2) In order to implement the intent of RCW 76.06.140, the department may initiate contract harvesting timber sales, or other silvicultural treatments when appropriate, in specific areas of state trust forest land where the department has identified forest health deficiencies as enumerated in RCW 76.06.140. All harvesting or silvicultural treatments applied under this section must be tailored to improve the health of the specific stand, must be consistent with any applicable state forest plans and other management agreements, and must comply with all applicable state and federal laws and regulations regarding the harvest of timber by the department of natural resources.

(3) In utilizing contract harvesting to address forest health issues as outlined in this section, the department shall give priority to silvicultural treatments that assist the department in meeting forest health strategies included in any management or landscape plans that exist for state forests. If such plans are not in place, the department shall prioritize silvicultural

treatments for forest health with higher priority given to the protection of public health and safety, public resources as defined in RCW 76.09.020, and the long-term asset value of the trust. [2007 c 109 § 2; 2004 c 218 § 5.]

Findings—2007 c 109: "The legislature finds that chapter 218, Laws of 2004 authorized the department of natural resources to utilize contract harvesting for silvicultural treatments to improve forest health on state trust lands, in accordance with RCW 76.06.140 and 79.15.540. The legislature further finds that the use of contract harvesting for silvicultural treatments has proven effective and that continued utilization is important to improve and maintain forest health. Therefore, the legislature finds that it is necessary to remove the expiration date for this authority, set for December 31, 2007, and to continue the use of contract harvesting for silvicultural treatments to improve forest health on state trust lands." [2007 c 109 § 1.]

Effective date—2004 c 218: See note following RCW 76.06.140.

Chapter 79.17 RCW

LAND TRANSFERS

Sections

79.17.220 Notification requirements.

79.17.220 Notification requirements. Actions under this chapter are subject to the notification requirements of RCW 43.17.400. [2007 c 62 § 4.]

Finding—Intent—Severability—2007 c 62: See notes following RCW 43.17.400.

Chapter 79.22 RCW

ACQUISITION, MANAGEMENT, AND DISPOSITION OF STATE FOREST LANDS

Sections

79.22.130 Notification requirements.

79.22.130 Notification requirements. Actions under this chapter are subject to the notification requirements of RCW 43.17.400. [2007 c 62 § 5.]

Finding—Intent—Severability—2007 c 62: See notes following RCW 43.17.400.

Chapter 79.64 RCW

FUNDS FOR MANAGING AND ADMINISTERING LANDS

Sections

79.64.040 Deductions from proceeds of all transactions authorized—Limitations.
79.64.110 Revenue distribution.

79.64.040 Deductions from proceeds of all transactions authorized—Limitations. (1) The board shall determine the amount deemed necessary in order to achieve the purposes of this chapter and shall provide by rule for the deduction of this amount from the moneys received from all leases, sales, contracts, licenses, permits, easements, and rights of way issued by the department and affecting state lands and aquatic lands, provided that no deduction shall be made from the proceeds from agricultural college lands.

(2) Moneys received as deposits from successful bidders, advance payments, and security under RCW 79.15.100, 79.15.080, and 79.11.150 prior to December 1, 1981, which

have not been subjected to deduction under this section are not subject to deduction under this section.

(3) Except as otherwise provided in subsection (5) of this section, the deductions authorized under this section shall not exceed twenty-five percent of the moneys received by the department in connection with any one transaction pertaining to state lands and aquatic lands other than second class tide and shore lands and the beds of navigable waters, and fifty percent of the moneys received by the department pertaining to second class tide and shore lands and the beds of navigable waters.

(4) In the event that the department sells logs using the contract harvesting process described in RCW 79.15.500 through 79.15.530, the moneys received subject to this section are the net proceeds from the contract harvesting sale.

(5) During the 2007-2009 fiscal biennium, the twenty-five percent limitation on deductions set in subsection (3) of this section may be increased up to thirty percent by the board, provided the total amount deducted does not exceed the total appropriations in the operating and capital budgets for the fiscal period. At the end of the fiscal period, any amounts deducted in excess of the appropriations shall be transferred to the appropriate beneficiary distribution accounts. [2007 c 522 § 958; 2005 c 518 § 945; 2004 c 199 § 227. Prior: 2003 c 334 § 522; 2003 c 313 § 8; 2001 c 250 § 16; 1999 c 279 § 2; 1981 2nd ex.s. c 4 § 3; 1971 ex.s. c 224 § 2; 1967 ex.s. c 63 § 2; 1961 c 178 § 4.]

Severability—Effective date—2007 c 522: See notes following RCW 15.64.050.

Severability—Effective date—2005 c 518: See notes following RCW 28A.305.210.

Part headings not law—2004 c 199: See note following RCW 79.02.010.

Intent—2003 c 334: See note following RCW 79.02.010.

Findings—Severability—2003 c 313: See notes following RCW 79.15.500.

Effective date—1999 c 279: See note following RCW 79.64.030.

Deductions authorized relating to common school lands—Temporary discontinued deductions for common school construction fund—1983 1st ex.s. c 17: "(1) The deductions authorized in RCW 79.64.040 relating to common school lands may be increased by the board of natural resources to one hundred percent after temporary discontinued deductions result in a transfer to the common school construction fund in the amount of approximately fourteen million dollars or so much thereof as may be necessary to maintain a positive cash balance in the common school construction fund. The increased deductions shall continue until the additional amounts received from the increased rate equal the amounts of the deductions that were discontinued or transferred under subsection (2) of this section. Thereafter the deductions shall be as otherwise provided for in RCW 79.64.040.

(2) If the discontinued deductions will not result in a transfer of four million dollars or so much thereof as may be necessary to maintain a positive balance in the common school construction fund in the biennium ending June 30, 1983, the state treasurer shall transfer the difference from the resource management cost account to the common school construction fund." [1983 1st ex.s. c 17 § 3.]

Severability—1981 2nd ex.s. c 4: See note following RCW 43.30.325.

79.64.110 Revenue distribution. Any moneys derived from the lease of state forest lands or from the sale of valuable materials, oils, gases, coal, minerals, or fossils from those lands, must be distributed as follows:

(1) State forest lands acquired through RCW 79.22.040 or by exchange for lands acquired through RCW 79.22.040:

[2007 RCW Supp—page 976]

(a) The expense incurred by the state for administration, reforestation, and protection, not to exceed twenty-five percent, which rate of percentage shall be determined by the board, must be returned to the forest development account in the state general fund.

(b) Any balance remaining must be paid to the county in which the land is located to be paid, distributed, and prorated, except as otherwise provided in this section, to the various funds in the same manner as general taxes are paid and distributed during the year of payment.

(c) Any balance remaining, paid to a county with a population of less than sixteen thousand, must first be applied to the reduction of any indebtedness existing in the current expense fund of the county during the year of payment.

(d) With regard to moneys remaining under this subsection (1), within seven working days of receipt of these moneys, the department shall certify to the state treasurer the amounts to be distributed to the counties. The state treasurer shall distribute funds to the counties four times per month, with no more than ten days between each payment date.

(2) State forest lands acquired through RCW 79.22.010 or by exchange for lands acquired through RCW 79.22.010, except as provided in RCW 79.64.120:

(a) Fifty percent shall be placed in the forest development account.

(b) Fifty percent shall be prorated and distributed to the state general fund, to be dedicated for the benefit of the public schools, and the county in which the land is located according to the relative proportions of tax levies of all taxing districts in the county. The portion to be distributed to the state general fund shall be based on the regular school levy rate under RCW 84.52.065 and the levy rate for any maintenance and operation special school levies. With regard to the portion to be distributed to the counties, the department shall certify to the state treasurer the amounts to be distributed within seven working days of receipt of the money. The state treasurer shall distribute funds to the counties four times per month, with no more than ten days between each payment date. The money distributed to the county must be paid, distributed, and prorated to the various other funds in the same manner as general taxes are paid and distributed during the year of payment.

(3) A school district may transfer amounts deposited in its debt service fund pursuant to this section into its capital projects fund as authorized in RCW 28A.320.330. [2007 c 503 § 1; 2003 c 334 § 207.]

Intent—2003 c 334: See note following RCW 79.02.010.

Chapter 79.70 RCW NATURAL AREA PRESERVES

Sections

79.70.070 Natural heritage advisory council.

79.70.070 Natural heritage advisory council. (1) The natural heritage advisory council is hereby established. The council shall consist of fifteen members, ten of whom shall be chosen as follows and who shall elect from the council's membership a chairperson:

(a) Five individuals, appointed by the commissioner, who shall be recognized experts in the ecology of natural areas and represent the public, academic, and private sectors. Desirable fields of expertise are biological and geological sciences; and

(b) Five individuals, appointed by the commissioner, who shall be selected from the various regions of the state. At least one member shall be or represent a private forest landowner and at least one member shall be or represent a private agricultural landowner.

(2) Members appointed under subsection (1) of this section shall serve for terms of four years.

(3) In addition to the members appointed by the commissioner, the director of the department of fish and wildlife, the director of the department of ecology, the supervisor of the department of natural resources, the director of the state parks and recreation commission, and the director of the recreation and conservation office, or an authorized representative of each agency officer, shall serve as ex officio, nonvoting members of the council.

(4) Any vacancy on the council shall be filled by appointment for the unexpired term by the commissioner.

(5) In order to provide for staggered terms, of the initial members of the council:

- (a) Three shall serve for a term of two years;
- (b) Three shall serve for a term of three years; and
- (c) Three shall serve for a term of four years.

(6) Members of the natural preserves advisory committee serving on July 26, 1981, shall serve as members of the council until the commissioner appoints a successor to each. The successor appointment shall be specifically designated to replace a member of the natural preserves advisory committee until all members of that committee have been replaced. A member of the natural preserves advisory committee is eligible for appointment to the council if otherwise qualified.

(7) Members of the council shall serve without compensation. Members shall be reimbursed for travel expenses as provided in RCW 43.03.050 and 43.03.060 as now or hereafter amended. [2007 c 241 § 24; 1998 c 50 § 1; 1994 c 264 § 62; 1988 c 36 § 55; 1981 c 189 § 4.]

Intent—Effective date—2007 c 241: See notes following RCW 79A.25.005.

Chapter 79.100 RCW DERELICT VESSELS

Sections

79.100.010	Definitions.
79.100.040	Obtaining custody of vessel.
79.100.100	Derelict vessel removal account.
79.100.130	Marina owner may contract with a local government—Contract requirements.

79.100.010 Definitions. The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

(1) "Abandoned vessel" means a vessel that has been left, moored, or anchored in the same area without the express consent, or contrary to the rules of, the owner, manager, or lessee of the aquatic lands below or on which the vessel is located for either a period of more than thirty consecu-

tive days or for more than a total of ninety days in any three hundred sixty-five-day period, and the vessel's owner is: (a) Not known or cannot be located; or (b) known and located but is unwilling to take control of the vessel. For the purposes of this subsection (1) only, "in the same area" means within a radius of five miles of any location where the vessel was previously moored or anchored on aquatic lands.

(2) "Aquatic lands" means all tidelands, shorelands, harbor areas, and the beds of navigable waters, including lands owned by the state and lands owned by other public or private entities.

(3) "Authorized public entity" includes any of the following: The department of natural resources; the department of fish and wildlife; the parks and recreation commission; a metropolitan park district; a port district; and any city, town, or county with ownership, management, or jurisdiction over the aquatic lands where an abandoned or derelict vessel is located.

(4) "Department" means the department of natural resources.

(5) "Derelict vessel" means the vessel's owner is known and can be located, and exerts control of a vessel that:

(a) Has been moored, anchored, or otherwise left in the waters of the state or on public property contrary to RCW 79.02.300 or rules adopted by an authorized public entity;

(b) Has been left on private property without authorization of the owner; or

(c) Has been left for a period of seven consecutive days, and:

- (i) Is sunk or in danger of sinking;
- (ii) Is obstructing a waterway; or
- (iii) Is endangering life or property.

(6) "Owner" means any natural person, firm, partnership, corporation, association, government entity, or organization that has a lawful right to possession of a vessel by purchase, exchange, gift, lease, inheritance, or legal action whether or not the vessel is subject to a security interest.

(7) "Vessel" means every species of watercraft or other mobile artificial contrivance, powered or unpowered, intended to be used for transporting people or goods on water or for floating marine construction or repair and which does not exceed two hundred feet in length. "Vessel" includes any trailer used for the transportation of watercraft, or any attached floats or debris. [2007 c 342 § 1; 2006 c 153 § 2; 2002 c 286 § 2.]

79.100.040 Obtaining custody of vessel. (1) Prior to exercising the authority granted in RCW 79.100.030, the authorized public entity must first obtain custody of the vessel. To do so, the authorized public entity must:

(a) Mail notice of its intent to obtain custody, at least twenty days prior to taking custody, to the last known address of the previous owner to register the vessel in any state or with the federal government and to any lien holders or secured interests on record. A notice need not be sent to the purported owner or any other person whose interest in the vessel is not recorded with a state or federal agency;

(b) Post notice of its intent clearly on the vessel for thirty days and publish its intent at least once, more than ten days but less than twenty days prior to taking custody, in a news-

paper of general circulation for the county in which the vessel is located; and

(c) Post notice of its intent on the department's internet web site on a page specifically designated for such notices. If the authorized public entity is not the department, the department must facilitate the internet posting.

(2) All notices sent, posted, or published in accordance with this section must, at a minimum, explain the intent of the authorized public entity to take custody of the vessel, the rights of the authorized public entity after taking custody of the vessel as provided in RCW 79.100.030, the procedures the owner must follow in order to avoid custody being taken by the authorized public entity, the procedures the owner must follow in order to reclaim possession after custody is taken by the authorized public entity, and the financial liabilities that the owner may incur as provided for in RCW 79.100.060.

(3)(a) If a vessel is: (i) In immediate danger of sinking, breaking up, or blocking navigational channels; or (ii) poses a reasonably imminent threat to human health or safety, including a threat of environmental contamination; and (iii) the owner of the vessel cannot be located or is unwilling or unable to assume immediate responsibility for the vessel, any authorized public entity may tow, beach, or otherwise take temporary possession of the vessel.

(b) Before taking temporary possession of the vessel, the authorized public entity must make reasonable attempts to consult with the department or the United States coast guard to ensure that other remedies are not available. The basis for taking temporary possession of the vessel must be set out in writing by the authorized public entity within seven days of taking action and be submitted to the owner, if known, as soon thereafter as is reasonable. If the authorized public entity has not already provided the required notice, immediately after taking possession of the vessel, the authorized public entity must initiate the notice provisions in subsection (1) of this section. The authorized public entity must complete the notice requirements of subsection (1) of this section before using or disposing of the vessel as authorized in RCW 79.100.050. [2007 c 342 § 2; 2006 c 153 § 3; 2002 c 286 § 5.]

79.100.100 Derelict vessel removal account. (1) The derelict vessel removal account is created in the state treasury. All receipts from RCW 79.100.050 and 79.100.060 and those moneys specified in RCW 88.02.030 and 88.02.050 must be deposited into the account. The account is authorized to receive fund transfers and appropriations from the general fund, deposits from the derelict vessel removal surcharge under RCW 88.02.270, as well as gifts, grants, and endowments from public or private sources as may be made from time to time, in trust or otherwise, for the use and benefit of the purposes of this chapter and expend the same or any income according to the terms of the gifts, grants, or endowments provided those terms do not conflict with any provisions of this section or any guidelines developed to prioritize reimbursement of removal projects associated with this chapter. Moneys in the account may only be spent after appropriation. Expenditures from the account shall be used by the department to reimburse authorized public entities for up to ninety percent of the total reasonable and auditable administrative, removal, disposal, and environmental damage costs

of abandoned or derelict vessels when the previous owner is either unknown after a reasonable search effort or insolvent. Reimbursement shall not be made unless the department determines that the public entity has made reasonable efforts to identify and locate the party responsible for the vessel, regardless of the title of owner of the vessel. Funds in the account resulting from transfers from the general fund or from the deposit of funds from the watercraft excise tax as provided for under RCW 82.49.030 shall be used to reimburse one hundred percent of these costs and should be prioritized for the removal of large vessels. Costs associated with removal and disposal of an abandoned or derelict vessel under the authority granted in RCW 53.08.320 also qualify for reimbursement from the derelict vessel removal account. In each biennium, up to twenty percent of the expenditures from the account may be used for administrative expenses of the department of licensing and department of natural resources in implementing this chapter.

(2) If the balance of the account reaches one million dollars as of March 1st of any year, exclusive of any transfer or appropriation of funds into the account or funds deposited into the account collected under RCW 88.02.270, the department must notify the department of licensing and the collection of any fees associated with this account must be suspended for the following fiscal year.

(3) Priority for use of this account is for the removal of derelict and abandoned vessels that are in danger of sinking, breaking up, or blocking navigation channels, or that present environmental risks such as leaking fuel or other hazardous substances. The department must develop criteria, in the form of informal guidelines, to prioritize removal projects associated with this chapter, but may not consider whether the applicant is a state or local entity when prioritizing. The guidelines must also include guidance to the authorized public entities as to what removal activities and associated costs are reasonable and eligible for reimbursement.

(4) The department must keep all authorized public entities apprized of the balance of the derelict vessel removal account and the funds available for reimbursement. The guidelines developed by the department must also be made available to the other authorized public entities. This subsection (4) must be satisfied by utilizing the least costly method, including maintaining the information on the department's internet web site, or any other cost-effective method.

(5) An authorized public entity may contribute its ten percent of costs that are not eligible for reimbursement by using in-kind services, including the use of existing staff, equipment, and volunteers.

(6) This chapter does not guarantee reimbursement for an authorized public entity. Authorized public entities seeking certainty in reimbursement prior to taking action under this chapter may first notify the department of their proposed action and the estimated total costs. Upon notification by an authorized public entity, the department must make the authorized public entity aware of the status of the fund and the likelihood of reimbursement being available. The department may offer technical assistance and assure reimbursement for up to two years following the removal action if an assurance is appropriate given the balance of the fund and the details of the proposed action. [2007 c 342 § 4; 2006 c 153 § 6; 2002 c 286 § 11.]

79.100.130 Marina owner may contract with a local government—Contract requirements. A marina owner may contract with a local government for the purpose of participating in the derelict vessel removal program. The local government shall serve as the authorized public entity for the removal of the derelict vessel from the marina owner's property. The contract must provide for the marina owner to be financially responsible for the removal costs that are not reimbursed by the department as provided under RCW 79.100.100, and any additional reasonable administrative costs incurred by the local government during the removal of the derelict vessel. Prior to the commencement of any removal which will seek reimbursement from the derelict vessel removal program, the contract and the proposed vessel removal shall be submitted to the department for review and approval. The local government shall use the procedure specified under RCW 79.100.100(6). [2007 c 342 § 3.]

Chapter 79.105 RCW

AQUATIC LANDS—GENERAL

Sections

- 79.105.150 Deposit, use of proceeds from sale or lease of aquatic lands or valuable materials therefrom—Aquatic lands enhancement project grant requirements—Aquatic lands enhancement account.
- 79.105.500 Aquatic land dredged material disposal sites—Findings.
- 79.105.610 Puget Sound partners.

79.105.150 Deposit, use of proceeds from sale or lease of aquatic lands or valuable materials therefrom—Aquatic lands enhancement project grant requirements—Aquatic lands enhancement account. (1) After deduction for management costs as provided in RCW 79.64.040 and payments to towns under RCW 79.115.150(2), all moneys received by the state from the sale or lease of state-owned aquatic lands and from the sale of valuable material from state-owned aquatic lands shall be deposited in the aquatic lands enhancement account which is hereby created in the state treasury. After appropriation, these funds shall be used solely for aquatic lands enhancement projects; for the purchase, improvement, or protection of aquatic lands for public purposes; for providing and improving access to the lands; and for volunteer cooperative fish and game projects.

(2) In providing grants for aquatic lands enhancement projects, the *interagency committee for outdoor recreation shall:

- (a) Require grant recipients to incorporate the environmental benefits of the project into their grant applications;
- (b) Utilize the statement of environmental benefits, consideration, except as provided in RCW 79.105.610, of whether the applicant is a Puget Sound partner, as defined in RCW 90.71.010, and whether a project is referenced in the action agenda developed by the Puget Sound partnership under RCW 90.71.310, in its prioritization and selection process; and
- (c) Develop appropriate outcome-focused performance measures to be used both for management and performance assessment of the grants.

(3) To the extent possible, the department should coordinate its performance measure system with other natural resource-related agencies as defined in RCW 43.41.270.

(4) The department shall consult with affected interest groups in implementing this section.

(5) After January 1, 2010, any project designed to address the restoration of Puget Sound may be funded under this chapter only if the project is not in conflict with the action agenda developed by the Puget Sound partnership under RCW 90.71.310. [2007 c 341 § 32. Prior: 2005 c 518 § 946; 2005 c 155 § 121; 2004 c 276 § 914; 2002 c 371 § 923; 2001 c 227 § 7; 1999 c 309 § 919; 1997 c 149 § 913; 1995 2nd sp.s. c 18 § 923; 1994 c 219 § 12; 1993 sp.s. c 24 § 927; 1987 c 350 § 1; 1985 c 57 § 79; 1984 c 221 § 24; 1982 2nd ex.s. c 8 § 4; 1969 ex.s. c 273 § 12; 1967 ex.s. c 105 § 3; 1961 c 167 § 9. Formerly RCW 79.90.245, 79.24.580.]

***Reviser's note:** Chapter 241, Laws of 2007 changed the name of the interagency committee for outdoor recreation to the recreation and conservation funding board.

Severability—Effective date—2007 c 341: See RCW 90.71.906 and 90.71.907.

Severability—Effective date—2005 c 518: See notes following RCW 28A.305.210.

Severability—Effective date—2004 c 276: See notes following RCW 43.330.167.

Severability—Effective date—2002 c 371: See notes following RCW 9.46.100.

Findings—Intent—2001 c 227: See note following RCW 43.41.270.

Severability—Effective date—1999 c 309: See notes following RCW 41.06.152.

Severability—Effective date—1997 c 149: See notes following RCW 43.08.250.

Severability—Effective date—1995 2nd sp.s. c 18: See notes following RCW 19.118.110.

Finding—1994 c 219: See note following RCW 43.88.030.

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

Effective date—1987 c 350: "This act shall take effect July 1, 1989." [1987 c 350 § 3.]

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

Severability—Effective date—1984 c 221: See RCW 79.105.901 and 79.105.902.

79.105.500 Aquatic land dredged material disposal sites—Findings. The legislature finds that the department provides, manages, and monitors aquatic land dredged material disposal sites on state-owned aquatic lands for materials dredged from rivers, harbors, and shipping lanes. These disposal sites are approved through a cooperative planning process by the departments of natural resources and ecology, the United States army corps of engineers, and the United States environmental protection agency in cooperation with the Puget Sound partnership. These disposal sites are essential to the commerce and well-being of the citizens of the state of Washington. Management and environmental monitoring of these sites are necessary to protect environmental quality and to assure appropriate use of state-owned aquatic lands. The creation of an aquatic land dredged material disposal site account is a reasonable means to enable and facilitate proper management and environmental monitoring of these disposal sites. [2007 c 341 § 58; 2005 c 155 § 158; 1987 c 259 § 1. Formerly RCW 79.90.550.]

Severability—Effective date—2007 c 341: See RCW 90.71.906 and 90.71.907.

Effective date—1987 c 259: "This act is necessary for the immediate preservation of the public peace, health, and safety, the support of the state government and its existing public institutions, and shall take effect on July 1, 1987." [1987 c 259 § 5.]

79.105.610 Puget Sound partners. When administering funds under this chapter, the *interagency committee for outdoor recreation shall give preference only to Puget Sound partners, as defined in RCW 90.71.010, in comparison to other entities that are eligible to be included in the definition of Puget Sound partner. Entities that are not eligible to be a Puget Sound partner due to geographic location, composition, exclusion from the scope of the Puget Sound action agenda developed by the Puget Sound partnership under RCW 90.71.310, or for any other reason, shall not be given less preferential treatment than Puget Sound partners. [2007 c 341 § 33.]

***Reviser’s note:** Chapter 241, Laws of 2007 changed the name of the interagency committee for outdoor recreation to the recreation and conservation funding board.

Severability—Effective date—2007 c 341: See RCW 90.71.906 and 90.71.907.

Chapter 79.135 RCW

AQUATIC LANDS—OYSTERS, GEODUCKS, SHELLFISH, OTHER AQUACULTURAL USES, AND MARINE AQUATIC PLANTS

Sections

79.135.100 Aquatic lands used for aquaculture production and harvesting—Rents and fees—Limitations on leases.

79.135.100 Aquatic lands used for aquaculture production and harvesting—Rents and fees—Limitations on leases. (1) If state-owned aquatic lands are used for aquaculture production or harvesting, rents and fees shall be established through competitive bidding or negotiation.

(2) After an initial twenty-three acres are leased, the department is prohibited from offering leases that would permit the intertidal commercial aquaculture of geoducks on more than fifteen acres of state-owned aquatic lands a [per] year until December 1, 2014.

(3) Any intertidal leases entered into by the department for geoduck aquaculture must be conditioned in such a way that the department can engage in monitoring of the environmental impacts of the lease’s execution, without unreasonably diminishing the economic viability of the lease, and that the lease tracts are eligible to be made part of the studies conducted under RCW 28B.20.475.

(4) The department must notify all abutting landowners and any landowner within three hundred feet of the lands to be leased of the intent of the department to lease any intertidal lands for the purposes of geoduck aquaculture. [2007 c 216 § 3; 1984 c 221 § 10. Formerly RCW 79.90.495.]

Title 79A

PUBLIC RECREATIONAL LANDS

Chapters

79A.05 Parks and recreation commission.

- 79A.15 Acquisition of habitat conservation and outdoor recreation lands.**
- 79A.25 Recreation and conservation funding board.**
- 79A.35 Washington state recreation trails system.**
- 79A.40 Conveyances for persons in recreational activities.**
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Chapter 79A.05 RCW

PARKS AND RECREATION COMMISSION

Sections

- 79A.05.065 Park passes—Eligibility.
- 79A.05.165 Penalties.
- 79A.05.175 Disposal of land not needed for park purposes.
- 79A.05.179 Notification requirements.
- 79A.05.215 State parks renewal and stewardship account.
- 79A.05.351 Outdoor education and recreation grant program—Creation—Establish and implement program by rule—Advisory committee—Account.
- 79A.05.785 Yakima river conservation area—Recreation and conservation funding board directed to assist Yakima county commissioners.

79A.05.065 Park passes—Eligibility. (1)(a) The commission shall grant to any person who meets the eligibility requirements specified in this section a senior citizen’s pass which shall entitle such person, and members of his or her camping unit, to a fifty percent reduction in the campsite rental fee prescribed by the commission, and entitle such person to free admission to any state park.

(b) The commission shall grant a senior citizen’s pass to any person who applies for the same and who meets the following requirements:

- (i) The person is at least sixty-two years of age; and
- (ii) The person is a domiciliary of the state of Washington and meets reasonable residency requirements prescribed by the commission; and

(iii) The person and his or her spouse have a combined income which would qualify the person for a property tax exemption pursuant to RCW 84.36.381. The financial eligibility requirements of this subsection (1)(b)(iii) shall apply regardless of whether the applicant for a senior citizen’s pass owns taxable property or has obtained or applied for such property tax exemption.

(c) Each senior citizen’s pass granted pursuant to this section is valid so long as the senior citizen meets the requirements of (b)(ii) of this subsection. Notwithstanding, any senior citizen meeting the eligibility requirements of this section may make a voluntary donation for the upkeep and maintenance of state parks.

(d) A holder of a senior citizen’s pass shall surrender the pass upon request of a commission employee when the employee has reason to believe the holder fails to meet the criteria in (b) of this subsection. The holder shall have the pass returned upon providing proof to the satisfaction of the director of the parks and recreation commission that the holder does meet the eligibility criteria for obtaining the senior citizen’s pass.

(2)(a) Any resident of Washington who is disabled as defined by the social security administration and who receives social security benefits for that disability, or any other benefits for that disability from any other governmental or nongovernmental source, or who is entitled to benefits for

permanent disability under RCW 71A.10.020(3) due to unemployability full time at the minimum wage, or who is legally blind or profoundly deaf, or who has been issued a card, decal, or special license plate for a permanent disability under RCW 46.16.381 shall be entitled to receive, regardless of age and upon making application therefor, a disability pass at no cost to the holder. The pass shall entitle such person, and members of his or her camping unit, to a fifty percent reduction in the campsite rental fee prescribed by the commission, and entitle such person to free admission to any state park.

(b) A card, decal, or special license plate issued for a permanent disability under RCW 46.16.381 may serve as a pass for the holder to entitle that person and members of the person's camping unit to a fifty percent reduction in the campsite rental fee prescribed by the commission, and to allow the holder free admission to state parks.

(3) Any resident of Washington who is a veteran and has a service-connected disability of at least thirty percent shall be entitled to receive a lifetime veteran's disability pass at no cost to the holder. The pass shall: (a) Entitle such person, and members of his or her camping unit, to free use of any campsite within any state park; (b) entitle such person to free admission to any state park; and (c) entitle such person to an exemption from any reservation fees.

(4) All passes issued pursuant to this section shall be valid at all parks any time during the year. However, the pass shall not be valid for admission to concessionaire operated facilities.

(5) The commission may deny or revoke any Washington state park pass issued under this section for cause, including but not limited to the following:

- (a) Residency outside the state of Washington;
- (b) Violation of laws or state park rules resulting in eviction from a state park;
- (c) Intimidating, obstructing, or assaulting a park employee or park volunteer who is engaged in the performance of official duties;
- (d) Fraudulent use of a pass;
- (e) Providing false information or documentation in the application for a state parks pass;
- (f) Refusing to display or show the pass to park employees when requested; or
- (g) Failing to provide current eligibility information upon request by the agency or when eligibility ceases or changes.

(6) This section shall not affect or otherwise impair the power of the commission to continue or discontinue any other programs it has adopted for senior citizens.

(7) The commission may engage in a mutually agreed upon reciprocal or discounted program for all or specific pass programs with other outdoor recreation agencies.

(8) The commission shall adopt such rules as it finds appropriate for the administration of this section. Among other things, such rules shall prescribe a definition of "camping unit" which will authorize a reasonable number of persons traveling with the person having a pass to stay at the campsite rented by such person, a minimum Washington residency requirement for applicants for a senior citizen's pass and an application form to be completed by applicants for a senior citizen's pass. [2007 c 441 § 1; 1999 c 249 § 305;

1997 c 74 § 1; 1989 c 135 § 1; 1988 c 176 § 909; 1986 c 6 § 1; 1985 c 182 § 1; 1979 ex.s. c 131 § 1; 1977 ex.s. c 330 § 1. Formerly RCW 43.51.055.]

Severability—1999 c 249: See note following RCW 79A.05.010.

Severability—1988 c 176: See RCW 71A.10.900.

79A.05.165 Penalties. (1) Every person is guilty of a misdemeanor who:

(a) Cuts, breaks, injures, destroys, takes, or removes any tree, shrub, timber, plant, or natural object in any park or parkway except in accordance with such rules as the commission may prescribe; or

(b) Kills, or pursues with intent to kill, any bird or animal in any park or parkway except in accordance with a research pass, permit, or other approval issued by the commission, pursuant to rule, for scientific research purposes; or

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

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

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

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

(2)(a) Except as provided in (b) of this subsection, a person who violates any rule adopted, promulgated, or issued by the commission pursuant to the provisions of this chapter is guilty of a misdemeanor.

(b) The commission may specify by rule, when not inconsistent with applicable statutes, that violation of the rule is an infraction under chapter 7.84 RCW. [2007 c 441 § 2; 2003 c 53 § 382; 1997 c 214 § 1; 1987 c 380 § 15; 1965 c 8 § 43.51.180. Prior: 1921 c 149 § 8; RRS § 10948. Formerly RCW 43.51.180.]

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

Effective date—Severability—1987 c 380: See RCW 7.84.900 and 7.84.901.

79A.05.175 Disposal of land not needed for park purposes. Whenever the commission finds that any land under its control cannot advantageously be used for park purposes, it is authorized to dispose of such land by the method provided in this section or by the method provided in RCW 79A.05.170. If such lands are school or other grant lands, control thereof shall be relinquished by resolution of the commission to the proper state officials. If such lands were acquired under restrictive conveyances by which the state may hold them only so long as they are used for park pur-

poses, they may be returned to the donor or grantors by the commission. All other such lands may be either sold by the commission to the highest bidder or exchanged for other lands of equal value by the commission, and all conveyance documents shall be executed by the governor. All such exchanges shall be accompanied by a transfer fee, to be set by the commission and paid by the other party to the transfer; such fee shall be paid into the parkland acquisition account established under RCW 79A.05.170. The commission may accept sealed bids, electronic bids, or oral bids at auction. Bids on all sales shall be solicited at least twenty days in advance of the sale date by an advertisement appearing at least once a week for two consecutive weeks in a newspaper of general circulation in the county in which the land to be sold is located. If the commission feels that no bid received adequately reflects the fair value of the land to be sold, it may reject all bids, and may call for new bids. All proceeds derived from the sale of such park property shall be paid into the park land acquisition account. All land considered for exchange shall be evaluated by the commission to determine its adaptability to park usage. The equal value of all lands exchanged shall first be determined by the appraisals to the satisfaction of the commission. No sale or exchange of state park lands shall be made without the unanimous consent of the commission. [2007 c 145 § 1; 1999 c 249 § 601; 1998 c 42 § 1; 1984 c 87 § 2; 1971 ex.s. c 246 § 1; 1969 c 99 § 3; 1965 c 8 § 43.51.210. Prior: 1953 c 64 § 1; 1947 c 261 § 1; RRS § 10951a. Formerly RCW 43.51.210.]

Severability—1999 c 249: See note following RCW 79A.05.010.

79A.05.179 Notification requirements. Actions under this chapter are subject to the notification requirements of RCW 43.17.400. [2007 c 62 § 11.]

Finding—Intent—Severability—2007 c 62: See notes following RCW 43.17.400.

79A.05.215 State parks renewal and stewardship account. The state parks renewal and stewardship account is created in the state treasury. Except as otherwise provided in this chapter, all receipts from user fees, concessions, leases, donations collected under RCW 46.16.076, and other state park-based activities shall be deposited into the account. Expenditures from the account may be used for operating state parks, developing and renovating park facilities, undertaking deferred maintenance, enhancing park stewardship, and other state park purposes. Expenditures from the account may be made only after appropriation by the legislature. [2007 c 340 § 2; 1995 c 211 § 7. Formerly RCW 43.51.275.]

Findings—Intent—Effective date—Severability—1995 c 211: See notes following RCW 79A.05.070.

79A.05.351 Outdoor education and recreation grant program—Creation—Establish and implement program by rule—Advisory committee—Account. (1) The outdoor education and recreation grant program is hereby created, subject to the availability of funds in the outdoor education and recreation account. The commission shall establish and implement the program by rule to provide opportunities for public agencies, private nonprofit organizations, formal school programs, nonformal after-school programs, and community-based programs to receive grants from the account.

Programs that provide outdoor education opportunities to schools shall be fully aligned with the state's essential academic learning requirements.

(2) The program shall be phased in beginning with the schools and students with the greatest needs in suburban, rural, and urban areas of the state. The program shall focus on students who qualify for free and reduced-price lunch, who are most likely to fail academically, or who have the greatest potential to drop out of school.

(3) The director shall set priorities and develop criteria for the awarding of grants to outdoor environmental, ecological, agricultural, or other natural resource-based education and recreation programs considering at least the following:

(a) Programs that contribute to the reduction of academic failure and dropout rates;

(b) Programs that make use of research-based, effective environmental, ecological, agricultural, or other natural resource-based education curriculum;

(c) Programs that contribute to healthy life styles through outdoor recreation and sound nutrition;

(d) Various Washington state parks as venues and use of the commission's personnel as a resource;

(e) Programs that maximize the number of participants that can be served;

(f) Programs that will commit matching and in-kind resources;

(g) Programs that create partnerships with public and private entities;

(h) Programs that provide students with opportunities to directly experience and understand nature and the natural world; and

(i) Programs that include ongoing program evaluation, assessment, and reporting of their effectiveness.

(4) The director shall create an advisory committee to assist and advise the commission in the development and administration of the outdoor education and recreation program. The director should solicit representation on the committee from the office of the superintendent of public instruction, the department of fish and wildlife, the business community, outdoor organizations with an interest in education, and any others the commission deems sufficient to ensure a cross section of stakeholders. When the director creates such an advisory committee, its members shall be reimbursed from the outdoor education and recreation program account for travel expenses as provided in RCW 43.03.050 and 43.03.060.

(5) The outdoor education and recreation program account is created in the custody of the state treasurer. Funds deposited in the outdoor education and recreation program account shall be transferred only to the commission to be used solely for the commission's outdoor education and recreation program purposes identified in this section including the administration of the program. The director may accept gifts, grants, donations, or moneys from any source for deposit in the outdoor education and recreation program account. Any public agency in this state may develop and implement outdoor education and recreation programs. The director may make grants to public agencies and contract with any public or private agency or person to develop and implement outdoor education and recreation programs. The outdoor education and recreation program account is subject

to allotment procedures under chapter 43.88 RCW, but an appropriation is not required for expenditures. [2007 c 176 § 2.]

Intent—2007 c 176: "It is the intent of the legislature to establish an outdoor education and recreation program to provide a large number of underserved students with quality opportunities to directly experience the natural world. It is the intent of the program to improve students' overall academic performance, self-esteem, personal responsibility, community involvement, personal health, and understanding of nature. Further, it is the intent of the program to empower local communities to engage students in outdoor education and recreation experiences." [2007 c 176 § 1.]

79A.05.785 Yakima river conservation area—Recreation and conservation funding board directed to assist Yakima county commissioners. The recreation and conservation funding board is directed to assist the Yakima county commissioners in obtaining state, federal, and private funding for the acquisition, development, and operation of the Yakima river conservation area. [2007 c 241 § 25; 1977 ex.s. c 75 § 8. Formerly RCW 43.51.953.]

Intent—Effective date—2007 c 241: See notes following RCW 79A.25.005.

Chapter 79A.15 RCW

ACQUISITION OF HABITAT CONSERVATION AND OUTDOOR RECREATION LANDS

Sections

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79A.15.010 Definitions. The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

(1) "Acquisition" means the purchase on a willing seller basis of fee or less than fee interests in real property. These interests include, but are not limited to, options, rights of first refusal, conservation easements, leases, and mineral rights.

(2) "Board" means the recreation and conservation funding board.

(3) "Critical habitat" means lands important for the protection, management, or public enjoyment of certain wildlife species or groups of species, including, but not limited to, wintering range for deer, elk, and other species, waterfowl and upland bird habitat, fish habitat, and habitat for endangered, threatened, or sensitive species.

(4) "Farmlands" means any land defined as "farm and agricultural land" in RCW 84.34.020(2).

(5) "Local agencies" means a city, county, town, federally recognized Indian tribe, special purpose district, port dis-

trict, or other political subdivision of the state providing services to less than the entire state.

(6) "Natural areas" means areas that have, to a significant degree, retained their natural character and are important in preserving rare or vanishing flora, fauna, geological, natural historical, or similar features of scientific or educational value.

(7) "Riparian habitat" means land adjacent to water bodies, as well as submerged land such as streambeds, which can provide functional habitat for salmonids and other fish and wildlife species. Riparian habitat includes, but is not limited to, shorelines and near-shore marine habitat, estuaries, lakes, wetlands, streams, and rivers.

(8) "Special needs populations" means physically restricted people or people of limited means.

(9) "State agencies" means the state parks and recreation commission, the department of natural resources, the department of general administration, and the department of fish and wildlife.

(10) "Trails" means public ways constructed for and open to pedestrians, equestrians, or bicyclists, or any combination thereof, other than a sidewalk constructed as a part of a city street or county road for exclusive use of pedestrians.

(11) "Urban wildlife habitat" means lands that provide habitat important to wildlife in proximity to a metropolitan area.

(12) "Water access" means boat or foot access to marine waters, lakes, rivers, or streams. [2007 c 241 § 26; 2005 c 303 § 1; 1990 1st ex.s. c 14 § 2. Formerly RCW 43.98A.010.]

Intent—Effective date—2007 c 241: See notes following RCW 79A.25.005.

Effective date—2005 c 303 §§ 1-14: "Sections 1 through 14 of this act take effect July 1, 2007." [2005 c 303 § 17.]

79A.15.020 Habitat conservation account. The habitat conservation account is established in the state treasury. The board shall administer the account in accordance with chapter 79A.25 RCW and this chapter, and shall hold it separate and apart from all other money, funds, and accounts of the board. [2007 c 241 § 27; 2000 c 11 § 65; 1990 1st ex.s. c 14 § 3. Formerly RCW 43.98A.020.]

Intent—Effective date—2007 c 241: See notes following RCW 79A.25.005.

79A.15.030 Allocation and use of moneys—Grants. (1) Moneys appropriated for this chapter shall be divided as follows:

(a) Appropriations for a biennium of forty million dollars or less must be allocated equally between the habitat conservation account and the outdoor recreation account.

(b) If appropriations for a biennium total more than forty million dollars, the money must be allocated as follows: (i) Twenty million dollars to the habitat conservation account and twenty million dollars to the outdoor recreation account; (ii) any amount over forty million dollars up to fifty million dollars shall be allocated as follows: (A) Ten percent to the habitat conservation account; (B) ten percent to the outdoor recreation account; (C) forty percent to the riparian protection account; and (D) forty percent to the farmlands preservation account; and (iii) any amounts over fifty million dollars

must be allocated as follows: (A) Thirty percent to the habitat conservation account; (B) thirty percent to the outdoor recreation account; (C) thirty percent to the riparian protection account; and (D) ten percent to the farmlands preservation account.

(2) Except as otherwise provided in chapter 303, Laws of 2005, moneys deposited in these accounts shall be invested as authorized for other state funds, and any earnings on them shall be credited to the respective account.

(3) All moneys deposited in the habitat conservation, outdoor recreation, riparian protection, and farmlands preservation accounts shall be allocated as provided under RCW 79A.15.040, 79A.15.050, 79A.15.120, and 79A.15.130 as grants to state or local agencies for acquisition, development, and renovation within the jurisdiction of those agencies, subject to legislative appropriation. The board may use or permit the use of any funds appropriated for this chapter as matching funds where federal, local, or other funds are made available for projects within the purposes of this chapter. Moneys appropriated to these accounts that are not obligated to a specific project may be used to fund projects from lists of alternate projects from the same account in biennia succeeding the biennium in which the moneys were originally appropriated.

(4) Projects receiving grants under this chapter that are developed or otherwise accessible for public recreational uses shall be available to the public.

(5) The board may make grants to an eligible project from the habitat conservation, outdoor recreation, riparian protection, and farmlands preservation accounts and any one or more of the applicable categories under such accounts described in RCW 79A.15.040, 79A.15.050, 79A.15.120, and 79A.15.130.

(6) The board may accept private donations to the habitat conservation account, the outdoor recreation account, the riparian protection account, and the farmlands preservation account for the purposes specified in this chapter.

(7) The board may apply up to three percent of the funds appropriated for this chapter for its office for the administration of the programs and purposes specified in this chapter.

(8) Habitat and recreation land and facilities acquired or developed with moneys appropriated for this chapter may not, without prior approval of the board, be converted to a use other than that for which funds were originally approved. The board shall adopt rules and procedures governing the approval of such a conversion. [2007 c 241 § 28; 2005 c 303 § 2; 2000 c 11 § 66; 1990 1st ex.s. c 14 § 4. Formerly RCW 43.98A.030.]

Intent—Effective date—2007 c 241: See notes following RCW 79A.25.005.

Effective date—2005 c 303 §§ 1-14: See note following RCW 79A.15.010.

Outdoor recreation account: Chapter 79A.25 RCW.

79A.15.040 Habitat conservation account—Distribution and use of moneys. (1) Moneys appropriated for this chapter to the habitat conservation account shall be distributed in the following way:

(a) Not less than forty percent through June 30, 2011, at which time the amount shall become forty-five percent, for the acquisition and development of critical habitat;

(b) Not less than thirty percent for the acquisition and development of natural areas;

(c) Not less than twenty percent for the acquisition and development of urban wildlife habitat; and

(d) Not less than ten percent through June 30, 2011, at which time the amount shall become five percent, shall be used by the board to fund restoration and enhancement projects on state lands. Only the department of natural resources and the department of fish and wildlife may apply for these funds to be used on existing habitat and natural area lands.

(2)(a) In distributing these funds, the board retains discretion to meet the most pressing needs for critical habitat, natural areas, and urban wildlife habitat, and is not required to meet the percentages described in subsection (1) of this section in any one biennium.

(b) If not enough project applications are submitted in a category within the habitat conservation account to meet the percentages described in subsection (1) of this section in any biennium, the board retains discretion to distribute any remaining funds to the other categories within the account.

(3) Only state agencies may apply for acquisition and development funds for natural areas projects under subsection (1) (b) of this section.

(4) State and local agencies may apply for acquisition and development funds for critical habitat and urban wildlife habitat projects under subsection (1)(a) and (c) of this section.

(5)(a) Any lands that have been acquired with grants under this section by the department of fish and wildlife are subject to an amount in lieu of real property taxes and an additional amount for control of noxious weeds as determined by RCW 77.12.203.

(b) Any lands that have been acquired with grants under this section by the department of natural resources are subject to payments in the amounts required under the provisions of RCW 79.70.130 and 79.71.130.

(6)(a) Except as otherwise conditioned by RCW 79A.15.140, the *committee shall consider the following in determining distribution priority:

(i) Whether the entity applying for funding is a Puget Sound partner, as defined in RCW 90.71.010; and

(ii) Whether the project is referenced in the action agenda developed by the Puget Sound partnership under RCW 90.71.310.

(7) After January 1, 2010, any project designed to address the restoration of Puget Sound may be funded under this chapter only if the project is not in conflict with the action agenda developed by the Puget Sound partnership under RCW 90.71.310. [2007 c 341 § 34; 2007 c 241 § 29; 2005 c 303 § 3; 1999 c 379 § 917; 1997 c 235 § 718; 1990 1st ex.s. c 14 § 5. Formerly RCW 43.98A.040.]

Reviser's note: *(1) Chapter 241, Laws of 2007 amended RCW 79A.15.010, changing the definition of "committee" to "board."

(2) This section was amended by 2007 c 241 § 29 and by 2007 c 341 § 34, each without reference to the other. Both amendments are incorporated in the publication of this section under RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

Severability—Effective date—2007 c 341: See RCW 90.71.906 and 90.71.907.

Intent—Effective date—2007 c 241: See notes following RCW 79A.25.005.

Effective date—2005 c 303 §§ 1-14: See note following RCW 79A.15.010.

Effective date—1999 c 379: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately [May 18, 1999]." [1999 c 379 § 949.]

Severability—1997 c 235: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1997 c 235 § 901.]

Effective date—1997 c 235: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately [April 26, 1997]." [1997 c 235 § 902.]

79A.15.050 Outdoor recreation account—Distribution and use of moneys. (1) Moneys appropriated for this chapter to the outdoor recreation account shall be distributed in the following way:

(a) Not less than thirty percent to the state parks and recreation commission for the acquisition and development of state parks, with at least fifty percent of the money for acquisition costs;

(b) Not less than thirty percent for the acquisition, development, and renovation of local parks, with at least fifty percent of this money for acquisition costs;

(c) Not less than twenty percent for the acquisition, renovation, or development of trails;

(d) Not less than fifteen percent for the acquisition, renovation, or development of water access sites, with at least seventy-five percent of this money for acquisition costs; and

(e) Not less than five percent for development and renovation projects on state recreation lands. Only the department of natural resources and the department of fish and wildlife may apply for these funds to be used on their existing recreation lands.

(2)(a) In distributing these funds, the board retains discretion to meet the most pressing needs for state and local parks, trails, and water access sites, and is not required to meet the percentages described in subsection (1) of this section in any one biennium.

(b) If not enough project applications are submitted in a category within the outdoor recreation account to meet the percentages described in subsection (1) of this section in any biennium, the board retains discretion to distribute any remaining funds to the other categories within the account.

(3) Only local agencies may apply for acquisition, development, or renovation funds for local parks under subsection (1)(b) of this section.

(4) Only state and local agencies may apply for funds for trails under subsection (1)(c) of this section.

(5) Only state and local agencies may apply for funds for water access sites under subsection (1)(d) of this section. [2007 c 241 § 30; 2005 c 303 § 4; 2003 c 184 § 1; 1999 c 379 § 941; 1999 c 379 § 920; 1990 1st ex.s. c 14 § 6. Formerly RCW 43.98A.050.]

Intent—Effective date—2007 c 241: See notes following RCW 79A.25.005.

Effective date—2005 c 303 §§ 1-14: See note following RCW 79A.15.010.

Effective date—1999 c 379: See note following RCW 79A.15.040.

79A.15.060 Habitat conservation account—Acquisition policies and priorities. (1) The board may adopt rules establishing acquisition policies and priorities for distributions from the habitat conservation account.

(2) Except as provided in RCW 79A.15.030(7), moneys appropriated for this chapter may not be used by the board to fund staff positions or other overhead expenses, or by a state, regional, or local agency to fund operation or maintenance of areas acquired under this chapter.

(3) Moneys appropriated for this chapter may be used by grant recipients for costs incidental to acquisition, including, but not limited to, surveying expenses, fencing, and signing.

(4) Moneys appropriated for this section may be used to fund mitigation banking projects involving the restoration, creation, enhancement, or preservation of critical habitat and urban wildlife habitat, provided that the parties seeking to use the mitigation bank meet the matching requirements of subsection (5) of this section. The moneys from this section may not be used to supplant an obligation of a state or local agency to provide mitigation. For the purposes of this section, a mitigation bank means a site or sites where critical habitat or urban wildlife habitat is restored, created, enhanced, or in exceptional circumstances, preserved expressly for the purpose of providing compensatory mitigation in advance of authorized project impacts to similar resources.

(5) The board may not approve a local project where the local agency share is less than the amount to be awarded from the habitat conservation account.

(6) In determining acquisition priorities with respect to the habitat conservation account, the board shall consider, at a minimum, the following criteria:

(a) For critical habitat and natural areas proposals:

(i) Community support for the project;

(ii) The project proposal's ongoing stewardship program that includes control of noxious weeds, detrimental invasive species, and that identifies the source of the funds from which the stewardship program will be funded;

(iii) Recommendations as part of a watershed plan or habitat conservation plan, or a coordinated regionwide prioritization effort, and for projects primarily intended to benefit salmon, limiting factors, or critical pathways analysis;

(iv) Immediacy of threat to the site;

(v) Uniqueness of the site;

(vi) Diversity of species using the site;

(vii) Quality of the habitat;

(viii) Long-term viability of the site;

(ix) Presence of endangered, threatened, or sensitive species;

(x) Enhancement of existing public property;

(xi) Consistency with a local land use plan, or a regional or statewide recreational or resource plan, including projects that assist in the implementation of local shoreline master plans updated according to RCW 90.58.080 or local comprehensive plans updated according to RCW 36.70A.130;

(xii) Educational and scientific value of the site;

(xiii) Integration with recovery efforts for endangered, threatened, or sensitive species;

(xiv) For critical habitat proposals by local agencies, the statewide significance of the site.

(b) For urban wildlife habitat proposals, in addition to the criteria of (a) of this subsection:

(i) Population of, and distance from, the nearest urban area;

(ii) Proximity to other wildlife habitat;

(iii) Potential for public use; and

(iv) Potential for use by special needs populations.

(7) Before November 1st of each even-numbered year, the board shall recommend to the governor a prioritized list of all state agency and local projects to be funded under RCW 79A.15.040(1) (a), (b), and (c). The governor may remove projects from the list recommended by the board and shall submit this amended list in the capital budget request to the legislature. The list shall include, but not be limited to, a description of each project and any particular match requirement, and describe for each project any anticipated restrictions upon recreational activities allowed prior to the project. [2007 c 241 § 31; 2005 c 303 § 8; 2000 c 11 § 67; 1999 c 379 § 918; 1997 c 235 § 719; 1990 1st ex.s. c 14 § 7. Formerly RCW 43.98A.060.]

Intent—Effective date—2007 c 241: See notes following RCW 79A.25.005.

Effective date—2005 c 303 §§ 1-14: See note following RCW 79A.15.010.

Effective date—1999 c 379: See note following RCW 79A.15.040.

Severability—Effective date—1997 c 235: See notes following RCW 79A.15.040.

79A.15.065 Grants through habitat conservation account—Statement of environmental benefits—Development of outcome-focused performance measures. In providing grants through the habitat conservation account, the board shall require grant applicants to incorporate the environmental benefits of the project into their grant applications, and the board shall utilize the statement of environmental benefits in the grant application and review process. The board shall also develop appropriate outcome-focused performance measures to be used both for management and performance assessment of the grant program. To the extent possible, the board should coordinate its performance measure system with other natural resource-related agencies as defined in RCW 43.41.270. The board shall consult with affected interest groups in implementing this section. [2007 c 241 § 32; 2001 c 227 § 8.]

Intent—Effective date—2007 c 241: See notes following RCW 79A.25.005.

Findings—Intent—2001 c 227: See note following RCW 43.41.270.

79A.15.070 Acquisition and development priorities—Generally. (1) In determining which state parks proposals and local parks proposals to fund, the board shall use existing policies and priorities.

(2) Except as provided in RCW 79A.15.030(7), moneys appropriated for this chapter may not be used by the board to fund staff or other overhead expenses, or by a state, regional, or local agency to fund operation or maintenance of areas acquired under this chapter.

(3) Moneys appropriated for this chapter may be used by grant recipients for costs incidental to acquisition and development, including, but not limited to, surveying expenses, fencing, and signing.

(4) The board may not approve a project of a local agency where the share contributed by the local agency is less

than the amount to be awarded from the outdoor recreation account.

(5) The board may adopt rules establishing acquisition policies and priorities for the acquisition and development of trails and water access sites to be financed from moneys in the outdoor recreation account.

(6) In determining the acquisition and development priorities, the board shall consider, at a minimum, the following criteria:

(a) For trails proposals:

(i) Community support for the project;

(ii) Immediacy of threat to the site;

(iii) Linkage between communities;

(iv) Linkage between trails;

(v) Existing or potential usage;

(vi) Consistency with a local land use plan, or a regional or statewide recreational or resource plan, including projects that assist in the implementation of local shoreline master plans updated according to RCW 90.58.080 or local comprehensive plans updated according to RCW 36.70A.130;

(vii) Availability of water access or views;

(viii) Enhancement of wildlife habitat; and

(ix) Scenic values of the site.

(b) For water access proposals:

(i) Community support for the project;

(ii) Distance from similar water access opportunities;

(iii) Immediacy of threat to the site;

(iv) Diversity of possible recreational uses;

(v) Public demand in the area; and

(vi) Consistency with a local land use plan, or a regional or statewide recreational or resource plan, including projects that assist in the implementation of local shoreline master plans updated according to RCW 90.58.080 or local comprehensive plans updated according to RCW 36.70A.130.

(7) Before November 1st of each even-numbered year, the board shall recommend to the governor a prioritized list of all state agency and local projects to be funded under RCW 79A.15.050(1) (a), (b), (c), and (d). The governor may remove projects from the list recommended by the board and shall submit this amended list in the capital budget request to the legislature. The list shall include, but not be limited to, a description of each project and any particular match requirement, and describe for each project any anticipated restrictions upon recreational activities allowed prior to the project. [2007 c 241 § 33; 2005 c 303 § 9; 2000 c 11 § 68; 1999 c 379 § 919; 1997 c 235 § 720; 1990 1st ex.s. c 14 § 8. Formerly RCW 43.98A.070.]

Intent—Effective date—2007 c 241: See notes following RCW 79A.25.005.

Effective date—2005 c 303 §§ 1-14: See note following RCW 79A.15.010.

Effective date—1999 c 379: See note following RCW 79A.15.040.

Severability—Effective date—1997 c 235: See notes following RCW 79A.15.040.

79A.15.080 Recommended project list—Board authority to obligate funds—Legislature's authority. The board shall not sign contracts or otherwise financially obligate funds from the habitat conservation account, the outdoor recreation account, the riparian protection account, or the farmlands preservation account as provided in this chapter

before the legislature has appropriated funds for a specific list of projects. The legislature may remove projects from the list recommended by the governor. [2007 c 241 § 34; 2005 c 303 § 10; 1990 1st ex.s. c 14 § 9. Formerly RCW 43.98A.080.]

Intent—Effective date—2007 c 241: See notes following RCW 79A.25.005.

Effective date—2005 c 303 §§ 1-14: See note following RCW 79A.15.010.

79A.15.100 Report to governor and standing committees. On or before November 1st of each odd-numbered year, the board shall submit to the governor and the standing committees of the legislature dealing with fiscal affairs, fish and wildlife, and natural resources a report detailing the acquisitions and development projects funded under this chapter during the immediately preceding biennium. [2007 c 241 § 35; 1990 1st ex.s. c 14 § 11. Formerly RCW 43.98A.100.]

Intent—Effective date—2007 c 241: See notes following RCW 79A.25.005.

79A.15.110 Review of proposed project application. A state or local agency shall review the proposed project application with the county or city with jurisdiction over the project area prior to applying for funds for the acquisition of property under this chapter. The appropriate county or city legislative authority may, at its discretion, submit a letter to the board identifying the authority's position with regard to the acquisition project. The board shall make the letters received under this section available to the governor and the legislature when the prioritized project list is submitted under RCW 79A.15.120, 79A.15.060, and 79A.15.070. [2007 c 241 § 36; 2005 c 303 § 5.]

Intent—Effective date—2007 c 241: See notes following RCW 79A.25.005.

Effective date—2005 c 303 §§ 1-14: See note following RCW 79A.15.010.

79A.15.120 Riparian protection account—Use of funds. (1) The riparian protection account is established in the state treasury. The board must administer the account in accordance with chapter 79A.25 RCW and this chapter, and hold it separate and apart from all other money, funds, and accounts of the board.

(2) Moneys appropriated for this chapter to the riparian protection account must be distributed for the acquisition or enhancement or restoration of riparian habitat. All enhancement or restoration projects, except those qualifying under subsection (10)(a) of this section, must include the acquisition of a real property interest in order to be eligible.

(3) State and local agencies and lead entities under chapter 77.85 RCW may apply for acquisition and enhancement or restoration funds for riparian habitat projects under subsection (1) of this section. Other state agencies not defined in RCW 79A.15.010, such as the department of transportation and the department of corrections, may enter into interagency agreements with state agencies to apply in partnership for funds under this section.

(4) The board may adopt rules establishing acquisition policies and priorities for distributions from the riparian protection account.

(5) Except as provided in RCW 79A.15.030(7), moneys appropriated for this section may not be used by the board to fund staff positions or other overhead expenses, or by a state, regional, or local agency to fund operation or maintenance of areas acquired under this chapter.

(6) Moneys appropriated for this section may be used by grant recipients for costs incidental to restoration and acquisition, including, but not limited to, surveying expenses, fencing, and signing.

(7) Moneys appropriated for this section may be used to fund mitigation banking projects involving the restoration, creation, enhancement, or preservation of riparian habitat, provided that the parties seeking to use the mitigation bank meet the matching requirements of subsection (8) of this section. The moneys from this section may not be used to supplant an obligation of a state or local agency to provide mitigation. For the purposes of this section, a mitigation bank means a site or sites where riparian habitat is restored, created, enhanced, or in exceptional circumstances, preserved expressly for the purpose of providing compensatory mitigation in advance of authorized project impacts to similar resources.

(8) The board may not approve a local project where the local agency share is less than the amount to be awarded from the riparian protection account. In-kind contributions, including contributions of a real property interest in land may be used to satisfy the local agency's share.

(9) State agencies receiving grants for acquisition of land under this section must pay an amount in lieu of real property taxes equal to the amount of tax that would be due if the land were taxable as open space land under chapter 84.34 RCW except taxes levied for any state purpose, plus an additional amount for control of noxious weeds equal to that which would be paid if such lands were privately owned. The county assessor and county legislative authority shall assist in determining the appropriate calculation of the amount of tax that would be due.

(10) In determining acquisition priorities with respect to the riparian protection account, the board must consider, at a minimum, the following criteria:

(a) Whether the project continues the conservation reserve enhancement program. Applications that extend the duration of leases of riparian areas that are currently enrolled in the conservation reserve enhancement program shall be eligible. Such applications are eligible for a conservation lease extension of at least twenty-five years of duration;

(b) Whether the projects are identified or recommended in a watershed planning process under chapter 247, Laws of 1998, salmon recovery planning under chapter 77.85 RCW, or other local plans, such as habitat conservation plans, and these must be highly considered in the process;

(c) Whether there is community support for the project;

(d) Whether the proposal includes an ongoing stewardship program that includes control of noxious weeds, detrimental invasive species, and that identifies the source of the funds from which the stewardship program will be funded;

(e) Whether there is an immediate threat to the site;

(f) Whether the quality of the habitat is improved or, for projects including restoration or enhancement, the potential for restoring quality habitat including linkage of the site to other high quality habitat;

(g) Whether the project is consistent with a local land use plan, or a regional or statewide recreational or resource plan. The projects that assist in the implementation of local shoreline master plans updated according to RCW 90.58.080 or local comprehensive plans updated according to RCW 36.70A.130 must be highly considered in the process;

(h) Whether the site has educational or scientific value; and

(i) Whether the site has passive recreational values for walking trails, wildlife viewing, or the observation of natural settings.

(11) Before November 1st of each even-numbered year, the board will recommend to the governor a prioritized list of projects to be funded under this section. The governor may remove projects from the list recommended by the board and will submit this amended list in the capital budget request to the legislature. The list must include, but not be limited to, a description of each project and any particular match requirement. [2007 c 241 § 37; 2005 c 303 § 6.]

Intent—Effective date—2007 c 241: See notes following RCW 79A.25.005.

Effective date—2005 c 303 §§ 1-14: See note following RCW 79A.15.010.

79A.15.130 Farmlands preservation account—Use of funds. (1) The farmlands preservation account is established in the state treasury. The board will administer the account in accordance with chapter 79A.25 RCW and this chapter, and hold it separate and apart from all other money, funds, and accounts of the board. Moneys appropriated for this chapter to the farmlands preservation account must be distributed for the acquisition and preservation of farmlands in order to maintain the opportunity for agricultural activity upon these lands.

(2)(a) Moneys appropriated for this chapter to the farmlands preservation account may be distributed for (i) the fee simple or less than fee simple acquisition of farmlands; (ii) the enhancement or restoration of ecological functions on those properties; or (iii) both. In order for a farmland preservation grant to provide for an environmental enhancement or restoration project, the project must include the acquisition of a real property interest.

(b) If a city or county acquires a property through this program in fee simple, the city or county shall endeavor to secure preservation of the property through placing a conservation easement, or other form of deed restriction, on the property which dedicates the land to agricultural use and retains one or more property rights in perpetuity. Once an easement or other form of deed restriction is placed on the property, the city or county shall seek to sell the property, at fair market value, to a person or persons who will maintain the property in agricultural production. Any moneys from the sale of the property shall either be used to purchase interests in additional properties which meet the criteria in subsection (9) of this section, or to repay the grant from the state which was originally used to purchase the property.

(3) Cities and counties may apply for acquisition and enhancement or restoration funds for farmland preservation projects within their jurisdictions under subsection (1) of this section.

(4) The board may adopt rules establishing acquisition and enhancement or restoration policies and priorities for distributions from the farmlands preservation account.

(5) The acquisition of a property right in a project under this section by a county or city does not provide a right of access to the property by the public unless explicitly provided for in a conservation easement or other form of deed restriction.

(6) Except as provided in RCW 79A.15.030(7), moneys appropriated for this section may not be used by the board to fund staff positions or other overhead expenses, or by a city or county to fund operation or maintenance of areas acquired under this chapter.

(7) Moneys appropriated for this section may be used by grant recipients for costs incidental to restoration and acquisition, including, but not limited to, surveying expenses, fencing, and signing.

(8) The board may not approve a local project where the local agency's share is less than the amount to be awarded from the farmlands preservation account. In-kind contributions, including contributions of a real property interest in land, may be used to satisfy the local agency's share.

(9) In determining the acquisition priorities, the board must consider, at a minimum, the following criteria:

(a) Community support for the project;

(b) A recommendation as part of a limiting factors or critical pathways analysis, a watershed plan or habitat conservation plan, or a coordinated regionwide prioritization effort;

(c) The likelihood of the conversion of the site to nonagricultural or more highly developed usage;

(d) Consistency with a local land use plan, or a regional or statewide recreational or resource plan. The projects that assist in the implementation of local shoreline master plans updated according to RCW 90.58.080 or local comprehensive plans updated according to RCW 36.70A.130 must be highly considered in the process;

(e) Benefits to salmonids;

(f) Benefits to other fish and wildlife habitat;

(g) Integration with recovery efforts for endangered, threatened, or sensitive species;

(h) The viability of the site for continued agricultural production, including, but not limited to:

(i) Soil types;

(ii) On-site production and support facilities such as barns, irrigation systems, crop processing and storage facilities, wells, housing, livestock sheds, and other farming infrastructure;

(iii) Suitability for producing different types or varieties of crops;

(iv) Farm-to-market access;

(v) Water availability; and

(i) Other community values provided by the property when used as agricultural land, including, but not limited to:

(i) Viewshed;

(ii) Aquifer recharge;

(iii) Occasional or periodic collector for storm water runoff;

(iv) Agricultural sector job creation;

(v) Migratory bird habitat and forage area; and

(vi) Educational and curriculum potential.

(10) In allotting funds for environmental enhancement or restoration projects, the board will require the projects to meet the following criteria:

(a) Enhancement or restoration projects must further the ecological functions of the farmlands;

(b) The projects, such as fencing, bridging watercourses, replanting native vegetation, replacing culverts, clearing of waterways, etc., must be less than fifty percent of the acquisition cost of the project including any in-kind contribution by any party;

(c) The projects should be based on accepted methods of achieving beneficial enhancement or restoration results; and

(d) The projects should enhance the viability of the preserved farmland to provide agricultural production while conforming to any legal requirements for habitat protection.

(11) Before November 1st of each even-numbered year, the board will recommend to the governor a prioritized list of all projects to be funded under this section. The governor may remove projects from the list recommended by the board and must submit this amended list in the capital budget request to the legislature. The list must include, but not be limited to, a description of each project and any particular match requirement. [2007 c 241 § 38; 2005 c 303 § 7.]

Intent—Effective date—2007 c 241: See notes following RCW 79A.25.005.

Effective date—2005 c 303 §§ 1-14: See note following RCW 79A.15.010.

79A.15.140 Puget Sound partners. When administering funds under this chapter, the committee shall give preference only to Puget Sound partners, as defined in RCW 90.71.010, in comparison to other entities that are eligible to be included in the definition of Puget Sound partner. Entities that are not eligible to be a Puget Sound partner due to geographic location, composition, exclusion from the scope of the Puget Sound action agenda developed by the Puget Sound partnership under RCW 90.71.310, or for any other reason, shall not be given less preferential treatment than Puget Sound partners. [2007 c 341 § 35.]

Severability—Effective date—2007 c 341: See RCW 90.71.906 and 90.71.907.

Chapter 79A.25 RCW

RECREATION AND CONSERVATION FUNDING BOARD

(Formerly: Interagency committee for outdoor recreation)

Sections

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79A.25.005 Policy—Mission of board. (1) As Washington begins its second century of statehood, the legislature recognizes that renewed efforts are needed to preserve, conserve, and enhance the state's recreational resources. Rapid population growth and increased urbanization have caused a decline in suitable land for recreation and resulted in overcrowding and deterioration of existing facilities. Lack of adequate recreational resources directly affects the health and well-being of all citizens of the state, reduces the state's economic viability, and prevents Washington from maintaining and achieving the quality of life that it deserves.

It is therefore the policy of the state and its agencies to preserve, conserve, and enhance recreational resources and open space. In carrying out this policy, the mission of the recreation and conservation funding board and its office is to (a) create and work actively for the implementation of a unified statewide strategy for meeting the recreational needs of Washington's citizens, (b) represent and promote the interests of the state on recreational issues in concert with other state and local agencies and the governor, (c) encourage and provide interagency and regional coordination, and interaction between public and private organizations, (d) administer recreational grant-in-aid programs and provide technical assistance, and (e) serve as a repository for information, studies, research, and other data relating to recreation.

(2) Washington is uniquely endowed with fresh and salt waters rich in scenic and recreational value. This outdoor heritage enriches the lives of citizens, attracts new residents and businesses to the state, and is a major support of its expanding tourist industry. Rising population, increased income and leisure time, and the rapid growth of boating and other water sports have greatly increased the demand for water related recreation, while waterfront land is rapidly rising in value and disappearing from public use. There is consequently an urgent need for the acquisition or improvement of waterfront land on fresh and salt water suitable for marine recreational use by Washington residents and visitors. To meet this need, it is necessary and proper that the portion of motor vehicle fuel taxes paid by boat owners and operators on fuel consumed in their watercraft and not reclaimed as presently provided by law should be expended for the acquisition or improvement of marine recreation land on the Pacific Ocean, Puget Sound, bays, lakes, rivers, reservoirs and other fresh and salt waters of the state. [2007 c 241 § 39;

1989 c 237 § 1; 1965 c 5 § 1 (Initiative Measure No. 215, approved November 3, 1964). Formerly RCW 43.99.010.]

Intent—2007 c 241: "The legislature intends to change the name of the interagency committee for outdoor recreation to the recreation and conservation funding board. Similarly, the office of the interagency committee is renamed the recreation and conservation office.

The legislature does not intend this act to make any substantive policy changes other than to change or clarify the names of the relevant entities.

The name changes in this act have no impact on the powers, duties, or responsibilities previously delegated to the interagency committee for outdoor recreation or the office of the interagency committee by statute, budget proviso, or executive order.

The name changes in this act have no impact on the validity of the documents, contracts, agreements, policies, and written decisions made, entered into, recorded, issued, or established before this name change by the interagency committee for outdoor recreation, its office, or director. Documents, contracts, agreements, policies, publications, and written decisions are not required to be changed to conform to the name changes, and the continued use of former names on documents made, recorded, issued, or established prior to the changes in this act does not affect the document's validity after the change." [2007 c 241 § 1.]

Effective date—2007 c 241: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect July 1, 2007." [2007 c 241 § 76.]

Effective date—1989 c 237: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and shall take effect on June 30, 1989." [1989 c 237 § 9.]

79A.25.010 Definitions. The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

(1) "Marine recreation land" means any land with or without improvements which (a) provides access to, or in whole or in part borders on, fresh or salt water suitable for recreational use by watercraft, or (b) may be used to create, add to, or make more usable, bodies of water, waterways, or land, for recreational use by watercraft.

(2) "Public body" means any county, city, town, port district, park and recreation district, metropolitan park district, or other municipal corporation which is authorized to acquire or improve public outdoor recreation land, and shall also mean Indian tribes now or hereafter recognized as such by the federal government for participation in the land and water conservation program.

(3) "Tax on marine fuel" means motor vehicle fuel tax which is (a) tax on fuel used in, or sold or distributed for use in, any watercraft, (b) refundable pursuant to chapter 82.36 RCW, and (c) paid to the director of licensing with respect to taxable sales, distributions, or uses occurring on or after December 3, 1964.

(4) "Watercraft" means any boat, vessel, or other craft used for navigation on or through water.

(5) "Board" means the recreation and conservation funding board.

(6) "Director" means the director of the recreation and conservation office.

(7) "Office," "recreation and conservation office," or "the office of recreation and conservation" means the state agency responsible for administration of programs and activities of the recreation and conservation funding board, the salmon recovery funding board, the invasive species council, and such other duties or boards, councils, or advisory groups

as are or may be established or directed for administrative placement in the agency.

(8) "Council" means the Washington invasive species council created in RCW 79A.25.310. [2007 c 241 § 40; 2006 c 152 § 9; 1989 c 237 § 2; 1979 c 158 § 108; 1972 ex.s. c 56 § 1; 1965 c 5 § 2 (Initiative Measure No. 215, approved November 3, 1964). Formerly RCW 43.99.020.]

Intent—Effective date—2007 c 241: See notes following RCW 79A.25.005.

Effective date—1989 c 237: See note following RCW 79A.25.005.

Construction—1972 ex.s. c 56: "The provisions of this 1972 amendatory act are intended to be remedial and procedural and shall be construed to apply retroactively." [1972 ex.s. c 56 § 2.]

79A.25.020 Director's powers and duties. The director shall have the following powers and duties:

(1) To supervise the administrative operations of the boards, office, and their staff;

(2) To administer recreation and conservation grant-in-aid programs and contracts, and provide technical assistance to state and local agencies;

(3) To prepare and update a strategic plan for the acquisition, renovation, and development of recreational resources and the preservation and conservation of open space. The plan shall be prepared in coordination with the office of the governor and the office of financial management, with participation of federal, state, and local agencies having recreational responsibilities, user groups, private sector interests, and the general public. The plan shall be submitted to the recreation and conservation funding board for review, and the board shall submit its recommendations on the plan to the governor. The plan shall include, but is not limited to: (a) an inventory of current resources; (b) a forecast of recreational resource demand; (c) identification and analysis of actual and potential funding sources; (d) a process for broad scale information gathering; (e) an assessment of the capabilities and constraints, both internal and external to state government, that affect the ability of the state to achieve the goals of the plan; (f) an analysis of strategic options and decisions available to the state; (g) an implementation strategy that is coordinated with executive policy and budget priorities; and (h) elements necessary to qualify for participation in or the receipt of aid from any federal program for outdoor recreation;

(4) To represent and promote the interests of the state on recreational issues and further the mission of the board and office;

(5) Upon approval of the relevant board, to enter into contracts and agreements with private nonprofit corporations to further state goals of preserving, conserving, and enhancing recreational resources and open space for the public benefit and use;

(6) To appoint such technical and other committees as may be necessary to carry out the purposes of this chapter;

(7) To create and maintain a repository for data, studies, research, and other information relating to recreation and conservation resources in the state, and to encourage the interchange of such information;

(8) To encourage and provide opportunities for interagency and regional coordination and cooperative efforts between public agencies and between public and private enti-

ties involved in the development and preservation of recreational and conservation resources; and

(9) To prepare the state trails plan, as required by RCW 79A.35.040. [2007 c 241 § 41; 2000 c 11 § 69; 1989 c 237 § 4. Formerly RCW 43.99.025.]

Intent—Effective date—2007 c 241: See notes following RCW 79A.25.005.

Effective date—1989 c 237: See note following RCW 79A.25.005.

79A.25.030 Determination of proportion of motor vehicle fuel tax moneys derived from tax on marine fuel—Studies—Costs. From time to time, but at least once each four years, the director of licensing shall determine the amount or proportion of moneys paid to him or her as motor vehicle fuel tax which is tax on marine fuel. The director of licensing shall make or authorize the making of studies, surveys, or investigations to assist him or her in making such determination, and shall hold one or more public hearings on the findings of such studies, surveys, or investigations prior to making his or her determination. The studies, surveys, or investigations conducted pursuant to this section shall encompass a period of twelve consecutive months each time. The final determination by the director of licensing shall be implemented as of the next biennium after the period from which the study data were collected. The director of licensing may delegate his or her duties and authority under this section to one or more persons of the department of licensing if he or she finds such delegation necessary and proper to the efficient performance of these duties. Costs of carrying out the provisions of this section shall be paid from the marine fuel tax refund account created in RCW 79A.25.040, upon legislative appropriation. [2007 c 241 § 42; 2000 c 11 § 70; 1995 c 166 § 1; 1979 c 158 § 109; 1975-'76 2nd ex.s. c 50 § 1; 1969 ex.s. c 74 § 1; 1965 c 5 § 3 (Initiative Measure No. 215, approved November 3, 1964). Formerly RCW 43.99.030.]

Intent—Effective date—2007 c 241: See notes following RCW 79A.25.005.

79A.25.060 Outdoor recreation account—Deposits. The outdoor recreation account is created in the state treasury. Moneys in the account are subject to legislative appropriation. The board shall administer the account in accordance with chapter 79A.15 RCW and this chapter, and shall hold it separate and apart from all other money, funds, and accounts of the board.

Grants, gifts, or other financial assistance, proceeds received from public bodies as administrative cost contributions, and moneys made available to the state of Washington by the federal government for outdoor recreation, may be deposited into the account. [2007 c 241 § 43; 2000 c 11 § 72; 1995 c 166 § 3; 1991 sp.s. c 13 § 52; 1985 c 57 § 54; 1967 ex.s. c 62 § 1; 1965 c 5 § 6 (Initiative Measure No. 215, approved November 3, 1964). Formerly RCW 43.99.060.]

Intent—Effective date—2007 c 241: See notes following RCW 79A.25.005.

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

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

79A.25.080 Recreation resource account—Distribution of moneys transferred. Moneys transferred to the recreation resource account from the marine fuel tax refund account may be used when appropriated by the legislature, as well as any federal or other funds now or hereafter available, to pay the office and necessary administrative and coordinative costs of the recreation and conservation funding board established by RCW 79A.25.110. All moneys so transferred, except those appropriated as aforesaid, shall be divided into two equal shares and shall be used to benefit watercraft recreation in this state as follows:

(1) One share as grants to state agencies for (a) acquisition of title to, or any interests or rights in, marine recreation land, (b) capital improvement and renovation of marine recreation land, including periodic dredging in accordance with subsection (3) of this section, if needed, to maintain or make the facility more useful, or (c) matching funds in any case where federal or other funds are made available on a matching basis for purposes described in (a) or (b) of this subsection;

(2) One share as grants to public bodies to help finance (a) acquisition of title to, or any interests or rights in, marine recreation land, or (b) capital improvement and renovation of marine recreation land, including periodic dredging in accordance with subsection (3) of this section, if needed, to maintain or make the facility more useful. A public body is authorized to use a grant, together with its own contribution, as matching funds in any case where federal or other funds are made available for purposes described in (a) or (b) of this subsection. The board may prescribe further terms and conditions for the making of grants in order to carry out the purposes of this chapter.

(3) For the purposes of this section "periodic dredging" is limited to dredging of materials that have been deposited in a channel due to unforeseen events. This dredging should extend the expected usefulness of the facility for at least five years. [2007 c 241 § 44; 2000 c 11 § 74; 1999 c 341 § 1; 1995 c 166 § 5; 1971 ex.s. c 140 § 1; 1965 ex.s. c 136 § 1; 1965 c 5 § 8 (Initiative Measure No. 215, approved November 3, 1964). Formerly RCW 43.99.080.]

Intent—Effective date—2007 c 241: See notes following RCW 79A.25.005.

79A.25.090 Interest on funds granted by board to be returned to source account. Interest earned on funds granted or made available by the board shall not be expended by the recipient but shall be returned to the source account for disbursement by the board in accordance with general budget and accounting procedure. [2007 c 241 § 45; 1995 c 166 § 6; 1967 ex.s. c 62 § 7. Formerly RCW 43.99.095.]

Intent—Effective date—2007 c 241: See notes following RCW 79A.25.005.

79A.25.100 Conversion of marine recreation land to other uses—Approval—Substitution. Marine recreation land with respect to which money has been expended under RCW 79A.25.080 shall not, without the approval of the board, be converted to uses other than those for which such expenditure was originally approved. The board shall only approve any such conversion upon conditions which will assure the substitution of other marine recreation land of at

least equal fair market value at the time of conversion and of as nearly as feasible equivalent usefulness and location. [2007 c 241 § 46; 2000 c 11 § 75; 1965 c 5 § 10 (Initiative Measure No. 215, approved November 3, 1964). Formerly RCW 43.99.100.]

Intent—Effective date—2007 c 241: See notes following RCW 79A.25.005.

79A.25.110 Recreation and conservation funding board—Created—Membership—Terms—Compensation and travel expenses. There is created the recreation and conservation funding board consisting of the commissioner of public lands, the director of parks and recreation, and the director of fish and wildlife, or their designees, and, by appointment of the governor with the advice and consent of the senate, five members from the public at large who have a demonstrated interest in and a general knowledge of outdoor recreation and conservation in the state. The terms of members appointed from the public at large shall commence on January 1st of the year of appointment and shall be for three years or until a successor is appointed, except in the case of appointments to fill vacancies which shall be for the remainder of the unexpired term. The governor shall appoint one of the members from the public at large to serve as chair of the board for the duration of the member's term. Members employed by the state shall serve without additional pay and participation in the work of the board shall be deemed performance of their employment. Members from the public at large shall be compensated in accordance with RCW 43.03.240 and shall be entitled to reimbursement individually for travel expenses incurred in performance of their duties as members of the board in accordance with RCW 43.03.050 and 43.03.060. [2007 c 241 § 47; 1994 c 264 § 31; 1988 c 36 § 21; 1985 c 77 § 1; 1984 c 287 § 84. Prior: 1981 c 338 § 7; 1981 c 206 § 1; 1975-'76 2nd ex.s. c 34 § 125; 1971 c 60 § 1; 1967 ex.s. c 62 § 2; 1965 c 5 § 11 (Initiative Measure No. 215, approved November 3, 1964). Formerly RCW 43.99.110.]

Intent—Effective date—2007 c 241: See notes following RCW 79A.25.005.

Legislative findings—Severability—Effective date—1984 c 287: See notes following RCW 43.03.220.

Effective date—1981 c 206: "This act is necessary for the immediate preservation of the public peace, health, and safety, the support of the state government and its existing public institutions, and shall take effect June 30, 1981." [1981 c 206 § 4.]

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

Construction and maintenance of outdoor recreation facilities by department of natural resources, review by recreation and conservation funding board: RCW 79.10.140.

79A.25.120 Plans for public outdoor recreation land acquisition or improvement—Contents—Submission—Recommendations. Any public body or any agency of state government authorized to acquire or improve public outdoor recreation land which desires funds from the outdoor recreation account, the recreation resource account, or the non-highway and off-road vehicle activities program account shall submit to the board a long-range plan for developing outdoor recreation facilities within its authority and detailed plans for the projects sought to be financed from these

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accounts, including estimated cost and such other information as the board may require. The board shall analyze all proposed plans and projects, and shall recommend to the governor for inclusion in the budget such projects as it may approve and find to be consistent with an orderly plan for the acquisition and improvement of outdoor recreation lands in the state. [2007 c 241 § 48; 1995 c 166 § 7; 1983 c 3 § 114; 1965 c 5 § 12 (Initiative Measure No. 215, approved November 3, 1964). Formerly RCW 43.99.120.]

Intent—Effective date—2007 c 241: See notes following RCW 79A.25.005.

79A.25.130 Participation in federal programs—Authority. The board or director may apply to any appropriate agency or officer of the United States for participation in or the receipt of aid from any federal program respecting outdoor recreation or conservation. The board or director may enter into contracts and agreements with the United States or any appropriate agency thereof, keep financial and other records relating thereto, and furnish to appropriate officials and agencies of the United States such reports and information as may be reasonably necessary to enable such officials and agencies to perform their duties under such programs. [2007 c 241 § 49; 1967 ex.s. c 62 § 5. Formerly RCW 43.99.124.]

Intent—Effective date—2007 c 241: See notes following RCW 79A.25.005.

79A.25.140 Commitments or agreements forbidden unless sufficient funds available—Agreements with federal agencies on behalf of state or local agencies—Conditions. The board or director shall not make any commitment or enter into any agreement until it is determined that sufficient funds are available to meet project costs. It is the legislative intent that, to such extent as may be necessary to assure the proper operation and maintenance of areas and facilities acquired or developed pursuant to any program participated in by this state under authority of this chapter, such areas and facilities shall be publicly maintained for outdoor recreation purposes. When requested by a state agency or public body, the board or director may enter into and administer agreements with the United States or any appropriate agency thereof for planning, acquisition, and development projects involving participating federal-aid funds on behalf of any state agency, public body, or subdivision of this state: **PROVIDED,** That recipients of funds give necessary assurances to the board or director that they have available sufficient matching funds to meet their shares, if any, of the cost of the project and that the acquired or developed areas will be operated and maintained at the expense of such state agency, public body, or subdivision for public outdoor recreation use. [2007 c 241 § 50; 1967 ex.s. c 62 § 6. Formerly RCW 43.99.126.]

Intent—Effective date—2007 c 241: See notes following RCW 79A.25.005.

79A.25.150 Assistance furnished by state departments—Appointment of director and personnel—Civil service exemption. When requested by the board, members employed by the state shall furnish assistance to the board from their departments for the analysis and review of pro-

posed plans and projects, and such assistance shall be a proper charge against the appropriations to the several agencies represented on the board. Assistance may be in the form of money, personnel, or equipment and supplies, whichever is most suitable to the needs of the board.

The director of the recreation and conservation office shall be appointed by, and serve at the pleasure of, the governor. The governor shall select the director from a list of three candidates submitted by the board. However, the governor may request and the board shall provide an additional list or lists from which the governor may select the director. The lists compiled by the board shall not be subject to public disclosure. The director shall have background and experience in the areas of recreation and conservation management and policy. The director shall be paid a salary to be fixed by the governor in accordance with the provisions of RCW 43.03.040. The director shall appoint such personnel as may be necessary to carry out the duties of the office. Not more than three employees appointed by the director shall be exempt from the provisions of chapter 41.06 RCW. [2007 c 241 § 51; 1989 c 237 § 3; 1981 c 206 § 2; 1967 ex.s. c 62 § 3; 1965 c 5 § 13 (Initiative Measure No. 215, approved November 3, 1964). Formerly RCW 43.99.130.]

Intent—Effective date—2007 c 241: See notes following RCW 79A.25.005.

Effective date—1989 c 237: See note following RCW 79A.25.005.

Effective date—1981 c 206: See note following RCW 79A.25.110.

79A.25.190 Appropriations by subsequent legislatures. The 1967 and subsequent legislatures may appropriate funds requested in the budget for grants to public bodies and state agencies from the recreation resource account to the board for allocation and disbursement. The board shall include a list of prioritized state agency projects to be funded from the recreation resource account with its biennial budget request. [2007 c 241 § 52; 1995 c 166 § 8; 1965 c 5 § 15 (Initiative Measure No. 215, approved November 3, 1964). Formerly RCW 43.99.150.]

Intent—Effective date—2007 c 241: See notes following RCW 79A.25.005.

79A.25.200 Recreation resource account. The recreation resource account is created in the state treasury. Moneys in this account are subject to legislative appropriation. The board shall administer the account in accordance with this chapter and chapter 79A.35 RCW and shall hold it separate and apart from all other money, funds, and accounts of the board. Moneys received from the marine fuel tax refund account under RCW 79A.25.070 shall be deposited into the account. Grants, gifts, or other financial assistance, proceeds received from public bodies as administrative cost contributions, and moneys made available to the state of Washington by the federal government for outdoor recreation may be deposited into the account. [2007 c 241 § 53; 2000 c 11 § 77; 1995 c 166 § 10. Formerly RCW 43.99.170.]

Intent—Effective date—2007 c 241: See notes following RCW 79A.25.005.

79A.25.210 Firearms range account—Grant program—Rules. The firearms range account is hereby created in the state general fund. Moneys in the account shall be sub-

ject to legislative appropriation and shall be used for purchase and development of land, construction or improvement of range facilities, including fixed structure construction or remodeling, equipment purchase, safety or environmental improvements, noise abatement, and liability protection for public and nonprofit firearm range training and practice facilities.

Grant funds shall not be used for expendable shooting supplies, or normal operating expenses. In making grants, the board shall give priority to projects for noise abatement or safety improvement. Grant funds shall not supplant funds for other organization programs.

The funds will be available to nonprofit shooting organizations, school districts, and state, county, or local governments on a match basis. All entities receiving matching funds must be open on a regular basis and usable by law enforcement personnel or the general public who possess Washington concealed pistol licenses or Washington hunting licenses or who are enrolled in a firearm safety class.

Applicants for a grant from the firearms range account shall provide matching funds in either cash or in-kind contributions. The match must represent one dollar in value for each one dollar of the grant except that in the case of a grant for noise abatement or safety improvements the match must represent one dollar in value for each two dollars of the grant. In-kind contributions include but are not limited to labor, materials, and new property. Existing assets and existing development may not apply to the match.

Applicants other than school districts or local or state government must be registered as a nonprofit or not-for-profit organization with the Washington secretary of state. The organization's articles of incorporation must contain provisions for the organization's structure, officers, legal address, and registered agent.

Organizations requesting grants must provide the hours of range availability for public and law enforcement use. The fee structure will be submitted with the grant application.

Any nonprofit organization or agency accepting a grant under this program will be required to pay back the entire grant amount to the firearms range account if the use of the range facility is discontinued less than ten years after the grant is accepted.

Entities receiving grants must make the facilities for which grant funding is received open for hunter safety education classes and firearm safety classes on a regular basis for no fee.

Government units or school districts applying for grants must open their range facility on a regular basis for hunter safety education classes and firearm safety classes.

The board shall adopt rules to implement chapter 195, Laws of 1990, pursuant to chapter 34.05 RCW. [2007 c 241 § 54; 1996 c 96 § 1; 1994 sp.s. c 7 § 443; 1990 c 195 § 2. Formerly RCW 77.12.720.]

Intent—Effective date—2007 c 241: See notes following RCW 79A.25.005.

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

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

Findings—1990 c 195: "Firearms are collected, used for hunting, recreational shooting, and self-defense, and firearm owners as well as bow users

need safe, accessible areas in which to shoot their equipment. Approved shooting ranges provide that opportunity, while at the same time, promote public safety. Interest in all shooting sports has increased while safe locations to shoot have been lost to the pressures of urban growth." [1990 c 195 § 1.]

79A.25.220 Firearms range advisory committee. (1)

A ten-member firearms range advisory committee is hereby created to provide advice and counsel to the board. The members shall be appointed by the director of the recreation and conservation office from the following groups:

- (a) Law enforcement;
- (b) Washington military department;
- (c) Black powder shooting sports;
- (d) Rifle shooting sports;
- (e) Pistol shooting sports;
- (f) Shotgun shooting sports;
- (g) Archery shooting sports;
- (h) Hunter education;
- (i) Hunters; and
- (j) General public.

(2) The firearms range advisory committee members shall serve two-year terms with five new members being selected each year beginning with the third year of the committee's existence. The firearms range advisory committee members shall not receive compensation from the firearms range account. However, travel and per diem costs shall be paid consistent with regulations for state employees.

(3) The office shall provide administrative, operational, and logistical support for the firearms range advisory committee. Expenses directly incurred for supporting this program may be charged by the office against the firearms range account. Expenses shall not exceed ten percent of the yearly income for the range account.

(4) The board shall in cooperation with the firearms range advisory committee:

- (a) Develop an application process;
- (b) Develop an audit and accountability program;
- (c) Screen, prioritize, and approve grant applications; and
- (d) Monitor compliance by grant recipients.

(5) The department of natural resources, the department of fish and wildlife, and the Washington military department are encouraged to provide land, facilitate land exchanges, and support the development of shooting range facilities. [2007 c 241 § 55; 1993 sp.s. c 2 § 71; 1990 c 195 § 3. Formerly RCW 77.12.730.]

Intent—Effective date—2007 c 241: See notes following RCW 79A.25.005.

Effective date—1993 sp.s. c 2 §§ 1-6, 8-59, and 61-79: See RCW 43.300.900.

Severability—1993 sp.s. c 2: See RCW 43.300.901.

Findings—1990 c 195: See note following RCW 79A.25.210.

79A.25.230 Firearms range account—Gifts and grants. The board or director may accept gifts and grants upon such terms as the board shall deem proper. All monetary gifts and grants shall be deposited in the firearms range account of the general fund. [2007 c 241 § 56; 1990 c 195 § 4. Formerly RCW 77.12.740.]

Intent—Effective date—2007 c 241: See notes following RCW 79A.25.005.

Findings—1990 c 195: See note following RCW 79A.25.210.

79A.25.240 Grants and loan administration. The recreation and conservation office shall provide necessary grants and loan administration support to the salmon recovery funding board as provided in RCW 77.85.120. The office shall also be responsible for tracking salmon recovery expenditures under RCW 77.85.140. The office shall provide all necessary administrative support to the salmon recovery funding board, and the salmon recovery funding board shall be located with the office. The office shall provide necessary coordination with the salmon recovery office. [2007 c 241 § 57; 2003 c 39 § 44; 2000 c 11 § 78; 1999 sp.s. c 13 § 17.]

Intent—Effective date—2007 c 241: See notes following RCW 79A.25.005.

Severability—Effective date—1999 sp.s. c 13: See notes following RCW 75.46.005.

79A.25.250 Acquisition, development, etc., of urban area parks by recreation and conservation funding board. Recognizing the fact that the demand for park services is greatest in our urban areas, that parks should be accessible to all Washington citizens, that the urban poor cannot afford to travel to remotely located parks, that few state parks are located in or near urban areas, that a need exists to conserve energy, and that local governments having jurisdiction in urban areas cannot afford the costs of maintaining and operating the extensive park systems needed to service their large populations, the legislature hereby directs the recreation and conservation funding board to place a high priority on the acquisition, development, redevelopment, and renovation of parks to be located in or near urban areas and to be particularly accessible to and used by the populations of those areas. For purposes of RCW 79A.25.250 and 79A.05.300, "urban areas" means any incorporated city with a population of five thousand persons or greater or any county with a population density of two hundred fifty persons per square mile or greater. This section shall be implemented by January 1, 1981. [2007 c 241 § 58; 2000 c 11 § 79; 1980 c 89 § 3. Formerly RCW 43.51.380.]

Intent—Effective date—2007 c 241: See notes following RCW 79A.25.005.

79A.25.260 Habitat and recreation lands coordinating group—Members—Progress reports—Duties. (Expires July 31, 2012.) (1) The habitat and recreation lands coordinating group is established. The habitat and recreation lands coordinating group must include representatives from the *committee, the state parks and recreation commission, the department of natural resources, and the Washington state department of fish and wildlife. The members of the habitat and recreation lands coordinating group must have subject matter expertise with the issues presented in this section. Representatives from appropriate stakeholder organizations and local government must also be considered for participation on the habitat and recreation lands coordinating group, but may only be appointed or invited by the director.

(2) To ensure timely completion of the duties assigned to the habitat and recreation lands coordinating group, the director shall submit yearly progress reports to the office of financial management.

(3) The habitat and recreation lands coordinating group must:

(a) Review agency land acquisition and disposal plans and policies to help ensure statewide coordination of habitat and recreation land acquisitions and disposals;

(b) Produce an interagency, statewide biennial forecast of habitat and recreation land acquisitions [acquisition] and disposal plans;

(c) Establish procedures for publishing the biennial forecast of acquisition and disposal plans on web sites or other centralized, easily accessible formats;

(d) Develop and convene an annual forum for agencies to coordinate their near-term acquisition and disposal plans;

(e) Develop a recommended method for interagency geographic information system-based documentation of habitat and recreation lands in cooperation with other state agencies using geographic information systems;

(f) Develop recommendations for standardization of acquisition and disposal recordkeeping, including identifying a preferred process for centralizing acquisition data;

(g) Develop an approach for monitoring the success of acquisitions;

(h) Identify and commence a dialogue with key state and federal partners to develop an inventory of potential public lands for transfer into habitat and recreation land management status;

(i) Review existing and proposed habitat conservation plans on a regular basis to foster statewide coordination and save costs.

(4) The group shall revisit the *committee's and Washington wildlife and recreation program's planning requirements to determine whether coordination of state agency habitat and recreation land acquisition and disposal could be improved by modifying those requirements.

(5) The group must develop options for centralizing coordination of habitat and recreation land acquisition made with funds from federal grants. The advantages and drawbacks of the following options, at a minimum, must be developed:

(a) Requiring that agencies provide early communication on the status of federal grant applications to the *committee, the office of financial management, or directly to the legislature;

(b) Establishing a centralized pass-through agency for federal funds, where individual agencies would be the primary applicants.

(6) This section expires July 31, 2012. Prior to January 1, 2012, the *committee shall make a formal recommendation to the appropriate committees of the legislature as to whether the existence of the habitat and recreation lands coordinating group should be continued beyond July 31, 2012, and if so, whether any modifications to its enabling statute should be pursued. The *committee shall involve all participants in the habitat and recreation lands coordinating group when developing the recommendations. [2007 c 247 § 1.]

***Reviser's note:** Chapter 241, Laws of 2007 amended RCW 79A.25.010, changing the definition of "committee" to "board."

79A.25.310 Washington invasive species council—Created. (1) There is created the Washington invasive species

council to exist until December 31, 2011. Staff support to the council shall be provided by the recreation and conservation office and from the agencies represented on the council. For administrative purposes, the council shall be located within the office.

(2) The purpose of the council is to provide policy level direction, planning, and coordination for combating harmful invasive species throughout the state and preventing the introduction of others that may be potentially harmful.

(3) The council is a joint effort between local, tribal, state, and federal governments, as well as the private sector and nongovernmental interests. The purpose of the council is to foster cooperation, communication, and coordinated approaches that support local, state, and regional initiatives for the prevention and control of invasive species.

(4) For the purposes of this chapter, "invasive species" include nonnative organisms that cause economic or environmental harm and are capable of spreading to new areas of the state. "Invasive species" does not include domestic livestock, intentionally planted agronomic crops, or nonharmful exotic organisms. [2007 c 241 § 61; 2006 c 152 § 2.]

Intent—Effective date—2007 c 241: See notes following RCW 79A.25.005.

79A.25.370 Washington invasive species council—Invasive species council account. (Expires December 31, 2011.) The invasive species council account is created in the custody of the state treasurer. All receipts from appropriations, gifts, grants, and donations must be deposited into the account. Expenditures from the account may be used only to carry out the purposes of the council. The account is subject to allotment procedures under chapter 43.88 RCW and the approval of the director of the recreation and conservation office is required for expenditures. All expenditures must be directed by the council. [2007 c 241 § 62; 2006 c 152 § 8.]

Expiration date—2007 c 241 § 62: "Section 62 of this act expires December 31, 2011." [2007 c 241 § 75.]

Intent—Effective date—2007 c 241: See notes following RCW 79A.25.005.

Expiration date—2006 c 152 § 8: "Section 8 of this act expires December 31, 2011." [2006 c 152 § 10.]

79A.25.820 Strategic plan—Funding eligibility—Regional coordination and cooperative efforts—Data collection and exchange. (Contingent expiration date.) Subject to available resources, the recreation and conservation funding board may:

(1) Prepare and update a strategic plan for the development, maintenance, and improvement of community outdoor athletic fields in the state. In the preparation of such plan, the board may use available data from federal, state, and local agencies having community outdoor athletic responsibilities, user groups, private sector interests, and the general public. The plan may include, but is not limited to:

(a) An inventory of current community outdoor athletic fields;

(b) A forecast of demand for these fields;

(c) An identification and analysis of actual and potential funding sources; and

(d) Other information the board deems appropriate to carry out the purposes of RCW 79A.25.800 through 79A.25.830;

(2) Determine the eligibility requirements for cities, counties, and qualified nonprofit organizations to access funding from the youth athletic facility account created in RCW 43.99N.060(4);

(3) Encourage and provide opportunities for interagency and regional coordination and cooperative efforts between public agencies and between public entities and nonprofit organizations involved in the maintenance, development, and improvement of community outdoor athletic fields; and

(4) Create and maintain data, studies, research, and other information relating to community outdoor athletic fields in the state, and to encourage the exchange of this information. [2007 c 241 § 59; 2003 c 126 § 702; 2000 c 11 § 81; 1998 c 264 § 3. Formerly RCW 43.99.820.]

Intent—Effective date—2007 c 241: See notes following RCW 79A.25.005.

Contingent expiration date—2003 c 126 §§ 701 and 702: See note following RCW 79A.25.800.

Part headings not law—Effective date—2003 c 126: See notes following RCW 79A.05.385.

Severability—Contingent expiration date—1998 c 264: See notes following RCW 79A.25.800.

79A.25.830 Gifts, grants, or endowments. (Continuing expiration date.) The recreation and conservation funding board or office may receive gifts, grants, or endowments from public and private sources that are made from time to time, in trust or otherwise, for the use and benefit of the purposes of RCW 79A.25.800 through 79A.25.830 and spend gifts, grants, or endowments or income from the public or private sources according to their terms, unless the receipt of the gifts, grants, or endowments violates RCW 42.17.710. [2007 c 241 § 60; 2000 c 11 § 82; 1998 c 264 § 4. Formerly RCW 43.99.830.]

Intent—Effective date—2007 c 241: See notes following RCW 79A.25.005.

Severability—Contingent expiration date—1998 c 264: See notes following RCW 79A.25.800.

Chapter 79A.35 RCW

WASHINGTON STATE RECREATION TRAILS SYSTEM

Sections

79A.35.010	Definitions.
79A.35.030	Trails to be designated by board—Inclusion of other trails—Procedure.
79A.35.050	Proposals for designation of existing or proposed trails as state recreational trails.
79A.35.060	Coordination by recreation and conservation funding board.
79A.35.070	Categories of trails or areas—Policy statement as to certain state lands.
79A.35.090	Guidelines.
79A.35.100	Consultation and cooperation with state, federal, and local agencies.
79A.35.110	Participation by volunteer organizations—Liability of public agencies therefor limited.
79A.35.120	Department of transportation—Participation.

79A.35.010 Definitions. The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

(1) "Board" means the recreation and conservation funding board.

(2) "System" means the Washington state recreation trails system. [2007 c 241 § 63; 1970 ex.s. c 76 § 2. Formerly RCW 67.32.020.]

Intent—Effective date—2007 c 241: See notes following RCW 79A.25.005.

Recreation and conservation funding board: Chapter 79A.25 RCW.

79A.35.030 Trails to be designated by board—Inclusion of other trails—Procedure. (1) The system shall be composed of trails as designated by the board. Such trails shall meet the conditions established in this chapter and such supplementary criteria as the board may prescribe.

(2) The board shall establish a procedure whereby federal, state, and local governmental agencies and/or public and private organizations may propose trails for inclusion within the system. Such proposals will comply with the proposal requirements contained in RCW 79A.35.050.

(3) In consultation with appropriate federal, state, and local governmental agencies and public and private organizations, the board shall establish a procedure for public review of the proposals considered appropriate for inclusion in the statewide trails system. [2007 c 241 § 64; 2000 c 11 § 86; 1970 ex.s. c 76 § 4. Formerly RCW 67.32.040.]

Intent—Effective date—2007 c 241: See notes following RCW 79A.25.005.

79A.35.050 Proposals for designation of existing or proposed trails as state recreational trails. Before any specific existing or proposed trail is considered for designation as a state recreational trail, a proposal must be submitted to the board showing the following:

(1) For existing trails:

(a) The route of such trail, including maps and illustrations, and the recommended mode or modes of travel to be permitted thereon;

(b) The characteristics that, in the judgment of the agency or organization proposing the trail, make it worthy of designation as a component of a state recreation trail or trail system;

(c) A map showing the current status of land ownership and use along the designated route;

(d) The name of the agency or combination of agencies that would be responsible for acquiring additional trail rights-of-way or easements, trail improvement, operation and maintenance, and a statement from those agencies indicating the conditions under which they would be willing to accept those responsibilities;

(e) Any anticipated problems of maintaining and supervising the use of such trail and any anticipated hazards to the use of any land or resource adjacent to such trail;

(f) And such others as deemed necessary by the board.

(2) In addition, for proposed trails or for existing trails which require additional right-of-way acquisition, easements, and/or development:

(a) The method of acquiring trail rights-of-way or easements;

(b) The estimated cost of acquisition of lands, or interest in land, if any is required;

(c) The plans for developing the trail and the estimated cost thereof;

(d) Proposed sources of funds to accomplish (a) and (b) of this subsection. [2007 c 241 § 65; 1970 ex.s. c 76 § 6. Formerly RCW 67.32.060.]

Intent—Effective date—2007 c 241: See notes following RCW 79A.25.005.

79A.35.060 Coordination by recreation and conservation funding board. Following designation of a state recreation trail, the recreation and conservation funding board may coordinate:

(1) The agency or agencies that will acquire (where appropriate), develop and/or maintain the trail;

(2) The most appropriate location for the trail;

(3) Modes of travel to be permitted;

(4) And other functions as appropriate. [2007 c 241 § 66; 1970 ex.s. c 76 § 7. Formerly RCW 67.32.070.]

Intent—Effective date—2007 c 241: See notes following RCW 79A.25.005.

79A.35.070 Categories of trails or areas—Policy statement as to certain state lands. The following seven categories of trails or areas are hereby established for purposes of this chapter:

(1) Cross-state trails which connect scenic, historical, geological, geographical, or other significant features which are characteristic of the state;

(2) Water-oriented trails which provide a designated path to, on, or along fresh and/or salt water in which the water is the primary point of interest;

(3) Scenic-access trails which give access to quality recreation, scenic, historic or cultural areas of statewide or national significance;

(4) Urban trails which provide opportunities within an urban setting for walking, bicycling, horseback riding, or other compatible activities. Where appropriate, they will connect parks, scenic areas, historical points, and neighboring communities;

(5) Historical trails which identify and interpret routes which were significant in the historical settlement and development of the state;

(6) ORV vehicle trails which are suitable for use by both four-wheel drive vehicles and two-wheel vehicles. Such trails may be included as a part of the trail systems enumerated in subsections (1), (2), (3) and (5) of this section or may be separately designated;

(7) Off-road and off-trail areas which are suitable for use by both four-wheel drive vehicles and two-wheel vehicles. The board shall coordinate an inventory and classification of such areas giving consideration to the type of use such areas will receive from persons operating four-wheel drive vehicles and two-wheel vehicles.

The planning and designation of trails shall take into account and give due regard to the interests of federal agencies, state agencies and bodies, counties, municipalities, private landowners and individuals, and interested recreation organizations. It is not required that the above categories be used to designate specific trails, but the board will assure that full consideration is given to including trails from all categories within the system. As it relates to all classes of trails and

to all types of trail users, it is herein declared as state policy to increase recreational trail access to and within state and federally owned lands and private lands where access may be obtained. It is the intent of the legislature that public recreation facilities be developed as fully as possible to provide greater recreation opportunities for the citizens of the state. The purpose of chapter 153, Laws of 1972 ex. sess. is to increase the availability of trails and areas for off-road vehicles by granting authority to state and local governments to maintain a system of ORV trails and areas, and to fund the program to provide for such development. State lands should be used as fully as possible for all public recreation which is compatible with the income-producing requirements of the various trusts. [2007 c 241 § 67; 1977 ex.s. c 220 § 21; 1972 ex.s. c 153 § 1; 1971 ex.s. c 47 § 2; 1970 ex.s. c 76 § 8. Formerly RCW 67.32.080.]

Intent—Effective date—2007 c 241: See notes following RCW 79A.25.005.

Severability—1971 ex.s. c 47: See RCW 46.09.900.

Application of chapter—Permission necessary to enter upon private lands: RCW 46.09.010.

79A.35.090 Guidelines. With the concurrence of any federal or state agency administering lands through which a state recreation trail may pass, and after consultation with local governments, private organizations and landowners which the board knows or believes to be concerned, the board may issue guidelines including, but not limited to: Encouraging the permissive use of volunteer organizations for planning, maintenance, or trail construction assistance; trail construction and maintenance standards, a trail use reporting procedure, and a uniform trail mapping system. [2007 c 241 § 68; 1971 ex.s. c 47 § 3; 1970 ex.s. c 76 § 10. Formerly RCW 67.32.100.]

Intent—Effective date—2007 c 241: See notes following RCW 79A.25.005.

Severability—1971 ex.s. c 47: See RCW 46.09.900.

Application of chapter—Permission necessary to enter upon private lands: RCW 46.09.010.

79A.35.100 Consultation and cooperation with state, federal, and local agencies. The board is authorized and encouraged to consult and to cooperate with any state, federal, or local governmental agency or body including special districts subject to the provisions of chapter 85.38 RCW, with private landowners, and with any privately owned utility having jurisdiction or control over or information concerning the use, abandonment, or disposition of roadways, utility rights-of-way, dikes or levees, or other properties suitable for the purpose of improving or expanding the system in order to assure, to the extent practicable, that any such properties having value for state recreation trail purposes may be made available for such use. [2007 c 241 § 69; 1993 c 258 § 1; 1970 ex.s. c 76 § 11. Formerly RCW 67.32.110.]

Intent—Effective date—2007 c 241: See notes following RCW 79A.25.005.

79A.35.110 Participation by volunteer organizations—Liability of public agencies therefor limited. Volunteer organizations may assist public agencies, with the agency's approval, in the construction and maintenance of

recreational trails in accordance with the guidelines issued by the board. In carrying out such volunteer activities the members of the organizations shall not be considered employees or agents of the public agency administering the trails, and such public agencies shall not be subject to any liability whatsoever arising out of volunteer activities. The liability of public agencies to members of such volunteer organizations shall be limited in the same manner as provided for in RCW 4.24.210. [2007 c 241 § 70; 1971 ex.s. c 47 § 4. Formerly RCW 67.32.130.]

Intent—Effective date—2007 c 241: See notes following RCW 79A.25.005.

Severability—1971 ex.s. c 47: See RCW 46.09.900.

Application of chapter—Permission necessary to enter upon private lands: RCW 46.09.010.

79A.35.120 Department of transportation—Participation. The department of transportation shall consider plans for trails along and across all new construction projects, improvement projects, and along or across any existing highways in the state system as deemed desirable by the board. [2007 c 241 § 71; 1984 c 7 § 368; 1971 ex.s. c 47 § 5. Formerly RCW 67.32.140.]

Intent—Effective date—2007 c 241: See notes following RCW 79A.25.005.

Severability—1984 c 7: See note following RCW 47.01.141.

Severability—1971 ex.s. c 47: See RCW 46.09.900.

Application of chapter—Permission necessary to enter upon private lands: RCW 46.09.010.

Chapter 79A.40 RCW

CONVEYANCES FOR PERSONS IN RECREATIONAL ACTIVITIES

Sections

79A.40.100 Judicial review.

79A.40.100 Judicial review. The procedure for review of the orders or actions of the state parks and recreation commission, its agents or employees, shall be conducted in accordance with chapter 34.05 RCW. [2007 c 234 § 98; 1959 c 327 § 10. Formerly RCW 70.88.100.]

Chapter 79A.60 RCW

REGULATION OF RECREATIONAL VESSELS

Sections

- 79A.60.510 Findings—Sewage disposal initiative established—Boater environmental education—Waterway access facilities.
- 79A.60.520 Identification and designation of polluted and environmentally sensitive areas.
- 79A.60.590 Allocation of funds.
- 79A.60.670 Boating activities program—Boating activities advisory committee—Adoption of rules.
- 79A.60.680 Study of boater needs—Funding recommendations.
- 79A.60.690 Boating activities account.

79A.60.510 Findings—Sewage disposal initiative established—Boater environmental education—Waterway access facilities. The legislature finds that the waters of Washington state provide a unique and valuable recreational resource to large and growing numbers of boaters. Proper

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stewardship of, and respect for, these waters requires that, while enjoying them for their scenic and recreational benefits, boaters must exercise care to assure that such activities do not contribute to the despoliation of these waters, and that watercraft be operated in a safe and responsible manner. The legislature has specifically addressed the topic of access to clean and safe waterways by requiring the 1987 boating safety study and by establishing the Puget Sound partnership.

The legislature finds that there is a need to educate Washington's boating community about safe and responsible actions on our waters and to increase the level and visibility of the enforcement of boating laws. To address the incidence of fatalities and injuries due to recreational boating on our state's waters, local and state efforts directed towards safe boating must be stimulated. To provide for safe waterways and public enjoyment, portions of the watercraft excise tax and boat registration fees should be made available for boating safety and other boating recreation purposes.

In recognition of the need for clean waterways, and in keeping with the Puget Sound partnership's water quality work plan, the legislature finds that adequate opportunities for responsible disposal of boat sewage must be made available. There is hereby established a five-year initiative to install sewage pumpout or sewage dump stations at appropriate marinas.

To assure the use of these sewage facilities, a boater environmental education program must accompany the five-year initiative and continue to educate boaters about boat wastes and aquatic resources.

The legislature also finds that, in light of the increasing numbers of boaters utilizing state waterways, a program to acquire and develop sufficient waterway access facilities for boaters must be undertaken.

To support boating safety, environmental protection and education, and public access to our waterways, the legislature declares that a portion of the income from boating-related activities, as specified in RCW 82.49.030 and 88.02.040, should support these efforts. [2007 c 341 § 57; 1999 c 249 § 1506; 1989 c 393 § 1. Formerly RCW 88.12.295, 88.12.360, and 88.36.010.]

Severability—Effective date—2007 c 341: See RCW 90.71.906 and 90.71.907.

Severability—1999 c 249: See note following RCW 79A.05.010.

79A.60.520 Identification and designation of polluted and environmentally sensitive areas. The commission, in consultation with the departments of ecology, fish and wildlife, natural resources, social and health services, and the Puget Sound partnership shall conduct a literature search and analyze pertinent studies to identify areas which are polluted or environmentally sensitive within the state's waters. Based on this review the commission shall designate appropriate areas as polluted or environmentally sensitive, for the purposes of chapter 393, Laws of 1989 only. [2007 c 341 § 56; 1999 c 249 § 1507; 1994 c 264 § 81; 1989 c 393 § 3. Formerly RCW 88.12.305, 88.12.380, and 88.36.030.]

Severability—Effective date—2007 c 341: See RCW 90.71.906 and 90.71.907.

Severability—1999 c 249: See note following RCW 79A.05.010.

79A.60.590 Allocation of funds. The amounts allocated in accordance with *RCW 82.49.030(3) shall be expended upon appropriation in accordance with the following limitations:

(1) Thirty percent of the funds shall be appropriated to the recreation and conservation funding board and be expended for use by state and local government for public recreational waterway boater access and boater destination sites. Priority shall be given to critical site acquisition. The recreation and conservation funding board shall administer such funds as a competitive grants program. The amounts provided for in this subsection shall be evenly divided between state and local governments.

(2) Thirty percent of the funds shall be expended by the commission exclusively for sewage pumpout or dump units at publicly and privately owned marinas as provided for in RCW 79A.60.530 and 79A.60.540.

(3) Twenty-five percent of the funds shall be expended for grants to state agencies and other public entities to enforce boating safety and registration laws and to carry out boating safety programs. The commission shall administer such grant program.

(4) Fifteen percent shall be expended for instructional materials, programs or grants to the public school system, public entities, or other nonprofit community organizations to support boating safety and boater environmental education or boat waste management planning. The commission shall administer this program. [2007 c 241 § 72; 2000 c 11 § 113; 1993 c 244 § 37; 1989 c 393 § 11. Formerly RCW 88.12.375, 88.12.450, and 88.36.100.]

***Reviser's note:** RCW 82.49.030 was amended by 2000 c 103 § 18, deleting subsection (3).

Intent—Effective date—2007 c 241: See notes following RCW 79A.25.005.

Intent—1993 c 244: See note following RCW 79A.60.010.

79A.60.670 Boating activities program—Boating activities advisory committee—Adoption of rules. (1) The boating activities program is created in the *interagency committee for outdoor recreation.

(2) The *interagency committee for outdoor recreation shall distribute moneys appropriated from the boating activities account created in RCW 79A.60.690 as follows, or as otherwise appropriated by the legislature, after deduction for the *committee's expenses in administering the boating activities grant program and for related studies:

(a) To the commission for boater safety, boater education, boating-related law enforcement activities, activities included in RCW 88.02.040, related administrative expenses, and boating-related environmental programs, such as pumpout stations, to enhance clean waters for boating;

(b) For grants to state agencies, counties, municipalities, port districts, federal agencies, nonprofit organizations, and Indian tribes to improve boating access to water and marine parks, enhance the boater experience, boater safety, boater education, and boating-related law enforcement activities, and to provide funds for boating-related environmental programs, such as pumpout stations, to enhance clean waters for boating; and

(c) If the amount available for distribution from the boating activities account is equal to or less than two million five

hundred thousand dollars per fiscal year, then eighty percent of the amount available must be distributed to the commission for the purposes of (a) of this subsection and twenty percent for grants in (b) of this subsection. Amounts available for distribution in excess of two million five hundred thousand dollars per fiscal year shall be distributed by the *committee for purposes of (a) and (b) of this subsection.

(3) The *interagency committee for outdoor recreation shall establish an application process for boating activities grants.

(4) Agencies receiving grants for capital purposes from the boating activities account shall consider the possibility of contracting with the commission, the department of natural resources, or other federal, state, and local agencies to employ the youth development and conservation corps or other youth crews in completing the project.

(5) To solicit input on the boating activities grant application process, criteria for grant awards, and use of grant moneys, and to determine the interests of the boating community, the *interagency committee for outdoor recreation shall solicit input from a boating activities advisory committee. The *interagency committee for outdoor recreation may utilize a currently established boating issues committee that has similar responsibility for input on recreational boating-related funding issues. Members of the boating activities advisory committee are not eligible for compensation but may be reimbursed for travel expenses as provided in RCW 43.03.050 and 43.03.060.

(6) The *interagency committee for outdoor recreation may adopt rules to implement this section. [2007 c 311 § 2.]

***Reviser's note:** Chapter 241, Laws of 2007 amended numerous sections of chapter 79A.25 RCW, and changed the name of the "interagency committee for outdoor recreation" to the "recreation and conservation funding board."

79A.60.680 Study of boater needs—Funding recommendations. (1) By December 1, 2007, the *interagency committee for outdoor recreation shall complete an initial study of boater needs and make recommendations to the appropriate committees of the legislature on the initial amount of funding that should be provided to the commission for boating-related law enforcement purposes under RCW 79A.60.670(2)(a).

(2) The *interagency committee for outdoor recreation shall periodically update its study of boater needs as necessary and shall make recommendations to the governor and the appropriate committees of the legislature concerning funding allocations to state parks and other grant applicants. [2007 c 311 § 3.]

***Reviser's note:** Chapter 241, Laws of 2007 amended numerous sections of chapter 79A.25 RCW, and changed the name of the "interagency committee for outdoor recreation" to the "recreation and conservation funding board."

79A.60.690 Boating activities account. The boating activities account is created in the state treasury. Moneys in the account may be spent only after appropriation. Expenditures from the account may be used only as authorized under RCW 79A.60.670 and 79A.60.680.

Grants, gifts, or other financial assistance received by the *interagency committee for outdoor recreation from state and

nonstate sources for purposes of boating activities may be deposited into the account. [2007 c 311 § 1.]

***Reviser's note:** Chapter 241, Laws of 2007 amended numerous sections of chapter 79A.25 RCW, and changed the name of the "interagency committee for outdoor recreation" to the "recreation and conservation funding board."

Title 80

PUBLIC UTILITIES

Chapters

- 80.01 Utilities and transportation commission.**
- 80.28 Gas, electrical, and water companies.**
- 80.36 Telecommunications.**
- 80.50 Energy facilities—Site locations.**
- 80.60 Net metering of electricity.**
- 80.80 Greenhouse gases emissions.**

Chapter 80.01 RCW

UTILITIES AND TRANSPORTATION COMMISSION

Sections

- 80.01.040 General powers and duties of commission.

80.01.040 General powers and duties of commission.

The utilities and transportation commission shall:

(1) Exercise all the powers and perform all the duties prescribed by this title and by Title 81 RCW, or by any other law.

(2) Regulate in the public interest, as provided by the public service laws, all persons engaging in the transportation of persons or property within this state for compensation.

(3) Regulate in the public interest, as provided by the public service laws, the rates, services, facilities, and practices of all persons engaging within this state in the business of supplying any utility service or commodity to the public for compensation.

(4) Make rules and regulations necessary to carry out its other powers and duties. [2007 c 234 § 1; 1985 c 450 § 10; 1961 c 14 § 80.01.040. Prior: (i) 1949 c 117 § 3; Rem. Supp. 1949 § 10964-115-3. (ii) 1945 c 267 § 5; Rem. Supp. 1945 § 10459-5. (iii) 1945 c 267 § 6; Rem. Supp. 1945 § 10459-6. Formerly RCW 43.53.050.]

Severability—Legislative review—1985 c 450: See RCW 80.36.900 and 80.36.901.

Flaggers—Safety standards: RCW 49.17.350.

Chapter 80.28 RCW

GAS, ELECTRICAL, AND WATER COMPANIES

Sections

- 80.28.205 through 80.28.215 Repealed.

80.28.205 through 80.28.215 Repealed. See Supplementary Table of Disposition of Former RCW Sections, this volume.

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Chapter 80.36 RCW

TELECOMMUNICATIONS

Sections

- 80.36.330 Classification as competitive telecommunications companies, services—Effective competition defined—Minimal regulation—Prices and rates—Reclassification.
- 80.36.332 Noncompetitive telecommunications companies, services—Minimal regulation.

80.36.330 Classification as competitive telecommunications companies, services—Effective competition defined—Minimal regulation—Prices and rates—Reclassification. (1) The commission may classify a telecommunications service provided by a telecommunications company as a competitive telecommunications service if the service is subject to effective competition. Effective competition means that customers of the service have reasonably available alternatives and that the service is not provided to a significant captive customer base. In determining whether a service is competitive, factors the commission shall consider include but are not limited to:

(a) The number and size of alternative providers of services, including those not subject to commission jurisdiction;

(b) The extent to which services are available from alternative providers in the relevant market;

(c) The ability of alternative providers to make functionally equivalent or substitute services readily available at competitive rates, terms, and conditions; and

(d) Other indicators of market power, which may include market share, growth in market share, ease of entry, and the affiliation of providers of services.

(2) Competitive telecommunications services are subject to minimal regulation. The commission may waive any regulatory requirement under this title for companies offering a competitive telecommunications service when it determines that competition will serve the same purposes as public interest regulation. The commission may waive different regulatory requirements for different companies if such different treatment is in the public interest. A company offering a competitive telecommunications service shall at a minimum:

(a) Keep its accounts according to rules adopted by the commission;

(b) File financial reports for competitive telecommunications services with the commission as required by the commission and in a form and at times prescribed by the commission; and

(c) Cooperate with commission investigations of customer complaints.

(3) Prices or rates charged for competitive telecommunications services shall cover their cost. The commission shall determine proper cost standards to implement this section, provided that in making any assignment of costs or allocating any revenue requirement, the commission shall act to preserve affordable universal telecommunications service.

(4) The commission may investigate prices for competitive telecommunications services upon complaint. In any complaint proceeding initiated by the commission, the telecommunications company providing the service shall bear the burden of proving that the prices charged cover cost, and are fair, just, and reasonable.

(5) Telecommunications companies shall provide the commission with all data it deems necessary to implement this section.

(6) No losses incurred by a telecommunications company in the provision of competitive services may be recovered through rates for noncompetitive services. The commission may order refunds or credits to any class of subscribers to a noncompetitive telecommunications service which has paid excessive rates because of below cost pricing of competitive telecommunications services.

(7) The commission may reclassify any competitive telecommunications service if reclassification would protect the public interest.

(8) The commission may waive the requirements of RCW 80.36.170 and 80.36.180 in whole or in part for a service classified as competitive if it finds that competition will serve the same purpose and protect the public interest. [2007 c 26 § 1; 2006 c 347 § 4; 2003 c 189 § 4; 1998 c 337 § 6; 1989 c 101 § 16; 1985 c 450 § 5.]

Severability—1998 c 337: See note following RCW 80.36.600.

80.36.332 Noncompetitive telecommunications companies, services—Minimal regulation. (1) A noncompetitive telecommunications company may petition to have packages or bundles of telecommunications services it offers be subject to minimal regulation. The commission shall grant the petition where:

(a) Each noncompetitive service in the packages or bundle is readily and separately available to customers at fair, just, and reasonable prices;

(b) The price of the package or bundle is equal to or greater than the cost for tariffed services plus the cost of any competitive services as determined in accordance with RCW 80.36.330(3); and

(c) The availability and price of the stand-alone noncompetitive services are displayed in the company's tariff and on its web site consistent with commission rules.

(2) For purposes of this section, "minimal regulation" shall have the same meaning as under RCW 80.36.330.

(3) The commission may waive any regulatory requirement under this title with respect to packages or bundles of telecommunications services if it finds those requirements are no longer necessary to protect public interest. [2007 c 26 § 2.]

Chapter 80.50 RCW

ENERGY FACILITIES—SITE LOCATIONS

Sections

80.50.020	Definitions.
80.50.060	Energy facilities to which chapter applies—Applications for certification—Forms—Information.
80.50.330	Preapplication—Siting electrical transmission facilities—Corridors.
80.50.340	Preapplication—Fees—Plans.
80.50.350	National interest electric transmission corridors task force—Duties—Recommendations. (<i>Expires July 1, 2009.</i>)

80.50.020 Definitions. The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

(1) "Applicant" means any person who makes application for a site certification pursuant to the provisions of this chapter.

(2) "Application" means any request for approval of a particular site or sites filed in accordance with the procedures established pursuant to this chapter, unless the context otherwise requires.

(3) "Person" means an individual, partnership, joint venture, private or public corporation, association, firm, public service company, political subdivision, municipal corporation, government agency, public utility district, or any other entity, public or private, however organized.

(4) "Site" means any proposed or approved location of an energy facility, alternative energy resource, or electrical transmission facility.

(5) "Certification" means a binding agreement between an applicant and the state which shall embody compliance to the siting guidelines, in effect as of the date of certification, which have been adopted pursuant to RCW 80.50.040 as now or hereafter amended as conditions to be met prior to or concurrent with the construction or operation of any energy facility.

(6) "Associated facilities" means storage, transmission, handling, or other related and supporting facilities connecting an energy plant with the existing energy supply, processing, or distribution system, including, but not limited to, communications, controls, mobilizing or maintenance equipment, instrumentation, and other types of ancillary transmission equipment, off-line storage or venting required for efficient operation or safety of the transmission system and overhead, and surface or subsurface lines of physical access for the inspection, maintenance, and safe operations of the transmission facility and new transmission lines constructed to operate at nominal voltages of at least 115,000 volts to connect a thermal power plant or alternative energy facilities to the northwest power grid. However, common carrier railroads or motor vehicles shall not be included.

(7) "Transmission facility" means any of the following together with their associated facilities:

(a) Crude or refined petroleum or liquid petroleum product transmission pipeline of the following dimensions: A pipeline larger than six inches minimum inside diameter between valves for the transmission of these products with a total length of at least fifteen miles;

(b) Natural gas, synthetic fuel gas, or liquefied petroleum gas transmission pipeline of the following dimensions: A pipeline larger than fourteen inches minimum inside diameter between valves, for the transmission of these products, with a total length of at least fifteen miles for the purpose of delivering gas to a distribution facility, except an interstate natural gas pipeline regulated by the United States federal power commission.

(8) "Electrical transmission facilities" means electrical power lines and related equipment.

(9) "Independent consultants" means those persons who have no financial interest in the applicant's proposals and who are retained by the council to evaluate the applicant's proposals, supporting studies, or to conduct additional studies.

(10) "Thermal power plant" means, for the purpose of certification, any electrical generating facility using any fuel,

including nuclear materials, for distribution of electricity by electric utilities.

(11) "Energy facility" means an energy plant or transmission facilities: PROVIDED, That the following are excluded from the provisions of this chapter:

(a) Facilities for the extraction, conversion, transmission or storage of water, other than water specifically consumed or discharged by energy production or conversion for energy purposes; and

(b) Facilities operated by and for the armed services for military purposes or by other federal authority for the national defense.

(12) "Council" means the energy facility site evaluation council created by RCW 80.50.030.

(13) "Counsel for the environment" means an assistant attorney general or a special assistant attorney general who shall represent the public in accordance with RCW 80.50.080.

(14) "Construction" means on-site improvements, excluding exploratory work, which cost in excess of two hundred fifty thousand dollars.

(15) "Energy plant" means the following facilities together with their associated facilities:

(a) Any stationary thermal power plant with generating capacity of three hundred fifty thousand kilowatts or more, measured using maximum continuous electric generating capacity, less minimum auxiliary load, at average ambient temperature and pressure, and floating thermal power plants of one hundred thousand kilowatts or more, including associated facilities. For the purposes of this subsection, "floating thermal power plants" means a thermal power plant that is suspended on the surface of water by means of a barge, vessel, or other floating platform;

(b) Facilities which will have the capacity to receive liquefied natural gas in the equivalent of more than one hundred million standard cubic feet of natural gas per day, which has been transported over marine waters;

(c) Facilities which will have the capacity to receive more than an average of fifty thousand barrels per day of crude or refined petroleum or liquefied petroleum gas which has been or will be transported over marine waters, except that the provisions of this chapter shall not apply to storage facilities unless occasioned by such new facility construction;

(d) Any underground reservoir for receipt and storage of natural gas as defined in RCW 80.40.010 capable of delivering an average of more than one hundred million standard cubic feet of natural gas per day; and

(e) Facilities capable of processing more than twenty-five thousand barrels per day of petroleum into refined products.

(16) "Land use plan" means a comprehensive plan or land use element thereof adopted by a unit of local government pursuant to chapter 35.63, 35A.63, 36.70, or 36.70A RCW, or as otherwise designated by chapter 325, Laws of 2007.

(17) "Zoning ordinance" means an ordinance of a unit of local government regulating the use of land and adopted pursuant to chapter 35.63, 35A.63, 36.70, or 36.70A RCW or Article XI of the state Constitution, or as otherwise designated by chapter 325, Laws of 2007.

(18) "Alternative energy resource" means: (a) Wind; (b) solar energy; (c) geothermal energy; (d) landfill gas; (e) wave or tidal action; or (f) biomass energy based on solid organic fuels from wood, forest, or field residues, or dedicated energy crops that do not include wood pieces that have been treated with chemical preservatives such as creosote, pentachlorophenol, or copper-chrome-arsenic.

(19) "Secretary" means the secretary of the United States department of energy.

(20) "Preapplication process" means the process which is initiated by written correspondence from the preapplicant to the council, and includes the process adopted by the council for consulting with the preapplicant and with cities, towns, and counties prior to accepting applications for all transmission facilities.

(21) "Preapplicant" means a person considering applying for a site certificate agreement for any transmission facility. [2007 c 325 § 1. Prior: 2006 c 205 § 1; 2006 c 196 § 1; 2001 c 214 § 3; 1995 c 69 § 1; 1977 ex.s. c 371 § 2; 1975-'76 2nd ex.s. c 108 § 30; 1970 ex.s. c 45 § 2.]

Severability—Effective date—2001 c 214: See notes following RCW 80.50.010.

Findings—2001 c 214: See note following RCW 39.35.010.

Severability—Effective date—1975-'76 2nd ex.s. c 108: See notes following RCW 43.21F.010.

80.50.060 Energy facilities to which chapter applies—Applications for certification—Forms—Information. (1) The provisions of this chapter apply to the construction of energy facilities which includes the new construction of energy facilities and the reconstruction or enlargement of existing energy facilities where the net increase in physical capacity or dimensions resulting from such reconstruction or enlargement meets or exceeds those capacities or dimensions set forth in RCW 80.50.020 (7) and (15). No construction of such energy facilities may be undertaken, except as otherwise provided in this chapter, after July 15, 1977, without first obtaining certification in the manner provided in this chapter.

(2) The provisions of this chapter apply to the construction, reconstruction, or enlargement of a new or existing energy facility that exclusively uses alternative energy resources and chooses to receive certification under this chapter, regardless of the generating capacity of the project.

(3)(a) The provisions of this chapter apply to the construction, reconstruction, or modification of electrical transmission facilities when:

(i) The facilities are located in a national interest electric transmission corridor as specified in RCW 80.50.045;

(ii) An applicant chooses to receive certification under this chapter, and the facilities are: (A) Of a nominal voltage of at least one hundred fifteen thousand volts and are located in a completely new corridor, except for the terminus of the new facility or interconnection of the new facility with the existing grid, and the corridor is not otherwise used for electrical transmission facilities; and (B) located in more than one jurisdiction that has promulgated land use plans or zoning ordinances; or

(iii) An applicant chooses to receive certification under this chapter, and the facilities are: (A) Of a nominal voltage in excess of one hundred fifteen thousand volts; and (B)

located outside an electrical transmission corridor identified in (a)(i) and (ii) of this subsection (3).

(b) For the purposes of this subsection, "modify" means a significant change to an electrical transmission facility and does not include the following: (i) Minor improvements such as the replacement of existing transmission line facilities or supporting structures with equivalent facilities or structures; (ii) the relocation of existing electrical transmission line facilities; (iii) the conversion of existing overhead lines to underground; or (iv) the placing of new or additional conductors, supporting structures, insulators, or their accessories on or replacement of supporting structures already built.

(4) The provisions of this chapter shall not apply to normal maintenance and repairs which do not increase the capacity or dimensions beyond those set forth in RCW 80.50.020 (7) and (15).

(5) Applications for certification of energy facilities made prior to July 15, 1977, shall continue to be governed by the applicable provisions of law in effect on the day immediately preceding July 15, 1977, with the exceptions of RCW 80.50.190 and 80.50.071 which shall apply to such prior applications and to site certifications prospectively from July 15, 1977.

(6) Applications for certification shall be upon forms prescribed by the council and shall be supported by such information and technical studies as the council may require. [2007 c 325 § 2; 2006 c 196 § 4; 2001 c 214 § 2; 1977 ex.s. c 371 § 5; 1975-'76 2nd ex.s. c 108 § 34; 1970 ex.s. c 45 § 6.]

Severability—Effective date—2001 c 214: See notes following RCW 80.50.010.

Findings—2001 c 214: See note following RCW 39.35.010.

Severability—Effective date—1975-'76 2nd ex.s. c 108: See notes following RCW 43.21F.010.

80.50.330 Preapplication—Siting electrical transmission facilities—Corridors. (1) For applications to site electrical transmission facilities, the council shall conduct a preapplication process pursuant to rules adopted by the council to govern such process, receive applications as prescribed in RCW 80.50.071, and conduct public meetings pursuant to RCW 80.50.090.

(2) The council shall consider and may recommend certification of electrical transmission facilities in corridors designated for this purpose by affected cities, towns, or counties:

(a) Where the jurisdictions have identified electrical transmission facility corridors as part of their land use plans and zoning maps based on policies adopted in their plans;

(b) Where the proposed electrical transmission facility is consistent with any adopted development regulations that govern the siting of electrical transmission facilities in such corridors; and

(c) Where contiguous jurisdictions and jurisdictions in which related regional electrical transmission facilities are located have either prior to or during the preapplication process undertaken good faith efforts to coordinate the locations of their corridors consistent with RCW 36.70A.100.

(3)(a) In the absence of a corridor designation in the manner prescribed in subsection (2) of this section, the council shall as part of the preapplication process require the preapplicant to negotiate, as provided by rule adopted by the council, for a reasonable time with affected cities, towns, and

counties to attempt to reach agreement about a corridor plan. The application for certification shall identify only the corridor agreed to by the applicant and cities, towns, and counties within the proposed corridor pursuant to the preapplication process.

(b) If no corridor plan is agreed to by the applicant and cities, towns, and counties pursuant to (a) of this subsection, the applicant shall propose a recommended corridor and electrical transmission facilities to be included within the proposed corridor.

(c) The council shall consider the applicant's proposed corridor and electrical transmission facilities as provided in RCW 80.50.090 (2) and (4), and shall make a recommendation consistent with RCW 80.50.090 and 80.50.100. [2007 c 325 § 3.]

80.50.340 Preapplication—Fees—Plans. (1) A preapplicant shall pay to the council a fee of ten thousand dollars to be applied to the cost of the preapplication process as a condition precedent to any action by the council, provided that costs in excess of this amount shall be paid only upon prior approval by the preapplicant, and provided further that any unexpended portions thereof shall be returned to the preapplicant.

(2) The council shall consult with the preapplicant and prepare a plan for the preapplication process which shall commence with an informational public hearing within sixty days after the receipt of the preapplication fee as provided in RCW 80.50.090.

(3) The preapplication plan shall include but need not be limited to:

(a) An initial consultation to explain the proposal and request input from council staff, federal and state agencies, cities, towns, counties, port districts, tribal governments, property owners, and interested individuals;

(b) Where applicable, a process to guide negotiations between the preapplicant and cities, towns, and counties within the corridor proposed pursuant to RCW 80.50.330. [2007 c 325 § 4.]

80.50.350 National interest electric transmission corridors task force—Duties—Recommendations. (Expires July 1, 2009.) (1)(a) A legislative task force on national interest electric transmission corridors is established, with members as provided in this subsection.

(i) The chair and the ranking minority member from the senate water, energy and telecommunications committee or their designees;

(ii) The chair and the ranking minority member from the house of representatives technology, energy and communications committee or their designees;

(iii) The governor shall appoint five members representing the energy facility site evaluation council, local governments, resource agencies, or other persons with appropriate expertise.

(b) The task force shall choose its cochairs representing the senate and house of representatives from among its legislative membership.

(2)(a) The task force shall negotiate the terms of an interstate compact that establishes a regional process for siting

national interest electric transmission corridors satisfactory to the national energy policy act of 2005.

(b) In negotiating the terms of the compact, the task force shall ensure that the compact reflects as close as possible the Washington state energy facility site evaluation council model under this chapter and its procedures to ensure appropriate adjudicative proceedings and mitigation of environmental impacts.

(c) The task force shall negotiate the terms of the compact through processes established and supported by the Pacific Northwest economic region for which the state of Washington is a party as referenced in RCW 43.147.010.

(3) Staff support for the task force members shall be provided from respective committees and appropriate agencies appointed by the governor.

(4) Legislative members of the task force shall be reimbursed for travel expenses in accordance with RCW 44.04.120. Nonlegislative members, except those representing an employer or organization, are entitled to be reimbursed for travel expenses in accordance with RCW 43.03.050 and 43.03.060.

(5) The task force shall report its preliminary recommendations on the compact to the appropriate committees of the legislature by January 1, 2008.

(6) The task force shall report its final recommendations on the compact to the appropriate committees of the legislature by September 1, 2008.

(7) This section expires July 1, 2009. [2007 c 326 § 2.]

Intent—2007 c 326: "It is the intent of the legislature to create a regional process for the siting of new electric transmission lines related to the national energy policy act of 2005. This regional process will facilitate the siting of new cross borders electric transmission lines by providing a "one stop" licensing process. This act calls for the creation of a legislative task force to establish an interstate compact to assert jurisdiction over national interest electric transmission corridors." [2007 c 326 § 1.]

Chapter 80.60 RCW

NET METERING OF ELECTRICITY

Sections

80.60.010	Definitions.
80.60.020	Available on first-come, first-served basis—Interconnected metering systems allowed—Charges to customer-generator.
80.60.030	Net energy measurement—Required calculation—Unused credit—Meter aggregation.

80.60.010 Definitions. The definitions in this section apply throughout this chapter unless the context clearly indicates otherwise.

(1) "Commission" means the utilities and transportation commission.

(2) "Customer-generator" means a user of a net metering system.

(3) "Electrical company" means a company owned by investors that meets the definition of RCW 80.04.010.

(4) "Electric cooperative" means a cooperative or association organized under chapter 23.86 or 24.06 RCW.

(5) "Electric utility" means any electrical company, public utility district, irrigation district, port district, electric cooperative, or municipal electric utility that is engaged in the business of distributing electricity to retail electric customers in the state.

(6) "Irrigation district" means an irrigation district under chapter 87.03 RCW.

(7) "Meter aggregation" means the administrative combination of readings from and billing for all meters, regardless of the rate class, on premises owned or leased by a customer-generator located within the service territory of a single electric utility.

(8) "Municipal electric utility" means a city or town that owns or operates an electric utility authorized by chapter 35.92 RCW.

(9) "Net metering" means measuring the difference between the electricity supplied by an electric utility and the electricity generated by a customer-generator over the applicable billing period.

(10) "Net metering system" means a fuel cell, a facility that produces electricity and used and useful thermal energy from a common fuel source, or a facility for the production of electrical energy that generates renewable energy, and that:

(a) Has an electrical generating capacity of not more than one hundred kilowatts;

(b) Is located on the customer-generator's premises;

(c) Operates in parallel with the electric utility's transmission and distribution facilities; and

(d) Is intended primarily to offset part or all of the customer-generator's requirements for electricity.

(11) "Premises" means any residential property, commercial real estate, or lands, owned or leased by a customer-generator within the service area of a single electric utility.

(12) "Port district" means a port district within which an industrial development district has been established as authorized by Title 53 RCW.

(13) "Public utility district" means a district authorized by chapter 54.04 RCW.

(14) "Renewable energy" means energy generated by a facility that uses water, wind, solar energy, or biogas from animal waste as a fuel. [2007 c 323 § 1; 2006 c 201 § 1; 2000 c 158 § 1; 1998 c 318 § 2.]

80.60.020 Available on first-come, first-served basis—Interconnected metering systems allowed—Charges to customer-generator. (1) An electric utility:

(a) Shall offer to make net metering available to eligible customers-generators on a first-come, first-served basis until the cumulative generating capacity of net metering systems equals 0.25 percent of the utility's peak demand during 1996. On January 1, 2014, the cumulative generating capacity available to net metering systems will equal 0.5 percent of the utility's peak demand during 1996. Not less than one-half of the utility's 1996 peak demand available for net metering systems shall be reserved for the cumulative generating capacity attributable to net metering systems that generate renewable energy;

(b) Shall allow net metering systems to be interconnected using a standard kilowatt-hour meter capable of registering the flow of electricity in two directions, unless the commission, in the case of an electrical company, or the appropriate governing body, in the case of other electric utilities, determines, after appropriate notice and opportunity for comment:

(i) That the use of additional metering equipment to monitor the flow of electricity in each direction is necessary

and appropriate for the interconnection of net metering systems, after taking into account the benefits and costs of purchasing and installing additional metering equipment; and

(ii) How the cost of purchasing and installing an additional meter is to be allocated between the customer-generator and the utility;

(c) Shall charge the customer-generator a minimum monthly fee that is the same as other customers of the electric utility in the same rate class, but shall not charge the customer-generator any additional standby, capacity, interconnection, or other fee or charge unless the commission, in the case of an electrical company, or the appropriate governing body, in the case of other electric utilities, determines, after appropriate notice and opportunity for comment that:

(i) The electric utility will incur direct costs associated with interconnecting or administering net metering systems that exceed any offsetting benefits associated with these systems; and

(ii) Public policy is best served by imposing these costs on the customer-generator rather than allocating these costs among the utility's entire customer base.

(2) If a production meter and software is required by the electric utility to provide meter aggregation under RCW 80.60.030(4), the customer-generator is responsible for the purchase of the production meter and software. [2007 c 323 § 2; 2006 c 201 § 2; 2000 c 158 § 2; 1998 c 318 § 3.]

80.60.030 Net energy measurement—Required calculation—Unused credit—Meter aggregation. Consistent with the other provisions of this chapter, the net energy measurement must be calculated in the following manner:

(1) The electric utility shall measure the net electricity produced or consumed during the billing period, in accordance with normal metering practices.

(2) If the electricity supplied by the electric utility exceeds the electricity generated by the customer-generator and fed back to the electric utility during the billing period, the customer-generator shall be billed for the net electricity supplied by the electric utility, in accordance with normal metering practices.

(3) If electricity generated by the customer-generator exceeds the electricity supplied by the electric utility, the customer-generator:

(a) Shall be billed for the appropriate customer charges for that billing period, in accordance with RCW 80.60.020; and

(b) Shall be credited for the excess kilowatt-hours generated during the billing period, with this kilowatt-hour credit appearing on the bill for the following billing period.

(4) If a customer-generator requests, an electric utility shall provide meter aggregation.

(a) For customer-generators participating in meter aggregation, kilowatt-hours credits earned by a net metering system during the billing period first shall be used to offset electricity supplied by the electric utility.

(b) Not more than a total of one hundred kilowatts shall be aggregated among all customer-generators participating in a generating facility under this subsection.

(c) Excess kilowatt-hours credits earned by the net metering system, during the same billing period, shall be credited equally by the electric utility to remaining meters

located on all premises of a customer-generator at the designated rate of each meter.

(d) Meters so aggregated shall not change rate classes due to meter aggregation under this section.

(5) On April 30th of each calendar year, any remaining unused kilowatt-hour credit accumulated during the previous year shall be granted to the electric utility, without any compensation to the customer-generator. [2007 c 323 § 3; 2006 c 201 § 3; 1998 c 318 § 4.]

Chapter 80.80 RCW

GREENHOUSE GASES EMISSIONS

Sections

80.80.005	Findings—Intent.
80.80.010	Definitions.
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80.80.060	Electrical companies—Baseload electric generation—Long-term financial commitments—Rules.
80.80.070	Consumer-owned utilities—Baseload electric generation—Long-term financial commitments.
80.80.080	Greenhouse gases emissions performance standards—Review—Report.

80.80.005 Findings—Intent. (1) The legislature finds that:

(a) Washington is especially vulnerable to climate change because of the state's dependence on snow pack for summer stream flows and because the expected rise in sea levels threatens our coastal communities. Extreme weather, a warming Pacific Northwest, reduced snow pack, and sea level rise are four major ways that climate change is disrupting Washington's economy, environment, and communities;

(b) Washington's greenhouse gases emissions are continuing to increase, despite international scientific consensus that worldwide emissions must be reduced significantly below current levels to avert catastrophic climate change;

(c) Washington state greenhouse gases are substantially caused by the transportation sector of the economy;

(d) Washington has been a leader in actions to slow the increase of greenhouse gases emissions, such as being the first state in the nation to adopt a carbon dioxide mitigation program for new thermal electric plants, mandating integrated resource planning for electric utilities to include life-cycle costs of carbon dioxide emissions, adopting clean car standards and stronger appliance energy efficiency standards, increasing production and use of renewable liquid fuels, and increasing renewable energy sources by electric utilities;

(e) A greenhouse gases emissions performance standard will work in unison with the state's carbon dioxide mitigation policy, chapter 80.70 RCW and its related rules, for fossil-fueled thermal electric generation facilities located in the state;

(f) While these actions are significant, there is a need to assess the trend of greenhouse gases emissions statewide over the next several decades, and to take sufficient actions so that Washington meets its responsibility to contribute to

the global actions needed to reduce the impacts and the pace of global warming;

(g) Actions to reduce greenhouse gases emissions will spur technology development and increase efficiency, thus resulting in benefits to Washington's economy and businesses; and

(h) The state of Washington has an obligation to provide clear guidance for the procurement of baseload electric generation to alleviate regulatory uncertainty while addressing risks that can affect the ability of electric utilities to make necessary and timely investments to ensure an adequate, reliable, and cost-effective supply of electricity.

(2) The legislature finds that companies that generate greenhouse gases emissions or manufacture products that generate such emissions are purchasing carbon credits from landowners and from other companies that provide carbon credits. Companies that are purchasing carbon credits would benefit from a program to trade and to bank carbon credits. Washington forests are one of the most effective resources that can absorb carbon dioxide from the atmosphere. Forests, and other planted lands and waters, provide carbon storage and mitigate greenhouse gases emissions. Washington contains the most productive forests in the world and both public and private landowners could benefit from a carbon storage trading and banking program.

(3) The legislature intends by this chapter to establish statutory goals for the statewide reduction in greenhouse gases emissions and to adopt the recommendations provided by the Washington climate change challenge stakeholder group, which is charged with designing and recommending a comprehensive set of policies to the legislature and the governor on how to achieve the goals. The legislature further intends by this chapter to authorize immediate actions in the electric power generation sector for the reduction of greenhouse gases emissions.

(4) The legislature finds that:

(a) To the extent energy efficiency and renewable resources are unable to satisfy increasing energy and capacity needs, the state will rely on clean and efficient fossil fuel-fired generation and will encourage the development of cost-effective, highly efficient, and environmentally sound supply resources to provide reliability and consistency with the state's energy priorities;

(b) It is vital to ensure all electric utilities internalize the significant and underrecognized cost of emissions and to reduce Washington consumers' exposure to costs associated with future regulation of these emissions, which is consistent with the objectives of integrated resource planning by electric utilities under chapter 19.280 RCW; and

(c) The state of California recently enacted a law establishing a greenhouse gases emissions performance standard for electric utility procurement of baseload electric generation that is based on the emissions of a combined-cycle thermal electric generation facility fueled by natural gas.

(5) The legislature finds that the climate change challenge stakeholder group provides a process for identifying the policies necessary to achieve the economic and emissions reduction goals in RCW 80.80.020 in a manner that maximizes economic opportunities and job creation in Washington. [2007 c 307 § 1.]

80.80.010 Definitions. The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

(1) "Attorney general" means the Washington state office of the attorney general.

(2) "Auditor" means: (a) The Washington state auditor's office or its designee for consumer-owned utilities under its jurisdiction; or (b) an independent auditor selected by a consumer-owned utility that is not under the jurisdiction of the state auditor.

(3) "Average available greenhouse gases emissions output" means the level of greenhouse gases emissions as surveyed and determined by the energy policy division of the department of community, trade, and economic development under RCW 80.80.050.

(4) "Baseload electric generation" means electric generation from a power plant that is designed and intended to provide electricity at an annualized plant capacity factor of at least sixty percent.

(5) "Cogeneration facility" means a power plant in which the heat or steam is also used for industrial or commercial heating or cooling purposes and that meets federal energy regulatory commission standards for qualifying facilities under the public utility regulatory policies act of 1978 (16 U.S.C. Sec. 824a-3), as amended.

(6) "Combined-cycle natural gas thermal electric generation facility" means a power plant that employs a combination of one or more gas turbines and steam turbines in which electricity is produced in the steam turbine from otherwise lost waste heat exiting from one or more of the gas turbines.

(7) "Commission" means the Washington utilities and transportation commission.

(8) "Consumer-owned utility" means a municipal utility formed under Title 35 RCW, a public utility district formed under Title 54 RCW, an irrigation district formed under chapter 87.03 RCW, a cooperative formed under chapter 23.86 RCW, a mutual corporation or association formed under chapter 24.06 RCW, or port district within which an industrial district has been established as authorized by Title 53 RCW, that is engaged in the business of distributing electricity to more than one retail electric customer in the state.

(9) "Department" means the department of ecology.

(10) "Distributed generation" means electric generation connected to the distribution level of the transmission and distribution grid, which is usually located at or near the intended place of use.

(11) "Electric utility" means an electrical company or a consumer-owned utility.

(12) "Electrical company" means a company owned by investors that meets the definition of RCW 80.04.010.

(13) "Governing board" means the board of directors or legislative authority of a consumer-owned utility.

(14) "Greenhouse gases" includes carbon dioxide, methane, nitrous oxide, hydrofluorocarbons, perfluorocarbons, and sulfur hexafluoride.

(15) "Long-term financial commitment" means:

(a) Either a new ownership interest in baseload electric generation or an upgrade to a baseload electric generation facility; or

(b) A new or renewed contract for baseload electric generation with a term of five or more years for the provision of

retail power or wholesale power to end-use customers in this state.

(16) "Plant capacity factor" means the ratio of the electricity produced during a given time period, measured in kilowatt-hours, to the electricity the unit could have produced if it had been operated at its rated capacity during that period, expressed in kilowatt-hours.

(17) "Power plant" means a facility for the generation of electricity that is permitted as a single plant by the energy facility site evaluation council or a local jurisdiction.

(18) "Upgrade" means any modification made for the primary purpose of increasing the electric generation capacity of a baseload electric generation facility. "Upgrade" does not include routine or necessary maintenance, installation of emission control equipment, installation, replacement, or modification of equipment that improves the heat rate of the facility, or installation, replacement, or modification of equipment for the primary purpose of maintaining reliable generation output capability that does not increase the heat input or fuel usage as specified in existing generation air quality permits as of July 22, 2007, but may result in incidental increases in generation capacity. [2007 c 307 § 2.]

80.80.020 Greenhouse gases emissions reduction—Clean energy economy—Goals—Reports. (1) The following greenhouse gases emissions reduction and clean energy economy goals are established for Washington state:

(a) By 2020, reduce overall greenhouse gases emissions in the state to 1990 levels;

(b) By 2035, reduce overall greenhouse gases emissions in the state to twenty-five percent below 1990 levels;

(c) By 2050, the state will do its part to reach global climate stabilization levels by reducing overall emissions to fifty percent below 1990 levels, or seventy percent below the state's expected emissions that year; and

(d) By 2020, increase the number of clean energy sector jobs to twenty-five thousand from the eight thousand four hundred jobs the state had in 2004.

(2)(a) By December 31, 2007, the departments of ecology and community, trade, and economic development shall report to the appropriate committees of the senate and house of representatives the total greenhouse gases emissions for 1990 and the totals in each major sector for 1990.

(b) By December 31st of each even-numbered year beginning in 2010, the departments of ecology and community, trade, and economic development shall report to the governor and the appropriate committees of the senate and house of representatives the total greenhouse gases emissions for the preceding two years, and totals in each major source sector. [2007 c 307 § 3.]

80.80.030 Achieving greenhouse gases emissions reduction goals—Submission of policy recommendations to legislature by governor. (1) The governor shall develop policy recommendations to the legislature on how the state can achieve the greenhouse gases emissions reduction goals established under RCW 80.80.020. These recommendations must include, but are not limited to:

(a) How market mechanisms, such as a load-based cap and trade system, would assist in achieving the greenhouse gases emissions reduction goals;

(b) How geologic injection, forest sequestration, and other carbon sequestration options could be used to achieve state greenhouse gases emissions reduction goals;

(c) A process for replacing the highest emitting thermal electric plants that have exceeded their expected useful life with newer technologies that have lower greenhouse gases emissions levels;

(d) Methods to utilize indigenous resources, such as landfill gas, geothermal resources, and other assets that might reduce greenhouse gases emissions consistent with the purposes of this chapter;

(e) How regulatory and tax policies for electric utilities could be improved to help achieve these goals in a manner that is equitable for electric utilities and consumers.

(2) Recommendations under subsection (1) of this section shall be submitted to the appropriate committees of the house of representatives and the senate for consideration in the 2008 legislative session. [2007 c 307 § 4.]

80.80.040 Greenhouse gases emissions performance standards—Rules—Sequestration. (1) Beginning July 1, 2008, the greenhouse gases emissions performance standard for all baseload electric generation for which electric utilities enter into long-term financial commitments on or after such date is the lower of:

(a) One thousand one hundred pounds of greenhouse gases per megawatt-hour; or

(b) The average available greenhouse gases emissions output as determined under RCW 80.80.050.

(2) All baseload electric generation facilities in operation as of June 30, 2008, are deemed to be in compliance with the greenhouse gases emissions performance standard established under this section until the facilities are the subject of long-term financial commitments. All baseload electric generation that commences operation after June 30, 2008, and is located in Washington, must comply with the greenhouse gases emissions performance standard established in subsection (1) of this section.

(3) All electric generation facilities or power plants powered exclusively by renewable resources, as defined in RCW 19.280.020, are deemed to be in compliance with the greenhouse gases emissions performance standard established under this section.

(4) All cogeneration facilities in the state that are fueled by natural gas or waste gas or a combination of the two fuels, and that are in operation as of June 30, 2008, are deemed to be in compliance with the greenhouse gases emissions performance standard established under this section until the facilities are the subject of a new ownership interest or are upgraded.

(5) In determining the rate of emissions of greenhouse gases for baseload electric generation, the total emissions associated with producing electricity shall be included.

(6) The department shall establish an output-based methodology to ensure that the calculation of emissions of greenhouse gases for a cogeneration facility recognizes the total usable energy output of the process, and includes all greenhouse gases emitted by the facility in the production of both

electrical and thermal energy. In developing and implementing the greenhouse gases emissions performance standard, the department shall consider and act in a manner consistent with any rules adopted pursuant to the public utilities regulatory policy act of 1978 (16 U.S.C. Sec. 824a-3), as amended.

(7) The following greenhouse gases emissions produced by baseload electric generation owned or contracted through a long-term financial commitment shall not be counted as emissions of the power plant in determining compliance with the greenhouse gases emissions performance standard:

(a) Those emissions that are injected permanently in geological formations;

(b) Those emissions that are permanently sequestered by other means approved by the department; and

(c) Those emissions sequestered or mitigated as approved under subsection (13) of this section.

(8) In adopting and implementing the greenhouse gases emissions performance standard, the department of community, trade, and economic development energy policy division, in consultation with the commission, the department, the Bonneville power administration, the western electricity coordination council, the energy facility site evaluation council, electric utilities, public interest representatives, and consumer representatives, shall consider the effects of the greenhouse gases emissions performance standard on system reliability and overall costs to electricity customers.

(9) In developing and implementing the greenhouse gases emissions performance standard, the department shall, with assistance of the commission, the department of community, trade, and economic development energy policy division, and electric utilities, and to the extent practicable, address long-term purchases of electricity from unspecified sources in a manner consistent with this chapter.

(10) The directors of the energy facility site evaluation council and the department shall each adopt rules under chapter 34.05 RCW in coordination with each other to implement and enforce the greenhouse gases emissions performance standard. The rules necessary to implement this section shall be adopted by June 30, 2008.

(11) In adopting the rules for implementing this section, the energy facility site evaluation council and the department shall include criteria to be applied in evaluating the carbon sequestration plan, for baseload electric generation that will rely on subsection (7) of this section to demonstrate compliance, but that will commence sequestration after the date that electricity is first produced. The rules shall include but not be limited to:

(a) Provisions for financial assurances, as a condition of plant operation, sufficient to ensure successful implementation of the carbon sequestration plan, including construction and operation of necessary equipment, and any other significant costs;

(b) Provisions for geological or other approved sequestration commencing within five years of plant operation, including full and sufficient technical documentation to support the planned sequestration;

(c) Provisions for monitoring the effectiveness of the implementation of the sequestration plan;

(d) Penalties for failure to achieve implementation of the plan on schedule;

(e) Provisions for an owner to purchase emissions reductions in the event of the failure of a sequestration plan under subsection (13) of this section; and

(f) Provisions for public notice and comment on the carbon sequestration plan.

(12)(a) Except as provided in (b) of this subsection, as part of its role enforcing the greenhouse gases emissions performance standard, the department shall determine whether sequestration or a plan for sequestration will provide safe, reliable, and permanent protection against the greenhouse gases entering the atmosphere from the power plant and all ancillary facilities.

(b) For facilities under its jurisdiction, the energy facility site evaluation council shall contract for review of sequestration or the carbon sequestration plan with the department consistent with the conditions under (a) of this subsection, consider the adequacy of sequestration or the plan in its adjudicative proceedings conducted under RCW 80.50.090(3), and incorporate specific findings regarding adequacy in its recommendation to the governor under RCW 80.50.100.

(13) A project under consideration by the energy facility site evaluation council by July 22, 2007, is required to include all of the requirements of subsection (11) of this section in its carbon sequestration plan submitted as part of the energy facility site evaluation council process. A project under consideration by the energy facility site evaluation council by July 22, 2007, that receives final site certification agreement approval under chapter 80.50 RCW shall make a good faith effort to implement the sequestration plan. If the project owner determines that implementation is not feasible, the project owner shall submit documentation of that determination to the energy facility site evaluation council. The documentation shall demonstrate the steps taken to implement the sequestration plan and evidence of the technological and economic barriers to successful implementation. The project owner shall then provide to the energy facility site evaluation council notification that they shall implement the plan that requires the project owner to meet the greenhouse gases emissions performance standard by purchasing verifiable greenhouse gases emissions reductions from an electric generating facility located within the western interconnection, where the reduction would not have occurred otherwise or absent this contractual agreement, such that the sum of the emissions reductions purchased and the facility's emissions meets the standard for the life of the facility. [2007 c 307 § 5.]

80.80.050 Public comment—Commercially available turbines—Rate of greenhouse gases emissions—Reports—Rules. The energy policy division of the department of community, trade, and economic development shall provide an opportunity for interested parties to comment on the development of a survey of new combined-cycle natural gas thermal electric generation turbines commercially available and offered for sale by manufacturers and purchased in the United States to determine the average rate of emissions of greenhouse gases for these turbines. The department of community, trade, and economic development shall report the results of its survey to the legislature every five years, beginning June 30, 2013. The department of community, trade, and economic development shall adopt by rule the

average available greenhouse gases emissions output every five years beginning five years after July 22, 2007. [2007 c 307 § 7.]

80.80.060 Electrical companies—Baseload electric generation—Long-term financial commitments—Rules.

(1) No electrical company may enter into a long-term financial commitment unless the baseload electric generation supplied under such a long-term financial commitment complies with the greenhouse gases emissions performance standard established under RCW 80.80.040.

(2) In order to enforce the requirements of this chapter, the commission shall review in a general rate case or as provided in subsection (5) of this section any long-term financial commitment entered into by an electrical company after June 30, 2008, to determine whether the baseload electric generation to be supplied under that long-term financial commitment complies with the greenhouse gases emissions performance standard established under RCW 80.80.040.

(3) In determining whether a long-term financial commitment is for baseload electric generation, the commission shall consider the design of the power plant and its intended use, based upon the electricity purchase contract, if any, permits necessary for the operation of the power plant, and any other matter the commission determines is relevant under the circumstances.

(4) Upon application by an electric utility, the commission may provide a case-by-case exemption from the greenhouse gases emissions performance standard to address: (a) Unanticipated electric system reliability needs; or (b) catastrophic events or threat of significant financial harm that may arise from unforeseen circumstances.

(5) Upon application by an electrical company, the commission shall determine whether the company's proposed decision to acquire electric generation or enter into a power purchase agreement for electricity complies with the greenhouse gases emissions performance standard established under RCW 80.80.040, whether the company has a need for the resource, and whether the specific resource selected is appropriate. The commission shall take into consideration factors such as the company's forecasted loads, need for energy, power plant technology, expected costs, and other associated investment decisions. The commission shall not decide in a proceeding under this subsection (5) issues involving the actual costs to construct and operate the selected resource, cost recovery, or other issues reserved by the commission for decision in a general rate case or other proceeding for recovery of the resource or contract costs. A proceeding under this subsection (5) shall be conducted pursuant to chapter 34.05 RCW (part IV). The commission shall adopt rules to provide that the schedule for a proceeding under this subsection takes into account both (a) the needs of the parties to the proposed resource acquisition or power purchase agreement for timely decisions that allow transactions to be completed; and (b) the procedural rights to be provided to parties in chapter 34.05 RCW (part IV), including intervention, discovery, briefing, and hearing.

(6) An electrical company may account for and defer for later consideration by the commission costs incurred in connection with the long-term financial commitment, including operating and maintenance costs, depreciation, taxes, and

cost of invested capital. The deferral begins with the date on which the power plant begins commercial operation or the effective date of the power purchase agreement and continues for a period not to exceed twenty-four months; provided that if during such period the company files a general rate case or other proceeding for the recovery of such costs, deferral ends on the effective date of the final decision by the commission in such proceeding. Creation of such a deferral account does not by itself determine the actual costs of the long-term financial commitment, whether recovery of any or all of these costs is appropriate, or other issues to be decided by the commission in a general rate case or other proceeding for recovery of these costs.

(7) The commission shall consult with the department to apply the procedures adopted by the department to verify the emissions of greenhouse gases from baseload electric generation under RCW 80.80.040. The department shall report to the commission whether baseload electric generation will comply with the greenhouse gases emissions performance standard for the duration of the period the baseload electric generation is supplied to the electrical company.

(8) The commission shall adopt rules for the enforcement of this section with respect to electrical companies and adopt procedural rules for approving costs incurred by an electrical company under subsection (4) of this section.

(9) The commission shall adopt rules necessary to implement this section by December 31, 2008. [2007 c 307 § 8.]

80.80.070 Consumer-owned utilities—Baseload electric generation—Long-term financial commitments. (1)

No consumer-owned utility may enter into a long-term financial commitment unless the baseload electric generation supplied under such a long-term financial commitment complies with the greenhouse gases emissions performance standard established under RCW 80.80.040.

(2) The governing board shall review and make a determination on any long-term financial commitment by the utility, pursuant to this chapter and after consultation with the department, to determine whether the baseload electric generation to be supplied under that long-term financial commitment complies with the greenhouse gases emissions performance standard established under RCW 80.80.040. No consumer-owned utility may enter into a long-term financial commitment unless the baseload electric generation to be supplied under that long-term financial commitment complies with the greenhouse gases emissions performance standard established under RCW 80.80.040.

(3) In confirming that a long-term financial commitment is for baseload electric generation, the governing board shall consider the design of the power plant and the intended use of the power plant based upon the electricity purchase contract, if any, permits necessary for the operation of the power plant, and any other matter the governing board determines is relevant under the circumstances.

(4) The governing board may provide a case-by-case exemption from the greenhouse gases emissions performance standard to address: (a) Unanticipated electric system reliability needs; or (b) catastrophic events or threat of significant financial harm that may arise from unforeseen circumstances.

(5) The governing board shall apply the procedures adopted by the department to verify the emissions of greenhouse gases from baseload electric generation under RCW 80.80.040, and may request assistance from the department in doing so.

(6) For consumer-owned utilities, the auditor is responsible for auditing compliance with this chapter and rules adopted under this chapter that apply to those utilities and the attorney general is responsible for enforcing that compliance. [2007 c 307 § 9.]

80.80.080 Greenhouse gases emissions performance standards—Review—Report. For the purposes of RCW 80.80.040 through 80.80.080 and 80.70.020, the department, in consultation with the department of community, trade, and economic development energy policy division, the energy facility site evaluation council, the commission, and the governing boards of consumer-owned utilities, shall review the greenhouse gases emissions performance standard established in this chapter to determine need, applicability, and effectiveness no less than every five years following July 22, 2007, or upon implementation of a federal or state law or rule regulating carbon dioxide emissions of electric utilities, and report to the legislature. [2007 c 307 § 10.]

Title 81

TRANSPORTATION

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Chapter 81.04 RCW

REGULATIONS—GENERAL

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81.04.010 Definitions. As used in this title, unless specially defined otherwise or unless the context indicates otherwise:

(1) "Commission" means the utilities and transportation commission.

(2) "Commissioner" means one of the members of such commission.

(3) "Corporation" includes a corporation, company, association, or joint stock association.

(4) "Low-level radioactive waste site operating company" includes every corporation, company, association, joint stock association, partnership, and person, their lessees, trustees, or receivers appointed by any court whatsoever, owning, operating, controlling, or managing a low-level radioactive waste disposal site or sites located within the state of Washington.

(5) "Low-level radioactive waste" means low-level waste as defined by RCW 43.145.010.

(6) "Person" includes an individual, a firm, or copartnership.

(7) "Street railroad" includes every railroad by whatever power operated, or any extension or extensions, branch or branches thereof, for public use in the conveyance of persons or property for hire, being mainly upon, along, above, or below any street, avenue, road, highway, bridge, or public place within any one city or town, and includes all equipment, switches, spurs, tracks, bridges, right of trackage, subways, tunnels, stations, terminals, and terminal facilities of every kind used, operated, controlled, or owned by or in connection with any such street railroad, within this state.

(8) "Street railroad company" includes every corporation, company, association, joint stock association, partnership, and person, their lessees, trustees, or receivers appointed by any court whatsoever, and every city or town, owning, controlling, operating, or managing any street railroad or any cars or other equipment used thereon or in connection therewith within this state.

(9) "Railroad" includes every railroad, other than street railroad, by whatever power operated for public use in the conveyance of persons or property for hire, with all facilities and equipment, used, operated, controlled, or owned by or in connection with any such railroad.

(10) "Railroad company" includes every corporation, company, association, joint stock association, partnership, or person, their lessees, trustees, or receivers appointed by any court whatsoever, owning, operating, controlling, or managing

ing any railroad or any cars or other equipment used thereon or in connection therewith within this state.

(11) "Common carrier" includes all railroads, railroad companies, street railroads, street railroad companies, commercial ferries, motor freight carriers, auto transportation companies, charter party carriers and excursion service carriers, private nonprofit transportation providers, solid waste collection companies, household goods carriers, hazardous liquid pipeline companies, and every corporation, company, association, joint stock association, partnership, and person, their lessees, trustees, or receivers appointed by any court whatsoever, and every city or town, owning, operating, managing, or controlling any such agency for public use in the conveyance of persons or property for hire within this state.

(12) "Vessel" includes every species of watercraft, by whatsoever power operated, for public use in the conveyance of persons or property for hire over and upon the waters within this state, excepting all towboats, tugs, scows, barges, and lighters, and excepting rowboats and sailing boats under twenty gross tons burden, open steam launches of five tons gross and under, and vessels under five tons gross propelled by gas, fluid, naphtha, or electric motors.

(13) "Commercial ferry" includes every corporation, company, association, joint stock association, partnership, and person, their lessees, trustees, or receivers, appointed by any court whatsoever, owning, controlling, leasing, operating, or managing any vessel over and upon the waters of this state.

(14) "Transportation of property" includes any service in connection with the receiving, delivery, elevation, transfer in transit, ventilation, refrigeration, icing, storage, and handling of the property transported, and the transmission of credit.

(15) "Transportation of persons" includes any service in connection with the receiving, carriage, and delivery of persons transported and their baggage and all facilities used, or necessary to be used in connection with the safety, comfort, and convenience of persons transported.

(16) "Public service company" includes every common carrier.

(17) The term "service" is used in this title in its broadest and most inclusive sense. [2007 c 234 § 4; 1993 c 427 § 9; 1991 c 272 § 3; 1981 c 13 § 2; 1961 c 14 § 81.04.010. Prior: 1955 c 316 § 3; prior: 1929 c 223 § 1, part; 1923 c 116 § 1, part; 1911 c 117 § 8, part; RRS § 10344, part.]

Effective dates—1991 c 272: See RCW 81.108.901.

81.04.080 Annual report—Other reports. Every public service company shall annually furnish to the commission a report in such form as the commission may require, and shall specifically answer all questions propounded to it by the commission. The commission may prescribe the period of time within which all public service companies subject to this title must have, as near as may be, a uniform system of accounts, and the manner in which the accounts must be kept. The detailed report must contain all the required statistics for the period of twelve months ending on the last day of any particular month prescribed by the commission for any public service company. The reports must be made out under oath and filed with the commission at its office in Olympia on a date the commission specifies by rule, unless additional time

is granted by the commission. The commission may require any public service company to file monthly reports of earnings and expenses, and to file periodical or special reports, or both, concerning any matter the commission is authorized or required, by this or any other law, to inquire into or keep itself informed about, or which it is required to enforce, the periodical or special reports to be under oath whenever the commission so requires. [2007 c 234 § 5; 1989 c 107 § 2; 1961 c 14 § 81.04.080. Prior: 1911 c 117 § 78, part; RRS § 10416, part.]

81.04.130 Suspension of tariff change. Whenever any public service company, subject to regulation by the commission as to rates and service, files with the commission any schedule, classification, rule, or regulation, the effect of which is to change any rate, fare, charge, rental, or toll previously charged, the commission may, either upon its own motion or upon complaint, upon notice, hold a hearing concerning the proposed change and the reasonableness and justice of it. Pending the hearing and the decision, the commission may suspend the operation of the rate, fare, charge, rental, or toll, if the change is proposed by a common carrier other than a solid waste collection company, for a period not exceeding seven months, and, if proposed by a solid waste collection company, for a period not exceeding ten months from the time the change would otherwise go into effect. After a full hearing the commission may make the order in reference to the change as would be provided in a hearing initiated after the change had become effective.

At any hearing involving any change in any schedule, classification, rule, or regulation the effect of which is to increase any rate, fare, charge, rental, or toll theretofore charged, the burden of proof to show that the increase is just and reasonable is upon the public service company. When any common carrier files any tariff, classification, rule, or regulation the effect of which is to decrease any rate, fare, or charge, the burden of proof to show that such decrease is just and reasonable is upon the common carrier. [2007 c 234 § 6; 1993 c 300 § 1; 1984 c 143 § 1; 1961 c 14 § 81.04.130. Prior: 1941 c 162 § 1; 1937 c 169 § 2; 1933 c 165 § 3; 1915 c 133 § 1; 1911 c 117 § 82; Rem. Supp. 1941 § 10424.]

81.04.150 Remunerative rate—Change without authorization prohibited. Whenever the commission finds, after a hearing upon its own motion or upon complaint as provided in this chapter, that any rate, toll, rental, or charge that has been the subject of complaint and inquiry is sufficiently remunerative to the public service company subject to regulation by the commission as to rates and service affected by it, the commission may order that the rate, toll, rental, or charge must not be changed, altered, abrogated, or discontinued, nor must there be any change in the classification that will change or alter the rate, toll, rental, or charge without first obtaining the consent of the commission authorizing the change to be made. [2007 c 234 § 7; 1984 c 143 § 2; 1961 c 14 § 81.04.150. Prior: 1911 c 117 § 84; RRS § 10426.]

81.04.160 Rules. The commission may adopt rules that pertain to the comfort and convenience of the public using the services of public service companies that are subject to regu-

lation by the commission as to services provided. [2007 c 234 § 8; 1961 c 14 § 81.04.160. Prior: 1911 c 117 § 85; RRS § 10427.]

81.04.170 through 81.04.190 Repealed. See Supplementary Table of Disposition of Former RCW Sections, this volume.

81.04.220 Reparations. After a complaint is made to the commission concerning the reasonableness of any rate, fare, toll, rental or charge for any service performed by any public service company subject to regulation by the commission as to rates and service, and the complaint is investigated by the commission, and the commission determines both that the public service company has charged an excessive or exorbitant amount for the service and that any party complainant is entitled to an award of damages, the commission shall order the public service company to pay the complainant the excess amount found to have been charged, whether the excess amount was charged and collected before or after the filing of the complaint, with interest from the date of the collection of the excess amount. [2007 c 234 § 9; 1961 c 14 § 81.04.220. Prior: 1943 c 258 § 1; 1937 c 29 § 1; Rem. Supp. 1943 § 10433.]

81.04.240 Action in court on reparations and overcharges—Procedure. If the public service company subject to regulation by the commission as to rates and service does not comply with the order of the commission for the payment of damages or overcharges within the time limited in the order, action may be brought in any superior court where service may be had upon the company to recover the amount of damages or overcharges with interest. The commission shall certify and file its record in the case, including all exhibits, with the clerk of the court within thirty days after the action is started. The action must be heard on the evidence and exhibits introduced before and certified by the commission.

If the complainant prevails in the action, the court shall enter judgment for the amount of damages or overcharges with interest and award the complainant reasonable attorney's fees, and the cost of preparing and certifying the record for the benefit of and to be paid to the commission by complainant, and deposited by the commission in the public service revolving fund, the sums to be fixed and collected as a part of the costs of the action.

If the order of the commission is found contrary to law or erroneous by the rejection of testimony properly offered, the court shall remand the cause to the commission with instructions to receive the testimony so proffered and rejected and enter a new order based upon the evidence theretofore taken and such as it is directed to receive.

The court may remand any action it reverses to the commission for further action.

Appeals to the supreme court shall lie as in other civil cases. Action to recover damages or overcharges must be filed in the superior court within one year from the date of the order of the commission.

The procedure provided in this section is exclusive, and neither the supreme court nor any superior court has jurisdiction except as provided. [2007 c 234 § 10; 1961 c 14 §

81.04.240. Prior: 1955 c 79 § 4; 1943 c 258 § 2; 1937 c 29 § 3; Rem. Supp. 1943 § 10433-2.]

81.04.250 Determination of rates. The commission may, upon complaint or upon its own motion, prescribe and authorize just and reasonable rates for the transportation of persons or property for any public service company subject to regulation by the commission as to rates and service, whenever and as often as it deems necessary or proper. The commission shall, before any hearing upon the complaint or motion, notify the complainants and the carrier concerned of the time and place of the hearing by giving at least ten days' written notice thereof, specifying that at the time and place designated a hearing will be held for the purpose of prescribing and authorizing the rates. The notice is sufficient to authorize the commission to inquire into and pass upon the matters designated in this section.

In exercising this power, the commission may use any standard, formula, method, or theory of valuation reasonably calculated to arrive at the objective of prescribing and authorizing just and reasonable rates.

In the exercise of this power, the commission may consider, in addition to other factors, the following:

(1) The effect of the rates upon movement of traffic by the carriers;

(2) The public need for adequate transportation facilities, equipment, and service at the lowest level of charges consistent with the provision, maintenance, and renewal of the facilities, equipment, and service; and

(3) The carrier need for revenue of a level that under honest, efficient, and economical management is sufficient to cover the cost, including all operating expenses, depreciation accruals, rents, and taxes of every kind, of providing adequate transportation service, plus an amount equal to the percentage of that cost as is reasonably necessary for the provision, maintenance, and renewal of the transportation facilities or equipment and a reasonable profit to the carrier. The relation of carrier expenses to carrier revenues may be deemed the proper test of a reasonable profit. [2007 c 234 § 11; 1984 c 143 § 3; 1961 c 14 § 81.04.250. Prior: 1951 c 75 § 1; 1933 c 165 § 4; 1913 c 182 § 1; 1911 c 117 § 92; RRS § 10441.]

81.04.270 Accounts to be kept separate. Any public service company, subject to regulation by the commission as to rates and services [service], that engages in the sale of merchandise or appliances or equipment shall keep separate accounts, as prescribed by the commission, of its capital employed in such business and of its revenues therefrom and operating expenses thereof. The capital employed in such business is not a part of the fair value of the company's property for rate making purposes, and the revenues from or operating expenses of such business are not a part of the operating revenues and expenses of the company as a public service company. [2007 c 234 § 12; 1961 c 14 § 81.04.270. Prior: 1933 c 165 § 8; RRS § 10458-2.]

81.04.280 Purchase and sale of stock by employees. A public service company subject to regulation by the commission as to rates and service shall not: (1) Permit any employee to sell, offer for sale, or solicit the purchase of any

security of any other person or corporation during such hours as such employee is engaged to perform any duty of such public service company; (2) by any means or device, require any employee to purchase or contract to purchase any of its securities or those of any other person or corporation; or (3) require any employee to permit the deduction from his wages or salary of any sum as a payment or to be applied as a payment of any purchase or contract to purchase any security of such public service company or of any other person or corporation. [2007 c 234 § 13; 1961 c 14 § 81.04.280. Prior: 1933 c 165 § 9; RRS § 10458-3.]

81.04.300 Budgets to be filed—Supplementary budgets. The commission may regulate, restrict, and control the budgets of expenditures of public service companies subject to regulation by the commission as to rates and service. The commission may require each company to prepare a budget showing the amount of money which, in its judgment, is needed during the ensuing year for maintenance, operation, and construction, classified by accounts as prescribed by the commission, and shall within ten days of the date it is approved by the company file it with the commission for its investigation and approval or rejection. When a budget has been filed, the commission shall examine into and investigate it to determine whether the expenditures therein proposed are fair and reasonable and not contrary to public interest.

Adjustments or additions to budget expenditures may be made from time to time during the year by filing a supplementary budget with the commission for its investigation and approval or rejection. [2007 c 234 § 14; 1961 c 14 § 81.04.300. Prior: 1959 c 248 § 15; prior: 1933 c 165 § 10, part; RRS § 10458-4, part.]

81.04.330 Effect of unauthorized expenditure—Emergencies. Any public service company subject to regulation by the commission as to rates and service may make or contract for any rejected item of expenditure, but in such case the rejected item of expenditure shall not be allowed as an operating expense, or as to items of construction, as a part of the fair value of the company's property used and useful in serving the public: PROVIDED, That such items of construction may at any time thereafter be so allowed in whole or in part upon proof that they are used and useful. Any company may upon the happening of any emergency caused by fire, flood, explosion, storm, earthquake, riot, or insurrection, or for the immediate preservation or restoration to condition of usefulness of any of its property, the usefulness of which has been destroyed by accident, make the necessary expenditure therefor free from the operation of RCW 81.04.300 through 81.04.330.

Any finding and order entered by the commission is effective until vacated and set aside in proper proceedings for review thereof. [2007 c 234 § 15; 1961 c 14 § 81.04.330. Prior: 1959 c 248 § 18; prior: 1933 c 165 § 10, part; RRS § 10458-4, part.]

81.04.350 Depreciation and retirement accounts. The commission may after hearing require any public service company subject to regulation by the commission as to rates and service to carry proper and adequate depreciation or

retirement accounts in accordance with such rules, regulations, and forms of accounts as the commission may prescribe. The commission may from time to time ascertain and by order fix the proper and adequate rates of depreciation or retirement of the several classes of property of each public service company. Each public service company shall conform its depreciation or retirement accounts to the rates so prescribed. In fixing the rate of the annual depreciation or retirement charge, the commission may consider the rate and amount theretofore charged by the company for depreciation or retirement.

The commission may exercise like power and authority over all other reserve accounts of public service companies. [2007 c 234 § 16; 1961 c 14 § 81.04.350. Prior: 1937 c 169 § 4; 1933 c 165 § 13; RRS § 10458-7.]

81.04.360 Excessive earnings to reserve fund. If any public service company subject to regulation by the commission as to rates and service earns in the period of five consecutive years immediately preceding the commission order fixing rates for such company a net utility operating income in excess of a reasonable rate of return upon the fair value of its property used and useful in the public service, the commission shall take official notice of such fact and of whether any such excess earnings were invested in such company's plant or otherwise used for purposes beneficial to the consumers of such company and may consider such facts in fixing rates for such company. [2007 c 234 § 17; 1961 c 14 § 81.04.360. Prior: 1959 c 285 § 3; 1933 c 165 § 14; RRS § 10458-8.]

81.04.490 Application to municipal utilities—Safety regulation of municipal gas and hazardous liquid pipelines. Nothing in this title shall authorize the commission to make or enforce any order affecting rates, tolls, rentals, contracts or charges or service rendered, or the safety, adequacy or sufficiency of the facilities, equipment, instrumentalities or buildings, or the reasonableness of rules or regulations made, furnished, used, supplied or in force affecting any street railroad owned and operated by any city or town, but all other provisions enumerated herein shall apply to public utilities owned by any city or town. The commission shall regulate the safety of all hazardous liquid and gas pipelines constructed, owned, or operated by any city or town under chapter 81.88 RCW. [2007 c 142 § 10; 1961 c 14 § 81.04.490. Prior: 1911 c 117 § 105; RRS § 10454.]

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

81.04.540 Regulation of common carriers, railroad safety practices. (1) The commission shall cooperate with the federal government and the United States department of transportation, or its successor, or any other commission or agency delegated or authorized to regulate interstate or foreign commerce by common carriers, to the end that the transportation of property and passengers by common carriers in interstate or foreign commerce into and through the state of Washington may be regulated and that the laws of the United States and the state of Washington are enforced and administered cooperatively in the public interest.

(2) In addition to its authority concerning interstate commerce under this title, the commission may regulate common carriers in interstate commerce within the state under the authority of and in accordance with any act of congress that vests in or delegates to the commission such authority as an agency of the United States government or under an agreement with the United States department of transportation, or its successor, or any other commission or agency delegated or authorized to regulate interstate or foreign commerce by common carriers.

(3) For the purpose of participating with the United States department of transportation in investigation and inspection activities necessary to enforce federal railroad safety regulations, the commission has regulatory jurisdiction over the safety practices for railroad equipment, facilities, rolling stock, and operations in the state. [2007 c 234 § 2.]

81.04.550 Railroad safety administration. The commission shall administer the railroad safety provisions of this title to the fullest extent allowed under 49 U.S.C. Sec. 20106 and state law. [2007 c 234 § 3.]

Chapter 81.08 RCW SECURITIES

Sections

81.08.010 Definition.
81.08.070 Repealed.

81.08.010 Definition. "Public service company," as used in this chapter, means every common carrier subject to regulation as to rates and service by the utilities and transportation commission under this title, except any "household goods carrier" subject to chapter 81.80 RCW or any "solid waste collection company" subject to chapter 81.77 RCW. [2007 c 234 § 18; 1981 c 13 § 3; 1965 ex.s. c 105 § 3; 1961 c 14 § 81.08.010. Prior: 1959 c 248 § 3; 1957 c 205 § 2; 1953 c 95 § 9; prior: 1933 c 151 § 1, part; RRS § 10439-1, part.]

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

Chapter 81.12 RCW TRANSFERS OF PROPERTY

Sections

81.12.010 Definition.

81.12.010 Definition. "Public service company," as used in this chapter, means every common carrier subject to regulation as to rates and service by the utilities and transportation commission under the provisions of this title. It does not include common carriers subject to regulation by the federal energy regulatory commission or the United States department of transportation, household goods carriers subject to chapter 81.80 RCW, or solid waste collection companies subject to chapter 81.77 RCW. This section does not apply to transfers of permits or certificates. [2007 c 234 § 19; 1981 c 13 § 4; 1969 ex.s. c 210 § 4; 1965 ex.s. c 105 § 4; 1963

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c 59 § 5; 1961 c 14 § 81.12.010. Prior: 1953 c 95 § 12; 1941 c 159 § 1, part; Rem. Supp. 1941 § 10440a.]

Chapter 81.16 RCW AFFILIATED INTERESTS

Sections

81.16.010 Definitions.

81.16.010 Definitions. As used in this chapter:

(1) "Public service company" means every corporation engaged in business as a common carrier and subject to regulation as to rates and service by the utilities and transportation commission under this title.

(2) "Affiliated interest" means:

(a) Every corporation and person owning or holding directly or indirectly five percent or more of the voting securities of any public service company engaged in any intrastate business in this state;

(b) Every corporation and person, other than those above specified, in any chain of successive ownership of five percent or more of voting securities, the chain beginning with the holder of the voting securities of such public service company;

(c) Every corporation five percent or more of whose voting securities are owned by any person or corporation owning five percent or more of the voting securities of such public service company or by any person or corporation in any such chain of successive ownership of five percent or more of voting securities;

(d) Every corporation or person with which the public service company has a management or service contract; and

(e) Every person who is an officer or director of such public service company or of any corporation in any chain of successive ownership of five percent or more of voting securities. [2007 c 234 § 20; 1969 ex.s. c 210 § 5; 1961 c 14 § 81.16.010. Prior: 1953 c 95 § 13; 1933 c 152 § 1, part; RRS § 10440-1, part.]

Chapter 81.24 RCW REGULATORY FEES

Sections

81.24.010 Companies to file reports of gross revenue and pay fees—
Exempt companies.

81.24.010 Companies to file reports of gross revenue and pay fees—Exempt companies. (1) Every company subject to regulation by the commission, except those listed in subsection (3) of this section, shall, on or before the date specified by the commission for filing annual reports under RCW 81.04.080, file with the commission a statement on oath showing its gross operating revenue from intrastate operations for the preceding calendar year, or portion thereof, and pay to the commission a fee equal to one-tenth of one percent of the first fifty thousand dollars of gross operating revenue, plus two-tenths of one percent of any gross operating revenue in excess of fifty thousand dollars, except railroad companies which shall each pay to the commission a fee equal to one and one-half percent of its intrastate gross oper-

ating revenue. The commission may, by rule, set minimum fees that do not exceed the cost of collecting the fees. The commission may by rule waive any or all of the minimum fee established pursuant to this section. Any railroad association that qualifies as a nonprofit charitable organization under the federal internal revenue code section 501(c)(3) is exempt from the fee required under this subsection.

(2) The percentage rates of gross operating revenue to be paid in any one year may be decreased by the commission for any class of companies subject to the payment of such fees, by general order entered before March 1st of such year, and for such purpose railroad companies are classified as class two. Every other company subject to regulation by the commission, for which regulatory fees are not otherwise fixed by law, shall pay fees as herein provided and shall constitute additional classes according to kinds of businesses engaged in.

(3) This section does not apply to private nonprofit transportation providers, auto transportation companies, charter party carriers and excursion service carriers, solid waste collection companies, motor freight carriers, household goods carriers, commercial ferries, and low-level radioactive waste storage facilities. [2007 c 234 § 21; 2003 c 296 § 2; 1996 c 196 § 1; 1990 c 48 § 2; 1977 ex.s. c 48 § 1; 1969 ex.s. c 210 § 6; 1963 c 59 § 11; 1961 c 14 § 81.24.010. Prior: 1957 c 185 § 1; 1955 c 125 § 4; prior: 1939 c 123 § 1, part; 1937 c 158 § 1, part; 1929 c 107 § 1, part; 1923 c 107 § 1, part; 1921 c 113 § 1, part; RRS § 10417, part.]

Chapter 81.28 RCW

COMMON CARRIERS IN GENERAL

Sections

81.28.010	Duties as to rates, services, and facilities.
81.28.020	Duty of carriers to expedite traffic.
81.28.030	Routing of freight—Connecting companies—Damages.
81.28.040	Tariff schedules to be filed with commission—Public schedules—Commission's powers as to schedules.
81.28.050	Tariff changes—Notice—Exception.
81.28.080	Published rates to be charged—Exceptions—Definitions.
81.28.180	Rate discrimination prohibited.
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81.28.200	Long and short haul.
81.28.210	Transportation at less than published rates—Rebating—False representation.
81.28.220	Action for treble damages.
81.28.230	Commission to fix just, reasonable, and compensatory rates.
81.28.250	Investigation and determination of interstate rates—Application for federal relief.
81.28.260	Bicycles as baggage on commercial ferries.

81.28.010 Duties as to rates, services, and facilities. All charges made for any service rendered or to be rendered in the transportation of persons or property, or in connection therewith, by any common carrier subject to regulation by the commission as to rates and service, or by any two or more such common carriers, must be just, fair, reasonable, and sufficient.

Every common carrier shall construct, furnish, maintain and provide, safe, adequate, and sufficient service facilities and equipment to enable it to promptly, expeditiously, safely, and properly receive, transport, and deliver all persons or property offered to or received by it for transportation, and to promote the safety, health, comfort, and convenience of its patrons, employees, and the public.

All rules and regulations issued by any such common carrier affecting or pertaining to the transportation of persons or property must be just and reasonable. [2007 c 234 § 22; 1961 c 14 § 81.28.010. Prior: 1911 c 117 § 9; RRS § 10345.]

81.28.020 Duty of carriers to expedite traffic. Every common carrier subject to regulation by the commission as to rates and service shall under reasonable rules and regulations promptly and expeditiously receive, transport, and deliver all persons or property offered to or received by it for transportation. [2007 c 234 § 23; 1961 c 14 § 81.28.020. Prior: 1911 c 117 § 10; RRS § 10346.]

81.28.030 Routing of freight—Connecting companies—Damages. All common carriers subject to regulation by the commission as to rates and service and doing business wholly within this state shall, upon receipt of any article of freight, promptly forward the same to its marked destination, by the route directed by the shipper, or if no directions are given by shipper, then to any connecting company whose line or route reaches nearest to the point to which such freight is marked.

Any such common carrier failing to comply with this section is liable for any damages that may be sustained, either to the shipper or consignee, from any cause, upon proof that the damages resulted from a failure of the transportation company to comply with this section.

Suit for damages may be instituted either at the place of shipping or destination, either by the shipper or consignee, and before any court competent and qualified to hear and determine like causes between persons who reside in the court's district. [2007 c 234 § 24; 1961 c 14 § 81.28.030. Prior: (i) 1890 p 291 § 1; RRS § 10491. (ii) 1890 p 291 § 2; RRS § 10492. (iii) 1890 p 291 § 3; RRS § 10493.]

81.28.040 Tariff schedules to be filed with commission—Public schedules—Commission's powers as to schedules. Every common carrier subject to regulation by the commission as to rates and service shall file with the commission and shall print and keep open for public inspection, schedules showing the rates, fares, charges, and classification for the transportation of persons and property within the state between each point upon the carrier's route and all other points thereon; and between each point upon its route and all points upon every route leased, operated, or controlled by it; and between each point on its route or upon any route leased, operated, or controlled by it and all points upon the route of any other common carrier, whenever a through route and joint rate have been established or ordered between any two such points. If no joint rate over a through route has been established, the several carriers participating in the through route shall file, print, and keep open for public inspection, the separately established rates, fares, charges, and classifications that apply to the through transportation. The schedules printed must: Plainly state the places between which property and persons are carried; contain classification of passengers or property in force; and state separately all terminal charges, storage charges, icing charges, all other charges that the commission may require to be stated, all privileges or facilities granted or allowed, and any rules or regulations that

may in any way change, affect, or determine any part, or the aggregate of, such rates, fares, and charges, or the value of the service rendered to the passenger, shipper, or consignee. The schedule must be plainly printed in large type, and a copy of it shall be kept by every carrier readily accessible to inspection by the public in every station or office of the carrier where passengers or property are respectively received for transportation, when the station or office is in charge of any agent. All of the schedules kept as provided in this section must be immediately produced by the carrier for inspection upon the demand of any person. A notice printed in bold type and stating that the schedules are on file with the agent and open to inspection by any person and that the agent will assist any person to determine from the schedules any transportation rates or fares or rules or regulations that are in force must be kept posted by the carrier in two public and conspicuous places in every such station or office. The form of each schedule must be prescribed by the commission.

The commission may, from time to time, determine and prescribe by order such changes in the form of the schedules as may be found expedient, and modify the requirements of this section in respect to publishing, posting, and filing of schedules either in particular instances or by general rule or order applicable to special or peculiar circumstances or conditions.

The commission may suspend the operation of this section in whole or in part as applied to vessels engaged in jobbing business not operating on regular routes. [2007 c 234 § 25; 1984 c 143 § 4; 1961 c 14 § 81.28.040. Prior: 1911 c 117 § 14; RRS § 10350.]

81.28.050 Tariff changes—Notice—Exception.

Unless the commission otherwise orders, a change may not be made to any classification, rate, fare, charge, rule, or regulation filed and published by a common carrier subject to regulation by the commission as to rates and service, except after thirty days' notice to the commission and to the public. In the case of a solid waste collection company, a change may not be made except after forty-five days' notice to the commission and to the public. The notice must be published as provided in RCW 81.28.040 and must plainly state the changes proposed to be made in the schedule then in force and the time when the changed rate, classification, fare, or charge will go into effect. All proposed changes must be shown by printing, filing, and publishing new schedules or must be plainly indicated upon the schedules in force at the time and kept open to public inspection. The commission, for good cause shown, may by order allow changes in rates without requiring the notice and the publication time periods specified in this section. When any change is made in any rate, fare, charge, classification, rule, or regulation, attention must be directed to the change by some character on the schedule. The character and its placement must be designated by the commission. The commission may, by order, for good cause shown, allow changes in any rate, fare, charge, classification, rule, or regulation without requiring any character to indicate each and every change to be made. [2007 c 234 § 26; 1993 c 300 § 2; 1984 c 143 § 5; 1981 c 116 § 1; 1961 c 14 § 81.28.050. Prior: 1957 c 205 § 3; 1911 c 117 § 15; RRS § 10351.]

81.28.080 Published rates to be charged—Exceptions—Definitions. (1) A common carrier subject to regulation by the commission as to rates and service shall not charge, demand, collect, or receive a greater or less or different compensation for transportation of persons or property, or for any service in connection therewith, than the rates, fares, and charges applicable to such transportation as specified in its schedules filed and in effect at the time and shall not refund or remit in any manner or by any device any portion of the rates, fares, or charges so specified excepting upon order of the commission as hereinafter provided, or extend to any shipper or person any privileges or facilities in the transportation of passengers or property except such as are regularly and uniformly extended to all persons and corporations under like circumstances. Any common carrier subject to regulation by the commission as to rates and service shall not, directly or indirectly, issue or give any free ticket, free pass, or free or reduced transportation for passengers between points within this state, except to the carrier's employees and their families, surgeons and physicians and their families, the carrier's officers, agents, and attorneys-at-law; to ministers of religion, traveling secretaries of young men's christian associations, inmates of hospitals, charitable and eleemosynary institutions, and persons exclusively engaged in charitable and eleemosynary work; to indigent, destitute, and homeless persons; to inmates of the national homes or state homes for volunteer soldiers with disabilities and of soldiers' and sailors' homes, including those about to enter and those returning home after discharge; to necessary caretakers of livestock, poultry, milk, and fruit; to lineworkers of telegraph and telephone companies; to post office inspectors, customs inspectors, and immigration inspectors; to baggage agents and witnesses attending any legal investigation in which the common carrier is interested; to persons injured in accidents or wrecks and physicians and nurses attending such persons; to the national guard of Washington when on official duty; and students going to and returning from state institutions of learning. This section does not prohibit the interchange of passes for the officers, attorneys, agents and employees and their families, of commercial ferries or prohibit any common carrier from carrying passengers free with the object of providing relief in cases of general epidemic, pestilence, or other calamitous visitation.

(2) "Employee," as used in this section, includes furloughed, pensioned, and superannuated employees, persons who have become disabled or infirm in the service of any such common carrier, the remains of a person killed or dying in the employment of a carrier, those entering or leaving its service, and former employees traveling for the purpose of entering the service of any such common carrier.

(3) "Families," as used in this section, includes the families of those persons named in subsection (2) of this section, the families of persons killed and their surviving spouses prior to remarriage and minor children during minority, and the families of persons who died while in the service of any such common carrier.

(4) Nothing in this section prevents the issuance of mileage, commutation tickets, or excursion passenger tickets or prevents the issuance of free or reduced transportation by any street railroad company for mail carriers, or police officers or members of fire departments, city officers, and employees

when engaged in the performance of their duties as city employees.

(5) Common carriers may carry, store, or handle, free or at reduced rates, property for the United States, state, county, or municipal governments, for charitable purposes, or to or from fairs and exhibitions for exhibition, and may carry, store, or handle, free or at reduced rates, the household goods and personal effects of its employees, those entering or leaving its service, and those killed or dying while in its service. [2007 c 234 § 27; 2007 c 218 § 74; 1973 1st ex.s. c 154 § 117; 1961 c 14 § 81.28.080. Prior: 1929 c 96 § 1; 1911 c 117 § 18; RRS § 10354. Formerly RCW 81.28.080 through 81.28.130, 81.28.150 through 81.28.170, and 80.36.130.]

Reviser's note: This section was amended by 2007 c 218 § 74 and by 2007 c 234 § 27, each without reference to the other. Both amendments are incorporated in the publication of this section under RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

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

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

81.28.180 Rate discrimination prohibited. A common carrier subject to regulation by the commission as to rates and service shall not, directly or indirectly, by any special rate, rebate, drawback, or other device or method, charge, demand, collect, or receive from any person or corporation a greater or lesser compensation for any service rendered or to be rendered in the transportation of persons or property, except as authorized in this title, than it charges, demands, collects, or receives from any person or corporation for doing a like and contemporaneous service in the transportation of a like kind of traffic under the same or substantially similar circumstances and conditions. [2007 c 234 § 28; 1984 c 143 § 6; 1961 c 14 § 81.28.180. Prior: 1911 c 117 § 20; RRS § 10356.]

81.28.190 Unreasonable preferences and prejudices prohibited. A common carrier subject to regulation by the commission as to rates and service shall not make or give any undue or unreasonable preference or advantage to any person, corporation, locality, or particular description of traffic in any respect whatsoever, or subject any particular person, corporation, locality, or particular description of traffic, to any undue or unreasonable prejudice or disadvantage in any respect whatsoever. [2007 c 234 § 29; 1984 c 143 § 7; 1961 c 14 § 81.28.190. Prior: 1911 c 117 § 21; RRS § 10357.]

81.28.200 Long and short haul. A common carrier, subject to regulation by the commission as to rates and service and this title, shall not charge or receive any greater compensation in the aggregate for the transportation of persons or a like kind of property for a shorter distance than for a longer distance over the same line in the same direction, the shorter distance being included within the longer distance, or to charge any greater compensation as a through rate than the aggregate of the intermediate rates subject to this title. The common carriers may not charge and receive as great a compensation for a shorter as for a longer distance or haul. Upon the application of a common carrier, the commission may by order authorize the common carrier to charge less for a longer distance than for a shorter distance for the transportation of persons or property in special cases after investigation by the

commission, but the order must specify and prescribe the extent to which the common carrier making the application is relieved from the operation of this section. Only to the extent so specified and prescribed is any common carrier relieved from the operation and requirements of this section. [2007 c 234 § 30; 1984 c 143 § 8; 1961 c 14 § 81.28.200. Prior: 1911 c 117 § 22; RRS § 10358.]

81.28.210 Transportation at less than published rates—Rebating—False representation. (1) A common carrier subject to regulation by the commission as to rates and service, or any officer or agent thereof, or any person acting for or employed by the common carrier, shall not assist, suffer, or permit any person or corporation to obtain transportation for any person or property between points within this state at less than the rates then established and in force in accordance with the schedules filed and published under this title, by false billing, false classification, false weight or weighing, or false report of weight, or by any other device or means. Any person, corporation, or any officer, agent, or employee of a corporation, who delivers property for transportation within the state to a common carrier, shall not seek to obtain or obtain such transportation for such property at less than the rates then established and in force, by false billing, false or incorrect classification, false weight or weighing, false representation of the contents or substance of a package, or false report or statement of weight, or by any device or means, whether with or without the consent or connivance of a common carrier or any of its officers, agents, or employees.

(2) A person, corporation, or any officer, agent, or employee of a corporation, shall not knowingly or wilfully, directly or indirectly, by false statement or representation as to the cost, value, nature, or extent of injury, or by the use of any false billing, bill of lading, receipt, voucher, roll, account, claim, certificate, affidavit, or deposition, knowing the same to be false, fictitious, or fraudulent, or to upon any false, fictitious, or fraudulent statement or entry, obtain or attempt to obtain any allowance, rebate, or payment for damage, or otherwise, in connection with or growing out of the transportation of persons or property, or agreement to transport such persons or property, whether with or without the consent or connivance of such common carrier or any of its officers, agents, or employees, when the compensation of such carrier for such transportation is less than the rates then established and in force.

(3) A person, corporation, or any officer, agent, or employee of a corporation, who delivers property for transportation within the state to a common carrier, shall not seek to obtain or obtain such transportation by any false representation or false statement of false paper or token as to the contents or substance thereof, when the transportation of such property is prohibited by law. [2007 c 234 § 31; 1961 c 14 § 81.28.210. Prior: 1911 c 117 § 23; RRS § 10359.]

81.28.220 Action for treble damages. The attorney general of the state of Washington shall, whenever he or she has reasonable grounds to believe that any person, firm, or corporation has knowingly accepted or received from any carriers of persons or property subject to the jurisdiction of the commission, either directly or indirectly, any unlawful

rebate, discount, deduction, concession, refund, or remittance from the rates or charges filed and open to public inspection as provided for in the public service laws of this state, prosecute a civil action in the name of the people of the state of Washington in the superior court of Thurston county to collect three times the total sum of such rebates, discounts, deductions, concessions, refunds, or remittances so accepted or received within three years prior to the commencement of such action.

All penalties imposed under the provisions of this section shall be paid to the state treasurer and by him or her deposited in the public service revolving fund. [2007 c 234 § 32; 1961 c 14 § 81.28.220. Prior: 1937 c 169 § 5; RRS § 10447-1.]

81.28.230 Commission to fix just, reasonable, and compensatory rates. Whenever the commission finds, after a hearing had upon its own motion or upon complaint, as provided in this chapter, that the rates, fares, or charges demanded, exacted, charged, or collected by any common carrier subject to regulation by the commission as to rates and service for the transportation of persons or property within the state or in connection therewith, or that the regulations or practices of the common carrier affecting those rates are unjust, unreasonable, unjustly discriminatory, or unduly preferential, or in any way are in violation of the provisions of law, or that the rates, fares, or charges are insufficient to yield a reasonable compensation for the service rendered, the commission shall determine and fix by order the just, reasonable, or sufficient rates, fares, or charges, or the regulations or practices to be thereafter observed and enforced. [2007 c 234 § 33; 1984 c 143 § 9; 1961 c 14 § 81.28.230. Prior: 1911 c 117 § 53, part; RRS § 10389, part.]

81.28.250 Investigation and determination of interstate rates—Application for federal relief. The commission shall investigate all interstate, rates, fares, charges, classifications, or rules or practices in relation to the transportation of persons or property within this state, and if the commission determines that these rates, fares, charges, classification, or rules or practices are excessive or discriminatory, or are applied in violation of the act of congress entitled "An act to regulate commerce," approved February 4, 1887, as amended or supplemented, or in conflict with the rulings, orders, or regulations of the applicable federal regulatory agency, the commission shall apply, by petition, to the applicable federal regulatory agency for relief, and may present to the agency all facts concerning violations of the rulings, orders, or regulations of that agency, or violations of the act to regulate commerce as amended or supplemented. [2007 c 234 § 34; 1961 c 14 § 81.28.250. Prior: 1911 c 117 § 58; RRS § 10394.]

81.28.260 Bicycles as baggage on commercial ferries. Bicycles must be transported as baggage for passengers by commercial ferries and are subject to the same liabilities as other baggage. A passenger is not required to crate, cover, or otherwise protect any bicycle. A commercial ferry is not required to transport more than one bicycle for one person.

[2007 c 234 § 35; 1961 c 14 § 81.28.260. Prior: 1899 c 15 § 1; RRS § 10495.]

Chapter 81.29 RCW COMMON CARRIERS—LIMITATIONS ON LIABILITY

Sections

81.29.010	Definition.
81.29.020	Carrier's liability for loss—Exceptions—Tariff schedule—Time for filing claims or instituting suits.

81.29.010 Definition. "Common carrier," as used in this chapter, means every common carrier subject to regulation by the commission as to rates and service. [2007 c 234 § 36; 1961 c 14 § 81.29.010. Prior: 1945 c 203 § 1; Rem. Supp. 1945 § 3673-0. Formerly RCW 81.32.010, part.]

81.29.020 Carrier's liability for loss—Exceptions—Tariff schedule—Time for filing claims or instituting suits. (1) Any common carrier subject to regulation by the commission as to rates and service, receiving property for transportation wholly within the state of Washington from one point in the state of Washington to another point in the state of Washington, shall issue a receipt or bill of lading and is liable to the lawful holder thereof for any loss, damage, or injury to such property caused by it, or by any common carrier to which such property may be delivered, or over whose line or lines such property may pass when transported on a through bill of lading, and a contract, receipt, rule, regulation, or other limitation of any character, does not exempt such common carrier from the liability imposed; and any such common carrier receiving property for transportation wholly within the state of Washington, or any common carrier delivering property received and transported, is liable to the lawful holder of the receipt or bill of lading, or to any party entitled to recover thereon, whether such receipt or bill of lading has been issued or not, for the full actual loss, damage, or injury to such property caused by it or by any such common carrier to which such property may be delivered, or over whose line or lines such property may pass, when transported on a through bill of lading. Any limitation of liability, limitation of the amount of recovery, or representation or agreement as to value in any such receipt or bill of lading, or in any contract, rule, or regulation, or in any tariff filed with the commission is unlawful and void.

(2) Liability for full actual loss, damage, or injury, notwithstanding any limitation of liability or recovery or representation, agreement, or release as to value, and declaring any such limitation to be unlawful and void, does not apply: First, to baggage carried on commercial ferries or motor vehicles, or commercial ferries or motor vehicles carrying passengers; second, to property, concerning which the carrier is expressly authorized or required by order of the commission, to establish and maintain rates dependent upon the value declared in writing by the shipper or agreed upon in writing as the released value of the property, in which case such declaration or agreement has no other effect than to limit liability and recovery to an amount not exceeding the value so declared or released; and any tariff schedule that may be filed with the commission pursuant to such order must contain

specific reference thereto and may establish rates varying with the value so declared and agreed upon; and the commission may make such order in cases where rates dependent upon and varying with declared or agreed values would, in its opinion, be just and reasonable under the circumstances and conditions surrounding the transportation.

(3) This section does not deprive any holder of a receipt or bill of lading of any remedy or right of action which he or she has under the existing law.

(4) It is unlawful for any receiving or delivering common carrier to provide by rule, contract, regulation, or otherwise a shorter period for the filing of claims than nine months, and for the institution of suits than two years, such period for institution of suits to be computed from the day when notice in writing is given by the carrier to the claimant that the carrier has disallowed the claim or any part or parts thereof specified in the notice.

(5) The liability imposed by this section applies to property reconsigned or diverted in accordance with the applicable tariffs filed with the commission. [2007 c 234 § 37; 1982 c 83 § 1; 1980 c 132 § 1; 1961 c 14 § 81.29.020. Prior: 1945 c 203 § 2; 1923 c 149 § 1; Rem. Supp. 1945 § 3673-1. Formerly RCW 81.32.290 through 81.32.330.]

Effective date—1980 c 132: "This 1980 act shall take effect on July 1, 1980." [1980 c 132 § 4.]

Chapter 81.36 RCW

RAILROADS—CORPORATE POWERS AND DUTIES

Sections

81.36.070 Repealed.

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

Chapter 81.40 RCW

RAILROADS—EMPLOYEE REQUIREMENTS AND REGULATIONS

Sections

81.40.040 Repealed.
81.40.095 Rules and regulations—Railroad employees—Sanitation, shelter.
81.40.100 Repealed.

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

81.40.095 Rules and regulations—Railroad employees—Sanitation, shelter. The utilities and transportation commission shall adopt and enforce rules and regulations relating to sanitation and adequate shelter as it affects the health of all railroad employees, including but not limited to railroad workers, maintenance of way employees, highway crossing watchpersons, clerical, platform, freight house and express employees. [2007 c 218 § 82; 1961 c 14 § 81.40.095. Prior: 1957 c 71 § 1. Formerly RCW 81.04.162.]

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

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

Chapter 81.44 RCW

COMMON CARRIERS—EQUIPMENT

Sections

81.44.010 Order for improved equipment and facilities.
81.44.020 Correction of unsafe or defective conditions—Walkways and handrails as unsafe or defective condition, when.
81.44.031 Repealed.
81.44.032 Repealed.
81.44.040 Streetcars.
81.44.050 through 81.44.065 Repealed.
81.44.091 through 81.44.120 Repealed.

81.44.010 Order for improved equipment and facilities. Whenever the commission, after a hearing had upon its own motion or upon complaint, finds that any equipment or facility for use by any common carrier in, or in connection with the transportation of persons or property, ought reasonably to be provided, or any repairs or improvements to, or changes in, any theretofore in use ought reasonably to be made, or any additions or changes in construction should reasonably be made thereto, in order to promote the security or convenience of the public or employees, or in order to secure adequate service or facilities for the transportation of passengers or property, the commission may, after a hearing, either on its own motion or after complaint, serve an order directing such repairs, improvements, changes, or additions to be made. [2007 c 234 § 38; 1961 c 14 § 81.44.010. Prior: 1911 c 117 § 64; RRS § 10400.]

81.44.020 Correction of unsafe or defective conditions—Walkways and handrails as unsafe or defective condition, when. If upon investigation the commission finds that the equipment, facilities, tracks, bridges, or other structures of any common carrier are defective, and that the operation thereof is dangerous to the employees of the common carrier or to the public, it shall immediately give notice to the superintendent or other officer of the common carrier of the repairs or reconstruction necessary to place the same in a safe condition. The commission may also prescribe the rate of speed for trains or cars passing over the dangerous or defective track, bridge, or other structure until the repairs or reconstruction required are made, and may also prescribe the time when the repairs or reconstruction must be made; or if, in the commission's opinion, it is needful or proper, the commission may forbid trains or cars to run over any defective track, bridge, or structure until the track, bridge, or structure is repaired and placed in a safe condition. Railroad bridges or trestles without walkways and handrails may be identified as an unsafe or defective condition under this section after a hearing by the commission upon complaint or on its own motion. The commission, in making the determination, shall balance considerations of employee and public safety with the potential for increased danger to the public resulting from adding walkways or handrails to railway bridges. A railroad company and its employees are not liable for injury to or death of any person occurring on or about any railway bridge or trestle if the person was not a railway employee but was a trespasser or was otherwise not authorized to be in the location where the injury or death occurred.

Appeal from or action to review any order of the commission made under this section is not available if the commission finds that immediate compliance is necessary for the

protection of employees or the public. [2007 c 234 § 39; 1982 c 141 § 1; 1977 ex.s. c 46 § 1; 1961 c 14 § 81.44.020. Prior: 1911 c 117 § 65; RRS § 10401.]

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

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

81.44.040 Streetcars. Every streetcar must be equipped with proper and efficient brakes, steps, grab irons or hand rails, fenders or aprons or pilots, and with such other appliances, apparatus, and machinery necessary for the safe operation of the streetcar as the commission may prescribe. [2007 c 234 § 40; 1961 c 14 § 81.44.040. Prior: 1911 c 117 § 66, part; RRS § 10402, part. Formerly RCW 81.44.040 and 81.64.120, part.]

81.44.050 through 81.44.065 Repealed. See Supplementary Table of Disposition of Former RCW Sections, this volume.

81.44.091 through 81.44.120 Repealed. See Supplementary Table of Disposition of Former RCW Sections, this volume.

Chapter 81.48 RCW

RAILROADS—OPERATING REQUIREMENTS AND REGULATIONS

Sections

81.48.010	Repealed.
81.48.015	Repealed.
81.48.070	Cruelty to stock in transit—Penalty.

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

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

81.48.070 Cruelty to stock in transit—Penalty. Railroad companies in carrying or transporting animals shall not permit them to be confined in cars for a longer period than forty-eight consecutive hours without unloading them for rest, water and feeding for a period of at least two consecutive hours, unless prevented from so unloading them by unavoidable accident. In estimating such confinement, the time during which the animals have been confined without such rest on connecting roads from which they are received shall be included. Animals so unloaded shall, during such rest, be properly fed, watered by the owner or person having the custody of them, or in case of his default in so doing, then by the railroad company transporting them, at the expense of said owner or person in custody thereof, and said company shall in such case have a lien upon such animals for food, care and custody furnished, and shall not be liable for such detention of such animals. If animals are transported where they can and do have proper food, water, space and opportunity for

rest, the foregoing provision in regard to their being unloaded shall not apply. Violators of this section shall be punished by fine not exceeding one thousand dollars per animal. [1994 c 261 § 19; 1961 c 14 § 81.56.120. Prior: 1893 c 27 § 4; RRS § 10494. Formerly RCW 81.56.120.]

Finding—Intent—1994 c 261: See note following RCW 16.52.011.

Chapter 81.52 RCW

RAILROADS—RIGHTS-OF-WAY—SPURS—FENCES

Sections

81.52.010 through 81.52.040 Repealed.

81.52.010 through 81.52.040 Repealed. See Supplementary Table of Disposition of Former RCW Sections, this volume.

Chapter 81.53 RCW

RAILROADS—CROSSINGS

Sections

81.53.261 Crossing signals, warning devices—Petition—Hearing—Order—Costs apportionment—Records not evidence for actions—Appeal.

81.53.261 Crossing signals, warning devices—Petition—Hearing—Order—Costs apportionment—Records not evidence for actions—Appeal. Whenever the secretary of transportation or the governing body of any city, town, or county, or any railroad company whose road is crossed by any highway, shall deem that the public safety requires signals or other warning devices, other than sawbuck signs, at any crossing of a railroad at common grade by any state, city, town, or county highway, road, street, alley, avenue, boulevard, parkway, or other public place actually open and in use or to be opened and used for travel by the public, he or it shall file with the utilities and transportation commission a petition in writing, alleging that the public safety requires the installation of specified signals or other warning devices at such crossing or specified changes in the method and manner of existing crossing warning devices. Upon receiving such petition, the commission shall promptly set the matter for hearing, giving at least twenty days notice to the railroad company or companies and the county or municipality affected thereby, or the secretary of transportation in the case of a state highway, of the time and place of such hearing. At the time and place fixed in the notice, all persons and parties interested shall be entitled to be heard and introduce evidence, which shall be reduced to writing and filed by the commission. If the commission shall determine from the evidence that public safety does not require the installation of the signal, other warning device or change in the existing warning device specified in the petition, it shall make determinations to that effect and enter an order denying said petition in toto. If the commission shall determine from the evidence that public safety requires the installation of such signals or other warning devices at such crossing or such change in the existing warning devices at said crossing, it shall make determinations to that effect and enter an order directing the installation

of such signals or other warning devices or directing that such changes shall be made in existing warning devices. The commission shall also at said hearing apportion the entire cost of installation and maintenance of such signals or other warning devices, other than sawbuck signs, as provided in RCW 81.53.271: PROVIDED, That upon agreement by all parties to waive hearing, the commission shall forthwith enter its order.

No railroad shall be required to install any such signal or other warning device until the public body involved has either paid or executed its promise to pay to the railroad its portion of the estimated cost thereof.

Nothing in this section shall be deemed to foreclose the right of the interested parties to enter into an agreement, franchise, or permit arrangement providing for the installation of signals or other warning devices at any such crossing or for the apportionment of the cost of installation and maintenance thereof, or compliance with an existing agreement, franchise, or permit arrangement providing for the same.

The hearing and determinations authorized by this section may be instituted by the commission on its own motion, and the proceedings, hearing, and consequences thereof shall be the same as for the hearing and determination of any petition authorized by this section.

No part of the record, or a copy thereof, of the hearing and determination provided for in this section and no finding, conclusion, or order made pursuant thereto shall be used as evidence in any trial, civil or criminal, arising out of an accident at or in the vicinity of any crossing prior to installation of signals or other warning devices pursuant to an order of the commission as a result of any such investigation.

Any order entered by the utilities and transportation commission under this section shall be subject to review, supersedeas and appeal as provided in chapter 34.05 RCW.

Nothing in this section shall be deemed to relieve any railroad from liability on account of failure to provide adequate protective devices at any such crossing. [2007 c 234 § 99; 1982 c 94 § 1; 1969 c 134 § 1.]

Application—1982 c 94: "The provisions of this act shall not apply to those petitions acted upon by the commission prior to July 10, 1982." [1982 c 94 § 5.]

Chapter 81.56 RCW

RAILROADS—SHIPPERS AND PASSENGERS

Sections

- 81.56.010 through 81.56.110 Repealed.
- 81.56.120 Recodified as RCW 81.48.070.
- 81.56.130 through 81.56.160 Repealed.

81.56.010 through 81.56.110 Repealed. See Supplementary Table of Disposition of Former RCW Sections, this volume.

81.56.120 Recodified as RCW 81.48.070. See Supplementary Table of Disposition of Former RCW Sections, this volume.

81.56.130 through 81.56.160 Repealed. See Supplementary Table of Disposition of Former RCW Sections, this volume.

Chapter 81.61 RCW

RAILROADS—PASSENGER-CARRYING VEHICLES FOR EMPLOYEES

Sections

- 81.61.020 Minimum standards for safe maintenance and operation—Rules and orders—Scope.

81.61.020 Minimum standards for safe maintenance and operation—Rules and orders—Scope. The utilities and transportation commission shall adopt rules and orders necessary to ensure that every passenger-carrying vehicle provided by a railroad company to transport employees in the course of their employment is maintained and operated in a safe manner when it is used on a public or private road. The rules and orders must establish minimum standards for:

(1) The construction and mechanical equipment of the passenger-carrying vehicles, including lighting devices and reflectors, exhaust system, rear vision mirrors, service and parking brakes, steering mechanisms, tires, warning and signaling devices, windshield wipers, and heating equipment capable of maintaining a reasonable temperature in passenger areas;

(2) The operation of passenger-carrying vehicles, including driving rules, the loading and carrying of passengers, maximum daily hours of service by drivers, minimum age and skill of drivers, physical condition of drivers, refueling, road warning devices, and the transportation of gasoline and explosives;

(3) The safety of passengers in a passenger-carrying vehicle, including emergency exits, fire extinguishers, first aid kits, facilities for communication between cab and rear compartments, means of ingress and egress, side walls, canopy, tail gates, or other means of retaining passengers within the passenger-carrying vehicle. [2007 c 234 § 41; 1977 ex.s. c 2 § 2.]

Chapter 81.66 RCW

TRANSPORTATION FOR PERSONS WITH SPECIAL NEEDS

Sections

- 81.66.005 Scope—Federal authority and registration for compensatory services.
- 81.66.040 Certificate required—Transferability—Application—Carried in vehicle.
- 81.66.060 Suspension, revocation, or alteration of certificate.

81.66.005 Scope—Federal authority and registration for compensatory services. This chapter applies to persons and motor vehicles engaged in interstate or foreign commerce to the full extent permitted by the Constitution and laws of the United States.

It is unlawful for any motor carrier to perform a transportation service for compensation upon the public highways of this state without first having secured appropriate federal authority from the United States department of transportation, if such authority is required, and without first having registered with the commission either directly or through a federally authorized uniform registration program. [2007 c 234 § 42.]

81.66.040 Certificate required—Transferability—Application—Carried in vehicle. A private, nonprofit transportation provider may not operate in this state without first having obtained from the commission under this chapter a certificate. Any right, privilege, or certificate held, owned, or obtained by a private, nonprofit transportation provider may be sold, assigned, leased, transferred, or inherited as other property only upon authorization by the commission. The commission shall issue a certificate to any person or corporation who files an application, in a form to be determined by the commission, which sets forth:

- (1) Satisfactory proof of its status as a private, nonprofit corporation;
- (2) The kind of service to be provided;
- (3) The number and type of vehicles to be operated, together with satisfactory proof that the vehicles are adequate for the proposed service and that drivers of such vehicles will be adequately trained and qualified;
- (4) Satisfactory proof of insurance or surety bond, in accordance with RCW 81.66.050.

The commission may deny a certificate to a provider who does not meet the requirements of this section. Each vehicle of a private, nonprofit transportation provider must carry a copy of the provider's certificate. [2007 c 234 § 43; 1979 c 111 § 7.]

Severability—1979 c 111: See note following RCW 46.74.010.

81.66.060 Suspension, revocation, or alteration of certificate. The commission may, at any time, by its order duly entered after notice to the holder of any certificate issued under this chapter, and an opportunity for a hearing, at which it is proven that the holder has willfully violated or refused to observe any of the commission's proper orders, rules, or regulations, suspend, revoke, alter, or amend any certificate issued under this chapter, but the holder of the certificate shall have all the rights of rehearing, review, and appeal as to the order of the commission as is provided for in chapter 34.05 RCW. [2007 c 234 § 44; 2005 c 121 § 1; 1979 c 111 § 9.]

Severability—1979 c 111: See note following RCW 46.74.010.

Chapter 81.68 RCW

AUTO TRANSPORTATION COMPANIES

Sections

81.68.010	Definitions.
81.68.015	Application of chapter restricted.
81.68.020	Compliance with chapter required.
81.68.030	Regulation by commission.
81.68.040	Certificate of convenience and necessity.
81.68.060	Liability and property damage insurance—Surety bond.
81.68.065	Self-insurers exempt as to insurance or bond.
81.68.070	Repealed.
81.68.080	Penalty.
81.68.090	Scope of chapter.
81.68.100	Federal authority and registration for compensatory services.

81.68.010 Definitions. The definitions set forth in this section apply throughout this chapter, unless the context clearly indicates otherwise.

(1) "Corporation" means a corporation, company, association, or joint stock association.

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(2) "Person" means an individual, firm, or a copartnership.

(3) "Auto transportation company" means every corporation or person, their lessees, trustees, receivers, or trustees appointed by any court whatsoever, owning, controlling, operating, or managing any motor-propelled vehicle used in the business of transporting persons and their baggage on the vehicles of auto transportation companies carrying passengers, for compensation over any public highway in this state between fixed termini or over a regular route, and not operating exclusively within the incorporated limits of any city or town.

(4) "Public highway" means every street, road, or highway in this state.

(5) The words "between fixed termini or over a regular route" mean the termini or route between or over which any auto transportation company usually or ordinarily operates any motor-propelled vehicle, even though there may be departure from the termini or route, whether the departures are periodic or irregular. Whether or not any motor-propelled vehicle is operated by any auto transportation company "between fixed termini or over a regular route" within the meaning of this section is a question of fact, and the finding of the commission thereon is final and is not subject to review. [2007 c 234 § 46; 1989 c 163 § 1; 1984 c 166 § 1; 1979 c 111 § 16; 1975-'76 2nd ex.s. c 121 § 1; 1969 ex.s. c 210 § 10; 1961 c 14 § 81.68.010. Prior: 1935 c 120 § 1; 1921 c 111 § 1; RRS § 6387.]

Severability—1979 c 111: See note following RCW 46.74.010.

81.68.015 Application of chapter restricted. This chapter does not apply to corporations or persons, their lessees, trustees, receivers, or trustees appointed by any court whatsoever insofar as they own, control, operate, or manage taxicabs, hotel buses, school buses, or any other carrier that does not come within the term "auto transportation company" as defined in RCW 81.68.010.

This chapter does not apply to persons operating motor vehicles when operated wholly within the limits of incorporated cities or towns, and for a distance not exceeding three road miles beyond the corporate limits of the city or town in Washington in which the original starting point of the vehicle is located, and which operation either alone or in conjunction with another vehicle or vehicles is not a part of any journey beyond the three-mile limit.

This chapter does not apply to commuter ride sharing or ride sharing for persons with special transportation needs in accordance with RCW 46.74.010, so long as the ride-sharing operation does not compete with or infringe upon comparable service actually being provided before the initiation of the ride-sharing operation by an existing auto transportation company certificated under this chapter. [2007 c 234 § 47; 1989 c 163 § 2; 1984 c 166 § 2.]

81.68.020 Compliance with chapter required. A corporation or person, their lessees, trustees, or receivers or trustees appointed by any court whatsoever, may not engage in the business of operating as a common carrier any motor-propelled vehicle for the transportation of persons and their baggage on the vehicles of auto transportation companies

carrying passengers, between fixed termini or over a regular route for compensation on any public highway in this state, except in accordance with this chapter. [2007 c 234 § 48; 1989 c 163 § 3; 1984 c 166 § 3; 1961 c 14 § 81.68.020. Prior: 1927 c 166 § 1; 1921 c 111 § 2; RRS § 6388.]

81.68.030 Regulation by commission. The commission is vested with power and authority, and it is its duty to supervise and regulate every auto transportation company in this state as provided in this section. Under this authority, it shall for each auto transportation company:

- (1) Fix, alter, and amend just, fair, reasonable, and sufficient rates, fares, charges, classifications, rules, and regulations;
- (2) Regulate the accounts, service, and safety of operations;
- (3) Require the filing of annual and other reports and of other data;
- (4) Supervise and regulate the companies in all other matters affecting the relationship between such companies and the traveling and shipping public;
- (5) By general order or otherwise, prescribe rules and regulations in conformity with this chapter, applicable to any and all such companies, and within such limits make orders.

The commission may, at any time, by its order duly entered after notice to the holder of any certificate under this chapter, and an opportunity for a hearing, at which it shall be proven that the holder willfully violates or refuses to observe any of the commission's proper orders, rules, or regulations, suspend, revoke, alter, or amend any certificate issued under the provisions of this chapter, but the holder of the certificate has all the rights of rehearing, review, and appeal as to the order of the commission as is provided for in chapter 34.05 RCW. [2007 c 234 § 96; 2005 c 121 § 2; 1989 c 163 § 4; 1984 c 166 § 4; 1961 c 14 § 81.68.030. Prior: 1921 c 111 § 3; RRS § 6389.]

81.68.040 Certificate of convenience and necessity. An auto transportation company shall not operate for the transportation of persons and their baggage for compensation between fixed termini or over a regular route in this state, without first having obtained from the commission under this chapter a certificate declaring that public convenience and necessity require such operation. Any right, privilege, certificate held, owned, or obtained by an auto transportation company may be sold, assigned, leased, transferred, or inherited as other property, only if authorized by the commission. The commission may, after notice and an opportunity for a hearing, when the applicant requests a certificate to operate in a territory already served by a certificate holder under this chapter, only when the existing auto transportation company or companies serving such territory will not provide the same to the satisfaction of the commission, or when the existing auto transportation company does not object, and in all other cases with or without hearing, issue the certificate as prayed for; or for good cause shown, may refuse to issue same, or issue it for the partial exercise only of the privilege sought, and may attach to the exercise of the rights granted by the certificate to such terms and conditions as, in its judgment, the public convenience and necessity may require. [2007 c 234 §

49; 2005 c 121 § 3; 1961 c 14 § 81.68.040. Prior: 1921 c 111 § 4; RRS § 6390.]

81.68.060 Liability and property damage insurance—Surety bond. In granting certificates to operate any auto transportation company, for transporting for compensation persons and their baggage on the vehicles of auto transportation companies carrying passengers, the commission shall require the owner or operator to first procure liability and property damage insurance from a company licensed to make liability insurance in the state of Washington or a surety bond of a company licensed to write surety bonds in the state of Washington on each motor-propelled vehicle used or to be used in transporting persons for compensation, in an amount of no less than one hundred thousand dollars for any recovery for personal injury by one person, no less than three hundred thousand dollars for any vehicle having a capacity of sixteen passengers or less, no less than five hundred thousand dollars for any vehicle having a capacity of seventeen passengers or more for all persons receiving personal injury by reason of at least one act of negligence, and no less than fifty thousand dollars for damage to property of any person other than the insured. The commission shall fix the amount of the insurance policy or policies or security deposit by giving due consideration to the character and amount of traffic, the number of persons affected, and the degree of danger that the proposed operation involves. The liability and property damage insurance or surety bond must be maintained in force on the motor-propelled vehicle while in use, and each policy for liability or property damage insurance or surety bond required by this section must be filed with the commission and kept in full force and effect. Failure to file and maintain the required insurance is cause for the revocation of the certificate. [2007 c 234 § 50; 1989 c 163 § 5; 1984 c 166 § 6; 1977 ex.s. c 298 § 1; 1961 c 14 § 81.68.060. Prior: 1921 c 111 § 5; RRS § 6391.]

81.68.065 Self-insurers exempt as to insurance or bond. Any auto transportation company authorized to transport persons for compensation on the highways and engaging in interstate, or interstate and intrastate, operations within the state of Washington which is or becomes qualified as a self-insurer with the federal motor carrier safety administration of the United States department of transportation under the United States interstate commerce act applicable to self insurance by motor carriers, is exempt, so long as such qualification remains effective, from all provisions of law relating to the carrying or filing of insurance policies or bonds in connection with such operations.

The commission may require auto transportation companies to prove the existence and continuation of such qualification with the federal motor carrier safety administration by affidavit in any form the commission prescribes. [2007 c 234 § 51; 1961 c 14 § 81.68.065. Prior: (i) 1949 c 127 § 1; Rem. Supp. 1949 § 6386-5a. (ii) 1949 c 127 § 2; Rem. Supp. 1949 § 6386-5b.]

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

81.68.080 Penalty. Every officer, agent, or employee of any corporation, and every other person who violates or fails to comply with, or who procures, aids, or abets in the violation of any provisions of this chapter, or who fails to obey, observe, or comply with any order, decision, rule or regulation, direction, demand, or requirement, or any part of provision thereof, is guilty of a gross misdemeanor. [2007 c 234 § 52; 2003 c 53 § 398; 1979 ex.s. c 136 § 106; 1961 c 14 § 81.68.080. Prior: 1921 c 111 § 7; RRS § 6393.]

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

Effective date—Severability—1979 ex.s. c 136: See notes following RCW 46.63.010.

81.68.090 Scope of chapter. This chapter applies to persons and motor vehicles engaged in interstate or foreign commerce to the full extent permitted by the Constitution and laws of the United States. [2007 c 234 § 53; 1961 c 14 § 81.68.090. Prior: 1921 c 111 § 8; RRS § 6394.]

81.68.100 Federal authority and registration for compensatory services. It is unlawful for any motor carrier to perform a transportation service for compensation upon the public highways of this state without first having secured appropriate federal authority from the United States department of transportation, if such authority is required, and without first having registered with the commission either directly or through a federally authorized uniform registration program. [2007 c 234 § 45.]

Chapter 81.70 RCW

PASSENGER CHARTER CARRIERS

Sections

81.70.020	Definitions.
81.70.030	Exclusions.
81.70.230	Certificates—Application, issuance.
81.70.250	Certificates—Grounds for cancellation.
81.70.280	Insurance or bond for liability and property damage.
81.70.290	Self-insurers exempt as to insurance or bond.
81.70.300	Repealed.
81.70.320	Fees—Amounts, deposit.
81.70.330	Vehicle identification.
81.70.340	Application to interstate or foreign carriers.
81.70.370	Federal authority and registration for compensatory services.

81.70.020 Definitions. Unless the context otherwise requires, the definitions and general provisions in this section govern the construction of this chapter:

(1) "Commission" means the Washington utilities and transportation commission;

(2) "Person or persons" means an individual, a corporation, association, joint stock association, and partnership, their lessees, trustees, or receivers;

(3) "Public highway" includes every public street, road, or highway in this state;

(4) "Motor vehicle" means every self-propelled vehicle with seating capacity for seven or more persons, excluding the driver;

(5) Subject to the exclusions of RCW 81.70.030, "charter party carrier" means every person engaged in the transportation over any public highways in this state of a group of persons, who, pursuant to a common purpose and under a single

contract, acquire the use of a motor vehicle to travel together as a group to a specified destination or for a particular itinerary, either agreed upon in advance or modified by the chartered group after leaving the place of origin;

(6) Subject to the exclusion of RCW 81.70.030, "excursion service carrier" means every person engaged in the transportation of persons for compensation over any public highway in this state from points of origin within the incorporated limits of any city or town or area, to any other location within the state of Washington and returning to that origin. The service must not pick up or drop off passengers after leaving and before returning to the area of origin. The excursions may be regularly scheduled. Compensation for the transportation offered or afforded must be computed, charged, or assessed by the excursion service company on an individual fare basis. [2007 c 234 § 55; 1989 c 163 § 6; 1988 c 30 § 1; 1969 c 132 § 1; 1965 c 150 § 3.]

81.70.030 Exclusions. This chapter does not apply to:

(1) Persons operating motor vehicles wholly within the limits of incorporated cities;

(2) Persons or their lessees, receivers, or trustees insofar as they own, control, operate, or manage taxicabs, hotel buses, or school buses, when operated as such;

(3) Passenger vehicles carrying passengers on a noncommercial enterprise basis; or

(4) Limousine charter party carriers of passengers under chapter 46.72A RCW. [2007 c 234 § 56; 1989 c 283 § 17; 1965 c 150 § 4.]

81.70.230 Certificates—Application, issuance. (1) Applications for certificates must be made to the commission in writing, verified under oath, and shall be in a form and contain information as the commission by regulation may require. Every application must be accompanied by a fee as the commission may prescribe by rule.

(2) A certificate must be issued to any applicant who establishes proof of safety fitness and insurance coverage under this chapter. [2007 c 234 § 57; 1988 c 30 § 3.]

81.70.250 Certificates—Grounds for cancellation. The commission may cancel, revoke, or suspend any certificate issued under this chapter on any of the following grounds:

(1) The violation of any of the provisions of this chapter;

(2) The violation of an order, decision, rule, regulation, or requirement established by the commission under this chapter;

(3) Failure of a charter party carrier or excursion service carrier of passengers to pay a fee, under this chapter, imposed on the carrier within the time required by law; or

(4) Failure of a charter party carrier or excursion service carrier to maintain required insurance coverage in full force and effect. [2007 c 234 § 58; 1989 c 163 § 8; 1988 c 30 § 5.]

81.70.280 Insurance or bond for liability and property damage. (1) In issuing certificates under this chapter, the commission shall require charter party carriers and excursion service carriers to procure and continue in effect during the life of the certificate, liability and property damage insur-

ance from a company licensed to make liability insurance in the state of Washington or a surety bond of a company licensed to write surety bonds in the state of Washington on each motor-propelled vehicle used or to be used in transporting persons for compensation, in the following amounts:

(a) Not less than one hundred thousand dollars for any recovery for personal injury by one person; and

(b) Not less than three hundred thousand dollars for any vehicle having a capacity of sixteen passengers or less; and

(c) Not less than five hundred thousand dollars for any vehicle having a capacity of seventeen passengers or more for all receiving personal injury by at least one act of negligence; and

(d) Not less than fifty thousand dollars for damage to property of any person other than the insured.

(2) The commission shall fix the amount of the insurance policy or policies or security deposit by giving consideration to the character and amount of traffic, the number of persons affected, and the degree of danger which the proposed operation involves. The liability and property damage insurance or surety bond must be maintained in force on each motor-propelled vehicle while in use. Each policy for liability or property damage insurance or surety bond required by this section must be filed with the commission and kept in effect. Failure to file and maintain the required insurance is cause for the revocation of the certificate. [2007 c 234 § 59; 1989 c 163 § 11; 1988 c 30 § 8.]

81.70.290 Self-insurers exempt as to insurance or bond. A charter party carrier or excursion service carrier of passengers, authorized to transport persons for compensation on the highways and engaging in interstate, or interstate and intrastate, operations within the state of Washington which is or becomes qualified as a self-insurer with the federal motor carrier safety administration of the United States department of transportation in accordance with the United States interstate commerce act applicable to self-insurance by motor carriers, is exempt from RCW 81.70.280 relating to the carrying or filing of insurance policies or bonds in connection with carrier operations as long as the qualification remains effective.

The commission may require the charter party carrier or excursion service carrier to prove the existence and continuation of qualification with the federal motor carrier safety administration by affidavit in a form the commission may prescribe. [2007 c 234 § 60; 1989 c 163 § 12; 1988 c 30 § 9.]

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

81.70.320 Fees—Amounts, deposit. (1) An application for a certificate, amendment of a certificate, or transfer of a certificate must be accompanied by a filing fee the commission may prescribe by rule. The fee must not exceed two hundred dollars.

(2) All fees paid to the commission under this chapter must be deposited in the state treasury to the credit of the public service revolving fund.

(3) It is the intent of the legislature that all fees collected under this chapter must reasonably approximate the cost of

supervising and regulating charter party carriers and excursion service carriers subject thereto, and to that end the commission may decrease the schedule of fees provided for in RCW 81.70.350 by general order entered before November 1st of any year in which the commission determines that the moneys, then in the charter party carrier and excursion service carrier account of the public service revolving fund, and the fees currently owed will exceed the reasonable cost of supervising and regulating such carriers during the succeeding calendar year. Whenever the cost accounting records of the commission indicate that the schedule of fees previously reduced should be increased, the increase, not to exceed the schedule set forth in this chapter, may be effected by a similar general order entered before November 1st of any calendar year. [2007 c 234 § 61; 1989 c 163 § 13; 1988 c 30 § 12.]

81.70.330 Vehicle identification. (1) It is unlawful for a charter party carrier or excursion service carrier to operate a motor vehicle upon the highways of this state unless there is firmly affixed to both sides of the vehicle, the name of the carrier and the certificate or permit number of the carrier. The characters composing the identification must be of sufficient size to be clearly distinguishable at a distance of at least fifty feet from the vehicle.

(2) A charter party carrier or excursion service carrier holding both intrastate and interstate authority may identify its vehicles with either the commission permit number or the federal vehicle marking requirement established by the United States department of transportation for interstate motor carriers. [2007 c 234 § 62; 1989 c 163 § 14; 1988 c 30 § 13.]

81.70.340 Application to interstate or foreign carriers. This chapter applies to persons and motor carriers engaged in interstate or foreign commerce to the full extent permitted by the Constitution and laws of the United States. [2007 c 234 § 63; 1989 c 163 § 15; 1988 c 30 § 14.]

81.70.370 Federal authority and registration for compensatory services. It is unlawful for any motor carrier to perform a transportation service for compensation upon the public highways of this state without first having secured appropriate federal authority from the United States department of transportation, if such authority is required, and without first having registered with the commission either directly or through a federally authorized uniform registration program. [2007 c 234 § 54.]

Chapter 81.77 RCW

SOLID WASTE COLLECTION COMPANIES

Sections

81.77.010	Definitions.
81.77.015	Repealed.
81.77.040	Certificate of convenience and necessity required—Issuance—Transferability—Solid waste categories.
81.77.070	Repealed.
81.77.100	Application to foreign or interstate commerce—Regulation of solid waste collection companies.
81.77.200	Federal authority and registration for compensatory services.

81.77.010 Definitions. As used in this chapter:

(1) "Motor vehicle" means any truck, trailer, semitrailer, tractor, or any self-propelled or motor driven vehicle used upon any public highway of this state for the purpose of transporting solid waste, for the collection or disposal, or both, of solid waste;

(2) "Public highway" means every street, road, or highway in this state;

(3) "Common carrier" means any person who collects and transports solid waste for disposal by motor vehicle for compensation, whether over regular or irregular routes, or by regular or irregular schedules;

(4) "Contract carrier" means all solid waste transporters not included under the terms "common carrier" and "private carrier," as defined in this section, and further, includes any person who under special and individual contracts or agreements transports solid waste by motor vehicle for compensation;

(5) "Private carrier" means a person who, in his or her own vehicle, transports solid waste purely as an incidental adjunct to some other established private business owned or operated by the person in good faith. A person who transports solid waste from residential sources in a vehicle designed or used primarily for the transport of solid waste is not a private carrier;

(6) "Vehicle" means every device capable of being moved upon a public highway and in, upon, or by which any solid waste is or may be transported or drawn upon a public highway, except devices moved by human or animal power or used exclusively upon stationary rail or tracks;

(7) "Solid waste collection company" means every person or his or her lessees, receivers, or trustees, owning, controlling, operating, or managing vehicles used in the business of transporting solid waste for collection or disposal, or both, for compensation, except septic tank pumpers, over any public highway in this state as a "common carrier" or as a "contract carrier";

(8) "Solid waste collection" does not include collecting or transporting recyclable materials from a drop-box or recycling buy-back center, or collecting or transporting recyclable materials by or on behalf of a commercial or industrial generator of recyclable materials to a recycler for use or recollection. Transportation of these materials is regulated under chapter 81.80 RCW;

(9) "Solid waste" means the same as defined under RCW 70.95.030, except for the purposes of this chapter solid waste does not include recyclable materials except for source separated recyclable materials collected from residences; and

(10) When the phrase "garbage and refuse" is used as a qualifying phrase or otherwise, it means "solid waste." [2007 c 234 § 65; 1989 c 431 § 17; 1961 c 295 § 2.]

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

81.77.040 Certificate of convenience and necessity required—Issuance—Transferability—Solid waste categories. A solid waste collection company shall not operate for the hauling of solid waste for compensation without first having obtained from the commission a certificate declaring that public convenience and necessity require such operation.

To operate a solid waste collection company in the unincorporated areas of a county, the company must comply with the solid waste management plan prepared under chapter 70.95 RCW in the company's franchise area.

Issuance of the certificate of necessity must be determined on, but not limited to, the following factors: The present service and the cost thereof for the contemplated area to be served; an estimate of the cost of the facilities to be utilized in the plant for solid waste collection and disposal, set out in an affidavit or declaration; a statement of the assets on hand of the person, firm, association, or corporation that will be expended on the purported plant for solid waste collection and disposal, set out in an affidavit or declaration; a statement of prior experience, if any, in such field by the petitioner, set out in an affidavit or declaration; and sentiment in the community contemplated to be served as to the necessity for such a service.

When an applicant requests a certificate to operate in a territory already served by a certificate holder under this chapter, the commission may, after notice and an opportunity for a hearing, issue the certificate only if the existing solid waste collection company or companies serving the territory will not provide service to the satisfaction of the commission or if the existing solid waste collection company does not object.

In all other cases, the commission may, with or without hearing, issue certificates, or for good cause shown refuse to issue them, or issue them for the partial exercise only of the privilege sought, and may attach to the exercise of the rights granted such terms and conditions as, in its judgment, the public convenience and necessity may require.

Any right, privilege, certificate held, owned, or obtained by a solid waste collection company may be sold, assigned, leased, transferred, or inherited as other property, only if authorized by the commission.

For purposes of issuing certificates under this chapter, the commission may adopt categories of solid wastes as follows: Garbage, refuse, recyclable materials, and demolition debris. A certificate may be issued for one or more categories of solid waste. Certificates issued on or before July 23, 1989, shall not be expanded or restricted by operation of this chapter. [2007 c 234 § 66; 2005 c 121 § 6; 1989 c 431 § 21; 1987 c 239 § 2; 1961 c 295 § 5.]

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

81.77.100 Application to foreign or interstate commerce—Regulation of solid waste collection companies. This chapter applies to persons and motor vehicles engaged in interstate or foreign commerce to the full extent permitted by the Constitution and laws of the United States.

To protect public health and safety and to ensure solid waste collection services are provided to all areas of the state, the commission, in accordance with this chapter, shall regulate all solid waste collection companies conducting business in the state. [2007 c 234 § 67; 1989 c 431 § 25; 1985 c 436 § 2; 1961 c 295 § 11.]

81.77.200 Federal authority and registration for compensatory services. It is unlawful for any motor carrier to perform a transportation service for compensation upon the public highways of this state without first having secured appropriate federal authority from the United States department of transportation, if such authority is required, and without first having registered with the commission either directly or through a federally authorized uniform registration program. [2007 c 234 § 64.]

Chapter 81.80 RCW MOTOR FREIGHT CARRIERS

Sections

81.80.010	Definitions.
81.80.020	Declaration of policy.
81.80.030	Repealed.
81.80.045	Exemption—Freight consolidators.
81.80.060	Combination of services.
81.80.070	Permit required—Penalty—Cease and desist orders.
81.80.080	Application for permit.
81.80.130	Regulatory power over common carriers.
81.80.140	Regulatory power over contract carriers.
81.80.150	Tariffs to be compiled and sold.
81.80.170	Temporary permits.
81.80.175	Repealed.
81.80.190	Insurance or deposit of security required.
81.80.220	Tariff rates to be charged.
81.80.230	Penalty for rebating, etc.—Procedure for collection.
81.80.240	Repealed.
81.80.250	Bond to protect shippers and consignees.
81.80.260	Operation in more than one class.
81.80.270	Permits—Acquisition of carrier holding permit—Commission approval—Duties on cessation of operation.
81.80.272	Transfer of decedent's interest—Temporary continuance of operations.
81.80.280	Cancellation, suspension, and alteration of permits.
81.80.301	Repealed.
81.80.305	Markings required—Exemptions.
81.80.312	Repealed.
81.80.318	Repealed.
81.80.330	Enforcement of chapter.
81.80.340	Repealed.
81.80.346	Repealed.
81.80.370	Application to interstate and foreign commerce.
81.80.371	Federal authority and registration for compensatory services.
81.80.375	through 81.80.420 Repealed.
81.80.430	Brokers and forwarders.
81.80.440	through 81.80.460 Repealed.
81.80.470	Recyclable materials collection and transportation—Construction.

81.80.010 Definitions. The definitions set forth in this section apply throughout this chapter.

(1) "Person" includes an individual, firm, copartnership, corporation, company, or association or their lessees, trustees, or receivers.

(2) "Motor vehicle" means any truck, trailer, semitrailer, tractor, dump truck which uses a hydraulic or mechanical device to dump or discharge its load, or any self-propelled or motor-driven vehicle used upon any public highway of this state for the purpose of transporting property, but not including baggage, mail, and express transported on the vehicles of auto transportation companies carrying passengers.

(3) "Public highway" means every street, road, or highway in this state.

(4) "Common carrier" means any person who undertakes to transport property for the general public by motor vehicle for compensation, whether over regular or irregular routes, or regular or irregular schedules, including motor vehicle oper-

ations of other carriers by rail or water and of express or forwarding companies.

(5) "Contract carrier" includes all motor vehicle operators not included under the terms "common carrier" and "private carrier" as defined in this section, and further includes any person who under special and individual contracts or agreements transports property by motor vehicle for compensation.

(6) A "private carrier" is a person who transports by his or her own motor vehicle, with or without compensation, property which is owned or is being bought or sold by the person, or property where the person is the seller, purchaser, lessee, or bailee and the transportation is incidental to and in furtherance of some other primary business conducted by the person in good faith.

(7) "Motor carrier" includes "common carrier," "contract carrier," "private carrier," and "exempt carrier" as defined in this section.

(8) "Exempt carrier" means any person operating a vehicle exempted under RCW 81.80.040.

(9) "Vehicle" means every device capable of being moved upon a public highway and in, upon, or by which any person or property is or may be transported or drawn upon a public highway, except devices moved by human or animal power or used exclusively upon stationary rail or tracks.

(10) "Common carrier" and "contract carrier" includes persons engaged in the business of providing, contracting for, or undertaking to provide transportation of property for compensation over the public highways of the state of Washington as brokers or forwarders.

(11) "Household goods carrier" means a person engaged in the business of transporting household goods as defined by the commission. [2007 c 234 § 68; 1989 c 60 § 1; 1988 c 31 § 1; 1982 c 71 § 1; 1967 c 69 § 1; 1961 c 14 § 81.80.010. Prior: 1937 c 166 § 2; 1935 c 184 § 2; RRS § 6382-2.]

Severability—1982 c 71: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1982 c 71 § 5.]

Severability—1967 c 69: "If any provision of this act, or its application to any person or circumstance is held invalid, the remainder of the act, or the application of the provision to other persons or circumstances is not affected." [1967 c 69 § 4.]

81.80.020 Declaration of policy. The business of operating as a motor carrier of freight for compensation along the highways of this state is declared to be a business affected with a public interest. The rapid increase of motor carrier freight traffic and the fact that under the existing law many motor trucks are not effectively regulated have increased the dangers and hazards on public highways and make it imperative that regulation to the fullest extent allowed under 49 U.S.C. Sec. 14501 should be employed to the end that the highways may be rendered safer for the use of the general public; that the wear of such highways may be reduced; that congestion on highways may be minimized; that the shippers of the state may be provided with a stabilized service and rate structure; that sound economic conditions in such transportation and among such carriers may be fostered in the public interest; that adequate, economical, and efficient service by motor carriers, and reasonable charges therefor, without unjust discrimination, undue preferences or advantages, or

unfair or destructive competitive practices may be promoted; that the common carriage of commodities by motor carrier may be preserved in the public interest; that the relations between, and transportation by and regulation of, motor carriers and other carriers may be improved and coordinated so that the highways of the state of Washington may be properly developed and preserved, and the public may be assured adequate, complete, dependable, and stable transportation service in all its phases. [2007 c 234 § 69; 1961 c 14 § 81.80.020. Prior: 1937 c 166 § 1; 1935 c 184 § 1; RRS § 6382-1.]

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

81.80.045 Exemption—Freight consolidators. This chapter does not apply to the operations of a shipper or a group or association of shippers in consolidating or distributing freight for themselves or for their members on a nonprofit basis for the purpose of securing the benefits of carload, truckload, or other volume rates, when the services of a common carrier are used for the transportation of such shipments. [2007 c 234 § 70; 1979 ex.s. c 138 § 1.]

81.80.060 Combination of services. Every person who engages for compensation to perform a combination of services, a substantial portion of which includes transportation of property of others upon the public highways, is subject to the jurisdiction of the commission as to such transportation and shall not engage in such transportation without first having obtained a common carrier or contract carrier permit to do so. A combination of services includes, but is not limited to, the delivery of household appliances for others where the delivering carrier also unpacks or uncrates the appliances and makes the initial installation. Any person engaged in extracting or processing, or both, and, in connection therewith, hauling materials exclusively for the maintenance, construction, or improvement of a public highway is not engaged in performing a combination of services. [2007 c 234 § 71; 1969 ex.s. c 210 § 17; 1969 c 33 § 1. Prior: 1967 ex.s. c 145 § 77; 1967 c 69 § 2; 1965 ex.s. c 170 § 40; 1961 c 14 § 81.80.060; prior: 1937 c 166 § 5; RRS § 6382-4a.]

Severability—1967 c 69: See note following RCW 81.80.010.

81.80.070 Permit required—Penalty—Cease and desist orders. (1) A common carrier, contract carrier, or temporary carrier shall not operate for the transportation of property for compensation in this state without first obtaining from the commission a permit for such operation.

(a) For household goods:

(i) Permits issued to any carrier must be exercised by the carrier to the fullest extent to render reasonable service to the public. Applications for household goods carrier permits or permit extensions must be on file for a period of at least thirty days before issuance unless the commission finds that special conditions require earlier issuance.

(ii) A permit or permit extension must be issued to any qualified applicant, authorizing the whole or any part of the operations covered by the application, if it is found that: The applicant is fit, willing, and able to perform the services pro-

posed and conform to this chapter and the requirements, rules, and regulations of the commission; the operations are consistent with the public interest; and, in the case of common carriers, they are required by the present or future public convenience and necessity; otherwise the application must be denied.

(b) For general commodities other than household goods:

(i) The commission shall issue a common carrier permit to any qualified applicant if it is found the applicant is fit, willing, and able to perform the service and conform to the provisions of this chapter and the rules and regulations of the commission.

(ii) Before a permit is issued, the commission shall require the applicant to establish safety fitness and proof of minimum financial responsibility as provided in this chapter.

(2) This chapter does not confer on any person or persons the exclusive right or privilege of transporting property for compensation over the public highways of the state.

(3) A common carrier, contract carrier, or temporary carrier operating without the permit required in subsection (1) of this section, or who violates a cease and desist order of the commission issued under RCW 81.04.510, is subject to a penalty, under the process set forth in RCW 81.04.405, of one thousand five hundred dollars.

(4) Notwithstanding RCW 81.04.510, the commission may, in conjunction with issuing the penalty set forth in subsection (3) of this section, issue cease and desist orders to carriers operating without the permit required in subsection (1) of this section, and to all persons involved in the carriers' operations. [2007 c 234 § 72; 1999 c 79 § 1; 1963 c 242 § 1; 1961 c 14 § 81.80.070. Prior: 1953 c 95 § 17; 1947 c 264 § 2; 1941 c 163 § 1; 1937 c 166 § 6; 1935 c 184 § 5; Rem. Supp. 1947 § 6382-5.]

81.80.080 Application for permit. Application for permits must be made to the commission in writing and must state the ownership, financial condition, equipment to be used and physical property of the applicant, the territory or route or routes in or over which the applicant proposes to operate, the nature of the transportation to be engaged in, and other information as the commission may require. [2007 c 234 § 73; 1991 c 41 § 1; 1961 c 14 § 81.80.080. Prior: 1935 c 184 § 6; RRS § 6382-6.]

81.80.130 Regulatory power over common carriers. To the extent allowed under 49 U.S.C. Sec. 14501, the commission shall: Supervise and regulate every common carrier in this state; make, fix, alter, and amend, just, fair, reasonable, minimum, maximum, or minimum and maximum, rates, charges, classifications, rules, and regulations for all common carriers; regulate the accounts, service, and safety of operations thereof; require the filing of reports and other data thereby; and supervise and regulate all common carriers in all other matters affecting their relationship with competing carriers of every kind and the shipping and general public. The commission may by order approve rates filed by common carriers in respect to certain designated commodities and services when, in the opinion of the commission, it is impractical for the commission to make, fix, or prescribe rates cover-

ing the commodities and services. [2007 c 234 § 74; 1961 c 14 § 81.80.130. Prior: 1957 c 205 § 5; 1937 c 166 § 9; 1935 c 184 § 11; RRS § 6382-11.]

81.80.140 Regulatory power over contract carriers.

To the extent allowed under 49 U.S.C. Sec. 14501, the commission shall: Supervise and regulate every contract carrier in this state; fix, alter, and amend, just, fair, and reasonable classifications, rules, and regulations and minimum rates and charges of each contract carrier; regulate the account, service, and safety of contract carriers' operations; require the filing of reports and of other data thereby; and supervise and regulate contract carriers in all other matters affecting their relationship with both the shipping and the general public. [2007 c 234 § 75; 1961 c 14 § 81.80.140. Prior: 1937 c 166 § 11; 1935 c 184 § 12; RRS § 6382-12.]

81.80.150 Tariffs to be compiled and sold.

The commission shall make, fix, construct, compile, promulgate, publish, and distribute tariffs containing compilations of rates, charges, classifications, rules, and regulations to be used by all household goods carriers. In compiling these tariffs, the commission shall include within any given tariff compilation the carriers, groups of carriers, commodities, or geographical areas it determines are in the public interest. The compilations and publications may be made by the commission by compiling the rates, charges, classifications, rules, and regulations now in effect, and as they may be amended and altered from time to time after notice and hearing, by issuing and distributing revised pages or supplements to the tariffs or reissues of tariffs in accordance with the orders of the commission. The commission, upon good cause shown, may establish temporary rates, charges, or classification changes which may be made permanent only after publication in an applicable tariff for not less than sixty days and a determination by the commission that the rates, charges, or classifications are just, fair, and reasonable. If a shipper or common carrier, or representative of either, files a protest with the commission, within sixty days from the date of publication, stating that the temporary rates are unjust, unfair, or unreasonable, the commission must hold a hearing to consider the protest. Publication of these temporary rates in the tariff is adequate public notice. The commission may, upon notice and hearing, fix and determine just, fair, and reasonable rates, charges, and classifications. Each common carrier shall purchase from the commission and post tariffs applicable to its authority. The commission shall set fees for the sale, supplements, and corrections of the tariffs at rates to cover all costs of making, fixing, constructing, compiling, promulgating, publishing, and distributing the tariffs. The proper tariff, or tariffs, applicable to a carrier's operations must be available to the public at each agency and office of all common carriers operating within this state. The compilations and publications must be sold by the commission for the established fee. However, copies may be furnished for free to other regulatory bodies and departments of government and to colleges, schools, and libraries. All copies of the compilations, whether sold or given for free, must be issued and distributed under rules fixed by the commission. The commission may by order authorize common carriers to publish and file tariffs with the

commission and be governed by the tariffs in respect to certain designated commodities and services when, in the opinion of the commission, it is impractical for the commission to make, fix, construct, compile, publish, and distribute tariffs covering such commodities and services. [2007 c 234 § 76; 1993 c 97 § 4; 1981 c 116 § 2; 1973 c 115 § 11; 1961 c 14 § 81.80.150. Prior: 1959 c 248 § 5; 1957 c 205 § 6; 1947 c 264 § 4; 1941 c 163 § 3; 1937 c 166 § 10; Rem. Supp. 1947 § 6382-11a.]

81.80.170 Temporary permits. The commission may issue temporary permits to temporary household goods carriers for no more than one hundred eighty days, but only after the commission finds that the issuance of the temporary permits is consistent with the public interest. The commission may prescribe special rules and regulations and impose special terms and conditions as in its judgment are reasonable and necessary in carrying out the provisions of this chapter.

The commission may also issue temporary permits pending the determination of an application filed with the commission for approval of a consolidation or merger of the properties of two or more household goods carriers or of a purchase or lease of one or more household goods carriers. [2007 c 234 § 77; 1963 c 242 § 2; 1961 c 14 § 81.80.170. Prior: 1953 c 95 § 18; 1947 c 264 § 5; 1937 c 166 § 12; 1935 c 184 § 14; Rem. Supp. 1947 § 6382-14.]

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

81.80.190 Insurance or deposit of security required.

The commission shall, in issuing permits to common carriers and contract carriers under this chapter, require the carriers to either procure and file liability and property damage insurance from a company licensed to write such insurance in the state of Washington, or deposit security, for the limits of liability and on terms and conditions that the commission determines are necessary for the reasonable protection of the public against damage and injury for which the carrier may be liable by reason of the operation of any motor vehicle.

In fixing the amount of the insurance policy or policies, or deposit of security, the commission shall consider the character and amount of traffic and the number of persons affected and the degree of danger that the proposed operation involves. [2007 c 234 § 78; 1986 c 191 § 5; 1961 c 14 § 81.80.190. Prior: 1935 c 184 § 16; RRS § 6382-16.]

Construction—Severability—1986 c 191: See RCW 43.200.905 and 43.200.906.

81.80.220 Tariff rates to be charged. A household goods carrier shall not collect or receive a greater, less, or different remuneration for the transportation of property or for any service in connection therewith than the rates and charges that are either legally established and filed with the commission or are specified in the contract or contracts filed. A household goods carrier shall not refund or remit in any manner or by any device any portion of the rates and charges required to be collected by each tariff or contract or filing with the commission.

The commission may check the records of all carriers under this chapter and of those employing the services of the carrier to discover all discriminations, under or overcharges, and rebates, and may suspend or revoke permits for violations of this section.

The commission may refuse to accept any time schedule, tariff, or contract that, in the opinion of the commission, limits the service of a carrier to profitable trips only or to the carrying of high class commodities in competition with other carriers who give a complete service affording one carrier an unfair advantage over a competitor. [2007 c 234 § 79; 1961 c 14 § 81.80.220. Prior: 1937 c 166 § 16; 1935 c 184 § 19; RRS § 6382-19.]

81.80.230 Penalty for rebating, etc.—Procedure for collection. Any person, whether a household goods carrier subject to this chapter, shipper, or consignee, or any officer, employee, agent, or representative thereof, who: (1) Offers, grants, gives, solicits, accepts, or receives any rebate, concession, or discrimination in violation of this chapter; (2) by means of any false statement or representation, or by the use of any false or fictitious bill, bill of lading, receipt, voucher, roll, account, claim, certificate, affidavit, deposition, lease, or bill of sale, or by any other means or device assists, suffers, or permits any person or persons, natural or artificial, to obtain transportation of property subject to this chapter for less than the applicable rate, fare, or charge; or (3) fraudulently seeks to evade or defeat regulation of motor carriers under this chapter is subject to a civil penalty of not more than one hundred dollars for each violation. Each and every violation is a separate and distinct offense, and in case of a continuing violation every day's continuance is a separate and distinct violation. Every act or omission that procures, aids, or abets in the violation is also a violation under this section and subject to the penalty under this section.

The penalty under this section is due and payable when the person incurring the penalty receives a notice in writing from the commission describing the violation with reasonable particularity and advising the person that the penalty is due. The commission may, upon a written application received within fifteen days, remit or mitigate any penalty under this section or discontinue any prosecution to recover the penalty upon such terms as the commission in its discretion deems proper. The commission may ascertain the facts on all applications. If the penalty is not paid to the commission within fifteen days after receipt of the notice imposing the penalty, or the application for remission or mitigation is not made within fifteen days after the violator has received notice of the disposition of the application, the attorney general shall bring an action in the name of the state of Washington in the superior court of Thurston county or another county where the violator may do business, to recover the penalty. In all such actions, the procedure and rules of evidence are the same as in an ordinary civil action except as otherwise provided in this section. All penalties recovered under this section must be paid into the state treasury and credited to the public service revolving fund. [2007 c 234 § 80; 1980 c 132 § 2; 1961 c 14 § 81.80.230. Prior: 1947 c 264 § 6; Rem. Supp. 1947 § 6382-19a.]

Effective date—1980 c 132: See note following RCW 81.29.020.

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

81.80.250 Bond to protect shippers and consignees. The commission may require any household goods carrier to file a surety bond, or deposit security, in an amount determined by the commission, that is conditioned on the carrier compensating the shippers and consignees for all money belonging to the shippers and consignees, and coming into the possession of the carrier in connection with its transportation service. Any household goods carrier required by law to compensate a shipper or consignee for any loss, damage, or default, for which a connecting common carrier is legally responsible, must be subrogated to the rights of the shipper or consignee under any bond or deposit of security to the extent of the amount paid. [2007 c 234 § 81; 1961 c 14 § 81.80.250. Prior: 1935 c 184 § 21; RRS § 6382-21.]

81.80.260 Operation in more than one class. It is unlawful for any household goods carrier to operate any vehicle at the same time in more than one class of operation, except upon approval of the commission and a finding that the operation is in the public interest.

An exempt carrier shall not transport property for compensation except as provided under this chapter. [2007 c 234 § 82; 1967 c 69 § 3; 1961 c 14 § 81.80.260. Prior: 1935 c 184 § 22; RRS § 6382-22.]

Severability—1967 c 69: See note following RCW 81.80.010.

81.80.270 Permits—Acquisition of carrier holding permit—Commission approval—Duties on cessation of operation. Permits issued under this chapter are neither irrevocable nor subject to transfer or assignment except upon a proper showing that property rights might be affected thereby, and then in the discretion of the commission.

Any person, partnership, or corporation, singly or in combination with any other person, partnership, or corporation, whether a household goods carrier holding a permit or otherwise, or any combination of such, shall not acquire control or enter into any agreement or arrangement to acquire control of a household goods carrier holding a permit through ownership of its stock or through purchase, lease, or contract to manage the business, or otherwise, except after and with the approval and authorization of the commission. However, upon the dissolution of a partnership, which holds a permit, because of the death, bankruptcy, or withdrawal of a partner where the partner's interest is transferred to his or her spouse or to one or more remaining partners, or in the case of a corporation which holds a permit, in the case of the death of a shareholder where a shareholder's interest upon death is transferred to his or her spouse or to one or more of the remaining shareholders, the commission shall transfer the permit to the newly organized partnership that is substantially composed of the remaining partners, or continue the corporation's permit without hearing and protest. In all other cases, any transaction either directly or indirectly entered into without approval of the commission is void, and it is unlawful for any person seeking to acquire or divest control of the permit to be a party to the transaction without approval of the commission.

Every carrier who ceases operation and abandons his or her rights under the permits issued to him or her shall notify the commission within thirty days of the cessation or abandonment. [2007 c 234 § 83; 1973 c 115 § 12; 1969 ex.s. c 210 § 12; 1965 ex.s. c 134 § 1; 1963 c 59 § 6; 1961 c 14 § 81.80.270. Prior: 1959 c 248 § 24; 1937 c 166 § 18; 1935 c 184 § 23; RRS § 6382-23.]

81.80.272 Transfer of decedent's interest—Temporary continuance of operations. Except as otherwise provided in RCW 81.80.270, any permit granted or issued to any household goods carrier under this chapter and held by a person alone or in conjunction with others other than as stockholders in a corporation at the time of his or her death is transferable as any other right or interest of the person's estate subject to the following:

(1) Application for transfer must be made to the commission in a form and contain information prescribed by the commission. The transfer described in the application must be approved if it appears from the application or from any hearing held thereon or from any investigation thereof that the proposed transferee is fit, willing, and able properly to perform the services authorized by the permit to be transferred and to conform to the provisions of this chapter and the requirements, rules, and regulations of the commission, otherwise the application must be denied.

(2) Temporary continuance of motor carrier operations without prior compliance with this section is recognized as justified by the public interest when the personal representatives, heirs, or surviving spouses of deceased persons desire to continue the operations of the carriers whom they succeed in interest subject to reasonable rules and regulations prescribed by the commission.

In case of temporary continuance under this section, the successor shall immediately procure insurance or deposit security as required by RCW 81.80.190.

Immediately upon any temporary continuance of motor carrier operations and in any event not more than thirty days thereafter, the successor shall give notice of the succession by written notice to the commission containing information prescribed by the commission. [2007 c 234 § 84; 1973 c 115 § 13; 1965 ex.s. c 134 § 2.]

81.80.280 Cancellation, suspension, and alteration of permits. Permits may be canceled, suspended, altered, or amended by the commission upon complaint by any interested party, or upon the commission's own motion after notice and opportunity for hearing, when the permittee or permittee's agent has repeatedly violated this chapter, the rules and regulations of the commission, or the motor laws of this state or of the United States, or the household goods carrier has made unlawful rebates or has not conducted its operation in accordance with the permit. The commission may enjoin any person from any violation of this chapter, or any order, rule, or regulation made by the commission pursuant to the terms hereof. If the suit is instituted by the commission, a bond is not required as a condition to the issuance of the injunction. [2007 c 234 § 85; 1987 c 209 § 1; 1961 c 14 § 81.80.280. Prior: 1935 c 184 § 24; RRS § 6382-24.]

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

81.80.305 Markings required—Exemptions. (1) All motor vehicles, other than those exempt under subsection (2) of this section, must display a permanent marking identifying the name or number, or both, on each side of the power units. For a motor vehicle that is a common or contract carrier under permit by the commission as described in subsection (3)(a) of this section, a private carrier under subsection (4) of this section, or a leased carrier as described in subsection (5) of this section, any required identification that is added, modified, or renewed after September 1, 1991, must be displayed on the driver and passenger doors of the power unit. The identification must be in a clearly legible style with letters no less than three inches high and in a color contrasting with the surrounding body panel.

(2) This section does not apply to (a) vehicles exempt under RCW 81.80.040, and (b) vehicles operated by private carriers that singly or in combination are less than thirty-six thousand pounds gross vehicle weight.

(3) If the motor vehicle is operated as (a) a common or contract carrier under a permit by the commission, the identification must contain the name of the permittee, or business name, and the permit number, or (b) a common or contract carrier holding both intrastate and interstate authority, the identification may be either the commission permit number or the federal vehicle marking requirement established by the United States department of transportation for interstate motor carriers.

(4) If the motor vehicle is a private carrier, the identification must contain the name and address of either the business operating the vehicle or the registered owner.

(5) If the motor vehicle is operated under lease, the vehicle must display either permanent markings or placards on the driver and passenger doors of the power unit. A motor vehicle under lease (a) that is operated as a common or contract carrier under permit by the commission must display identification as provided in subsection (3)(a) of this section, and (b) that is operated as a private carrier must display identification as provided in subsection (4) of this section. [2007 c 234 § 86; 1991 c 241 § 1.]

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

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

81.80.330 Enforcement of chapter. The commission may administer and enforce all provisions of this chapter and inspect the vehicles, books, and documents of all motor carriers and the books, documents, and records of those using the service of the carriers for the purpose of discovering all discriminations and rebates and other information pertaining to the enforcement of this chapter and shall prosecute violations thereof. The commission shall employ auditors, inspectors, clerks, and assistants necessary for the enforcement of this chapter. The Washington state patrol shall perform all motor carrier safety inspections required by this chapter, including

terminal safety audits, except for (1) those carriers subject to the economic regulation of the commission, or (2) a vehicle owned or operated by a carrier affiliated with a solid waste company subject to economic regulation by the commission. The Washington state patrol and the sheriffs of the counties shall make arrests and the county attorneys shall prosecute violations of this chapter. [2007 c 234 § 87; 1995 c 272 § 5; 1980 c 132 § 3; 1961 c 14 § 81.80.330. Prior: 1935 c 184 § 29; RRS § 6382-29.]

Effective dates—1995 c 272: See note following RCW 46.32.090.

Effective date—1980 c 132: See note following RCW 81.29.020.

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

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

81.80.370 Application to interstate and foreign commerce. This chapter applies to persons and motor vehicles engaged in interstate or foreign commerce to the full extent permitted by the Constitution and laws of the United States. [2007 c 234 § 88; 1961 c 14 § 81.80.370. Prior: 1935 c 184 § 32; RRS § 6382-32.]

81.80.371 Federal authority and registration for compensatory services. It is unlawful for any motor carrier to perform a transportation service for compensation upon the public highways of this state without first having secured appropriate federal authority from the United States department of transportation, if the authority is required, and without first having registered with the commission either directly or through a federally authorized uniform registration program. [2007 c 234 § 89; 1963 c 59 § 9.]

81.80.375 through 81.80.420 Repealed. See Supplementary Table of Disposition of Former RCW Sections, this volume.

81.80.430 Brokers and forwarders. (1) A person who provides brokering or forwarding services for the transportation of property in intrastate commerce shall file with the commission and keep in effect, a surety bond or deposit of satisfactory security, in a sum to be determined by the commission, but not less than five thousand dollars, conditioned upon the broker or forwarder compensating shippers, consignees, and carriers for all moneys belonging to them and coming into the broker's or forwarder's possession in connection with the transportation service.

(2) Failure to file the bond or deposit security is sufficient cause for the commission to refuse to grant the application for a permit or registration. Failure to maintain the bond or the deposit of security is sufficient cause for cancellation of a permit or registration. [2007 c 234 § 90; 1991 c 146 § 1; 1990 c 109 § 1; 1989 c 60 § 2; 1988 c 31 § 2.]

81.80.440 through 81.80.460 Repealed. See Supplementary Table of Disposition of Former RCW Sections, this volume.

81.80.470 Recyclable materials collection and transportation—Construction. (1) The collection or transportation of recyclable materials from a drop box or recycling buy-back center, or collection or transportation of recyclable materials by or on behalf of a commercial or industrial generator of recyclable materials to a recycler for use or reclamation is subject to regulation under this chapter.

(2) Nothing in this chapter changes RCW 81.77.010(8), to allow any entity, other than a solid waste collection company authorized by the commission or an entity collecting solid waste from a city or town under chapter 35.21 or 35A.21 RCW, to collect solid waste that may incidentally contain recyclable materials. [2007 c 234 § 91.]

Chapter 81.84 RCW

COMMERCIAL FERRIES

Sections

81.84.010	Certificate of convenience and necessity required—Service initiation—Progress reports.
81.84.020	Application—Hearing—Issuance of certificate—Determining factors.
81.84.060	Certificate—Grounds for cancellation, revocation, suspension, alteration, or amendment.

81.84.010 Certificate of convenience and necessity required—Service initiation—Progress reports. (1) A commercial ferry may not operate any vessel or ferry for the public use for hire between fixed termini or over a regular route upon the waters within this state, including the rivers and lakes and Puget Sound, without first applying for and obtaining from the commission a certificate declaring that public convenience and necessity require such operation. Service authorized by certificates issued before or after July 25, 1993, to a commercial ferry operator must be exercised by the operator in a manner consistent with the conditions established in the certificate or tariffs. However, a certificate is not required for a vessel primarily engaged in transporting freight other than vehicles, whose gross earnings from the transportation of passengers or vehicles, or both, are not more than ten percent of the total gross annual earnings of such vessel. This section does not affect the right of any county public transportation benefit area or other public agency within this state to construct, condemn, purchase, operate, or maintain, itself or by contract, agreement, or lease, with any person, firm, or corporation, ferries or boats across the waters within this state, including rivers and lakes and Puget Sound, if the operation is not over the same route or between the same districts being served by a certificate holder without first acquiring the rights granted to the certificate holder under the certificate.

(2) The holder of a certificate of public convenience and necessity granted under this chapter must initiate service within five years of obtaining the certificate, except that the holder of a certificate of public convenience and necessity for passenger-only ferry service in Puget Sound must initiate service within twenty months of obtaining the certificate. The certificate holder shall report to the commission every six months after the certificate is granted on the progress of the certificated route. The reports shall include, but not be limited to, the progress of environmental impact, parking, local government land use, docking, and financing considerations.

Except in the case of passenger-only ferry service in Puget Sound, if service has not been initiated within five years of obtaining the certificate, the commission may extend the certificate on a twelve-month basis for up to three years if the six-month progress reports indicate there is significant advancement toward initiating service. [2007 c 234 § 92. Prior: 2003 c 373 § 4; 2003 c 83 § 211; 1993 c 427 § 2; 1961 c 14 § 81.84.010; prior: 1950 ex.s. c 6 § 1, part; 1927 c 248 § 1, part; RRS § 10361-1, part.]

Findings—Intent—2003 c 373: See note following RCW 47.64.090.

Findings—Intent—Captions, part headings not law—Severability—Effective date—2003 c 83: See notes following RCW 36.57A.200.

81.84.020 Application—Hearing—Issuance of certificate—Determining factors. (1) Upon the filing of an application, the commission shall give reasonable notice to the department, affected cities, counties, and public transportation benefit areas and any common carrier which might be adversely affected, of the time and place for hearing on such application. The commission may, after notice and an opportunity for a hearing, issue the certificate as prayed for, or refuse to issue it, or issue it for the partial exercise only of the privilege sought, and may attach to the exercise of the rights granted by the certificate any terms and conditions as in its judgment the public convenience and necessity may require; but the commission may not grant a certificate to operate between districts or into any territory prohibited by RCW 47.60.120 or already served by an existing certificate holder, unless the existing certificate holder has failed or refused to furnish reasonable and adequate service, has failed to provide the service described in its certificate or tariffs after the time allowed to initiate service has elapsed, or has not objected to the issuance of the certificate as prayed for.

(2) Before issuing a certificate, the commission shall determine that the applicant has the financial resources to operate the proposed service for at least twelve months, based upon the submission by the applicant of a pro forma financial statement of operations. Issuance of a certificate must be determined upon, but not limited to, the following factors: Ridership and revenue forecasts; the cost of service for the proposed operation; an estimate of the cost of the assets to be used in providing the service; a statement of the total assets on hand of the applicant that will be expended on the proposed operation; and a statement of prior experience, if any, in such field by the applicant. The documentation required of the applicant under this section must comply with the provisions of RCW 9A.72.085.

(3) In granting a certificate for passenger-only ferries and determining what conditions to place on the certificate, the commission shall consider and give substantial weight to the effect of its decisions on public agencies operating, or eligible to operate, passenger-only ferry service.

(4) Until July 1, 2007, the commission shall not accept or consider an application for passenger-only ferry service serving any county in the Puget Sound area with a population of over one million people. Applications for passenger-only ferry service serving any county in the Puget Sound area with a population of over one million pending before the commission as of May 9, 2005, must be held in abeyance and not be considered before July 1, 2007. [2007 c 234 § 93; 2006 c 332 § 11. Prior: 2005 c 313 § 609; 2005 c 121 § 7; 2003 c 373 §

5; 2003 c 83 § 212; 1993 c 427 § 3; 1961 c 14 § 81.84.020; prior: 1950 ex.s. c 6 § 1, part; 1927 c 248 § 1, part; RRS § 10361-1, part.]

Severability—2005 c 313: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [2005 c 313 § 901.]

Effective date—2005 c 313: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately [May 9, 2005]." [2005 c 313 § 902.]

Findings—Intent—2003 c 373: See note following RCW 47.64.090.

Findings—Intent—Captions, part headings not law—Severability—Effective date—2003 c 83: See notes following RCW 36.57A.200.

81.84.060 Certificate—Grounds for cancellation, revocation, suspension, alteration, or amendment. The commission, upon complaint by an interested party, or upon its own motion after notice and opportunity for hearing, may cancel, revoke, suspend, alter, or amend a certificate issued under this chapter on any of the following grounds:

(1) Failure of the certificate holder to initiate service by the conclusion of the fifth year after the certificate has been granted or by the conclusion of an extension granted under RCW 81.84.010(2), if the commission has considered the progress report information required under RCW 81.84.010(2);

(2) Failure of a certificate holder for passenger-only ferry service in Puget Sound to initiate service by the conclusion of the twentieth month after the certificate has been granted;

(3) Failure of the certificate holder to file an annual report;

(4) The filing by a certificate holder of an annual report that shows no revenue in the previous twelve-month period after service has been initiated;

(5) The violation of any provision of this chapter;

(6) The violation of or failure to observe the provisions or conditions of the certificate or tariffs;

(7) The violation of an order, decision, rule, regulation, or requirement established by the commission under this chapter;

(8) Failure of a certificate holder to maintain the required insurance coverage in full force and effect; or

(9) Failure or refusal to furnish reasonable and adequate service after initiating service.

The commission shall take appropriate action within thirty days upon a complaint by an interested party or of its own finding that a provision of this section has been violated. [2007 c 234 § 97; 2003 c 373 § 6; 2003 c 83 § 213; 1993 c 427 § 7.]

Findings—Intent—2003 c 373: See note following RCW 47.64.090.

Findings—Intent—Captions, part headings not law—Severability—Effective date—2003 c 83: See notes following RCW 36.57A.200.

Chapter 81.88 RCW

GAS AND HAZARDOUS LIQUID PIPELINES

Sections

81.88.010	Definitions.
81.88.040	Violations—Rules—Penalties—Injunctive relief.
81.88.050	Pipeline safety account.

81.88.060	Hazardous liquid pipelines—Safety—Commission's duties.
81.88.065	Gas pipelines—Safety—Commission's duties.
81.88.080	Pipeline mapping system—Commission specifications and evaluations.
81.88.090	Federal certification for pipeline safety program—Commission's duties.
81.88.100	Commission inspection of records, maps, or written procedures.
81.88.150	Repealed.

81.88.010 Definitions. The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

(1) "Commission" means the utilities and transportation commission.

(2) "Gas" means natural gas, flammable gas, or toxic or corrosive gas.

(3) "Gas pipeline" means all parts of a pipeline facility through which gas moves in transportation, including, but not limited to, line pipe, valves, and other appurtenances connected to line pipe, compressor units, metering stations, regulator stations, delivery stations, holders, and fabricated assemblies. "Gas pipeline" does not include any pipeline facilities, other than a master meter system, owned by a consumer or consumers of the gas, located exclusively on the consumer or consumers' property, and none of the gas leaves that property through a pipeline.

(4) "Gas pipeline company" means a person or entity constructing, owning, or operating a gas pipeline for transporting gas. "Gas pipeline company" includes a person or entity owning or operating a master meter system. "Gas pipeline company" does not include excavation contractors or other contractors that contract with a gas pipeline company.

(5) "Hazardous liquid" means: (a) Petroleum, petroleum products, or anhydrous ammonia as those terms are defined in 49 C.F.R. Part 195; and (b) carbon dioxide.

(6) "Hazardous liquid pipeline" means all parts of a pipeline facility through which a hazardous liquid moves in transportation including, but not limited to, line pipe, valves, and other appurtenances connected to line pipe, pumping units, fabricated assemblies associated with pumping units, metering and delivery stations and fabricated assemblies therein, and breakout tanks. "Hazardous liquid pipeline" does not include all parts of a pipeline facility through which a hazardous liquid moves in transportation through refining or manufacturing facilities or storage or in-plant piping systems associated with such facilities, a pipeline subject to safety regulations of the United States coast guard, or a pipeline that serves refining, manufacturing, or truck, rail, or vessel terminal facilities, if the pipeline is less than one mile long, measured outside facility grounds, and does not cross an offshore area or a waterway used for commercial navigation.

(7) "Hazardous liquid pipeline company" means a person or entity constructing, owning, or operating a hazardous liquid pipeline. "Hazardous liquid pipeline company" does not include excavation contractors or other contractors that contract with a hazardous liquid pipeline company.

(8) "Line pipe" means a tube, usually cylindrical, through which a hazardous liquid or gas is transported from one point to another.

(9) "Local government" means a political subdivision of the state.

(10) "Master meter system" means a pipeline system for distributing gas within, but not limited to, a definable area, such as a mobile home park, housing project, or apartment complex, where the operator purchases metered gas from an outside source for resale through a gas distribution pipeline system. The gas distribution pipeline system supplies the ultimate consumer who either purchases the gas directly through a meter or by any other means, such as by rents.

(11) "Person" means an individual, partnership, franchise holder, association, corporation, a state, a city, a town, a county, or any other political subdivision or instrumentality of a state, and its employees, agents, or legal representatives.

(12) "Pipeline company," without further qualification, means a hazardous liquid pipeline company or a gas pipeline company. [2007 c 142 § 1; 2001 c 238 § 6; 2000 c 191 § 2.]

Intent—Finding—Effective date—2001 c 238: See notes following RCW 80.24.060.

81.88.040 Violations—Rules—Penalties—Injunctive relief. (1) A person, officer, agent, or employee of a pipeline company who, as an individual or acting as an officer, agent, or employee of such a company, violates or fails to comply with this chapter or a rule adopted under RCW 81.88.060 or 81.88.065, or who procures, aids, or abets another person or entity in the violation of or noncompliance with this chapter or a rule adopted under RCW 81.88.060 or 81.88.065, is guilty of a gross misdemeanor.

(2)(a) A pipeline company, or any person, officer, agent, or employee of a pipeline company that violates a provision of this chapter, or a rule adopted under RCW 81.88.060 or 81.88.065, is subject to a civil penalty to be assessed by the commission.

(b) The commission shall adopt rules: (i) Setting penalty amounts, but may not exceed the penalties specified in the federal pipeline safety laws, 49 U.S.C. Sec. 60101 et seq.; and (ii) establishing procedures for mitigating penalties assessed.

(c) In determining the amount of the penalty in a particular instance, the commission shall consider: (i) The appropriateness of the penalty in relation to the position of the person charged with the violation; (ii) the gravity of the violation; and (iii) the good faith of the person or company charged in attempting to achieve compliance after notification of the violation.

(d) The amount of the penalty may be recovered in a civil action in the superior court of Thurston county or of some other county in which the violator may do business. In all actions for recovery, the rules of evidence shall be the same as in ordinary civil actions. All penalties recovered under this section must be paid into the state treasury and credited to the pipeline safety account.

(3) The commission shall adopt rules incorporating by reference other substances designated as hazardous by the secretary of transportation under 49 U.S.C. Sec. 60101(a)(4).

(4) The commission may seek injunctive relief to enforce the provisions of this chapter.

(5) Nothing in this section duplicates the authority of the energy facility site evaluation council under chapter 80.50 RCW. [2007 c 142 § 2; 2000 c 191 § 3; 1998 c 123 § 1.]

81.88.050 Pipeline safety account. The pipeline safety account is created in the custody of the state treasurer. All fees received by the commission for the pipeline safety program according to RCW 80.24.060 and 81.24.090 and all receipts from the federal office of pipeline safety and any other state or federal funds provided for pipeline safety shall be deposited in the account. Any penalties collected under this chapter, or otherwise designated to this account must be deposited in the account. Moneys in the account may be spent only after appropriation. Expenditures from the account may be used only for funding pipeline safety. [2007 c 142 § 3; 2001 c 238 § 7; 2000 c 191 § 4.]

Intent—Finding—Effective date—2001 c 238: See notes following RCW 80.24.060.

81.88.060 Hazardous liquid pipelines—Safety—Commission’s duties. (1) Each hazardous liquid pipeline company shall design, construct, operate, and maintain its hazardous liquid pipeline so that it is safe and efficient. Each hazardous liquid pipeline company is responsible for the conduct of its contractors regarding compliance with pipeline safety requirements.

(2) The commission shall develop and administer a comprehensive program of pipeline safety in accordance with this chapter.

(3) The commission may adopt rules to carry out the purposes of this chapter as long as the rules are compatible with minimum federal requirements.

(4) The commission shall coordinate information related to hazardous liquid pipeline safety by providing technical assistance to local planning and siting authorities. [2007 c 142 § 4; 2001 c 238 § 9; 2000 c 191 § 5.]

Intent—Finding—Effective date—2001 c 238: See notes following RCW 80.24.060.

81.88.065 Gas pipelines—Safety—Commission’s duties. (1) Each gas pipeline company shall design, construct, operate, and maintain its gas pipeline so that it is safe and efficient. Each gas pipeline company is responsible for the conduct of its contractors regarding compliance with pipeline safety requirements.

(2) The commission shall develop and administer a comprehensive program of gas pipeline safety in accordance with this chapter.

(3) The commission may adopt rules to carry out the purposes of this chapter as long as the rules are compatible with minimum federal requirements.

(4) The commission shall coordinate information related to natural gas pipeline safety by providing technical assistance to local planning and siting authorities. [2007 c 142 § 5.]

81.88.080 Pipeline mapping system—Commission specifications and evaluations. (1) The commission shall require hazardous liquid pipeline companies, and gas pipeline companies with interstate pipelines, or gas pipelines operating over two hundred fifty pounds per square inch gauge, to provide accurate maps of these pipelines to specifications developed by the commission sufficient to meet the needs of first responders.

(2) The commission shall evaluate the sufficiency of the maps and consolidate the maps into a statewide geographic information system. The commission shall assist local governments in obtaining hazardous liquid and gas pipeline location information and maps. The maps shall be made available to the one-number locator services as provided in chapter 19.122 RCW. The mapping system shall be consistent with the United States department of transportation national pipeline mapping program.

(3) The commission shall periodically update the mapping system. [2007 c 142 § 6; 2000 c 191 § 7.]

81.88.090 Federal certification for pipeline safety program—Commission’s duties. The commission shall maintain federal certification for the state’s pipeline safety program. The commission, at a minimum, shall do the following:

(1) Inspect hazardous liquid pipelines and gas pipelines periodically as specified in the inspection program;

(2) Collect fees;

(3) Order and oversee the testing of hazardous liquid pipelines and gas pipelines as authorized by federal law and regulation; and

(4) File reports with the United States secretary of transportation as required to maintain federal certification. [2007 c 142 § 7; 2001 c 238 § 10; 2000 c 191 § 9.]

Intent—Finding—Effective date—2001 c 238: See notes following RCW 80.24.060.

81.88.100 Commission inspection of records, maps, or written procedures. The commission may inspect any record, map, or written procedure required by federal law to be kept by a pipeline company concerning releases, and the design, construction, testing, or operation and maintenance of pipelines. Nothing in this section affects the commission’s access to records under any other provision of law. [2007 c 142 § 8; 2000 c 191 § 11.]

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

Chapter 81.104 RCW

HIGH-CAPACITY TRANSPORTATION SYSTEMS

Sections

81.104.115 Rail fixed guideway system—Safety program plan and security and emergency preparedness plan.

81.104.115 Rail fixed guideway system—Safety program plan and security and emergency preparedness plan. (1) The department may collect and review the system safety program plan and the system security and emergency preparedness plan prepared by each owner or operator of a rail fixed guideway system. In carrying out this function, the department may adopt rules specifying the elements and standard to be contained in a system safety program plan and a system security and emergency preparedness plan, and the content of any investigation report, corrective action plan, and accompanying implementation schedule resulting from a reportable accident, unacceptable hazardous condition, or

security breach. These rules may include due dates for the department's timely receipt of and response to required documents.

(2) The system security and emergency preparedness plan as described in subsection (1)(d) of RCW 35.21.228, 35A.21.300, 36.01.210, 36.57.120, 36.57A.170, and 81.112.180 is exempt from public disclosure under chapter 42.56 RCW by the department when collected from the owners and operators of fixed railway systems. However, the system safety program plan as described in RCW 35.21.228, 35A.21.300, 36.01.210, 36.57.120, 36.57A.170, and 81.112.180 is not exempt from public disclosure.

(3) The department shall audit each system safety program plan and each system security and emergency preparedness plan at least once every three years. The department may contract with other persons or entities for the performance of duties required by this subsection. The department shall provide at least thirty days' advance notice to the owner or operator of a rail fixed guideway system before commencing the audit. The owner or operator of each rail fixed guideway system shall reimburse the reasonable expenses of the department in carrying out its responsibilities of this subsection within ninety days after receipt of an invoice. The department shall notify the owner or operator of the estimated expenses at least six months in advance of when the department audits the system.

(4) In the event of a reportable accident, unacceptable hazardous condition, or security breach, the department shall review the investigation report, corrective action plan, and accompanying implementation schedule, submitted by the owner or operator of the rail fixed guideway system to ensure that it meets the goal of preventing and mitigating a recurrence of the reportable accident, unacceptable hazardous condition, or security breach.

(a) The department may, at its option, perform a separate, independent investigation of a reportable accident, unacceptable hazardous condition, or security breach. The department may contract with other persons or entities for the performance of duties required by this subsection.

(b) If the department does not concur with the investigation report, corrective action plan, and accompanying implementation schedule, submitted by the owner or operator, the department shall notify that owner or operator in writing within forty-five days of its receipt of the complete investigation report, corrective action plan, and accompanying implementation schedule.

(5) The secretary may adopt rules to implement this section and RCW 35.21.228, 35A.21.300, 36.01.210, 36.57.120, 36.57A.170, and 81.112.180, including rules establishing procedures and timelines for owners and operators of rail fixed guideway systems to comply with RCW 35.21.228, 35A.21.300, 36.01.210, 36.57.120, 36.57A.170, and 81.112.180 and the rules adopted under this section. If non-compliance by an owner or operator of a rail fixed guideway system results in the loss of federal funds to the state of Washington or a political subdivision of the state, the owner or operator is liable to the affected entity or entities for the amount of the lost funds.

(6) The department may impose sanctions upon owners and operators of rail fixed guideway systems, but only for failure to meet reasonable deadlines for submission of

required reports and audits. The department is expressly prohibited from imposing sanctions for any other purposes, including, but not limited to, differences in format or content of required reports and audits.

(7) The department and its employees have no liability arising from the adoption of rules; the review of or concurrence in a system safety program plan and a system security and emergency preparedness plan; the separate, independent investigation of a reportable accident, unacceptable hazardous condition, or security breach; and the review of or concurrence in a corrective action plan for a reportable accident, unacceptable hazardous condition, or security breach.

(8) The department shall set by rule an annual fee for owners and operators of rail fixed guideway systems to defray the department's direct costs associated only with the system safety program plans, system security and emergency preparedness plans, and incident investigations, as described in this section, and the fee shall not be a flat fee but shall be imposed on each owner and operator in proportion to the effort expended by the department in relation to individual plans. The department shall establish by rule the manner and timing of the collection of the fee. [2007 c 422 § 7; 2005 c 274 § 359; 2001 c 127 § 1; 1999 c 202 § 7.]

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

Effective date—1999 c 202: See note following RCW 35.21.228.

Chapter 81.112 RCW REGIONAL TRANSIT AUTHORITIES

Sections

81.112.030	Formation—Submission of ballot propositions to voters.
81.112.060	Powers.
81.112.180	Rail fixed guideway system—Safety program plan and security and emergency preparedness plan.

81.112.030 Formation—Submission of ballot propositions to voters. Two or more contiguous counties each having a population of four hundred thousand persons or more may establish a regional transit authority to develop and operate a high capacity transportation system as defined in chapter 81.104 RCW.

The authority shall be formed in the following manner:

(1) The joint regional policy committee created pursuant to RCW 81.104.040 shall adopt a system and financing plan, including the definition of the service area. This action shall be completed by September 1, 1992, contingent upon satisfactory completion of the planning process defined in RCW 81.104.100. The final system plan shall be adopted no later than June 30, 1993. In addition to the requirements of RCW 81.104.100, the plan for the proposed system shall provide explicitly for a minimum portion of new tax revenues to be allocated to local transit agencies for interim express services. Upon adoption the joint regional policy committee shall immediately transmit the plan to the county legislative authorities within the adopted service area.

(2) The legislative authorities of the counties within the service area shall decide by resolution whether to participate in the authority. This action shall be completed within forty-five days following receipt of the adopted plan or by August 13, 1993, whichever comes first.

(3) Each county that chooses to participate in the authority shall appoint its board members as set forth in RCW 81.112.040 and shall submit its list of members to the secretary of the Washington state department of transportation. These actions must be completed within thirty days following each county's decision to participate in the authority.

(4) The secretary shall call the first meeting of the authority, to be held within thirty days following receipt of the appointments. At its first meeting, the authority shall elect officers and provide for the adoption of rules and other operating procedures.

(5) The authority is formally constituted at its first meeting and the board shall begin taking steps toward implementation of the system and financing plan adopted by the joint regional policy committee. If the joint regional policy committee fails to adopt a plan by June 30, 1993, the authority shall proceed to do so based on the work completed by that date by the joint regional policy committee. Upon formation of the authority, the joint regional policy committee shall cease to exist. The authority may make minor modifications to the plan as deemed necessary and shall at a minimum review local transit agencies' plans to ensure feeder service/high capacity transit service integration, ensure fare integration, and ensure avoidance of parallel competitive services. The authority shall also conduct a minimum thirty-day public comment period.

(6) If the authority determines that major modifications to the plan are necessary before the initial ballot proposition is submitted to the voters, the authority may make those modifications with a favorable vote of two-thirds of the entire membership. Any such modification shall be subject to the review process set forth in RCW 81.104.110. The modified plan shall be transmitted to the legislative authorities of the participating counties. The legislative authorities shall have forty-five days following receipt to act by motion or ordinance to confirm or rescind their continued participation in the authority.

(7) If any county opts to not participate in the authority, but two or more contiguous counties do choose to continue to participate, the authority's board shall be revised accordingly. The authority shall, within forty-five days, redefine the system and financing plan to reflect elimination of one or more counties, and submit the redefined plan to the legislative authorities of the remaining counties for their decision as to whether to continue to participate. This action shall be completed within forty-five days following receipt of the redefined plan.

(8) The authority shall place on the ballot within two years of the authority's formation, a single ballot proposition to authorize the imposition of taxes to support the implementation of an appropriate phase of the plan within its service area. In addition to the system plan requirements contained in RCW 81.104.100(2)(d), the system plan approved by the authority's board before the submittal of a proposition to the voters shall contain an equity element which:

(a) Identifies revenues anticipated to be generated by corridor and by county within the authority's boundaries;

(b) Identifies the phasing of construction and operation of high capacity system facilities, services, and benefits in each corridor. Phasing decisions should give priority to juris-

dictions which have adopted transit-supportive land use plans; and

(c) Identifies the degree to which revenues generated within each county will benefit the residents of that county, and identifies when such benefits will accrue.

A simple majority of those voting within the boundaries of the authority is required for approval. If the vote is affirmative, the authority shall begin implementation of the projects identified in the proposition. However, the authority may not submit any authorizing proposition for voter-approved taxes prior to July 1, 1993; nor may the authority issue bonds or form any local improvement district prior to July 1, 1993.

(9) If the vote on a proposition fails, the board may redefine the proposition, make changes to the authority boundaries, and make corresponding changes to the composition of the board. If the composition of the board is changed, the participating counties shall revise the membership of the board accordingly. The board may then submit the revised proposition or a different proposition to the voters. No single proposition may be submitted to the voters more than twice. Beginning no sooner than the 2007 general election, the authority may place additional propositions on the ballot to impose taxes to support additional phases of plan implementation.

(10) At the 2007 general election, the authority shall submit a proposition to support a system and financing plan or additional implementation phases of the authority's system and financing plan as part of a single ballot proposition that includes a plan to support a regional transportation investment plan developed under chapter 36.120 RCW. The authority's plan shall not be considered approved unless both a majority of the persons voting on the proposition residing within the authority vote in favor of the proposition and a majority of the persons voting on the proposition residing within the proposed regional transportation investment district vote in favor of the proposition.

(11) Additional phases of plan implementation may include a transportation subarea equity element which (a) identifies the combined authority and regional transportation investment district revenues anticipated to be generated by corridor and by county within the authority's boundaries, and (b) identifies the degree to which the combined authority and regional transportation investment district revenues generated within each county will benefit the residents of that county, and identifies when such benefits will accrue. For purposes of the transportation subarea equity principle established under this subsection, the authority may use the five subareas within the authority's boundaries as identified in the authority's system plan adopted in May 1996.

(12) If the authority is unable to achieve a positive vote on a proposition within two years from the date of the first election on a proposition, the board may, by resolution, reconstitute the authority as a single-county body. With a two-thirds vote of the entire membership of the voting members, the board may also dissolve the authority. [2007 c 509 § 3; 2006 c 311 § 12; 1994 c 44 § 1; 1993 sp.s. c 23 § 62; 1992 c 101 § 3.]

Findings—Intent—Constitutional challenges—Expedited appeals—Severability—Effective date—2007 c 509: See notes following RCW 36.120.070.

Findings—2006 c 311: See note following RCW 36.120.020.

Effective dates—1993 sp.s. c 23: See note following RCW 43.89.010.

81.112.060 Powers. An authority shall have the following powers:

(1) To establish offices, departments, boards, and commissions that are necessary to carry out the purposes of the authority, and to prescribe the functions, powers, and duties thereof.

(2) To appoint or provide for the appointment of, and to remove or to provide for the removal of, all officers and employees of the authority.

(3) To fix the salaries, wages, and other compensation of all officers and employees of the authority.

(4) To employ such engineering, legal, financial, or other specialized personnel as may be necessary to accomplish the purposes of the authority.

(5) To determine risks, hazards, and liabilities in order to obtain insurance consistent with these determinations. This insurance may include any types of insurance covering, and for the benefit of, one or more parties with whom the authority contracts for any purpose, and insurance for the benefit of its board members, authority officers, and employees to insure against liability for acts or omissions while performing or in good faith purporting to perform their official duties. All insurance obtained for construction of authority projects with a total project cost exceeding one hundred million dollars may be acquired by bid or by negotiation. In order to allow the authority flexibility to secure appropriate insurance by negotiation, the authority is exempt from RCW 48.30.270. [2007 c 166 § 1; 2000 2nd sp.s. c 4 § 32; 1992 c 101 § 6.]

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

(2) Each regional transit authority shall implement and comply with its system safety program plan and system security and emergency preparedness plan. The regional transit authority shall perform internal safety and security audits to evaluate its compliance with the plans, and submit its audit schedule to the department of transportation no later than December 15th each year. The regional transit authority shall

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prepare an annual report for its internal safety and security audits undertaken in the prior year and submit it to the department no later than February 15th. This annual report must include the dates the audits were conducted, the scope of the audit activity, the audit findings and recommendations, the status of any corrective actions taken as a result of the audit activity, and the results of each audit in terms of the adequacy and effectiveness of the plans.

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

(4) The system security and emergency preparedness plan required in subsection (1)(d) of this section is exempt from public disclosure under chapter 42.56 RCW. However, the system safety program plan as described in this section is not subject to this exemption. [2007 c 422 § 6; 2005 c 274 § 360; 1999 c 202 § 6.]

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

Effective date—1999 c 202: See note following RCW 35.21.228.

Title 82

EXCISE TAXES

Chapters

82.02	General provisions.
82.04	Business and occupation tax.
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Chapter 82.02 RCW

GENERAL PROVISIONS

Sections

82.02.210	Washington compliance with streamlined sales and use tax agreement—Intent. (<i>Effective July 1, 2008.</i>)
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82.02.210 Washington compliance with streamlined sales and use tax agreement—Intent. (*Effective July 1, 2008.*) (1) It is the intent of the legislature that Washington join as a member state in the streamlined sales and use tax agreement referred to in chapter 82.58 RCW. The agreement provides for a simpler and more uniform sales and use tax structure among states that have sales and use taxes. The intent of the legislature is to bring Washington's sales and use tax system into compliance with the agreement so that Washington may join as a member state and have a voice in the development and administration of the system, and to substantially reduce the burden of tax compliance on sellers.

(2) Chapter 168, Laws of 2003 does not include changes to Washington law that may be required in the future and that are not fully developed under the agreement. These include, but are not limited to, changes relating to online registration, reporting, and remitting of payments by businesses for sales and use tax purposes, monetary allowances for sellers and their agents, sourcing, and amnesty for businesses registering under the agreement.

(3) It is the intent of the legislature that the provisions of this title relating to the administration and collection of state and local sales and use taxes be interpreted and applied consistently with the agreement.

(4) The department of revenue shall report to the fiscal committees of the legislature on January 1, 2004, and each January 1st thereafter, on the development of the agreement and shall recommend changes to the sales and use tax structure and propose legislation as may be necessary to keep Washington in compliance with the agreement. [2007 c 6 § 105; 2003 c 168 § 1.]

Part headings not law—Savings—Effective date—Severability—2007 c 6: See notes following RCW 82.32.020.

Findings—Intent—2007 c 6: See note following RCW 82.14.495.

Part headings not law—2003 c 168: See note following RCW 82.08.010.

Chapter 82.04 RCW

BUSINESS AND OCCUPATION TAX

Sections

82.04.050	"Sale at retail," "retail sale." (<i>Effective until July 1, 2008.</i>)
82.04.050	"Sale at retail," "retail sale." (<i>Effective July 1, 2008.</i>)
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82.04.065	Telephone, telecommunications, and ancillary services—Definitions. (<i>Effective July 1, 2008; contingency, see note following RCW 82.04.530.</i>)
82.04.190	"Consumer." (<i>Effective July 1, 2008.</i>)
82.04.2404	Manufacturers—Processors for hire—Semiconductor materials.
82.04.250	Tax on retailers. (<i>Effective July 1, 2011.</i>)
82.04.260	Tax on manufacturers and processors of various foods and by-products—Research and development organizations—Travel agents—Certain international activities—Stevedoring and associated activities—Low-level waste disposers—Insurance agents, brokers, and solicitors—Hospitals—Commercial airplane activities—Timber product activities—Canned salmon processors.
82.04.261	Surcharge on timber and wood product manufacturers, extractors, and wholesalers. (<i>Expires July 1, 2024.</i>)
82.04.294	Tax on manufacturers or wholesalers of solar energy systems. (<i>Expires June 30, 2014.</i>)
82.04.310	Exemptions—Public utilities—Electrical energy—Natural or manufactured gas.
82.04.332	Exemptions—Buying and selling at wholesale unprocessed milk, wheat, oats, dry peas, dry beans, lentils, triticale, canola, corn, rye, and barley.
82.04.333	Exemptions—Small harvesters.

82.04.334	Exemptions—Standing timber.
82.04.4266	Exemptions—Fruit and vegetable businesses.
82.04.4281	Deductions—Investments, dividends, interest on loans.
82.04.4334	Deductions—Sale or distribution of biodiesel or E85 motor fuels. (<i>Expires July 1, 2015.</i>)
82.04.440	Persons taxable on multiple activities—Credits.
82.04.4461	Credit—Preproduction development expenditures. (<i>Expires July 1, 2024.</i>)
82.04.470	Resale certificate—Burden of proof—Tax liability—Rules—Resale certificate defined. (<i>Effective July 1, 2008.</i>)
82.04.530	Gross proceeds of sales calculation for telephone business. (<i>Effective until July 1, 2008; contingency, see note following this section.</i>)
82.04.530	Telecommunications service providers—Calculation of gross proceeds. (<i>Effective July 1, 2008; contingency, see note following this section.</i>)
82.04.601	Exemptions—Affixing stamp services for cigarette sales.
82.04.610	Exemptions—Import or export commerce.
82.04.615	Exemptions—Certain limited purpose public corporations, commissions, and authorities.
82.04.620	Exemptions—Certain prescription drugs. (<i>Effective October 1, 2007.</i>)
82.04.625	Exemptions—Custom farming services. (<i>Expires December 31, 2020.</i>)

82.04.050 "Sale at retail," "retail sale." (*Effective until July 1, 2008.*) (1) "Sale at retail" or "retail sale" means every sale of tangible personal property (including articles produced, fabricated, or imprinted) to all persons irrespective of the nature of their business and including, among others, without limiting the scope hereof, persons who install, repair, clean, alter, improve, construct, or decorate real or personal property of or for consumers other than a sale to a person who presents a resale certificate under RCW 82.04.470 and who:

(a) Purchases for the purpose of resale as tangible personal property in the regular course of business without intervening use by such person, but a purchase for the purpose of resale by a regional transit authority under RCW 81.112.300 is not a sale for resale; or

(b) Installs, repairs, cleans, alters, imprints, improves, constructs, or decorates real or personal property of or for consumers, if such tangible personal property becomes an ingredient or component of such real or personal property without intervening use by such person; or

(c) Purchases for the purpose of consuming the property purchased in producing for sale a new article of tangible personal property or substance, of which such property becomes an ingredient or component or is a chemical used in processing, when the primary purpose of such chemical is to create a chemical reaction directly through contact with an ingredient of a new article being produced for sale; or

(d) Purchases for the purpose of consuming the property purchased in producing ferrosilicon which is subsequently used in producing magnesium for sale, if the primary purpose of such property is to create a chemical reaction directly through contact with an ingredient of ferrosilicon; or

(e) Purchases for the purpose of providing the property to consumers as part of competitive telephone service, as defined in RCW 82.04.065. The term shall include every sale of tangible personal property which is used or consumed or to be used or consumed in the performance of any activity classified as a "sale at retail" or "retail sale" even though such property is resold or utilized as provided in (a), (b), (c), (d), or (e) of this subsection following such use. The term also means every sale of tangible personal property to persons engaged in any business which is taxable under RCW 82.04.280 (2) and (7), 82.04.290, and 82.04.2908; or

(f) Purchases for the purpose of satisfying the person's obligations under an extended warranty as defined in subsection (7) of this section, if such tangible personal property replaces or becomes an ingredient or component of property covered by the extended warranty without intervening use by such person.

(2) The term "sale at retail" or "retail sale" shall include the sale of or charge made for tangible personal property consumed and/or for labor and services rendered in respect to the following:

(a) The installing, repairing, cleaning, altering, imprinting, or improving of tangible personal property of or for consumers, including charges made for the mere use of facilities in respect thereto, but excluding charges made for the use of self-service laundry facilities, and also excluding sales of laundry service to nonprofit health care facilities, and excluding services rendered in respect to live animals, birds and insects;

(b) The constructing, repairing, decorating, or improving of new or existing buildings or other structures under, upon, or above real property of or for consumers, including the installing or attaching of any article of tangible personal property therein or thereto, whether or not such personal property becomes a part of the realty by virtue of installation, and shall also include the sale of services or charges made for the clearing of land and the moving of earth excepting the mere leveling of land used in commercial farming or agriculture;

(c) The constructing, repairing, or improving of any structure upon, above, or under any real property owned by an owner who conveys the property by title, possession, or any other means to the person performing such construction, repair, or improvement for the purpose of performing such construction, repair, or improvement and the property is then reconveyed by title, possession, or any other means to the original owner;

(d) The cleaning, fumigating, razing, or moving of existing buildings or structures, but shall not include the charge made for janitorial services; and for purposes of this section the term "janitorial services" shall mean those cleaning and caretaking services ordinarily performed by commercial janitor service businesses including, but not limited to, wall and window washing, floor cleaning and waxing, and the cleaning in place of rugs, drapes and upholstery. The term "janitorial services" does not include painting, papering, repairing, furnace or septic tank cleaning, snow removal or sandblasting;

(e) Automobile towing and similar automotive transportation services, but not in respect to those required to report and pay taxes under chapter 82.16 RCW;

(f) The furnishing of lodging and all other services by a hotel, rooming house, tourist court, motel, trailer camp, and the granting of any similar license to use real property, as distinguished from the renting or leasing of real property, and it shall be presumed that the occupancy of real property for a continuous period of one month or more constitutes a rental or lease of real property and not a mere license to use or enjoy the same. For the purposes of this subsection, it shall be presumed that the sale of and charge made for the furnishing of lodging for a continuous period of one month or more to a

person is a rental or lease of real property and not a mere license to enjoy the same;

(g) Persons taxable under (a), (b), (c), (d), (e), and (f) of this subsection when such sales or charges are for property, labor and services which are used or consumed in whole or in part by such persons in the performance of any activity defined as a "sale at retail" or "retail sale" even though such property, labor and services may be resold after such use or consumption. Nothing contained in this subsection shall be construed to modify subsection (1) of this section and nothing contained in subsection (1) of this section shall be construed to modify this subsection.

(3) The term "sale at retail" or "retail sale" shall include the sale of or charge made for personal, business, or professional services including amounts designated as interest, rents, fees, admission, and other service emoluments however designated, received by persons engaging in the following business activities:

(a) Amusement and recreation services including but not limited to golf, pool, billiards, skating, bowling, ski lifts and tows, day trips for sightseeing purposes, and others, when provided to consumers;

(b) Abstract, title insurance, and escrow services;

(c) Credit bureau services;

(d) Automobile parking and storage garage services;

(e) Landscape maintenance and horticultural services but excluding (i) horticultural services provided to farmers and (ii) pruning, trimming, repairing, removing, and clearing of trees and brush near electric transmission or distribution lines or equipment, if performed by or at the direction of an electric utility;

(f) Service charges associated with tickets to professional sporting events; and

(g) The following personal services: Physical fitness services, tanning salon services, tattoo parlor services, steam bath services, turkish bath services, escort services, and dating services.

(4)(a) The term shall also include:

(i) The renting or leasing of tangible personal property to consumers; and

(ii) Providing tangible personal property along with an operator for a fixed or indeterminate period of time. A consideration of this is that the operator is necessary for the tangible personal property to perform as designed. For the purpose of this subsection (4)(a)(ii), an operator must do more than maintain, inspect, or set up the tangible personal property.

(b) The term shall not include the renting or leasing of tangible personal property where the lease or rental is for the purpose of sublease or subrent.

(5) The term shall also include the providing of telephone service, as defined in RCW 82.04.065, to consumers.

(6) The term shall also include the sale of prewritten computer software other than a sale to a person who presents a resale certificate under RCW 82.04.470, regardless of the method of delivery to the end user, but shall not include custom software or the customization of prewritten computer software.

(7) The term shall also include the sale of or charge made for an extended warranty to a consumer. For purposes of this subsection, "extended warranty" means an agreement for a

specified duration to perform the replacement or repair of tangible personal property at no additional charge or a reduced charge for tangible personal property, labor, or both, or to provide indemnification for the replacement or repair of tangible personal property, based on the occurrence of specified events. The term "extended warranty" does not include an agreement, otherwise meeting the definition of extended warranty in this subsection, if no separate charge is made for the agreement and the value of the agreement is included in the sales price of the tangible personal property covered by the agreement. For purposes of this subsection, "sales price" has the same meaning as in RCW 82.08.010.

(8) The term shall not include the sale of or charge made for labor and services rendered in respect to the building, repairing, or improving of any street, place, road, highway, easement, right of way, mass public transportation terminal or parking facility, bridge, tunnel, or trestle which is owned by a municipal corporation or political subdivision of the state or by the United States and which is used or to be used primarily for foot or vehicular traffic including mass transportation vehicles of any kind.

(9) The term shall also not include sales of chemical sprays or washes to persons for the purpose of postharvest treatment of fruit for the prevention of scald, fungus, mold, or decay, nor shall it include sales of feed, seed, seedlings, fertilizer, agents for enhanced pollination including insects such as bees, and spray materials to: (a) Persons who participate in the federal conservation reserve program, the environmental quality incentives program, the wetlands reserve program, and the wildlife habitat incentives program, or their successors administered by the United States department of agriculture; (b) farmers for the purpose of producing for sale any agricultural product; and (c) farmers acting under cooperative habitat development or access contracts with an organization exempt from federal income tax under 26 U.S.C. Sec. 501(c)(3) or the Washington state department of fish and wildlife to produce or improve wildlife habitat on land that the farmer owns or leases.

(10) The term shall not include the sale of or charge made for labor and services rendered in respect to the constructing, repairing, decorating, or improving of new or existing buildings or other structures under, upon, or above real property of or for the United States, any instrumentality thereof, or a county or city housing authority created pursuant to chapter 35.82 RCW, including the installing, or attaching of any article of tangible personal property therein or thereto, whether or not such personal property becomes a part of the realty by virtue of installation. Nor shall the term include the sale of services or charges made for the clearing of land and the moving of earth of or for the United States, any instrumentality thereof, or a county or city housing authority. Nor shall the term include the sale of services or charges made for cleaning up for the United States, or its instrumentalities, radioactive waste and other byproducts of weapons production and nuclear research and development.

(11) The term shall not include the sale of or charge made for labor, services, or tangible personal property pursuant to agreements providing maintenance services for bus, rail, or rail fixed guideway equipment when a regional transit authority is the recipient of the labor, services, or tangible personal property, and a transit agency, as defined in RCW

81.104.015, performs the labor or services. [2007 c 54 § 4. Prior: 2005 c 515 § 2; 2005 c 514 § 101; prior: 2004 c 174 § 3; 2004 c 153 § 407; 2003 c 168 § 104; 2002 c 178 § 1; 2000 2nd sp.s. c 4 § 23; prior: 1998 c 332 § 2; 1998 c 315 § 1; 1998 c 308 § 1; 1998 c 275 § 1; 1997 c 127 § 1; prior: 1996 c 148 § 1; 1996 c 112 § 1; 1995 1st sp.s. c 12 § 2; 1995 c 39 § 2; 1993 sp.s. c 25 § 301; 1988 c 253 § 1; prior: 1987 c 285 § 1; 1987 c 23 § 2; 1986 c 231 § 1; 1983 2nd ex.s. c 3 § 25; 1981 c 144 § 3; 1975 1st ex.s. c 291 § 5; 1975 1st ex.s. c 90 § 1; 1973 1st ex.s. c 145 § 1; 1971 ex.s. c 299 § 3; 1971 ex.s. c 281 § 1; 1970 ex.s. c 8 § 1; prior: 1969 ex.s. c 262 § 30; 1969 ex.s. c 255 § 3; 1967 ex.s. c 149 § 4; 1965 ex.s. c 173 § 1; 1963 c 7 § 1; prior: 1961 ex.s. c 24 § 1; 1961 c 293 § 1; 1961 c 15 § 82.04.050; prior: 1959 ex.s. c 5 § 2; 1957 c 279 § 1; 1955 c 389 § 6; 1953 c 91 § 3; 1951 2nd ex.s. c 28 § 3; 1949 c 228 § 2, part; 1945 c 249 § 1, part; 1943 c 156 § 2, part; 1941 c 178 § 2, part; 1939 c 225 § 2, part; 1937 c 227 § 2, part; 1935 c 180 § 5, part; Rem. Supp. 1949 § 8370-5, part.]

Severability—2007 c 54: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [2007 c 54 § 32.]

Findings—2005 c 515: "The legislature finds that:

(1) Public entities that receive tax dollars must continuously improve the way they operate and deliver service so citizens receive maximum value for their tax dollars; and

(2) An explicit statement clarifying that no sales or use tax shall apply to the entire charge paid by regional transit authorities for bus or rail combined operations and maintenance agreements that are provided to such authorities in support of their provision of urban transportation or transportation services is necessary to improve efficient service." [2005 c 515 § 1.]

Effective date—2005 c 514: See note following RCW 83.100.230.

Part headings not law—Severability—2005 c 514: See notes following RCW 82.12.808.

Effective date—2004 c 174: See note following RCW 82.04.2908.

Retrospective effective date—Effective date—2004 c 153: See note following RCW 82.08.0293.

Effective dates—Part headings not law—2003 c 168: See notes following RCW 82.08.010.

Retrospective application—Effective date—2002 c 178: See notes following RCW 67.28.180.

Findings—Construction—2000 2nd sp.s. c 4 §§ 18-30: See notes following RCW 81.112.300.

Findings—Intent—Effective date—1998 c 332: See notes following RCW 82.04.29001.

Effective dates—1998 c 308: "(1) Sections 1 through 4 of this act take effect July 1, 1998.

(2) Section 5 of this act takes effect July 1, 2003." [1998 c 308 § 6.]

Effective date—1998 c 275: "This act takes effect July 1, 1998." [1998 c 275 § 2.]

Effective date—1997 c 127: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect July 1, 1997." [1997 c 127 § 2.]

Severability—1996 c 148: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1996 c 148 § 7.]

Effective date—1996 c 148: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and shall take effect April 1, 1996." [1996 c 148 § 8.]

Effective date—1996 c 112: "This act shall take effect July 1, 1996." [1996 c 112 § 5.]

Intent—1995 1st sp.s. c 12: "It is the intent of the legislature that massage services be recognized as health care practitioners for the purposes of

business and occupation tax application. To achieve this intent massage services are being removed from the definition of sale at retail and retail sale." [1995 1st sp.s. c 12 § 1.]

Effective date—1995 1st sp.s. c 12: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and shall take effect July 1, 1995." [1995 1st sp.s. c 12 § 5.]

Effective date—1995 c 39: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and shall take effect July 1, 1995." [1995 c 39 § 3.]

Severability—Effective dates—Part headings, captions not law—1993 sp.s. c 25: See notes following RCW 82.04.230.

Construction—Severability—Effective dates—1983 2nd ex.s. c 3: See notes following RCW 82.04.255.

Intent—Severability—Effective date—1981 c 144: See notes following RCW 82.16.010.

Application to preexisting contracts—1975 1st ex.s. c 291; 1975 1st ex.s. c 90: See note following RCW 82.12.010.

Effective dates—1975 1st ex.s. c 291: "This 1975 amendatory act is necessary for the immediate preservation of the public peace, health, and safety, the support of the state government and its existing institutions, and shall take effect immediately: PROVIDED, That sections 8 and 26 through 43 of this amendatory act shall be effective on and after January 1, 1976: PROVIDED FURTHER, That sections 2, 3, and 4, and subsections (1) and (2) of section 24 shall be effective on and after January 1, 1977: AND PROVIDED FURTHER, That subsections (3) through (15) of section 24 shall be effective on and after January 1, 1978." [1975 1st ex.s. c 291 § 46.]

Severability—1975 1st ex.s. c 291: "If any provision of this 1975 amendatory act, or its application to any person or circumstance is held invalid, the remainder of the act, or the application of the provision to other persons or circumstances is not affected." [1975 1st ex.s. c 291 § 45.]

Effective date—1975 1st ex.s. c 90: "This 1975 amendatory act is necessary for the immediate preservation of the public peace, health and safety, the support of the state government and its existing public institutions, and shall take effect July 1, 1975." [1975 1st ex.s. c 90 § 5.]

Effective date—1973 1st ex.s. c 145: "This act is necessary for the immediate preservation of the public peace, health and safety, the support of the state government and its existing public institutions, and shall take effect July 1, 1973." [1973 1st ex.s. c 145 § 2.]

Effective dates—1971 ex.s. c 299: "This 1971 amendatory act is necessary for the immediate preservation of the public peace, health and safety, the support of the state government and its existing public institutions, and shall take effect as follows:

(1) Sections 1 through 12, 15 through 34 and 53 shall take effect July 1, 1971;

(2) Sections 13, 14, and 77 and 78 shall take effect June 1, 1971; and

(3) Sections 35 through 52 and 54 through 76 shall take effect as provided in section 53." [1971 ex.s. c 299 § 79.]

Severability—1971 ex.s. c 299: "If any phrase, clause, subsection or section of this 1971 amendatory act shall be declared unconstitutional or invalid by any court of competent jurisdiction, it shall be conclusively presumed that the legislature would have enacted this 1971 amendatory act without the phrase, clause, subsection or section so held unconstitutional or invalid and the remainder of the act shall not be affected as a result of said part being held unconstitutional or invalid." [1971 ex.s. c 299 § 78.]

Construction—Severability—1969 ex.s. c 255: See notes following RCW 35.58.272.

Effective date—1967 ex.s. c 149: "This act is necessary for the immediate preservation of the public peace, health and safety, the support of the state government and its existing public institutions, and shall take effect July 1, 1967." [1967 ex.s. c 149 § 65.]

Effective date—1965 ex.s. c 173: "This act is necessary for the immediate preservation of the public peace, health and safety, the support of the state government and its existing public institutions, and shall take effect June 1, 1965." [1965 ex.s. c 173 § 33.]

Credit for retail sales or use taxes paid to other jurisdictions with respect to property used: RCW 82.12.035.

"Services rendered in respect to" defined: RCW 82.04.051.

[2007 RCW Supp—page 1042]

82.04.050 "Sale at retail," "retail sale." (Effective July 1, 2008.) (1) "Sale at retail" or "retail sale" means every sale of tangible personal property (including articles produced, fabricated, or imprinted) to all persons irrespective of the nature of their business and including, among others, without limiting the scope hereof, persons who install, repair, clean, alter, improve, construct, or decorate real or personal property of or for consumers other than a sale to a person who presents a resale certificate under RCW 82.04.470 and who:

(a) Purchases for the purpose of resale as tangible personal property in the regular course of business without intervening use by such person, but a purchase for the purpose of resale by a regional transit authority under RCW 81.112.300 is not a sale for resale; or

(b) Installs, repairs, cleans, alters, imprints, improves, constructs, or decorates real or personal property of or for consumers, if such tangible personal property becomes an ingredient or component of such real or personal property without intervening use by such person; or

(c) Purchases for the purpose of consuming the property purchased in producing for sale a new article of tangible personal property or substance, of which such property becomes an ingredient or component or is a chemical used in processing, when the primary purpose of such chemical is to create a chemical reaction directly through contact with an ingredient of a new article being produced for sale; or

(d) Purchases for the purpose of consuming the property purchased in producing ferrosilicon which is subsequently used in producing magnesium for sale, if the primary purpose of such property is to create a chemical reaction directly through contact with an ingredient of ferrosilicon; or

(e) Purchases for the purpose of providing the property to consumers as part of competitive telephone service, as defined in RCW 82.04.065. The term shall include every sale of tangible personal property which is used or consumed or to be used or consumed in the performance of any activity classified as a "sale at retail" or "retail sale" even though such property is resold or utilized as provided in (a), (b), (c), (d), or (e) of this subsection following such use. The term also means every sale of tangible personal property to persons engaged in any business which is taxable under RCW 82.04.280 (2) and (7), 82.04.290, and 82.04.2908; or

(f) Purchases for the purpose of satisfying the person's obligations under an extended warranty as defined in subsection (7) of this section, if such tangible personal property replaces or becomes an ingredient or component of property covered by the extended warranty without intervening use by such person.

(2) The term "sale at retail" or "retail sale" shall include the sale of or charge made for tangible personal property consumed and/or for labor and services rendered in respect to the following:

(a) The installing, repairing, cleaning, altering, imprinting, or improving of tangible personal property of or for consumers, including charges made for the mere use of facilities in respect thereto, but excluding charges made for the use of self-service laundry facilities, and also excluding sales of laundry service to nonprofit health care facilities, and excluding services rendered in respect to live animals, birds and insects;

(b) The constructing, repairing, decorating, or improving of new or existing buildings or other structures under, upon, or above real property of or for consumers, including the installing or attaching of any article of tangible personal property therein or thereto, whether or not such personal property becomes a part of the realty by virtue of installation, and shall also include the sale of services or charges made for the clearing of land and the moving of earth excepting the mere leveling of land used in commercial farming or agriculture;

(c) The constructing, repairing, or improving of any structure upon, above, or under any real property owned by an owner who conveys the property by title, possession, or any other means to the person performing such construction, repair, or improvement for the purpose of performing such construction, repair, or improvement and the property is then reconveyed by title, possession, or any other means to the original owner;

(d) The cleaning, fumigating, razing, or moving of existing buildings or structures, but shall not include the charge made for janitorial services; and for purposes of this section the term "janitorial services" shall mean those cleaning and caretaking services ordinarily performed by commercial janitor service businesses including, but not limited to, wall and window washing, floor cleaning and waxing, and the cleaning in place of rugs, drapes and upholstery. The term "janitorial services" does not include painting, papering, repairing, furnace or septic tank cleaning, snow removal or sandblasting;

(e) Automobile towing and similar automotive transportation services, but not in respect to those required to report and pay taxes under chapter 82.16 RCW;

(f) The furnishing of lodging and all other services by a hotel, rooming house, tourist court, motel, trailer camp, and the granting of any similar license to use real property, as distinguished from the renting or leasing of real property, and it shall be presumed that the occupancy of real property for a continuous period of one month or more constitutes a rental or lease of real property and not a mere license to use or enjoy the same. For the purposes of this subsection, it shall be presumed that the sale of and charge made for the furnishing of lodging for a continuous period of one month or more to a person is a rental or lease of real property and not a mere license to enjoy the same;

(g) Persons taxable under (a), (b), (c), (d), (e), and (f) of this subsection when such sales or charges are for property, labor and services which are used or consumed in whole or in part by such persons in the performance of any activity defined as a "sale at retail" or "retail sale" even though such property, labor and services may be resold after such use or consumption. Nothing contained in this subsection shall be construed to modify subsection (1) of this section and nothing contained in subsection (1) of this section shall be construed to modify this subsection.

(3) The term "sale at retail" or "retail sale" shall include the sale of or charge made for personal, business, or professional services including amounts designated as interest, rents, fees, admission, and other service emoluments however designated, received by persons engaging in the following business activities:

(a) Amusement and recreation services including but not limited to golf, pool, billiards, skating, bowling, ski lifts and tows, day trips for sightseeing purposes, and others, when provided to consumers;

(b) Abstract, title insurance, and escrow services;

(c) Credit bureau services;

(d) Automobile parking and storage garage services;

(e) Landscape maintenance and horticultural services but excluding (i) horticultural services provided to farmers and (ii) pruning, trimming, repairing, removing, and clearing of trees and brush near electric transmission or distribution lines or equipment, if performed by or at the direction of an electric utility;

(f) Service charges associated with tickets to professional sporting events; and

(g) The following personal services: Physical fitness services, tanning salon services, tattoo parlor services, steam bath services, turkish bath services, escort services, and dating services.

(4)(a) The term shall also include:

(i) The renting or leasing of tangible personal property to consumers; and

(ii) Providing tangible personal property along with an operator for a fixed or indeterminate period of time. A consideration of this is that the operator is necessary for the tangible personal property to perform as designed. For the purpose of this subsection (4)(a)(ii), an operator must do more than maintain, inspect, or set up the tangible personal property.

(b) The term shall not include the renting or leasing of tangible personal property where the lease or rental is for the purpose of sublease or subrent.

(5) The term shall also include the providing of "competitive telephone service," "telecommunications service," or "ancillary services," as those terms are defined in RCW 82.04.065, to consumers.

(6) The term shall also include the sale of prewritten computer software other than a sale to a person who presents a resale certificate under RCW 82.04.470, regardless of the method of delivery to the end user, but shall not include custom software or the customization of prewritten computer software.

(7) The term shall also include the sale of or charge made for an extended warranty to a consumer. For purposes of this subsection, "extended warranty" means an agreement for a specified duration to perform the replacement or repair of tangible personal property at no additional charge or a reduced charge for tangible personal property, labor, or both, or to provide indemnification for the replacement or repair of tangible personal property, based on the occurrence of specified events. The term "extended warranty" does not include an agreement, otherwise meeting the definition of extended warranty in this subsection, if no separate charge is made for the agreement and the value of the agreement is included in the sales price of the tangible personal property covered by the agreement. For purposes of this subsection, "sales price" has the same meaning as in RCW 82.08.010.

(8) The term shall not include the sale of or charge made for labor and services rendered in respect to the building, repairing, or improving of any street, place, road, highway, easement, right of way, mass public transportation terminal

or parking facility, bridge, tunnel, or trestle which is owned by a municipal corporation or political subdivision of the state or by the United States and which is used or to be used primarily for foot or vehicular traffic including mass transportation vehicles of any kind.

(9) The term shall also not include sales of chemical sprays or washes to persons for the purpose of postharvest treatment of fruit for the prevention of scald, fungus, mold, or decay, nor shall it include sales of feed, seed, seedlings, fertilizer, agents for enhanced pollination including insects such as bees, and spray materials to: (a) Persons who participate in the federal conservation reserve program, the environmental quality incentives program, the wetlands reserve program, and the wildlife habitat incentives program, or their successors administered by the United States department of agriculture; (b) farmers for the purpose of producing for sale any agricultural product; and (c) farmers acting under cooperative habitat development or access contracts with an organization exempt from federal income tax under 26 U.S.C. Sec. 501(c)(3) or the Washington state department of fish and wildlife to produce or improve wildlife habitat on land that the farmer owns or leases.

(10) The term shall not include the sale of or charge made for labor and services rendered in respect to the constructing, repairing, decorating, or improving of new or existing buildings or other structures under, upon, or above real property of or for the United States, any instrumentality thereof, or a county or city housing authority created pursuant to chapter 35.82 RCW, including the installing, or attaching of any article of tangible personal property therein or thereto, whether or not such personal property becomes a part of the realty by virtue of installation. Nor shall the term include the sale of services or charges made for the clearing of land and the moving of earth of or for the United States, any instrumentality thereof, or a county or city housing authority. Nor shall the term include the sale of services or charges made for cleaning up for the United States, or its instrumentalities, radioactive waste and other byproducts of weapons production and nuclear research and development.

(11) The term shall not include the sale of or charge made for labor, services, or tangible personal property pursuant to agreements providing maintenance services for bus, rail, or rail fixed guideway equipment when a regional transit authority is the recipient of the labor, services, or tangible personal property, and a transit agency, as defined in RCW 81.104.015, performs the labor or services. [2007 c 54 § 4; 2007 c 6 § 1004. Prior: 2005 c 515 § 2; 2005 c 514 § 101; prior: 2004 c 174 § 3; 2004 c 153 § 407; 2003 c 168 § 104; 2002 c 178 § 1; 2000 2nd sp.s. c 4 § 23; prior: 1998 c 332 § 2; 1998 c 315 § 1; 1998 c 308 § 1; 1998 c 275 § 1; 1997 c 127 § 1; prior: 1996 c 148 § 1; 1996 c 112 § 1; 1995 1st sp.s. c 12 § 2; 1995 c 39 § 2; 1993 sp.s. c 25 § 301; 1988 c 253 § 1; prior: 1987 c 285 § 1; 1987 c 23 § 2; 1986 c 231 § 1; 1983 2nd ex.s. c 3 § 25; 1981 c 144 § 3; 1975 1st ex.s. c 291 § 5; 1975 1st ex.s. c 90 § 1; 1973 1st ex.s. c 145 § 1; 1971 ex.s. c 299 § 3; 1971 ex.s. c 281 § 1; 1970 ex.s. c 8 § 1; prior: 1969 ex.s. c 262 § 30; 1969 ex.s. c 255 § 3; 1967 ex.s. c 149 § 4; 1965 ex.s. c 173 § 1; 1963 c 7 § 1; prior: 1961 ex.s. c 24 § 1; 1961 c 293 § 1; 1961 c 15 § 82.04.050; prior: 1959 ex.s. c 5 § 2; 1957 c 279 § 1; 1955 c 389 § 6; 1953 c 91 § 3; 1951 2nd ex.s. c 28 § 3; 1949 c 228 § 2, part; 1945 c 249 § 1, part; 1943

c 156 § 2, part; 1941 c 178 § 2, part; 1939 c 225 § 2, part; 1937 c 227 § 2, part; 1935 c 180 § 5, part; Rem. Supp. 1949 § 8370-5, part.]

Reviser's note: This section was amended by 2007 c 6 § 1004 and by 2007 c 54 § 4, each without reference to the other. Both amendments are incorporated in the publication of this section under RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

Severability—2007 c 54: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [2007 c 54 § 32.]

Part headings not law—Savings—Effective date—Severability—2007 c 6: See notes following RCW 82.32.020.

Findings—Intent—2007 c 6: See note following RCW 82.14.495.

Findings—2005 c 515: "The legislature finds that:

(1) Public entities that receive tax dollars must continuously improve the way they operate and deliver service so citizens receive maximum value for their tax dollars; and

(2) An explicit statement clarifying that no sales or use tax shall apply to the entire charge paid by regional transit authorities for bus or rail combined operations and maintenance agreements that are provided to such authorities in support of their provision of urban transportation or transportation services is necessary to improve efficient service." [2005 c 515 § 1.]

Effective date—2005 c 514: See note following RCW 83.100.230.

Part headings not law—Severability—2005 c 514: See notes following RCW 82.12.808.

Effective date—2004 c 174: See note following RCW 82.04.2908.

Retroactive effective date—Effective date—2004 c 153: See note following RCW 82.08.0293.

Effective dates—Part headings not law—2003 c 168: See notes following RCW 82.08.010.

Retroactive application—Effective date—2002 c 178: See notes following RCW 67.28.180.

Findings—Construction—2000 2nd sp.s. c 4 §§ 18-30: See notes following RCW 81.112.300.

Findings—Intent—Effective date—1998 c 332: See notes following RCW 82.04.29001.

Effective dates—1998 c 308: "(1) Sections 1 through 4 of this act take effect July 1, 1998.

(2) Section 5 of this act takes effect July 1, 2003." [1998 c 308 § 6.]

Effective date—1998 c 275: "This act takes effect July 1, 1998." [1998 c 275 § 2.]

Effective date—1997 c 127: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect July 1, 1997." [1997 c 127 § 2.]

Severability—1996 c 148: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1996 c 148 § 7.]

Effective date—1996 c 148: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and shall take effect April 1, 1996." [1996 c 148 § 8.]

Effective date—1996 c 112: "This act shall take effect July 1, 1996." [1996 c 112 § 5.]

Intent—1995 1st sp.s. c 12: "It is the intent of the legislature that massage services be recognized as health care practitioners for the purposes of business and occupation tax application. To achieve this intent massage services are being removed from the definition of sale at retail and retail sale." [1995 1st sp.s. c 12 § 1.]

Effective date—1995 1st sp.s. c 12: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and shall take effect July 1, 1995." [1995 1st sp.s. c 12 § 5.]

Effective date—1995 c 39: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state gov-

ernment and its existing public institutions, and shall take effect July 1, 1995." [1995 c 39 § 3.]

Severability—Effective dates—Part headings, captions not law—1993 sp.s. c 25: See notes following RCW 82.04.230.

Construction—Severability—Effective dates—1983 2nd ex.s. c 3: See notes following RCW 82.04.255.

Intent—Severability—Effective date—1981 c 144: See notes following RCW 82.16.010.

Application to preexisting contracts—1975 1st ex.s. c 291; 1975 1st ex.s. c 90: See note following RCW 82.12.010.

Effective dates—1975 1st ex.s. c 291: "This 1975 amendatory act is necessary for the immediate preservation of the public peace, health, and safety, the support of the state government and its existing institutions, and shall take effect immediately: PROVIDED, That sections 8 and 26 through 43 of this amendatory act shall be effective on and after January 1, 1976: PROVIDED FURTHER, That sections 2, 3, and 4, and subsections (1) and (2) of section 24 shall be effective on and after January 1, 1977: AND PROVIDED FURTHER, That subsections (3) through (15) of section 24 shall be effective on and after January 1, 1978." [1975 1st ex.s. c 291 § 46.]

Severability—1975 1st ex.s. c 291: "If any provision of this 1975 amendatory act, or its application to any person or circumstance is held invalid, the remainder of the act, or the application of the provision to other persons or circumstances is not affected." [1975 1st ex.s. c 291 § 45.]

Effective date—1975 1st ex.s. c 90: "This 1975 amendatory act is necessary for the immediate preservation of the public peace, health and safety, the support of the state government and its existing public institutions, and shall take effect July 1, 1975." [1975 1st ex.s. c 90 § 5.]

Effective date—1973 1st ex.s. c 145: "This act is necessary for the immediate preservation of the public peace, health and safety, the support of the state government and its existing public institutions, and shall take effect July 1, 1973." [1973 1st ex.s. c 145 § 2.]

Effective dates—1971 ex.s. c 299: "This 1971 amendatory act is necessary for the immediate preservation of the public peace, health and safety, the support of the state government and its existing public institutions, and shall take effect as follows:

- (1) Sections 1 through 12, 15 through 34 and 53 shall take effect July 1, 1971;
- (2) Sections 13, 14, and 77 and 78 shall take effect June 1, 1971; and
- (3) Sections 35 through 52 and 54 through 76 shall take effect as provided in section 53." [1971 ex.s. c 299 § 79.]

Severability—1971 ex.s. c 299: "If any phrase, clause, subsection or section of this 1971 amendatory act shall be declared unconstitutional or invalid by any court of competent jurisdiction, it shall be conclusively presumed that the legislature would have enacted this 1971 amendatory act without the phrase, clause, subsection or section so held unconstitutional or invalid and the remainder of the act shall not be affected as a result of said part being held unconstitutional or invalid." [1971 ex.s. c 299 § 78.]

Construction—Severability—1969 ex.s. c 255: See notes following RCW 35.58.272.

Effective date—1967 ex.s. c 149: "This act is necessary for the immediate preservation of the public peace, health and safety, the support of the state government and its existing public institutions, and shall take effect July 1, 1967." [1967 ex.s. c 149 § 65.]

Effective date—1965 ex.s. c 173: "This act is necessary for the immediate preservation of the public peace, health and safety, the support of the state government and its existing public institutions, and shall take effect June 1, 1965." [1965 ex.s. c 173 § 33.]

Credit for retail sales or use taxes paid to other jurisdictions with respect to property used: RCW 82.12.035.

"Services rendered in respect to" defined: RCW 82.04.051.

82.04.060 "Sale at wholesale," "wholesale sale." (Effective July 1, 2008.) "Sale at wholesale" or "wholesale sale" means: (1) Any sale of tangible personal property, any sale of services defined as a retail sale in RCW 82.04.050(2)(a), any sale of amusement or recreation services as defined in RCW 82.04.050(3)(a), any sale of canned software, any sale of an extended warranty as defined in RCW 82.04.050(7), or any sale of competitive telephone ser-

vice, ancillary services, or telecommunications service as those terms are defined in RCW 82.04.065, which is not a sale at retail; and (2) any charge made for labor and services rendered for persons who are not consumers, in respect to real or personal property, if such charge is expressly defined as a retail sale by RCW 82.04.050 when rendered to or for consumers: PROVIDED, That the term "real or personal property" as used in this subsection shall not include any natural products named in RCW 82.04.100. [2007 c 6 § 1007; 2005 c 514 § 102; 2002 c 367 § 1; 1998 c 332 § 5; 1996 c 148 § 3; 1983 2nd ex.s. c 3 § 26; 1961 c 15 § 82.04.060. Prior: 1955 ex.s. c 10 § 4; 1955 c 389 § 7; prior: 1949 c 228 § 2, part; 1945 c 249 § 1, part; 1943 c 156 § 2, part; 1941 c 178 § 2, part; 1939 c 225 § 2, part; 1937 c 227 § 2, part; 1935 c 180 § 5, part; Rem. Supp. 1949 § 8370-5, part.]

Part headings not law—Savings—Effective date—Severability—2007 c 6: See notes following RCW 82.32.020.

Findings—Intent—2007 c 6: See note following RCW 82.14.495.

Effective date—2005 c 514: See note following RCW 83.100.230.

Part headings not law—Severability—2005 c 514: See notes following RCW 82.12.808.

Severability—2002 c 367: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [2002 c 367 § 7.]

Effective date—2002 c 367: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect June 1, 2002." [2002 c 367 § 8.]

Findings—Intent—Effective date—1998 c 332: See notes following RCW 82.04.29001.

Severability—Effective date—1996 c 148: See notes following RCW 82.04.050.

Construction—Severability—Effective dates—1983 2nd ex.s. c 3: See notes following RCW 82.04.255.

82.04.065 Telephone, telecommunications, and ancillary services—Definitions. (Effective July 1, 2008; continuity, see note following RCW 82.04.530.) (1) "Competitive telephone service" means the providing by any person of telecommunications equipment or apparatus, or service related to that equipment or apparatus such as repair or maintenance service, if the equipment or apparatus is of a type which can be provided by persons that are not subject to regulation as telephone companies under Title 80 RCW and for which a separate charge is made.

(2) "Ancillary services" means services that are associated with or incidental to the provision of "telecommunications services," including but not limited to "detailed telecommunications billing," "directory assistance," "vertical service," and "voice mail services."

(3) "Conference-bridging service" means an ancillary service that links two or more participants of an audio or video conference call and may include the provision of a telephone number. "Conference-bridging service" does not include the telecommunications services used to reach the conference bridge.

(4) "Detailed telecommunications billing service" means an ancillary service of separately stating information pertaining to individual calls on a customer's billing statement.

(5) "Directory assistance" means an ancillary service of providing telephone number information, and/or address information.

(6) "Vertical service" means an ancillary service that is offered in connection with one or more telecommunications services, that offers advanced calling features that allow customers to identify callers and to manage multiple calls and call connections, including conference-bridging services.

(7) "Voice mail service" means an ancillary service that enables the customer to store, send, or receive recorded messages. "Voice mail service" does not include any vertical services that the customer may be required to have in order to use the voice mail service.

(8) "Telecommunications service" means the electronic transmission, conveyance, or routing of voice, data, audio, video, or any other information or signals to a point, or between or among points. "Telecommunications service" includes such transmission, conveyance, or routing in which computer processing applications are used to act on the form, code, or protocol of the content for purposes of transmission, conveyance, or routing without regard to whether such service is referred to as voice over internet protocol services or is classified by the federal communications commission as enhanced or value added. "Telecommunications service" does not include:

(a) Data processing and information services that allow data to be generated, acquired, stored, processed, or retrieved and delivered by an electronic transmission to a purchaser where such purchaser's primary purpose for the underlying transaction is the processed data or information;

(b) Installation or maintenance of wiring or equipment on a customer's premises;

(c) Tangible personal property;

(d) Advertising, including but not limited to directory advertising;

(e) Billing and collection services provided to third parties;

(f) Internet access service;

(g) Radio and television audio and video programming services, regardless of the medium, including the furnishing of transmission, conveyance, and routing of such services by the programming service provider. Radio and television audio and video programming services include but are not limited to cable service as defined in 47 U.S.C. Sec. 522(6) and audio and video programming services delivered by commercial mobile radio service providers, as defined in section 20.3, Title 47 C.F.R.;

(h) Ancillary services; or

(i) Digital products delivered electronically, including but not limited to software, music, video, reading materials, or ring tones.

(9) "800 service" means a telecommunications service that allows a caller to dial a toll-free number without incurring a charge for the call. The service is typically marketed under the name "800," "855," "866," "877," and "888" toll-free calling, and any subsequent numbers designated by the federal communications commission.

(10) "900 service" means an inbound toll "telecommunications service" purchased by a subscriber that allows the subscriber's customers to call in to the subscriber's pre-recorded announcement or live service. "900 service" does not

include the charge for: Collection services provided by the seller of the telecommunications services to the subscriber, or services or products sold by the subscriber to the subscriber's customer. The service is typically marketed under the name "900" service, and any subsequent numbers designated by the federal communications commission.

(11) "Fixed wireless service" means a telecommunications service that provides radio communication between fixed points.

(12) "Mobile wireless service" means a telecommunications service that is transmitted, conveyed, or routed regardless of the technology used, whereby the origination and/or termination points of the transmission, conveyance, or routing are not fixed, including, by way of example only, telecommunications services that are provided by a commercial mobile radio service provider.

(13) "Paging service" means a telecommunications service that provides transmission of coded radio signals for the purpose of activating specific pagers; these transmissions may include messages and/or sounds.

(14) "Prepaid calling service" means the right to access exclusively telecommunications services, which must be paid for in advance and which enable the origination of calls using an access number or authorization code, whether manually or electronically dialed, and that is sold in predetermined units or dollars of which the number declines with use in a known amount.

(15) "Prepaid wireless calling service" means a telecommunications service that provides the right to use mobile wireless service as well as other nontelecommunications services including the download of digital products delivered electronically, content, and ancillary services, which must be paid for in advance and that is sold in predetermined units or dollars of which the number declines with use in a known amount.

(16) "Private communications service" means a telecommunications service that entitles the customer to exclusive or priority use of a communications channel or group of channels between or among termination points, regardless of the manner in which the channel or channels are connected, and includes switching capacity, extension lines, stations, and any other associated services that are provided in connection with the use of the channel or channels.

(17) "Value-added nonvoice data service" means a service that otherwise meets the definition of telecommunications services in which computer processing applications are used to act on the form, content, code, or protocol of the information or data primarily for a purpose other than transmission, conveyance, or routing.

(18) "Charges for mobile telecommunications services" means any charge for, or associated with, the provision of commercial mobile radio service, as defined in section 20.3, Title 47 C.F.R. as in effect on June 1, 1999, or any charge for, or associated with, a service provided as an adjunct to a commercial mobile radio service, regardless of whether individual transmissions originate or terminate within the licensed service area of the mobile telecommunications service provider.

(19) "Customer" means: (a) The person or entity that contracts with the home service provider for mobile telecommunications services; or (b) the end user of the mobile tele-

communications service, if the end user of mobile telecommunications services is not the contracting party, but this subsection (19)(b) applies only for the purpose of determining the place of primary use. The term does not include a reseller of mobile telecommunications service, or a serving carrier under an arrangement to serve the customer outside the home service provider's licensed service area.

(20) "Designated data base provider" means a person representing all the political subdivisions of the state that is:

(a) Responsible for providing an electronic data base prescribed in 4 U.S.C. Sec. 119(a) if the state has not provided an electronic data base; and

(b) Approved by municipal and county associations or leagues of the state whose responsibility it would otherwise be to provide a data base prescribed by 4 U.S.C. Secs. 116 through 126.

(21) "Enhanced zip code" means a United States postal zip code of nine or more digits.

(22) "Home service provider" means the facilities-based carrier or reseller with whom the customer contracts for the provision of mobile telecommunications services.

(23) "Licensed service area" means the geographic area in which the home service provider is authorized by law or contract to provide commercial mobile radio service to the customer.

(24) "Mobile telecommunications service" means commercial mobile radio service, as defined in section 20.3, Title 47 C.F.R. as in effect on June 1, 1999.

(25) "Mobile telecommunications service provider" means a home service provider or a serving carrier.

(26) "Place of primary use" means the street address representative of where the customer's use of the mobile telecommunications service primarily occurs, which must be:

(a) The residential street address or the primary business street address of the customer; and

(b) Within the licensed service area of the home service provider.

(27) "Prepaid telephone calling service" means the right to purchase exclusively telecommunications services that must be paid for in advance, that enables the origination of calls using an access number, authorization code, or both, whether manually or electronically dialed, if the remaining amount of units of service that have been prepaid is known by the provider of the prepaid service on a continuous basis.

(28) "Reseller" means a provider who purchases telecommunications services from another telecommunications service provider and then resells, uses as a component part of, or integrates the purchased services into a mobile telecommunications service. "Reseller" does not include a serving carrier with whom a home service provider arranges for the services to its customers outside the home service provider's licensed service area.

(29) "Serving carrier" means a facilities-based carrier providing mobile telecommunications service to a customer outside a home service provider's or reseller's licensed service area.

(30) "Taxing jurisdiction" means any of the several states, the District of Columbia, or any territory or possession of the United States, any municipality, city, county, township, parish, transportation district, or assessment jurisdiction, or other political subdivision within the territorial limits

of the United States with the authority to impose a tax, charge, or fee. [2007 c 6 § 1003; 2007 c 6 § 1002; 2002 c 67 § 2; 1997 c 304 § 5; 1983 2nd ex.s. c 3 § 24.]

Part headings not law—Savings—Effective date—Severability—2007 c 6: See notes following RCW 82.32.020.

Findings—Intent—2007 c 6: See note following RCW 82.14.495.

***Contingent effective date—2007 c 6 §§ 1003, 1006, 1014, and 1018:** "Sections 1003, 1006, 1014, and 1018 of this act take effect the later of: The date chapter 67, Laws of 2002, becomes null and void; or July 1, 2008." [2007 c 6 § 1707.]

***Reviser's note:** 2002 C 67 § 18 was repealed by 2007 c 54 § 2 without cognizance of its amendment by 2007 c 6 § 1701. That section has been decodified for publication purposes under RCW 1.12.025.

Finding—Contingency—Court judgment—Effective date—2002 c 67: See note and Reviser's note following RCW 82.04.530.

Findings—Severability—Effective date—1997 c 304: See notes following RCW 35.21.717.

Construction—Severability—Effective dates—1983 2nd ex.s. c 3: See notes following RCW 82.04.255.

License fees or taxes on telephone business by cities: RCW 35.21.712 through 35.21.715.

Sales tax exemption for certain network telephone service: RCW 82.08.0289.

82.04.190 "Consumer." (Effective July 1, 2008.)

"Consumer" means the following:

(1) Any person who purchases, acquires, owns, holds, or uses any article of tangible personal property irrespective of the nature of the person's business and including, among others, without limiting the scope hereof, persons who install, repair, clean, alter, improve, construct, or decorate real or personal property of or for consumers other than for the purpose (a) of resale as tangible personal property in the regular course of business or (b) of incorporating such property as an ingredient or component of real or personal property when installing, repairing, cleaning, altering, imprinting, improving, constructing, or decorating such real or personal property of or for consumers or (c) of consuming such property in producing for sale a new article of tangible personal property or a new substance, of which such property becomes an ingredient or component or as a chemical used in processing, when the primary purpose of such chemical is to create a chemical reaction directly through contact with an ingredient of a new article being produced for sale or (d) of consuming the property purchased in producing ferrosilicon which is subsequently used in producing magnesium for sale, if the primary purpose of such property is to create a chemical reaction directly through contact with an ingredient of ferrosilicon or (e) of satisfying the person's obligations under an extended warranty as defined in RCW 82.04.050(7), if such tangible personal property replaces or becomes an ingredient or component of property covered by the extended warranty without intervening use by such person;

(2)(a) Any person engaged in any business activity taxable under RCW 82.04.290 or 82.04.2908; (b) any person who purchases, acquires, or uses any competitive telephone service, ancillary services, or telecommunications service as those terms are defined in RCW 82.04.065, other than for resale in the regular course of business; (c) any person who purchases, acquires, or uses any service defined in RCW 82.04.050(2)(a), other than for resale in the regular course of business or for the purpose of satisfying the person's obliga-

tions under an extended warranty as defined in RCW 82.04.050(7); (d) any person who purchases, acquires, or uses any amusement and recreation service defined in RCW 82.04.050(3)(a), other than for resale in the regular course of business; (e) any person who is an end user of software; and (f) any person who purchases or acquires an extended warranty as defined in RCW 82.04.050(7) other than for resale in the regular course of business;

(3) Any person engaged in the business of contracting for the building, repairing or improving of any street, place, road, highway, easement, right of way, mass public transportation terminal or parking facility, bridge, tunnel, or trestle which is owned by a municipal corporation or political subdivision of the state of Washington or by the United States and which is used or to be used primarily for foot or vehicular traffic including mass transportation vehicles of any kind as defined in RCW 82.04.280, in respect to tangible personal property when such person incorporates such property as an ingredient or component of such publicly owned street, place, road, highway, easement, right of way, mass public transportation terminal or parking facility, bridge, tunnel, or trestle by installing, placing or spreading the property in or upon the right of way of such street, place, road, highway, easement, bridge, tunnel, or trestle or in or upon the site of such mass public transportation terminal or parking facility;

(4) Any person who is an owner, lessee or has the right of possession to or an easement in real property which is being constructed, repaired, decorated, improved, or otherwise altered by a person engaged in business, excluding only (a) municipal corporations or political subdivisions of the state in respect to labor and services rendered to their real property which is used or held for public road purposes, and (b) the United States, instrumentalities thereof, and county and city housing authorities created pursuant to chapter 35.82 RCW in respect to labor and services rendered to their real property. Nothing contained in this or any other subsection of this definition shall be construed to modify any other definition of "consumer";

(5) Any person who is an owner, lessee, or has the right of possession to personal property which is being constructed, repaired, improved, cleaned, imprinted, or otherwise altered by a person engaged in business;

(6) Any person engaged in the business of constructing, repairing, decorating, or improving new or existing buildings or other structures under, upon, or above real property of or for the United States, any instrumentality thereof, or a county or city housing authority created pursuant to chapter 35.82 RCW, including the installing or attaching of any article of tangible personal property therein or thereto, whether or not such personal property becomes a part of the realty by virtue of installation; also, any person engaged in the business of clearing land and moving earth of or for the United States, any instrumentality thereof, or a county or city housing authority created pursuant to chapter 35.82 RCW. Any such person shall be a consumer within the meaning of this subsection in respect to tangible personal property incorporated into, installed in, or attached to such building or other structure by such person, except that consumer does not include any person engaged in the business of constructing, repairing, decorating, or improving new or existing buildings or other structures under, upon, or above real property of or for the

United States, or any instrumentality thereof, if the investment project would qualify for sales and use tax deferral under chapter 82.63 RCW if undertaken by a private entity;

(7) Any person who is a lessor of machinery and equipment, the rental of which is exempt from the tax imposed by RCW 82.08.020 under RCW 82.08.02565, with respect to the sale of or charge made for tangible personal property consumed in respect to repairing the machinery and equipment, if the tangible personal property has a useful life of less than one year. Nothing contained in this or any other subsection of this section shall be construed to modify any other definition of "consumer";

(8) Any person engaged in the business of cleaning up for the United States, or its instrumentalities, radioactive waste and other byproducts of weapons production and nuclear research and development; and

(9) Any person who is an owner, lessee, or has the right of possession of tangible personal property that, under the terms of an extended warranty as defined in RCW 82.04.050(7), has been repaired or is replacement property, but only with respect to the sale of or charge made for the repairing of the tangible personal property or the replacement property. [2007 c 6 § 1008; 2005 c 514 § 103. Prior: 2004 c 174 § 4; 2004 c 2 § 8; 2002 c 367 § 2; prior: 1998 c 332 § 6; 1998 c 308 § 2; prior: 1996 c 173 § 2; 1996 c 148 § 4; 1996 c 112 § 2; 1995 1st sp.s. c 3 § 4; 1986 c 231 § 2; 1985 c 134 § 1; 1983 2nd ex.s. c 3 § 27; 1975 1st ex.s. c 90 § 2; 1971 ex.s. c 299 § 4; 1969 ex.s. c 255 § 4; 1967 ex.s. c 149 § 6; 1965 ex.s. c 173 § 4; 1961 c 15 § 82.04.190; prior: 1959 ex.s. c 3 § 3; 1957 c 279 § 2; 1955 c 389 § 20; prior: 1949 c 228 § 2, part; 1945 c 249 § 1, part; 1943 c 156 § 2, part; 1941 c 178 § 2, part; 1939 c 225 § 2, part; 1937 c 227 § 2, part; 1935 c 180 § 5, part; Rem. Supp. 1949 § 8370-5, part.]

Part headings not law—Savings—Effective date—Severability—2007 c 6: See notes following RCW 82.32.020.

Findings—Intent—2007 c 6: See note following RCW 82.14.495.

Effective date—2005 c 514: See note following RCW 83.100.230.

Part headings not law—Severability—2005 c 514: See notes following RCW 82.12.808.

Effective date—2004 c 174: See note following RCW 82.04.2908.

Severability—Effective date—2002 c 367: See notes following RCW 82.04.060.

Findings—Intent—Effective date—1998 c 332: See notes following RCW 82.04.29001.

Effective dates—1998 c 308: See note following RCW 82.04.050.

Findings—Intent—1996 c 173: See note following RCW 82.08.02565.

Severability—Effective date—1996 c 148: See notes following RCW 82.04.050.

Effective date—1996 c 112: See note following RCW 82.04.050.

Findings—Effective date—1995 1st sp.s. c 3: See notes following RCW 82.08.02565.

Construction—Severability—Effective dates—1983 2nd ex.s. c 3: See notes following RCW 82.04.255.

Application to preexisting contracts—1975 1st ex.s. c 90: See note following RCW 82.12.010.

Effective date—1975 1st ex.s. c 90: See note following RCW 82.04.050.

Effective dates—Severability—1971 ex.s. c 299: See notes following RCW 82.04.050.

Construction—Severability—1969 ex.s. c 255: See notes following RCW 35.58.272.

82.04.2404 Manufacturers—Processors for hire—Semiconductor materials.

Effective date—2007 c 54 § 22; 2006 c 84 §§ 2-8: "(1)(a) Sections 2 through 8, chapter 84, Laws of 2006 and section 22, chapter 54, Laws of 2007 are contingent upon the siting, expansion, or renovation, and commercial operation of a significant semiconductor materials fabrication facility or facilities in the state of Washington.

(b) For the purposes of this section:

(i) "Commercial operation" means the equipment and process qualifications in the new, expanded, or renovated building are completed and production for sale has begun.

(ii) "Semiconductor materials fabrication" means the manufacturing of silicon crystals, silicon ingots that are at least three hundred millimeters in diameter, raw polished semiconductor wafers that are at least three hundred millimeters in diameter, and compound semiconductor wafers that are at least three hundred millimeters in diameter.

(iii) "Significant" means that the combined investment or investments by a single person, occurring at any time before December 1, 2006, of new buildings, expansion or renovation of existing buildings, tenant improvements to buildings, and machinery and equipment in the buildings, at the commencement of commercial production, is at least three hundred fifty million dollars based on actual expenditures by the person.

(2) Except for section 1 of this act and this section, this act takes effect the first day of the month immediately following the department's determination that the contingency in subsection (1) of this section has occurred. The department shall make its determination regarding the contingency in subsection (1) of this section based on information provided to the department by affected taxpayers or representatives of affected taxpayers.

(3) The department of revenue shall provide notice of the effective date of sections 2 through 8, chapter 84, Laws of 2006 [December 1, 2006] to affected taxpayers, the legislature, the office of the code reviser, and others as deemed appropriate by the department." [2007 c 54 § 29; 2006 c 84 § 9.]

82.04.250 Tax on retailers. (Effective July 1, 2011.)

(1) Upon every person engaging within this state in the business of making sales at retail, except persons taxable as retailers under other provisions of this chapter, as to such persons, the amount of tax with respect to such business shall be equal to the gross proceeds of sales of the business, multiplied by the rate of 0.471 percent.

(2) Upon every person engaging within this state in the business of making sales at retail that are exempt from the tax imposed under chapter 82.08 RCW by reason of RCW 82.08.0261, 82.08.0262, or 82.08.0263, except persons taxable under RCW 82.04.260(11), as to such persons, the amount of tax with respect to such business shall be equal to the gross proceeds of sales of the business, multiplied by the rate of 0.484 percent. [2007 c 54 § 5; 2003 2nd sp.s. c 1 § 2; (2003 1st sp.s. c 2 § 1 expired July 1, 2006). Prior: 1998 c 343 § 5; 1998 c 312 § 4; 1993 sp.s. c 25 § 103; 1981 c 172 § 2; 1971 ex.s. c 281 § 4; 1971 ex.s. c 186 § 2; 1969 ex.s. c 262 § 35; 1967 ex.s. c 149 § 9; 1961 c 15 § 82.04.250; prior: 1955 c 389 § 45; prior: 1950 ex.s. c 5 § 1, part; 1949 c 228 § 1, part; 1943 c 156 § 1, part; 1941 c 178 § 1, part; 1939 c 225 § 1, part; 1937 c 227 § 1, part; 1935 c 180 § 4, part; Rem. Supp. 1949 § 8370-4, part.]

Effective date—2007 c 54 § 5: "Section 5 of this act takes effect July 1, 2011." [2007 c 54 § 30.]

Severability—2007 c 54: See note following RCW 82.04.050.

Contingent effective date—2003 2nd sp.s. c 1: See RCW 82.32.550.

Finding—2003 2nd sp.s. c 1: See note following RCW 82.04.4461.

Expiration date—2003 1st sp.s. c 2: "This act expires July 1, 2006." [2003 1st sp.s. c 2 § 3.]

Effective date—2003 1st sp.s. c 2: "This act takes effect August 1, 2003." [2003 1st sp.s. c 2 § 4.]

Effective date—1998 c 343: See note following RCW 82.04.272.

Effective date—Savings—1998 c 312: See notes following RCW 82.04.332.

Severability—Effective dates—Part headings, captions not law—1993 sp.s. c 25: See notes following RCW 82.04.230.

Effective dates—1981 c 172: See note following RCW 82.04.240.

Effective date—1971 ex.s. c 186: See note following RCW 82.04.110.

Reporting requirements: RCW 82.32.640.

82.04.260 Tax on manufacturers and processors of various foods and by-products—Research and development organizations—Travel agents—Certain international activities—Stevedoring and associated activities—Low-level waste disposers—Insurance agents, brokers, and solicitors—Hospitals—Commercial airplane activities—Timber product activities—Canned salmon processors. (1) Upon every person engaging within this state in the business of manufacturing:

(a) Wheat into flour, barley into pearl barley, soybeans into soybean oil, canola into canola oil, canola meal, or canola byproducts, or sunflower seeds into sunflower oil; as to such persons the amount of tax with respect to such business shall be equal to the value of the flour, pearl barley, oil, canola meal, or canola byproduct manufactured, multiplied by the rate of 0.138 percent;

(b) Beginning July 1, 2012, seafood products that remain in a raw, raw frozen, or raw salted state at the completion of the manufacturing by that person; or selling manufactured seafood products that remain in a raw, raw frozen, or raw salted state at the completion of the manufacturing, to purchasers who transport in the ordinary course of business the goods out of this state; as to such persons the amount of tax with respect to such business shall be equal to the value of the products manufactured or the gross proceeds derived from such sales, multiplied by the rate of 0.138 percent. Sellers must keep and preserve records for the period required by RCW 82.32.070 establishing that the goods were transported by the purchaser in the ordinary course of business out of this state;

(c) Beginning July 1, 2012, dairy products that as of September 20, 2001, are identified in 21 C.F.R., chapter 1, parts 131, 133, and 135, including byproducts from the manufacturing of the dairy products such as whey and casein; or selling the same to purchasers who transport in the ordinary course of business the goods out of state; as to such persons the tax imposed shall be equal to the value of the products manufactured or the gross proceeds derived from such sales multiplied by the rate of 0.138 percent. Sellers must keep and preserve records for the period required by RCW 82.32.070 establishing that the goods were transported by the purchaser in the ordinary course of business out of this state;

(d) Beginning July 1, 2012, fruits or vegetables by canning, preserving, freezing, processing, or dehydrating fresh fruits or vegetables, or selling at wholesale fruits or vegetables manufactured by the seller by canning, preserving, freezing, processing, or dehydrating fresh fruits or vegetables and sold to purchasers who transport in the ordinary course of business the goods out of this state; as to such persons the amount of tax with respect to such business shall be equal to the value of the products manufactured or the gross proceeds derived from such sales multiplied by the rate of 0.138 percent. Sellers must keep and preserve records for the period

required by RCW 82.32.070 establishing that the goods were transported by the purchaser in the ordinary course of business out of this state;

(e) Until July 1, 2009, alcohol fuel, biodiesel fuel, or biodiesel feedstock, as those terms are defined in RCW 82.29A.135; as to such persons the amount of tax with respect to the business shall be equal to the value of alcohol fuel, biodiesel fuel, or biodiesel feedstock manufactured, multiplied by the rate of 0.138 percent; and

(f) Alcohol fuel or wood biomass fuel, as those terms are defined in RCW 82.29A.135; as to such persons the amount of tax with respect to the business shall be equal to the value of alcohol fuel or wood biomass fuel manufactured, multiplied by the rate of 0.138 percent.

(2) Upon every person engaging within this state in the business of splitting or processing dried peas; as to such persons the amount of tax with respect to such business shall be equal to the value of the peas split or processed, multiplied by the rate of 0.138 percent.

(3) Upon every nonprofit corporation and nonprofit association engaging within this state in research and development, as to such corporations and associations, the amount of tax with respect to such activities shall be equal to the gross income derived from such activities multiplied by the rate of 0.484 percent.

(4) Upon every person engaging within this state in the business of slaughtering, breaking and/or processing perishable meat products and/or selling the same at wholesale only and not at retail; as to such persons the tax imposed shall be equal to the gross proceeds derived from such sales multiplied by the rate of 0.138 percent.

(5) Upon every person engaging within this state in the business of acting as a travel agent or tour operator; as to such persons the amount of the tax with respect to such activities shall be equal to the gross income derived from such activities multiplied by the rate of 0.275 percent.

(6) Upon every person engaging within this state in business as an international steamship agent, international customs house broker, international freight forwarder, vessel and/or cargo charter broker in foreign commerce, and/or international air cargo agent; as to such persons the amount of the tax with respect to only international activities shall be equal to the gross income derived from such activities multiplied by the rate of 0.275 percent.

(7) Upon every person engaging within this state in the business of stevedoring and associated activities pertinent to the movement of goods and commodities in waterborne interstate or foreign commerce; as to such persons the amount of tax with respect to such business shall be equal to the gross proceeds derived from such activities multiplied by the rate of 0.275 percent. Persons subject to taxation under this subsection shall be exempt from payment of taxes imposed by chapter 82.16 RCW for that portion of their business subject to taxation under this subsection. Stevedoring and associated activities pertinent to the conduct of goods and commodities in waterborne interstate or foreign commerce are defined as all activities of a labor, service or transportation nature whereby cargo may be loaded or unloaded to or from vessels or barges, passing over, onto or under a wharf, pier, or similar structure; cargo may be moved to a warehouse or similar holding or storage yard or area to await further movement in

import or export or may move to a consolidation freight station and be stuffed, unstuffed, containerized, separated or otherwise segregated or aggregated for delivery or loaded on any mode of transportation for delivery to its consignee. Specific activities included in this definition are: Wharfage, handling, loading, unloading, moving of cargo to a convenient place of delivery to the consignee or a convenient place for further movement to export mode; documentation services in connection with the receipt, delivery, checking, care, custody and control of cargo required in the transfer of cargo; imported automobile handling prior to delivery to consignee; terminal stevedoring and incidental vessel services, including but not limited to plugging and unplugging refrigerator service to containers, trailers, and other refrigerated cargo receptacles, and securing ship hatch covers.

(8) Upon every person engaging within this state in the business of disposing of low-level waste, as defined in RCW 43.145.010; as to such persons the amount of the tax with respect to such business shall be equal to the gross income of the business, excluding any fees imposed under chapter 43.200 RCW, multiplied by the rate of 3.3 percent.

If the gross income of the taxpayer is attributable to activities both within and without this state, the gross income attributable to this state shall be determined in accordance with the methods of apportionment required under RCW 82.04.460.

(9) Upon every person engaging within this state as an insurance agent, insurance broker, or insurance solicitor licensed under chapter 48.17 RCW; as to such persons, the amount of the tax with respect to such licensed activities shall be equal to the gross income of such business multiplied by the rate of 0.484 percent.

(10) Upon every person engaging within this state in business as a hospital, as defined in chapter 70.41 RCW, that is operated as a nonprofit corporation or by the state or any of its political subdivisions, as to such persons, the amount of tax with respect to such activities shall be equal to the gross income of the business multiplied by the rate of 0.75 percent through June 30, 1995, and 1.5 percent thereafter. The moneys collected under this subsection shall be deposited in the health services account created under RCW 43.72.900.

(11)(a) Beginning October 1, 2005, upon every person engaging within this state in the business of manufacturing commercial airplanes, or components of such airplanes, as to such persons the amount of tax with respect to such business shall, in the case of manufacturers, be equal to the value of the product manufactured, or in the case of processors for hire, be equal to the gross income of the business, multiplied by the rate of:

(i) 0.4235 percent from October 1, 2005, through the later of June 30, 2007, or the day preceding the date final assembly of a superefficient airplane begins in Washington state, as determined under RCW 82.32.550; and

(ii) 0.2904 percent beginning on the later of July 1, 2007, or the date final assembly of a superefficient airplane begins in Washington state, as determined under RCW 82.32.550.

(b) Beginning October 1, 2005, upon every person engaging within this state in the business of making sales, at retail or wholesale, of commercial airplanes, or components of such airplanes, manufactured by that person, as to such persons the amount of tax with respect to such business shall

be equal to the gross proceeds of sales of the airplanes or components multiplied by the rate of:

(i) 0.4235 percent from October 1, 2005, through the later of June 30, 2007, or the day preceding the date final assembly of a superefficient airplane begins in Washington state, as determined under RCW 82.32.550; and

(ii) 0.2904 percent beginning on the later of July 1, 2007, or the date final assembly of a superefficient airplane begins in Washington state, as determined under RCW 82.32.550.

(c) For the purposes of this subsection (11), "commercial airplane," "component," and "final assembly of a superefficient airplane" have the meanings given in RCW 82.32.550.

(d) In addition to all other requirements under this title, a person eligible for the tax rate under this subsection (11) must report as required under RCW 82.32.545.

(e) This subsection (11) does not apply after the earlier of: July 1, 2024; or December 31, 2007, if assembly of a superefficient airplane does not begin by December 31, 2007, as determined under RCW 82.32.550.

(12)(a) Until July 1, 2024, upon every person engaging within this state in the business of extracting timber or extracting for hire timber; as to such persons the amount of tax with respect to the business shall, in the case of extractors, be equal to the value of products, including byproducts, extracted, or in the case of extractors for hire, be equal to the gross income of the business, multiplied by the rate of 0.4235 percent from July 1, 2006, through June 30, 2007, and 0.2904 percent from July 1, 2007, through June 30, 2024.

(b) Until July 1, 2024, upon every person engaging within this state in the business of manufacturing or processing for hire: (i) Timber into timber products or wood products; or (ii) timber products into other timber products or wood products; as to such persons the amount of the tax with respect to the business shall, in the case of manufacturers, be equal to the value of products, including byproducts, manufactured, or in the case of processors for hire, be equal to the gross income of the business, multiplied by the rate of 0.4235 percent from July 1, 2006, through June 30, 2007, and 0.2904 percent from July 1, 2007, through June 30, 2024.

(c) Until July 1, 2024, upon every person engaging within this state in the business of selling at wholesale: (i) Timber extracted by that person; (ii) timber products manufactured by that person from timber or other timber products; or (iii) wood products manufactured by that person from timber or timber products; as to such persons the amount of the tax with respect to the business shall be equal to the gross proceeds of sales of the timber, timber products, or wood products multiplied by the rate of 0.4235 percent from July 1, 2006, through June 30, 2007, and 0.2904 percent from July 1, 2007, through June 30, 2024.

(d) Until July 1, 2024, upon every person engaging within this state in the business of selling standing timber; as to such persons the amount of the tax with respect to the business shall be equal to the gross income of the business multiplied by the rate of 0.2904 percent. For purposes of this subsection (12)(d), "selling standing timber" means the sale of timber apart from the land, where the buyer is required to sever the timber within thirty months from the date of the original contract, regardless of the method of payment for the timber and whether title to the timber transfers before, upon, or after severance.

(e) For purposes of this subsection, the following definitions apply:

(i) "Paper and paper products" means products made of interwoven cellulosic fibers held together largely by hydrogen bonding. "Paper and paper products" includes newsprint; office, printing, fine, and pressure-sensitive papers; paper napkins, towels, and toilet tissue; kraft bag, construction, and other kraft industrial papers; paperboard, liquid packaging containers, containerboard, corrugated, and solid-fiber containers including linerboard and corrugated medium; and related types of cellulosic products containing primarily, by weight or volume, cellulosic materials. "Paper and paper products" does not include books, newspapers, magazines, periodicals, and other printed publications, advertising materials, calendars, and similar types of printed materials.

(ii) "Timber" means forest trees, standing or down, on privately or publicly owned land. "Timber" does not include Christmas trees that are cultivated by agricultural methods or short-rotation hardwoods as defined in RCW 84.33.035.

(iii) "Timber products" means logs, wood chips, sawdust, wood waste, and similar products obtained wholly from the processing of timber, short-rotation hardwoods as defined in RCW 84.33.035, or both; and pulp, including market pulp and pulp derived from recovered paper or paper products.

(iv) "Wood products" means paper and paper products; dimensional lumber; engineered wood products such as particleboard, oriented strand board, medium density fiberboard, and plywood; wood doors; and wood windows.

(13) Upon every person engaging within this state in inspecting, testing, labeling, and storing canned salmon owned by another person, as to such persons, the amount of tax with respect to such activities shall be equal to the gross income derived from such activities multiplied by the rate of 0.484 percent. [2007 c 54 § 6; 2007 c 48 § 2. Prior: 2006 c 354 § 4; 2006 c 300 § 1; prior: 2005 c 513 § 2; 2005 c 443 § 4; prior: 2003 2nd sp.s. c 1 § 4; 2003 2nd sp.s. c 1 § 3; 2003 c 339 § 11; 2003 c 261 § 11; 2001 2nd sp.s. c 25 § 2; prior: 1998 c 312 § 5; 1998 c 311 § 2; prior: 1998 c 170 § 4; 1996 c 148 § 2; 1996 c 115 § 1; prior: 1995 2nd sp.s. c 12 § 1; 1995 2nd sp.s. c 6 § 1; 1993 sp.s. c 25 § 104; 1993 c 492 § 304; 1991 c 272 § 15; 1990 c 21 § 2; 1987 c 139 § 1; prior: 1985 c 471 § 1; 1985 c 135 § 2; 1983 2nd ex.s. c 3 § 5; prior: 1983 1st ex.s. c 66 § 4; 1983 1st ex.s. c 55 § 4; 1982 2nd ex.s. c 13 § 1; 1982 c 10 § 16; prior: 1981 c 178 § 1; 1981 c 172 § 3; 1979 ex.s. c 196 § 2; 1975 1st ex.s. c 291 § 7; 1971 ex.s. c 281 § 5; 1971 ex.s. c 186 § 3; 1969 ex.s. c 262 § 36; 1967 ex.s. c 149 § 10; 1965 ex.s. c 173 § 6; 1961 c 15 § 82.04.260; prior: 1959 c 211 § 2; 1955 c 389 § 46; prior: 1953 c 91 § 4; 1951 2nd ex.s. c 28 § 4; 1950 ex.s. c 5 § 1, part; 1949 c 228 § 1, part; 1943 c 156 § 1, part; 1941 c 178 § 1, part; 1939 c 225 § 1, part; 1937 c 227 § 1, part; 1935 c 180 § 4, part; Rem. Supp. 1949 § 8370-4, part.]

Reviser's note: This section was amended by 2007 c 48 § 2 and by 2007 c 54 § 6, each without reference to the other. Both amendments are incorporated in the publication of this section under RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

Severability—2007 c 54: See note following RCW 82.04.050.

Effective date—2007 c 48: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect July 1, 2007." [2007 c 48 § 9.]

Effective dates—2006 c 354: See note following RCW 82.04.4268.

Effective dates—Contingent effective date—2006 c 300: See note following RCW 82.04.261.

Effective dates—2005 c 513: See note following RCW 82.04.4266.

Finding—Intent—Effective date—2005 c 443: See notes following RCW 82.08.0255.

Contingent effective date—2003 2nd sp.s. c 1: See RCW 82.32.550.

Finding—2003 2nd sp.s. c 1: See note following RCW 82.04.4461.

Effective dates—2003 c 339: See note following RCW 84.36.640.

Effective dates—2003 c 261: See note following RCW 84.36.635.

Purpose—Intent—2001 2nd sp.s. c 25: "The purpose of sections 2 and 3 of this act is to provide a tax rate for persons who manufacture dairy products that is commensurate to the rate imposed on certain other processors of agricultural commodities. This tax rate applies to persons who manufacture dairy products from raw materials such as fluid milk, dehydrated milk, or byproducts of milk such as cream, buttermilk, whey, butter, or casein. It is not the intent of the legislature to provide this tax rate to persons who use dairy products as an ingredient or component of their manufactured product, such as milk-based soups or pizza. It is the intent that persons who manufacture products such as milk, cheese, yogurt, ice cream, whey, or whey products be subject to this rate." [2001 2nd sp.s. c 25 § 1.]

Part headings not law—2001 2nd sp.s. c 25: "Part headings used in this act are not any part of the law." [2001 2nd sp.s. c 25 § 7.]

Effective date—Savings—1998 c 312: See notes following RCW 82.04.332.

Effective date—1998 c 170: See note following RCW 82.04.331.

Severability—Effective date—1996 c 148: See notes following RCW 82.04.050.

Effective date—1996 c 115: "This act shall take effect July 1, 1996." [1996 c 115 § 2.]

Effective date—1995 2nd sp.s. c 12: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and shall take effect July 1, 1995." [1995 2nd sp.s. c 12 § 2.]

Effective date—1995 2nd sp.s. c 6: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and shall take effect July 1, 1995." [1995 2nd sp.s. c 6 § 2.]

Severability—Effective dates—Part headings, captions not law—1993 sp.s. c 25: See notes following RCW 82.04.230.

Findings—Intent—1993 c 492: See notes following RCW 43.20.050.

Short title—Severability—Savings—Captions not law—Reservation of legislative power—Effective dates—1993 c 492: See RCW 43.72.910 through 43.72.915.

Effective dates—1991 c 272: See RCW 81.108.901.

Severability—1985 c 471: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1985 c 471 § 17.]

Effective date—1985 c 471: "This act is necessary for the immediate preservation of the public peace, health, and safety, the support of the state government and its existing public institutions, and shall take effect July 1, 1985." [1985 c 471 § 18.]

Construction—Severability—Effective dates—1983 2nd ex.s. c 3: See notes following RCW 82.04.255.

Effective dates—1983 1st ex.s. c 55: See note following RCW 82.08.010.

Severability—1982 2nd ex.s. c 13: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1982 2nd ex.s. c 13 § 2.]

Effective date—1982 2nd ex.s. c 13: "This act is necessary for the immediate preservation of the public peace, health, and safety, the support of the state government and its existing public institutions, and shall take effect August 1, 1982." [1982 2nd ex.s. c 13 § 3.]

Severability—1982 c 10: See note following RCW 6.13.080.

Effective dates—1981 c 172: See note following RCW 82.04.240.

Effective date—1979 ex.s. c 196: See note following RCW 82.04.240.

Effective dates—Severability—1975 1st ex.s. c 291: See notes following RCW 82.04.050.

Effective date—1971 ex.s. c 186: See note following RCW 82.04.110.

82.04.261 Surcharge on timber and wood product manufacturers, extractors, and wholesalers. (Expires July 1, 2024.) (1) In addition to the taxes imposed under RCW 82.04.260(12), a surcharge is imposed on those persons who are subject to any of the taxes imposed under RCW 82.04.260(12). Except as otherwise provided in this section, the surcharge is equal to 0.052 percent. The surcharge is added to the rates provided in RCW 82.04.260(12) (a), (b), (c), and (d). The surcharge and this section expire July 1, 2024.

(2) All receipts from the surcharge imposed under this section shall be deposited into the forest and fish support account created in RCW 76.09.405.

(3)(a) The surcharge imposed under this section shall be suspended if:

(i) Receipts from the surcharge total at least eight million dollars during any fiscal biennium; or

(ii) The office of financial management certifies to the department that the federal government has appropriated at least two million dollars for participation in forest and fish report-related activities by federally recognized Indian tribes located within the geographical boundaries of the state of Washington for any federal fiscal year.

(b)(i) The suspension of the surcharge under (a)(i) of this subsection (3) shall take effect on the first day of the calendar month that is at least thirty days after the end of the month during which the department determines that receipts from the surcharge total at least eight million dollars during the fiscal biennium. The surcharge shall be imposed again at the beginning of the following fiscal biennium.

(ii) The suspension of the surcharge under (a)(ii) of this subsection (3) shall take effect on the later of the first day of October of any federal fiscal year for which the federal government appropriates at least two million dollars for participation in forest and fish report-related activities by federally recognized Indian tribes located within the geographical boundaries of the state of Washington, or the first day of a calendar month that is at least thirty days following the date that the office of financial management makes a certification to the department under subsection (5) of this section. The surcharge shall be imposed again on the first day of the following July.

(4)(a) If, by October 1st of any federal fiscal year, the office of financial management certifies to the department that the federal government has appropriated funds for participation in forest and fish report-related activities by federally recognized Indian tribes located within the geographical boundaries of the state of Washington but the amount of the appropriation is less than two million dollars, the department shall adjust the surcharge in accordance with this subsection.

(b) The department shall adjust the surcharge by an amount that the department estimates will cause the amount of funds deposited into the forest and fish support account for the state fiscal year that begins July 1st and that includes the beginning of the federal fiscal year for which the federal appropriation is made, to be reduced by twice the amount of the federal appropriation for participation in forest and fish

report-related activities by federally recognized Indian tribes located within the geographical boundaries of the state of Washington.

(c) Any adjustment in the surcharge shall take effect at the beginning of a calendar month that is at least thirty days after the date that the office of financial management makes the certification under subsection (5) of this section.

(d) The surcharge shall be imposed again at the rate provided in subsection (1) of this section on the first day of the following state fiscal year unless the surcharge is suspended under subsection (3) of this section or adjusted for that fiscal year under this subsection.

(e) Adjustments of the amount of the surcharge by the department are final and shall not be used to challenge the validity of the surcharge imposed under this section.

(f) The department shall provide timely notice to affected taxpayers of the suspension of the surcharge or an adjustment of the surcharge.

(5) The office of financial management shall make the certification to the department as to the status of federal appropriations for tribal participation in forest and fish report-related activities. [2007 c 54 § 7; 2007 c 48 § 4; 2006 c 300 § 2.]

Reviser's note: This section was amended by 2007 c 48 § 4 and by 2007 c 54 § 7, each without reference to the other. Both amendments are incorporated in the publication of this section under RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

Severability—2007 c 54: See note following RCW 82.04.050.

Savings—2007 c 48: "The expiration of RCW 82.04.261 does not affect any existing right acquired or liability or obligation incurred under that section or under any rule or order adopted under that section, nor does it affect any proceeding instituted under that section." [2007 c 48 § 8.]

Effective date—2007 c 48: See note following RCW 82.04.260.

Effective dates—Contingent effective date—2006 c 300: "(1) Sections 1, 3, 4 through 6, and 8 through 12 of this act take effect July 1, 2006.

(2) Section 2 of this act takes effect July 1, 2007.

(3) Section 7 of this act takes effect if the contingency in *section 12 of this act occurs." [2006 c 300 § 13.]

***Reviser's note:** See note following RCW 82.04.426.

82.04.294 Tax on manufacturers or wholesalers of solar energy systems. (Expires June 30, 2014.) (1) Beginning October 1, 2005, upon every person engaging within this state in the business of manufacturing solar energy systems using photovoltaic modules, or of manufacturing solar grade silicon to be used exclusively in components of such systems; as to such persons the amount of tax with respect to such business shall, in the case of manufacturers, be equal to the value of the product manufactured, or in the case of processors for hire, be equal to the gross income of the business, multiplied by the rate of 0.2904 percent.

(2) Beginning October 1, 2005, upon every person engaging within this state in the business of making sales at wholesale of solar energy systems using photovoltaic modules, or of solar grade silicon to be used exclusively in components of such systems, manufactured by that person; as to such persons the amount of tax with respect to such business shall be equal to the gross proceeds of sales of the solar energy systems using photovoltaic modules, or of the solar grade silicon to be used exclusively in components of such systems, multiplied by the rate of 0.2904 percent.

(3) The definitions in this subsection apply throughout this section.

(a) "Module" means the smallest nondivisible self-contained physical structure housing interconnected photovoltaic cells and providing a single direct current electrical output.

(b) "Photovoltaic cell" means a device that converts light directly into electricity without moving parts.

(c) "Solar energy system" means any device or combination of devices or elements that rely upon direct sunlight as an energy source for use in the generation of electricity.

(d) "Solar grade silicon" means high-purity silicon used exclusively in components of solar energy systems using photovoltaic modules to capture direct sunlight. "Solar grade silicon" does not include silicon used in semiconductors.

(4) This section expires June 30, 2014. [2007 c 54 § 8; 2005 c 301 § 2.]

Severability—2007 c 54: See note following RCW 82.04.050.

Findings—Intent—2005 c 301: "The legislature finds that the welfare of the people of the state of Washington is positively impacted through the encouragement and expansion of key growth industries in the state. The legislature further finds that targeting tax incentives to focus on key growth industries is an important strategy to enhance the state's business climate.

A recent report by the Washington State University energy program recognized the solar electric industry as one of the state's important growth industries. It is of great concern that businesses in this industry have been increasingly expanding and relocating their operations elsewhere. The report indicates that additional incentives for the solar electric industry are needed in recognition of the unique forces and issues involved in business decisions in this industry.

Therefore, the legislature intends to enact comprehensive tax incentives for the solar electric industry that address activities of the manufacture of these products and to encourage these industries to locate in Washington. Tax incentives for the solar electric industry are important in both retention and expansion of existing business and attraction of new businesses, all of which will strengthen this growth industry within our state, will create jobs, and will bring many indirect benefits to the state." [2005 c 301 § 1.]

Effective date—2005 c 301: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect July 1, 2005." [2005 c 301 § 6.]

Report to legislature—2005 c 301: "(1) Using existing sources of information, the department shall report to the house appropriations committee, the house committee dealing with energy issues, the senate committee on ways and means, and the senate committee dealing with energy issues by December 1, 2013. The report shall measure the impacts of this act, including the total number of solar energy system manufacturing companies in the state, any change in the number of solar energy system manufacturing companies in the state, and, where relevant, the effect on job creation, the number of jobs created for Washington residents, and any other factors the department selects.

(2) The department shall not conduct any new surveys to provide the report in subsection (1) of this section." [2005 c 301 § 5.]

Annual report: RCW 82.32.620.

82.04.310 Exemptions—Public utilities—Electrical energy—Natural or manufactured gas. (1) This chapter shall not apply to any person in respect to a business activity with respect to which tax liability is specifically imposed under the provisions of chapter 82.16 RCW including amounts derived from activities for which a deduction is allowed under RCW 82.16.050.

(2) This chapter does not apply to amounts received by any person for the sale of electrical energy for resale within or outside the state.

(3)(a) This chapter does not apply to amounts received by any person for the sale of natural or manufactured gas in a calendar year if that person sells within the United States a

total amount of natural or manufactured gas in that calendar year that is no more than twenty percent of the amount of natural or manufactured gas that it consumes within the United States in the same calendar year.

(b) For purposes of determining whether a person has sold within the United States a total amount of natural or manufactured gas in a calendar year that is no more than twenty percent of the amount of natural or manufactured gas that it consumes within the United States in the same calendar year, the following transfers of gas are not considered to be the sale of natural or manufactured gas:

(i) The transfer of any natural or manufactured gas as a result of the acquisition of another business, through merger or otherwise; or

(ii) The transfer of any natural or manufactured gas accomplished solely to comply with federal regulatory requirements imposed on the pipeline transportation of such gas when it is shipped by a third-party manager of a person's pipeline transportation. [2007 c 58 § 1; 2000 c 245 § 2; 1989 c 302 § 202; 1961 c 15 § 82.04.310. Prior: 1959 c 197 § 15; prior: 1945 c 249 § 2, part; 1943 c 156 § 4, part; 1941 c 178 § 6, part; 1939 c 225 § 5, part; 1937 c 227 § 4, part; 1935 c 180 § 11, part; Rem. Supp. 1945 § 8370-11, part.]

Finding, purpose—1989 c 302: See note following RCW 82.04.120.

82.04.332 Exemptions—Buying and selling at wholesale unprocessed milk, wheat, oats, dry peas, dry beans, lentils, triticale, canola, corn, rye, and barley. This chapter does not apply to amounts received from buying unprocessed milk, wheat, oats, dry peas, dry beans, lentils, triticale, canola, corn, rye, and barley, but not including any manufactured products thereof, and selling the same at wholesale. [2007 c 131 § 1; 1998 c 312 § 2.]

Effective date—1998 c 312: "This act takes effect July 1, 1998." [1998 c 312 § 11.]

Savings—1998 c 312: "This act does not affect any existing right acquired or liability or obligation incurred under the sections amended or repealed in this act or under any rule or order adopted under those sections, nor does it affect any proceeding instituted under those sections." [1998 c 312 § 10.]

82.04.333 Exemptions—Small harvesters. In computing tax under this chapter, a person who is a small harvester as defined in RCW 84.33.035(14) may deduct an amount not to exceed one hundred thousand dollars per tax year from the gross receipts or value of products proceeding or accruing from timber harvested by that person. A deduction under this section may not reduce the amount of tax due to less than zero. [2007 c 48 § 5; 1990 c 141 § 1.]

Effective date—2007 c 48: See note following RCW 82.04.260.

82.04.334 Exemptions—Standing timber. This chapter does not apply to any sale of standing timber excluded from the definition of "sale" in RCW 82.45.010(3). The definitions in RCW 82.04.260(12) apply to this section. [2007 c 48 § 3.]

Effective date—2007 c 48: See note following RCW 82.04.260.

82.04.4266 Exemptions—Fruit and vegetable businesses.

[2007 RCW Supp—page 1054]

Effective dates—2005 c 513: "This act takes effect July 1, 2007, except for sections 1 through 3 of this act which are necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and take effect July 1, 2005, and section 5, chapter 513, Laws of 2005, which takes effect April 30, 2007." [2007 c 243 § 1; 2005 c 513 § 14.]

82.04.4281 Deductions—Investments, dividends, interest on loans. (1) In computing tax there may be deducted from the measure of tax:

(a) Amounts derived from investments;

(b) Amounts derived as dividends or distributions from the capital account by a parent from its subsidiary entities; and

(c) Amounts derived from interest on loans between subsidiary entities and a parent entity or between subsidiaries of a common parent entity, but only if the total investment and loan income is less than five percent of gross receipts of the business annually.

(2) The following are not deductible under subsection (1)(a) of this section:

(a) Amounts received from loans, except as provided in subsection (1)(c) of this section, or the extension of credit to another, revolving credit arrangements, installment sales, the acceptance of payment over time for goods or services, or any of the foregoing that have been transferred by the originator of the same to an affiliate of the transferor; or

(b) Amounts received by a banking, lending, or security business.

(3) The definitions in this subsection apply only to this section.

(a) "Banking business" means a person engaging in business as a national or state-chartered bank, a mutual savings bank, a savings and loan association, a trust company, an alien bank, a foreign bank, a credit union, a stock savings bank, or a similar entity that is chartered under Title 30, 31, 32, or 33 RCW, or organized under Title 12 U.S.C.

(b) "Lending business" means a person engaged in the business of making secured or unsecured loans of money, or extending credit, and (i) more than one-half of the person's gross income is earned from such activities and (ii) more than one-half of the person's total expenditures are incurred in support of such activities.

(c) The terms "loan" and "extension of credit" do not include ownership of or trading in publicly traded debt instruments, or substantially equivalent instruments offered in a private placement.

(d) "Security business" means a person, other than an issuer, who is engaged in the business of effecting transactions in securities as a broker, dealer, or broker-dealer, as those terms are defined in the securities act of Washington, chapter 21.20 RCW, or the federal securities act of 1933. "Security business" does not include any company excluded from the definition of broker or dealer under the federal investment company act of 1940 or any entity that is not an investment company by reason of sections 3(c)(1) and 3(c)(3) through 3(c)(14) thereof. [2007 c 54 § 9; 2002 c 150 § 2; 1980 c 37 § 2. Formerly RCW 82.04.430(1).]

Severability—2007 c 54: See note following RCW 82.04.050.

Findings—Intent—2002 c 150: "The legislature finds that the application of the business and occupation tax deductions provided in RCW 82.04.4281 for investment income of persons deemed to be "other financial

businesses" has been the subject of uncertainty, and therefore, disagreement and litigation between taxpayers and the state. The legislature further finds that the decision of the state supreme court in *Simpson Investment Co. v. Department of Revenue* could lead to a restrictive, narrow interpretation of the deductibility of investment income for business and occupation tax purposes. As a result, the legislature directed the department of revenue to work with affected businesses to develop a revision of the statute that would provide certainty and stability for taxpayers and the state. The legislature intends, by adopting this recommended revision of the statute, to provide a positive environment for capital investment in this state, while continuing to treat similarly situated taxpayers fairly." [2002 c 150 § 1.]

Effective date—2002 c 150: "This act takes effect July 1, 2002." [2002 c 150 § 3.]

Finding—Intent on application of deduction—2001 c 320: "The legislature finds that the application of the business and occupation tax deduction provided in RCW 82.04.4281 for investment income of persons other than those engaging in banking, loan, security, or other financial businesses has been the subject of disagreement between taxpayers and the state. Decisions of the supreme court have provided some broad guidelines and principles for interpretation of the deduction provided in RCW 82.04.4281, but these decisions have not provided the certainty and clarity that is desired by taxpayers and the state. Therefore, it is the intent of the legislature to delay change in the manner or extent of taxation of the investment income until definitions or standards can be developed and enacted by the legislature." [2001 c 320 § 18.]

Reviser's note: 2001 c 320 § 19, which was vetoed May 15, 2001, would have implemented the intent in this section.

Report to legislature—2001 c 320: "The department of revenue shall report to the fiscal committees of the legislature by November 30, 2001, on the progress made in working with affected businesses on potential amendments to RCW 82.04.4281 which would clarify the application of RCW 82.04.4281 to other financial businesses." [2001 c 320 § 20.]

Intent—1980 c 37: "The separation of sales tax exemption, use tax exemption, and business and occupation deduction sections into shorter sections is intended to improve the readability and facilitate the future amendment of these sections. This separation shall not change the meaning of any of the exemptions or deductions involved." [1980 c 37 § 1.]

82.04.4334 Deductions—Sale or distribution of biodiesel or E85 motor fuels. (Expires July 1, 2015.) (1) In computing tax there may be deducted from the measure of tax amounts received from the retail sale, or for the distribution, of:

- (a) Biodiesel fuel; or
- (b) E85 motor fuel.

(2) For the purposes of this section and RCW 82.08.955 and 82.12.955, the following definitions apply:

(a) "Biodiesel fuel" means a mono alkyl ester of long chain fatty acids derived from vegetable oils or animal fats for use in compression-ignition engines and that meets the requirements of the American society of testing and materials specification D 6751 in effect as of January 1, 2003.

(b) "E85 motor fuel" means an alternative fuel that is a blend of ethanol and hydrocarbon of which the ethanol portion is nominally seventy-five to eighty-five percent denatured fuel ethanol by volume that complies with the most recent version of American society of testing and materials specification D 5798.

(c) "Distribution" means any of the actions specified in RCW 82.36.020(2).

(3) This section expires July 1, 2015. [2007 c 309 § 3; 2003 c 63 § 1.]

Effective date—2003 c 63: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect July 1, 2003." [2003 c 63 § 4.]

82.04.440 Persons taxable on multiple activities—Credits.

Contingent expiration date—2007 c 54 § 10: "Section 10 of this act expires if the contingency in section 29 of this act occurs." [2007 c 54 § 31.] The contingency in section 29, chapter 54, Laws of 2007 occurred on December 1, 2006.

82.04.4461 Credit—Preproduction development expenditures. (Expires July 1, 2024.) (1)(a) In computing the tax imposed under this chapter, a credit is allowed for each person for qualified preproduction development expenditures occurring after December 1, 2003.

(b) Before July 1, 2005, any credits earned under this section must be accrued and carried forward and may not be used until July 1, 2005. These carryover credits may be used at any time thereafter, and may be carried over until used. Refunds may not be granted in the place of a credit.

(2) The credit is equal to the amount of qualified preproduction development expenditures of a person, multiplied by the rate of 1.5 percent.

(3) Except as provided in subsection (1)(b) of this section the credit shall be taken against taxes due for the same calendar year in which the qualified preproduction development expenditures are incurred. Credit earned on or after July 1, 2005, may not be carried over. The credit for each calendar year shall not exceed the amount of tax otherwise due under this chapter for the calendar year. Refunds may not be granted in the place of a credit.

(4) Any person claiming the credit shall file an affidavit form prescribed by the department that shall include the amount of the credit claimed, an estimate of the anticipated preproduction development expenditures during the calendar year for which the credit is claimed, an estimate of the taxable amount during the calendar year for which the credit is claimed, and such additional information as the department may prescribe.

(5) The definitions in this subsection apply throughout this section.

(a) "Aeronautics" means the study of flight and the science of building and operating commercial aircraft.

(b) "Person" means a person as defined in RCW 82.04.030, who is a manufacturer or processor for hire of commercial airplanes, or components of such airplanes, as those terms are defined in RCW 82.32.550.

(c) "Preproduction development" means research, design, and engineering activities performed in relation to the development of a product, product line, model, or model derivative, including prototype development, testing, and certification. The term includes the discovery of technological information, the translating of technological information into new or improved products, processes, techniques, formulas, or inventions, and the adaptation of existing products and models into new products or new models, or derivatives of products or models. The term does not include manufacturing activities or other production-oriented activities, however the term does include tool design and engineering design for the manufacturing process. The term does not include surveys and studies, social science and humanities research, market research or testing, quality control, sale promotion and service, computer software developed for internal use,

and research in areas such as improved style, taste, and seasonal design.

(d) "Qualified preproduction development" means preproduction development performed within this state in the field of aeronautics.

(e) "Qualified preproduction development expenditures" means operating expenses, including wages, compensation of a proprietor or a partner in a partnership as determined by the department, benefits, supplies, and computer expenses, directly incurred in qualified preproduction development by a person claiming the credit provided in this section. The term does not include amounts paid to a person other than a public educational or research institution to conduct qualified preproduction development. The term does not include capital costs and overhead, such as expenses for land, structures, or depreciable property.

(f) "Taxable amount" means the taxable amount subject to the tax imposed in this chapter required to be reported on the person's tax returns during the year in which the credit is claimed, less any taxable amount for which a credit is allowed under RCW 82.04.440.

(6) In addition to all other requirements under this title, a person taking the credit under this section must report as required under RCW 82.32.545.

(7) Credit may not be claimed for expenditures for which a credit is claimed under RCW 82.04.4452.

(8) This section expires July 1, 2024. [2007 c 54 § 11; 2003 2nd sp.s. c 1 § 7.]

Severability—2007 c 54: See note following RCW 82.04.050.

Finding—2003 2nd sp.s. c 1: "The legislature finds that the people of the state have benefited from the presence of the aerospace industry in Washington state. The aerospace industry provides good wages and benefits for the thousands of engineers, mechanics, and support staff working directly in the industry throughout the state. The suppliers and vendors that support the aerospace industry in turn provide a range of jobs. The legislature declares that it is in the public interest to encourage the continued presence of this industry through the provision of tax incentives. The comprehensive tax incentives in this act address the cost of doing business in Washington state compared to locations in other states." [2003 2nd sp.s. c 1 § 1.]

Contingent effective date—2003 2nd sp.s. c 1: See RCW 82.32.550.

82.04.470 Resale certificate—Burden of proof—Tax liability—Rules—Resale certificate defined. (Effective July 1, 2008.) (1) Unless a seller has taken from the buyer a resale certificate, the burden of proving that a sale of tangible personal property, or of services, was not a sale at retail shall be upon the person who made it.

(2) If a seller does not receive a resale certificate at the time of the sale, have a resale certificate on file at the time of the sale, or obtain a resale certificate from the buyer within a reasonable time after the sale, the seller shall remain liable for the tax as provided in RCW 82.08.050, unless the seller can demonstrate facts and circumstances according to rules adopted by the department of revenue that show the sale was properly made without payment of sales tax.

(3) The department may provide by rule for suggested forms for resale certificates or equivalent documents containing the information that will be accepted as resale certificates. The department shall provide by rule the categories of items or services that must be specified on resale certificates and the business classifications that may use a blanket resale certificate.

(4) As used in this section, "resale certificate" means documentation provided by a buyer to a seller stating that the purchase is for resale in the regular course of business, or that the buyer is exempt from retail sales tax, and containing the following information:

(a) The name and address of the buyer;

(b) The uniform business identifier or revenue registration number of the buyer, if the buyer is required to be registered;

(c) The type of business engaged in;

(d) The categories of items or services to be purchased for resale or that are exempt, unless the buyer presents a blanket resale certificate;

(e) The date on which the certificate was provided;

(f) A statement that the items or services purchased either: (i) Are purchased for resale in the regular course of business; or (ii) are exempt from tax pursuant to statute;

(g) A statement that the buyer acknowledges that the buyer is solely responsible for purchasing within the categories specified on the certificate and that misuse of the resale or exemption privilege claimed on the certificate subjects the buyer to a penalty of fifty percent of the tax due, in addition to the tax, interest, and any other penalties imposed by law;

(h) The name of the individual authorized to sign the certificate, printed in a legible fashion;

(i) The signature of the authorized individual; and

(j) The name of the seller.

(5) Subsection (4)(h), (i), and (j) of this section does not apply if the certificate is provided in a format other than paper. If the certificate is provided in a format other than paper, the name of the individual providing the certificate must be included in the certificate. [2007 c 6 § 1201; 2003 c 168 § 204; 1993 sp.s. c 25 § 701; 1983 2nd ex.s. c 3 § 29; 1975 1st ex.s. c 278 § 43; 1961 c 15 § 82.04.470. Prior: 1935 c 180 § 9; RRS § 8370-9.]

Part headings not law—Savings—Effective date—Severability—2007 c 6: See notes following RCW 82.32.020.

Findings—Intent—2007 c 6: See note following RCW 82.14.495.

Effective dates—Part headings not law—2003 c 168: See notes following RCW 82.08.010.

Severability—Effective dates—Part headings, captions not law—1993 sp.s. c 25: See notes following RCW 82.04.230.

Construction—Severability—Effective dates—1983 2nd ex.s. c 3: See notes following RCW 82.04.255.

Construction—Severability—1975 1st ex.s. c 278: See notes following RCW 11.08.160.

Resale certificates: RCW 82.08.130 and 82.32.291.

82.04.530 Gross proceeds of sales calculation for telephone business. (Effective until July 1, 2008; contingency, see note following this section.) For purposes of this chapter, a telephone business other than a mobile telecommunications service provider must calculate gross proceeds of sales in a manner consistent with the sourcing rules provided in RCW 82.32.520. The department may adopt rules to implement this section, including rules that provide a formulary method of determining gross proceeds that reasonably approximates the taxable activity of a telephone business. [2007 c 54 § 13; 2004 c 153 § 410; 2002 c 67 § 3.]

Findings—Intent—2007 c 54: "In July 2000, congress passed the mobile telecommunications sourcing act (P.L. 106-252). The act addresses

the problem of determining the situs of a cellular telephone call for tax purposes. In 2002, the legislature passed Senate Bill No. 6539 (chapter 67, Laws of 2002), which addressed the sourcing of mobile telecommunications for state business and occupation tax, state and local retail sales taxes, city utility taxes, and state and county telephone access line taxes. Section 18, chapter 67, Laws of 2002 provided that the act is null and void if the federal mobile telecommunications sourcing act is substantially impaired or limited as a result of a court decision that is no longer subject to appeal. The legislature finds that the contingent null and void clause in section 18, chapter 67, Laws of 2002 has resulted in the necessity of codifying two versions of a number of statutes to incorporate contingent expiration and effective dates. The legislature recognizes that this adds complexity to the tax code and makes tax administration more difficult. The legislature further finds that there is little or no likelihood that the federal mobile telecommunications sourcing act will be substantially impaired or limited as a result of a court decision. Therefore, the legislature intends in section 2 of this act to simplify Washington's tax code and tax administration by eliminating the contingent null and void clause in section 18, chapter 67, Laws of 2002." [2007 c 54 § 1.]

Severability—2007 c 54: See note following RCW 82.04.050.

Retroactive effective date—Effective date—2004 c 153: See note following RCW 82.08.0293.

Finding—2002 c 67: "The legislature finds that the United States congress has enacted the mobile telecommunications sourcing act for the purpose of establishing uniform nationwide sourcing rules for state and local taxation of mobile telecommunications services. The legislature desires to adopt implementing legislation governing taxation by the state and by affected local taxing jurisdictions within the state. The legislature recognizes that the federal act is intended to provide a clarification of sourcing rules that is revenue-neutral among the states, and that the clarifications required by the federal act are likely in fact to be revenue-neutral at the state level. The legislature also desires to take advantage of a provision of the federal act that allows a state with a generally applicable business and occupation tax, such as this state, to make certain of the uniform sourcing rules elective for such tax." [2002 c 67 § 1.]

***Contingency—Court judgment—2002 c 67.**

***Reviser's note:** This section was repealed by 2007 c 54 § 2 without cognizance of its amendment by 2007 c 6 § 1701. It has been decodified for publication purposes under RCW 1.12.025.

For complete text of the amendment, see the 2007 c 6 § 1701 session law.

Effective date—2002 c 67: "This act takes effect August 1, 2002." [2002 c 67 § 19.]

82.04.530 Telecommunications service providers—Calculation of gross proceeds. (Effective July 1, 2008; contingency, see note following this section.) For purposes of this chapter, a telecommunications service provider other than a mobile telecommunications service provider must calculate gross proceeds of sales in a manner consistent with the sourcing rules provided in RCW 82.32.520. The department may adopt rules to implement this section, including rules that provide a formulary method of determining gross proceeds that reasonably approximates the taxable activity of a telephone business. [2007 c 54 § 13; 2007 c 6 § 1022; 2004 c 153 § 410; 2002 c 67 § 3.]

Reviser's note: This section was amended by 2007 c 6 § 1022 and by 2007 c 54 § 13, each without reference to the other. Both amendments are incorporated in the publication of this section under RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

Findings—Intent—2007 c 54: "In July 2000, congress passed the mobile telecommunications sourcing act (P.L. 106-252). The act addresses the problem of determining the situs of a cellular telephone call for tax purposes. In 2002, the legislature passed Senate Bill No. 6539 (chapter 67, Laws of 2002), which addressed the sourcing of mobile telecommunications for state business and occupation tax, state and local retail sales taxes, city utility taxes, and state and county telephone access line taxes. Section 18, chapter 67, Laws of 2002 provided that the act is null and void if the federal mobile telecommunications sourcing act is substantially impaired or limited as a result of a court decision that is no longer subject to appeal. The legis-

lature finds that the contingent null and void clause in section 18, chapter 67, Laws of 2002 has resulted in the necessity of codifying two versions of a number of statutes to incorporate contingent expiration and effective dates. The legislature recognizes that this adds complexity to the tax code and makes tax administration more difficult. The legislature further finds that there is little or no likelihood that the federal mobile telecommunications sourcing act will be substantially impaired or limited as a result of a court decision. Therefore, the legislature intends in section 2 of this act to simplify Washington's tax code and tax administration by eliminating the contingent null and void clause in section 18, chapter 67, Laws of 2002." [2007 c 54 § 1.]

Severability—2007 c 54: See note following RCW 82.04.050.

Part headings not law—Savings—Effective date—Severability—2007 c 6: See notes following RCW 82.32.020.

Findings—Intent—2007 c 6: See note following RCW 82.14.495.

Retroactive effective date—Effective date—2004 c 153: See note following RCW 82.08.0293.

Finding—2002 c 67: "The legislature finds that the United States congress has enacted the mobile telecommunications sourcing act for the purpose of establishing uniform nationwide sourcing rules for state and local taxation of mobile telecommunications services. The legislature desires to adopt implementing legislation governing taxation by the state and by affected local taxing jurisdictions within the state. The legislature recognizes that the federal act is intended to provide a clarification of sourcing rules that is revenue-neutral among the states, and that the clarifications required by the federal act are likely in fact to be revenue-neutral at the state level. The legislature also desires to take advantage of a provision of the federal act that allows a state with a generally applicable business and occupation tax, such as this state, to make certain of the uniform sourcing rules elective for such tax." [2002 c 67 § 1.]

***Contingency—Court judgment—2002 c 67.**

***Reviser's note:** This section was repealed by 2007 c 54 § 2 without cognizance of its amendment by 2007 c 6 § 1701. It has been decodified for publication purposes under RCW 1.12.025.

For complete text of the amendment, see the 2007 c 6 § 1701 session law.

Effective date—2002 c 67: "This act takes effect August 1, 2002." [2002 c 67 § 19.]

82.04.601 Exemptions—Affixing stamp services for cigarette sales. This chapter does not apply to compensation allowed under RCW 82.24.295 for wholesalers and retailers for their services in affixing the stamps required under chapter 82.24 RCW. For purposes of this section, "wholesaler," "retailer," and "stamp" have the same meaning as in chapter 82.24 RCW. [2007 c 221 § 5.]

82.04.610 Exemptions—Import or export commerce. (1) This chapter does not apply to the sale of tangible personal property in import or export commerce.

(2) Tangible personal property is in import commerce while the property is in the process of import transportation. Except as provided in (a) through (c) of this subsection, property is in the process of import transportation from the time the property begins its transportation at a point outside of the United States until the time that the property is delivered to the buyer in this state. Property is also in the process of import transportation if it is merely flowing through this state on its way to a destination in some other state or country. However, property is no longer in the process of import transportation when the property is:

(a) Put to actual use in any state, territory, or possession of the United States for any purpose;

(b) Resold by the importer or any other person after the property has arrived in this state or any other state, territory,

or possession of the United States, regardless of whether the property is in its original unbroken package or container; or

(c) Processed, handled, or otherwise stopped in transit for a business purpose other than shipping needs, if the processing, handling or other stoppage of transit occurs within the United States, including any of its possessions or territories, or the territorial waters of this state or any other state, regardless of whether the processing, handling, or other stoppage of transit occurs within a foreign trade zone.

(3)(a) Tangible personal property is in export commerce when the seller delivers the property to:

(i) The buyer at a destination in a foreign country;

(ii) A carrier consigned to and for transportation to a destination in a foreign country;

(iii) The buyer at shipside or aboard the buyer's vessel or other vehicle of transportation under circumstances where it is clear that the process of exportation of the property has begun; or

(iv) The buyer in this state if the property is capable of being transported to a foreign destination under its own power, the seller files a shipper's export declaration with respect to the property listing the seller as the exporter, and the buyer immediately transports the property directly to a destination in a foreign country. This subsection (3)(a)(iv) does not apply to sales of motor vehicles as defined in RCW 46.04.320.

(b) The exemption under this subsection (3) applies with respect to property delivered to the buyer in this state if, at the time of delivery, there is a certainty of export, and the process of export has begun. The process of exportation will not be deemed to have begun if the property is merely in storage awaiting shipment, even though there is reasonable certainty that the property will be exported. The intention to export, as evidenced for example, by financial and contractual relationships does not indicate certainty of export. The process of exportation begins when the property starts its final and certain continuous movement to a destination in a foreign country.

(4) Persons claiming an exemption under this section must keep and maintain records for the period required by RCW 82.32.070 establishing their right to the exemption. [2007 c 477 § 2.]

Intent—Purpose—2007 c 477: "Because of the uncertainty regarding the constitutional limitations on the taxation of import and export sales of tangible personal property, the legislature recognizes the need to provide clarity in the taxation of imports and exports. It is the legislature's intent to provide a statutory tax exemption for the sale of tangible personal property in import or export commerce, which is not dependent on future interpretation of the constitutional limitations on the taxation of imports and exports by the courts. The sole purpose of the legislature in enacting RCW 82.04.610 and 82.08.990 is to codify current department practice in the taxation of import and export sales of tangible personal property consistent with WAC 458-20-193C. It is not the intent of the legislature in enacting RCW 82.04.610 and 82.08.990 to eliminate, narrow, or expand existing exemptions under WAC 458-20-193C." [2007 c 477 § 1.]

82.04.615 Exemptions—Certain limited purpose public corporations, commissions, and authorities. This chapter does not apply to public corporations, commissions, or authorities created under RCW 35.21.660 or 35.21.730 for amounts derived from sales of tangible personal property and services to:

(1) A limited liability company in which the corporation, commission, or authority is the managing member;

(2) A limited partnership in which the corporation, commission, or authority is the general partner; or

(3) A single asset entity required under any federal, state, or local governmental housing assistance program, which is controlled directly or indirectly by the corporation, commission, or authority. [2007 c 381 § 1.]

82.04.620 Exemptions—Certain prescription drugs. (Effective October 1, 2007.) In computing tax there may be deducted from the measure of tax imposed by RCW 82.04.290(2) amounts received by physicians or clinics for drugs for infusion or injection by licensed physicians or their agents for human use pursuant to a prescription, but only if the amounts: (1) Are separately stated on invoices or other billing statements; (2) do not exceed the then current federal rate; and (3) are covered or required under a health care service program subsidized by the federal or state government. The federal rate means the rate at or below which the federal government or its agents reimburse providers for prescription drugs administered to patients as provided for in the medicare, part B, drugs average sales price information resource as published by the United States department of health and human services, or any successor index thereto. [2007 c 447 § 1.]

Effective date—2007 c 447: "This act takes effect October 1, 2007." [2007 c 447 § 2.]

82.04.625 Exemptions—Custom farming services. (Expires December 31, 2020.) (1) This chapter does not apply to any:

(a) Person performing custom farming services for a farmer, when the person performing the custom farming services is: (i) An eligible farmer; or (ii) at least fifty percent owned by an eligible farmer; or

(b) Person performing farm management services, contract labor services, services provided with respect to animals that are agricultural products, or any combination of these services, for a farmer or for a person performing custom farming services, when the person performing the farm management services, contract labor services, services with respect to animals, or any combination of these services, and the farmer or person performing custom farming services are related.

(2) The definitions in this subsection apply throughout this section.

(a) "Custom farming services" means the performance of specific farming operations through the use of any farm machinery or equipment, farm implement, or draft animal, together with an operator, when: (i) The specific farming operation consists of activities directly related to the growing, raising, or producing of any agricultural product to be sold or consumed by a farmer; and (ii) the performance of the specific farming operation is for, and under a contract with, or the direction or supervision of, a farmer. "Custom farming services" does not include the custom application of fertilizers, chemicals, or biologicals.

For the purposes of this subsection (2)(a), "specific farming operation" includes specific planting, cultivating, or harvesting activities, or similar specific farming operations. The

term does not include veterinary services as defined in RCW 18.92.010; farrier, boarding, training, or appraisal services; artificial insemination or stud services, agricultural consulting services; packing or processing of agricultural products; or pumping or other waste disposal services.

(b) "Eligible farmer" means a person who is eligible for an exemption certificate under RCW 82.08.855 at the time that the custom farming services are rendered, regardless of whether the person has applied for an exemption certificate under RCW 82.08.855.

(c) "Farm management services" means the consultative decisions made for the operations of the farm including, but not limited to, determining which crops to plant, the choice and timing of application of fertilizers and chemicals, the horticultural practices to apply, the marketing of crops and livestock, and the care and feeding of animals.

(d) "Related" means having any of the relationships specifically described in section 267(b) (1), (2), and (4) through (13) of the internal revenue code, as amended or renumbered as of January 1, 2007. [2007 c 334 § 1.]

Effective date—2007 c 334: "This act takes effect August 1, 2007." [2007 c 334 § 3.]

Expiration date—2007 c 334: "This act expires December 31, 2020." [2007 c 334 § 4.]

Chapter 82.08 RCW RETAIL SALES TAX

Sections

82.08.010	Definitions. (<i>Expires July 1, 2008.</i>)
82.08.010	Definitions. (<i>Effective July 1, 2008.</i>)
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82.08.0264	Exemptions—Sales of motor vehicles, trailers, or campers to nonresidents for use outside the state.
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82.08.037	Credits and refunds for bad debts. (<i>Effective July 1, 2008.</i>)
82.08.050	Buyer to pay, seller to collect tax—Statement of tax—Exception—Penalties—Contingent expiration of subsection. (<i>Effective July 1, 2008.</i>)
82.08.145	Delivery charges. (<i>Effective July 1, 2008.</i>)
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82.08.700	Exemptions—Vessels sold to nonresidents.
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82.08.955	Exemptions—Sales of machinery, equipment, vehicles, and services related to biodiesel blend or E85 motor fuel. (<i>Expires July 1, 2015.</i>)
82.08.990	Exemptions—Import or export commerce.
82.08.995	Exemptions—Certain limited purpose public corporations, commissions, and authorities.

82.08.010 Definitions. (*Expires July 1, 2008.*) For the purposes of this chapter:

(1) "Selling price" includes "sales price." "Sales price" means the total amount of consideration, except separately stated trade-in property of like kind, including cash, credit, property, and services, for which tangible personal property, extended warranties, or services defined as a "retail sale" under RCW 82.04.050 are sold, leased, or rented, valued in money, whether received in money or otherwise. No deduction from the total amount of consideration is allowed for the following: (a) The seller's cost of the property sold; (b) the cost of materials used, labor or service cost, interest, losses, all costs of transportation to the seller, all taxes imposed on the seller, and any other expense of the seller; (c) charges by the seller for any services necessary to complete the sale, other than delivery and installation charges; (d) delivery charges; and (e) installation charges.

When tangible personal property is rented or leased under circumstances that the consideration paid does not represent a reasonable rental for the use of the articles so rented or leased, the "selling price" shall be determined as nearly as possible according to the value of such use at the places of use of similar products of like quality and character under such rules as the department may prescribe.

"Selling price" or "sales price" does not include: Discounts, including cash, term, or coupons that are not reimbursed by a third party that are allowed by a seller and taken by a purchaser on a sale; interest, financing, and carrying charges from credit extended on the sale of tangible personal property, extended warranties, or services, if the amount is separately stated on the invoice, bill of sale, or similar document given to the purchaser; and any taxes legally imposed directly on the consumer that are separately stated on the invoice, bill of sale, or similar document given to the purchaser;

(2)(a) "Seller" means every person, including the state and its departments and institutions, making sales at retail or retail sales to a buyer, purchaser, or consumer, whether as agent, broker, or principal, except "seller" does not mean:

(i) The state and its departments and institutions when making sales to the state and its departments and institutions; or

(ii) A professional employer organization when a covered employee coemployed with the client under the terms of a professional employer agreement engages in activities that constitute a sale at retail that is subject to the tax imposed by this chapter. In such cases, the client, and not the professional employer organization, is deemed to be the seller and is responsible for collecting and remitting the tax imposed by this chapter.

(b) For the purposes of (a) of this subsection, the terms "client," "covered employee," "professional employer agreement," and "professional employer organization" have the same meanings as in RCW 82.04.540;

(3) "Buyer," "purchaser," and "consumer" include, without limiting the scope hereof, every individual, receiver, assignee, trustee in bankruptcy, trust, estate, firm, copartnership, joint venture, club, company, joint stock company, business trust, corporation, association, society, or any group of individuals acting as a unit, whether mutual, cooperative, fraternal, nonprofit, or otherwise, municipal corporation, quasi municipal corporation, and also the state, its departments and institutions and all political subdivisions thereof, irrespective

of the nature of the activities engaged in or functions performed, and also the United States or any instrumentality thereof;

(4) "Delivery charges" means charges by the seller of personal property or services for preparation and delivery to a location designated by the purchaser of personal property or services including, but not limited to, transportation, shipping, postage, handling, crating, and packing;

(5) "Direct mail" means printed material delivered or distributed by United States mail or other delivery service to a mass audience or to addressees on a mailing list provided by the purchaser or at the direction of the purchaser when the cost of the items are not billed directly to the recipients. "Direct mail" includes tangible personal property supplied directly or indirectly by the purchaser to the direct mail seller for inclusion in the package containing the printed material. "Direct mail" does not include multiple items of printed material delivered to a single address;

(6) The meaning attributed in chapter 82.04 RCW to the terms "tax year," "taxable year," "person," "company," "sale," "sale at retail," "retail sale," "sale at wholesale," "wholesale," "business," "engaging in business," "cash discount," "successor," "consumer," "in this state" and "within this state" shall apply equally to the provisions of this chapter;

(7) For the purposes of the taxes imposed under this chapter and under chapter 82.12 RCW, "tangible personal property" means personal property that can be seen, weighed, measured, felt, or touched, or that is in any other manner perceptible to the senses. Tangible personal property includes electricity, water, gas, steam, and prewritten computer software;

(8) "Extended warranty" has the same meaning as in RCW 82.04.050(7). [2007 c 6 § 1301; 2006 c 301 § 2; 2005 c 514 § 110; 2004 c 153 § 406; 2003 c 168 § 101; 1985 c 38 § 3; 1985 c 2 § 2 (Initiative Measure No. 464, approved November 6, 1984); 1983 1st ex.s. c 55 § 1; 1967 ex.s. c 149 § 18; 1963 c 244 § 1; 1961 c 15 § 82.08.010. Prior: (i) 1945 c 249 § 4; 1943 c 156 § 6; 1941 c 178 § 8; 1939 c 225 § 7; 1935 c 180 § 17; Rem. Supp. 1945 § 8370-17. (ii) 1935 c 180 § 20; RRS § 8370-20.]

Expiration date—2007 c 6 § 1301: "Section 1301 of this act expires July 1, 2008." [2007 c 6 § 1706.]

Part headings not law—Savings—Severability—2007 c 6: See notes following RCW 82.32.020.

Findings—Intent—2007 c 6: See note following RCW 82.14.495.

Effective date—Act does not affect application of Title 50 or 51 RCW—2006 c 301: See notes following RCW 82.32.710.

Effective date—2005 c 514: See note following RCW 82.04.4272.

Part headings not law—Severability—2005 c 514: See notes following RCW 82.12.808.

Retroactive effective date—Effective date—2004 c 153: See note following RCW 82.08.0293.

Effective dates—2003 c 168: "Sections 101 through 104, 201 through 216, 401 through 412, 501, 502, 601 through 604, 701 through 704, 801, 901, and 902 of this act take effect July 1, 2004. Sections 301 through 305 of this act take effect January 1, 2004." [2003 c 168 § 903.]

Part headings not law—2003 c 168: "Part headings used in this act are not any part of the law." [2003 c 168 § 901.]

Purpose—1985 c 2: "The purpose of this initiative is to reduce the amount on which sales tax is paid by excluding the trade-in value of certain

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property from the amount taxable." [1985 c 2 § 1 (Initiative Measure No. 464, approved November 6, 1984).]

Effective dates—1983 1st ex.s. c 55: "This act is necessary for the immediate preservation of the public peace, health, and safety, the support of the state government and its existing public institutions, and shall take effect July 1, 1983, except that section 12 of this act shall take effect January 1, 1984, and shall be effective for property taxes levied in 1983, and due in 1984, and thereafter." [1983 1st ex.s. c 55 § 13.]

82.08.010 Definitions. (Effective July 1, 2008.) For the purposes of this chapter:

(1)(a) "Selling price" includes "sales price." "Sales price" means the total amount of consideration, except separately stated trade-in property of like kind, including cash, credit, property, and services, for which tangible personal property, extended warranties, or services defined as a "retail sale" under RCW 82.04.050 are sold, leased, or rented, valued in money, whether received in money or otherwise. No deduction from the total amount of consideration is allowed for the following: (i) The seller's cost of the property sold; (ii) the cost of materials used, labor or service cost, interest, losses, all costs of transportation to the seller, all taxes imposed on the seller, and any other expense of the seller; (iii) charges by the seller for any services necessary to complete the sale, other than delivery and installation charges; (iv) delivery charges; and (v) installation charges.

When tangible personal property is rented or leased under circumstances that the consideration paid does not represent a reasonable rental for the use of the articles so rented or leased, the "selling price" shall be determined as nearly as possible according to the value of such use at the places of use of similar products of like quality and character under such rules as the department may prescribe;

(b) "Selling price" or "sales price" does not include: Discounts, including cash, term, or coupons that are not reimbursed by a third party that are allowed by a seller and taken by a purchaser on a sale; interest, financing, and carrying charges from credit extended on the sale of tangible personal property, extended warranties, or services, if the amount is separately stated on the invoice, bill of sale, or similar document given to the purchaser; and any taxes legally imposed directly on the consumer that are separately stated on the invoice, bill of sale, or similar document given to the purchaser;

(c) "Selling price" or "sales price" includes consideration received by the seller from a third party if:

(i) The seller actually receives consideration from a party other than the purchaser, and the consideration is directly related to a price reduction or discount on the sale;

(ii) The seller has an obligation to pass the price reduction or discount through to the purchaser;

(iii) The amount of the consideration attributable to the sale is fixed and determinable by the seller at the time of the sale of the item to the purchaser; and

(iv) One of the criteria in this subsection (1)(c)(iv) is met:

(A) The purchaser presents a coupon, certificate, or other documentation to the seller to claim a price reduction or discount where the coupon, certificate, or documentation is authorized, distributed, or granted by a third party with the understanding that the third party will reimburse any seller to whom the coupon, certificate, or documentation is presented;

(B) The purchaser identifies himself or herself to the seller as a member of a group or organization entitled to a price reduction or discount, however a "preferred customer" card that is available to any patron does not constitute membership in such a group; or

(C) The price reduction or discount is identified as a third party price reduction or discount on the invoice received by the purchaser or on a coupon, certificate, or other documentation presented by the purchaser;

(2)(a) "Seller" means every person, including the state and its departments and institutions, making sales at retail or retail sales to a buyer, purchaser, or consumer, whether as agent, broker, or principal, except "seller" does not mean:

(i) The state and its departments and institutions when making sales to the state and its departments and institutions; or

(ii) A professional employer organization when a covered employee coemployed with the client under the terms of a professional employer agreement engages in activities that constitute a sale at retail that is subject to the tax imposed by this chapter. In such cases, the client, and not the professional employer organization, is deemed to be the seller and is responsible for collecting and remitting the tax imposed by this chapter.

(b) For the purposes of (a) of this subsection, the terms "client," "covered employee," "professional employer agreement," and "professional employer organization" have the same meanings as in RCW 82.04.540;

(3) "Buyer," "purchaser," and "consumer" include, without limiting the scope hereof, every individual, receiver, assignee, trustee in bankruptcy, trust, estate, firm, copartnership, joint venture, club, company, joint stock company, business trust, corporation, association, society, or any group of individuals acting as a unit, whether mutual, cooperative, fraternal, nonprofit, or otherwise, municipal corporation, quasi municipal corporation, and also the state, its departments and institutions and all political subdivisions thereof, irrespective of the nature of the activities engaged in or functions performed, and also the United States or any instrumentality thereof;

(4) "Delivery charges" means charges by the seller of personal property or services for preparation and delivery to a location designated by the purchaser of personal property or services including, but not limited to, transportation, shipping, postage, handling, crating, and packing;

(5) "Direct mail" means printed material delivered or distributed by United States mail or other delivery service to a mass audience or to addressees on a mailing list provided by the purchaser or at the direction of the purchaser when the cost of the items are not billed directly to the recipients. "Direct mail" includes tangible personal property supplied directly or indirectly by the purchaser to the direct mail seller for inclusion in the package containing the printed material. "Direct mail" does not include multiple items of printed material delivered to a single address;

(6) The meaning attributed in chapter 82.04 RCW to the terms "tax year," "taxable year," "person," "company," "sale," "sale at retail," "retail sale," "sale at wholesale," "wholesale," "business," "engaging in business," "cash discount," "successor," "consumer," "in this state" and "within

this state" shall apply equally to the provisions of this chapter;

(7) For the purposes of the taxes imposed under this chapter and under chapter 82.12 RCW, "tangible personal property" means personal property that can be seen, weighed, measured, felt, or touched, or that is in any other manner perceptible to the senses. Tangible personal property includes electricity, water, gas, steam, and prewritten computer software;

(8) "Extended warranty" has the same meaning as in RCW 82.04.050(7). [2007 c 6 § 1302; 2006 c 301 § 2; 2005 c 514 § 110; 2004 c 153 § 406; 2003 c 168 § 101; 1985 c 38 § 3; 1985 c 2 § 2 (Initiative Measure No. 464, approved November 6, 1984); 1983 1st ex.s. c 55 § 1; 1967 ex.s. c 149 § 18; 1963 c 244 § 1; 1961 c 15 § 82.08.010. Prior: (i) 1945 c 249 § 4; 1943 c 156 § 6; 1941 c 178 § 8; 1939 c 225 § 7; 1935 c 180 § 17; Rem. Supp. 1945 § 8370-17. (ii) 1935 c 180 § 20; RRS § 8370-20.]

Part headings not law—Savings—Effective date—Severability—2007 c 6: See notes following RCW 82.32.020.

Findings—Intent—2007 c 6: See note following RCW 82.14.495.

Effective date—Act does not affect application of Title 50 or 51 RCW—2006 c 301: See notes following RCW 82.32.710.

Effective date—2005 c 514: See note following RCW 82.04.4272.

Part headings not law—Severability—2005 c 514: See notes following RCW 82.12.808.

Retroactive effective date—Effective date—2004 c 153: See note following RCW 82.08.0293.

Effective dates—2003 c 168: "Sections 101 through 104, 201 through 216, 401 through 412, 501, 502, 601 through 604, 701 through 704, 801, 901, and 902 of this act take effect July 1, 2004. Sections 301 through 305 of this act take effect January 1, 2004." [2003 c 168 § 903.]

Part headings not law—2003 c 168: "Part headings used in this act are not any part of the law." [2003 c 168 § 901.]

Purpose—1985 c 2: "The purpose of this initiative is to reduce the amount on which sales tax is paid by excluding the trade-in value of certain property from the amount taxable." [1985 c 2 § 1 (Initiative Measure No. 464, approved November 6, 1984).]

Effective dates—1983 1st ex.s. c 55: "This act is necessary for the immediate preservation of the public peace, health, and safety, the support of the state government and its existing public institutions, and shall take effect July 1, 1983, except that section 12 of this act shall take effect January 1, 1984, and shall be effective for property taxes levied in 1983, and due in 1984, and thereafter." [1983 1st ex.s. c 55 § 13.]

82.08.0255 Exemptions—Sales of motor vehicle and special fuel—Conditions—Credit or refund of special fuel used outside this state in interstate commerce. (1) The tax levied by RCW 82.08.020 shall not apply to sales of motor vehicle and special fuel if:

(a) The fuel is purchased for the purpose of public transportation and the purchaser is entitled to a refund or an exemption under RCW 82.36.275 or 82.38.080(3); or

(b) The fuel is purchased by a private, nonprofit transportation provider certified under chapter 81.66 RCW and the purchaser is entitled to a refund or an exemption under RCW 82.36.285 or 82.38.080(1)(h); or

(c) The fuel is purchased by a public transportation benefit area created under chapter 36.57A RCW or a county-owned ferry or county ferry district created under chapter 36.54 RCW for use in passenger-only ferry vessels; or

(d) The fuel is taxable under chapter 82.36 or 82.38 RCW.

(2) Any person who has paid the tax imposed by RCW 82.08.020 on the sale of special fuel delivered in this state shall be entitled to a credit or refund of such tax with respect to fuel subsequently established to have been actually transported and used outside this state by persons engaged in interstate commerce. The tax shall be claimed as a credit or refunded through the tax reports required under RCW 82.38.150. [2007 c 223 § 9; 2005 c 443 § 5; 1998 c 176 § 4. Prior: 1983 1st ex.s. c 35 § 2; 1983 c 108 § 1; 1980 c 147 § 1; 1980 c 37 § 23. Formerly RCW 82.08.030(5).]

Effective date—2007 c 223: See note following RCW 36.57A.220.

Finding—Intent—2005 c 443: "The legislature finds that a number of tax exemptions, deductions, credits, and other preferences have outlived their usefulness. State records show no taxpayers have claimed relief under these tax preferences in recent years. The intent of this act is to update and simplify the tax statutes by repealing these outdated tax preferences." [2005 c 443 § 1.]

Effective date—2005 c 443: "This act takes effect July 1, 2006." [2005 c 443 § 8.]

Rules—Findings—Effective date—1998 c 176: See RCW 82.36.800, 82.36.900, and 82.36.901.

Intent—1983 1st ex.s. c 35: "It is the intent of the legislature that special fuel purchased in Washington upon which the special fuel tax has been paid, regardless of whether or not the tax is subsequently refunded or credited in whole or in part, should not be subject to the sales and use tax if the special fuel is transported and used outside the state by persons engaged in interstate commerce." [1983 1st ex.s. c 35 § 1.]

Intent—1980 c 37: See note following RCW 82.04.4281.

Diesel and aircraft fuel sales tax exemption for farmers: RCW 82.08.865.

82.08.0264 Exemptions—Sales of motor vehicles, trailers, or campers to nonresidents for use outside the state. (1) The tax levied by RCW 82.08.020 does not apply to sales of motor vehicles, trailers, or campers to nonresidents of this state for use outside of this state, even when delivery is made within this state, but only if:

(a) The motor vehicles, trailers, or campers will be taken from the point of delivery in this state directly to a point outside this state under the authority of a vehicle trip permit issued by the department of licensing pursuant to the provisions of RCW 46.16.160, or any agency of another state that has authority to issue similar permits; or

(b) The motor vehicles, trailers, or campers will be registered and licensed immediately under the laws of the state of the buyer's residence, will not be used in this state more than three months, and will not be required to be registered and licensed under the laws of this state.

(2) For the purposes of this section, the seller of a motor vehicle, trailer, or camper is not required to collect and shall not be found liable for the tax levied by RCW 82.08.020 on the sale if the tax is not collected and the seller retains the following documents, which must be made available upon request of the department:

(a) A copy of the buyer's currently valid out-of-state driver's license or other official picture identification issued by a jurisdiction other than Washington state;

(b) A copy of any one of the following documents, on which there is an out-of-state address for the buyer:

(i) A current residential rental agreement;

(ii) A property tax statement from the current or previous year;

(iii) A utility bill, dated within the previous two months;

(iv) A state income tax return from the previous year;

(v) A voter registration card;

(vi) A current credit report; or

(vii) Any other document determined by the department to be acceptable;

(c) A witnessed declaration in the form designated by the department, signed by the buyer, and stating that the buyer's purchase meets the requirements of this section; and

(d) A seller's certification, in the form designated by the department, that either a vehicle trip permit was issued or the vehicle was immediately registered and licensed in another state as required under subsection (1) of this section.

(3) If the department has information indicating the buyer is a Washington resident, or if the addresses for the buyer shown on the documentation provided under subsection (2) of this section are not the same, the department may contact the buyer to verify the buyer's eligibility for the exemption provided under this section. This subsection does not prevent the department from contacting a buyer as a result of information obtained from a source other than the seller's records.

(4)(a) Any person making fraudulent statements, which includes the offer of fraudulent identification or fraudulently procured identification to a seller, in order to purchase a motor vehicle, trailer, or camper without paying retail sales tax is guilty of perjury under chapter 9A.72 RCW.

(b) Any person making tax exempt purchases under this section by displaying proof of identification not his or her own, or counterfeit identification, with intent to violate the provisions of this section, is guilty of a misdemeanor and, in addition, is liable for the tax and subject to a penalty equal to the greater of one hundred dollars or the tax due on such purchases.

(5)(a) Any seller that makes sales without collecting the tax to a person who does not provide the documents required under subsection (2) of this section, and any seller who fails to retain the documents required under subsection (2) of this section for the period prescribed by RCW 82.32.070, is personally liable for the amount of tax due.

(b) Any seller that makes sales without collecting the retail sales tax under this section and who has actual knowledge that the buyer's documentation required by subsection (2) of this section is fraudulent is guilty of a misdemeanor and, in addition, is liable for the tax and subject to a penalty equal to the greater of one thousand dollars or the tax due on such sales. In addition, both the buyer and the seller are liable for any penalties and interest assessable under chapter 82.32 RCW.

(6) For purposes of this section, the term "buyer" does not include cosigners or financial guarantors, unless those parties are listed as a registered owner on the vehicle title. [2007 c 135 § 1; 1980 c 37 § 31. Formerly RCW 82.08.030(13).]

Intent—1980 c 37: See note following RCW 82.04.4281.

82.08.0273 Exemptions—Sales to nonresidents of tangible personal property for use outside the state—Proof of nonresident status—Penalties. (1) The tax levied by RCW 82.08.020 shall not apply to sales to nonresidents of this state of tangible personal property for use outside this

state when the purchaser (a) is a bona fide resident of a state or possession or Province of Canada other than the state of Washington and such state, possession, or Province of Canada does not impose a retail sales tax or use tax of three percent or more or, if imposing such a tax, permits Washington residents exemption from otherwise taxable sales by reason of their residence, and (b) agrees, when requested, to grant the department of revenue access to such records and other forms of verification at his or her place of residence to assure that such purchases are not first used substantially in the state of Washington.

(2) Notwithstanding anything to the contrary in this chapter, if parts or other tangible personal property are installed by the seller during the course of repairing, cleaning, altering, or improving motor vehicles, trailers, or campers and the seller makes a separate charge for the tangible personal property, the tax levied by RCW 82.08.020 does not apply to the separately stated charge to a nonresident purchaser for the tangible personal property but only if the separately stated charge does not exceed either the seller's current publicly stated retail price for the tangible personal property or, if no separately stated retail price is available, the seller's cost for the tangible personal property. However, the exemption provided by this section does not apply if tangible personal property is installed by the seller during the course of repairing, cleaning, altering, or improving motor vehicles, trailers, or campers and the seller makes a single nonitemized charge for providing the tangible personal property and service. All of the requirements in subsections (1) and (3) through (6) of this section apply to this subsection.

(3)(a) Any person claiming exemption from retail sales tax under the provisions of this section must display proof of his or her current nonresident status as provided in this section.

(b) Acceptable proof of a nonresident person's status shall include one piece of identification such as a valid driver's license from the jurisdiction in which the out-of-state residency is claimed or a valid identification card which has a photograph of the holder and is issued by the out-of-state jurisdiction. Identification under this subsection (3)(b) must show the holder's residential address and have as one of its legal purposes the establishment of residency in that out-of-state jurisdiction.

(4) Nothing in this section requires the vendor to make tax exempt retail sales to nonresidents. A vendor may choose to make sales to nonresidents, collect the sales tax, and remit the amount of sales tax collected to the state as otherwise provided by law. If the vendor chooses to make a sale to a nonresident without collecting the sales tax, the vendor shall, in good faith, examine the proof of nonresidence, determine whether the proof is acceptable under subsection (3)(b) of this section, and maintain records for each nontaxable sale which shall show the type of proof accepted, including any identification numbers where appropriate, and the expiration date, if any.

(5)(a) Any person making fraudulent statements, which includes the offer of fraudulent identification or fraudulently procured identification to a vendor, in order to purchase goods without paying retail sales tax is guilty of perjury under chapter 9A.72 RCW.

(b) Any person making tax exempt purchases under this section by displaying proof of identification not his or her own, or counterfeit identification, with intent to violate the provisions of this section, is guilty of a misdemeanor and, in addition, shall be liable for the tax and subject to a penalty equal to the greater of one hundred dollars or the tax due on such purchases.

(6)(a) Any vendor who makes sales without collecting the tax to a person who does not hold valid identification establishing out-of-state residency, and any vendor who fails to maintain records of sales to nonresidents as provided in this section, shall be personally liable for the amount of tax due.

(b) Any vendor who makes sales without collecting the retail sales tax under this section and who has actual knowledge that the purchaser's proof of identification establishing out-of-state residency is fraudulent is guilty of a misdemeanor and, in addition, shall be liable for the tax and subject to a penalty equal to the greater of one thousand dollars or the tax due on such sales. In addition, both the purchaser and the vendor shall be liable for any penalties and interest assessable under chapter 82.32 RCW. [2007 c 135 § 2; 2003 c 53 § 399; 1993 c 444 § 1; 1988 c 96 § 1; 1982 1st ex.s. c 5 § 1; 1980 c 37 § 39. Formerly RCW 82.08.030(21).]

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

Effective date—1988 c 96: "This act shall take effect July 1, 1989." [1988 c 96 § 2.]

Intent—1980 c 37: See note following RCW 82.04.4281.

82.08.02745 Exemptions—Charges for labor and services or sales of tangible personal property related to agricultural employee housing—Exemption certificate—

Rules. (1) The tax levied by RCW 82.08.020 shall not apply to charges made for labor and services rendered by any person in respect to the constructing, repairing, decorating, or improving of new or existing buildings or other structures used as agricultural employee housing, or to sales of tangible personal property that becomes an ingredient or component of the buildings or other structures during the course of the constructing, repairing, decorating, or improving the buildings or other structures. The exemption is available only if the buyer provides the seller with an exemption certificate in a form and manner prescribed by the department by rule.

(2) The exemption provided in this section for agricultural employee housing provided to year-round employees of the agricultural employer, only applies if that housing is built to the current building code for single-family or multifamily dwellings according to the state building code, chapter 19.27 RCW.

(3) Any agricultural employee housing built under this section shall be used according to this section for at least five consecutive years from the date the housing is approved for occupancy, or the full amount of tax otherwise due shall be immediately due and payable together with interest, but not penalties, from the date the housing is approved for occupancy until the date of payment. If at any time agricultural employee housing that is not located on agricultural land ceases to be used in the manner specified in subsection (2) of this section, the full amount of tax otherwise due shall be immediately due and payable with interest, but not penalties,

from the date the housing ceases to be used as agricultural employee housing until the date of payment.

(4) The exemption provided in this section shall not apply to housing built for the occupancy of an employer, family members of an employer, or persons owning stock or shares in a farm partnership or corporation business.

(5) For purposes of this section and RCW 82.12.02685:

(a) "Agricultural employee" or "employee" has the same meaning as given in RCW 19.30.010;

(b) "Agricultural employer" or "employer" has the same meaning as given in RCW 19.30.010; and

(c) "Agricultural employee housing" means all facilities provided by an agricultural employer, housing authority, local government, state or federal agency, nonprofit community or neighborhood-based organization that is exempt from income tax under section 501(c) of the internal revenue code of 1986 (26 U.S.C. Sec. 501(c)), or for-profit provider of housing for housing agricultural employees on a year-round or seasonal basis, including bathing, food handling, hand washing, laundry, and toilet facilities, single-family and multifamily dwelling units and dormitories, and includes labor camps under RCW 70.114A.110. "Agricultural employee housing" does not include housing regularly provided on a commercial basis to the general public. "Agricultural employee housing" does not include housing provided by a housing authority unless at least eighty percent of the occupants are agricultural employees whose adjusted income is less than fifty percent of median family income, adjusted for household size, for the county where the housing is provided. [2007 c 54 § 14; 1997 c 438 § 1; 1996 c 117 § 1.]

Severability—2007 c 54: See note following RCW 82.04.050.

Effective date—1997 c 438: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately [May 20, 1997]." [1997 c 438 § 3.]

Effective date—1996 c 117: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and shall take effect immediately [March 20, 1996]." [1996 c 117 § 3.]

82.08.0283 Exemptions—Certain medical items. (Effective July 1, 2008.) (1) The tax levied by RCW 82.08.020 shall not apply to sales of:

(a) Prosthetic devices prescribed, fitted, or furnished for an individual by a person licensed under the laws of this state to prescribe, fit, or furnish prosthetic devices, and the components of such prosthetic devices;

(b) Medicines of mineral, animal, and botanical origin prescribed, administered, dispensed, or used in the treatment of an individual by a person licensed under chapter 18.36A RCW; and

(c) Medically prescribed oxygen, including, but not limited to, oxygen concentrator systems, oxygen enricher systems, liquid oxygen systems, and gaseous, bottled oxygen systems prescribed for an individual by a person licensed under chapter 18.57 or 18.71 RCW for use in the medical treatment of that individual.

(2) In addition, the tax levied by RCW 82.08.020 shall not apply to charges made for labor and services rendered in respect to the repairing, cleaning, altering, or improving of any of the items exempted under subsection (1) of this section.

(3) The exemption in subsection (1) of this section shall not apply to sales of durable medical equipment, other than as specified in subsection (1)(c) of this section, or mobility enhancing equipment.

(4) The definitions in this subsection apply throughout this section.

(a) "Prosthetic device" means a replacement, corrective, or supportive device, including repair and replacement parts for a prosthetic device, worn on or in the body to:

(i) Artificially replace a missing portion of the body;

(ii) Prevent or correct a physical deformity or malfunction; or

(iii) Support a weak or deformed portion of the body.

(b) "Durable medical equipment" means equipment, including repair and replacement parts for durable medical equipment that:

(i) Can withstand repeated use;

(ii) Is primarily and customarily used to serve a medical purpose;

(iii) Generally is not useful to a person in the absence of illness or injury; and

(iv) Is not worn in or on the body.

(c) "Mobility enhancing equipment" means equipment, including repair and replacement parts for mobility enhancing equipment that:

(i) Is primarily and customarily used to provide or increase the ability to move from one place to another and that is appropriate for use either in a home or a motor vehicle;

(ii) Is not generally used by persons with normal mobility; and

(iii) Does not include any motor vehicle or equipment on a motor vehicle normally provided by a motor vehicle manufacturer.

(d) The terms "durable medical equipment" and "mobility enhancing equipment" are mutually exclusive. [2007 c 6 § 1101; 2004 c 153 § 101; 2003 c 168 § 409; 2001 c 75 § 1; 1998 c 168 § 2; 1997 c 224 § 1; 1996 c 162 § 1; 1991 c 250 § 2; 1986 c 255 § 1; 1980 c 86 § 1; 1980 c 37 § 48. Formerly RCW 82.08.030(30).]

Part headings not law—Savings—Effective date—Severability—2007 c 6: See notes following RCW 82.32.020.

Findings—Intent—2007 c 6: See note following RCW 82.14.495.

Retroactive effective date—Effective date—2004 c 153: See note following RCW 82.08.0293.

Effective dates—Part headings not law—2003 c 168: See notes following RCW 82.08.010.

Effective date—2001 c 75: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately [April 19, 2001]." [2001 c 75 § 3.]

Effective date—1998 c 168: See note following RCW 82.04.120.

Effective date—1997 c 224: "This act takes effect October 1, 1998." [1997 c 224 § 3.]

Effective date—1996 c 162: "This act shall take effect July 1, 1996." [1996 c 162 § 3.]

Finding—Intent—1991 c 250: "(1) The legislature finds:

(a) The existing state policy is to exempt medical oxygen from sales and use tax.

(b) The technology for supplying medical oxygen has changed substantially in recent years. Many consumers of medical oxygen purchase or rent equipment that supplies oxygen rather than purchasing oxygen in gaseous form.

(2) The intent of this act is to bring sales and rental of individual oxy-

gen systems within the existing exemption for medical oxygen, without expanding the essence of the original policy decision that medical oxygen should be exempt from sales and use tax." [1991 c 250 § 1.]

Effective date—1986 c 255: "This act shall take effect July 1, 1986." [1986 c 255 § 3.]

Intent—1980 c 37: See note following RCW 82.04.4281.

82.08.0289 Exemptions—Telephone, telecommunications, and ancillary services. (*Effective July 1, 2008; contingency, see note following RCW 82.04.530.*) (1) The tax levied by RCW 82.08.020 shall not apply to sales of:

- (a) Local service;
- (b) Coin-operated telephone service; and
- (c) Mobile telecommunications services, including any toll service, provided to a customer whose place of primary use is outside this state.

(2) The definitions in RCW 82.04.065, as well as the definitions in this subsection, apply to this section.

(a) "Local service" means ancillary services and telecommunications service, as those terms are defined in RCW 82.04.065, other than toll service, provided to an individual subscribing to a residential class of telephone service.

(b) "Toll service" does not include customer access line charges for access to a toll calling network.

(c) "Coin-operated telephone service" means a telecommunications service paid for by inserting money into a telephone accepting direct deposits of money to operate. [2007 c 6 § 1006; 2007 c 6 § 1005; 2002 c 67 § 6; 1983 2nd ex.s. c 3 § 30.]

Reviser's note: This section was amended by 2007 c 6 § 1005 and by 2007 c 6 § 1006, each without reference to the other. Both amendments are incorporated in the publication of this section under RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

Contingent effective date—2007 c 6 §§ 1003, 1006, 1014, and 1018: See note following RCW 82.04.065.

Part headings not law—Savings—Effective date—Severability—2007 c 6: See notes following RCW 82.32.020.

Findings—Intent—2007 c 6: See note following RCW 82.14.495.

Finding—Contingency—Court judgment—Effective date—2002 c 67: See note and Reviser's note following RCW 82.04.530.

Construction—Severability—Effective dates—1983 2nd ex.s. c 3: See notes following RCW 82.04.255.

82.08.037 Credits and refunds for bad debts. (*Effective July 1, 2008.*) (1) A seller is entitled to a credit or refund for sales taxes previously paid on bad debts, as that term is used in 26 U.S.C. Sec. 166, as amended or renumbered as of January 1, 2003.

(2) For purposes of this section, "bad debts" does not include:

- (a) Amounts due on property that remains in the possession of the seller until the full purchase price is paid;
- (b) Expenses incurred in attempting to collect debt; and
- (c) Repossessed property.

(3) If a credit or refund of sales tax is taken for a bad debt and the debt is subsequently collected in whole or in part, the tax on the amount collected must be paid and reported on the return filed for the period in which the collection is made.

(4) Payments on a previously claimed bad debt are applied first proportionally to the taxable price of the property or service and the sales or use tax thereon, and secondly to interest, service charges, and any other charges.

(5) If the seller uses a certified service provider as defined in RCW 82.32.020 to administer its sales tax responsibilities, the certified service provider may claim, on behalf of the seller, the credit or refund allowed by this section. The certified service provider must credit or refund the full amount received to the seller.

(6) The department shall allow an allocation of bad debts among member states to the streamlined sales tax agreement, as defined in RCW 82.58.010(1), if the books and records of the person claiming bad debts support the allocation. [2007 c 6 § 102; 2004 c 153 § 302; 2003 c 168 § 212; 1982 1st ex.s. c 35 § 35.]

Part headings not law—Savings—Effective date—Severability—2007 c 6: See notes following RCW 82.32.020.

Findings—Intent—2007 c 6: See note following RCW 82.14.495.

Bad debts—Intent—2004 c 153 §§ 302-305: "For the purposes of sections 302 through 305 of this act, the legislature does not intend by any provision of this act relating to bad debts, and did not intend by any provision of chapter 168, Laws of 2003 relating to bad debts, to affect the holding of the supreme court of the state of Washington in *Puget Sound National Bank v. the Department of Revenue*, 123 Wn. 2d 284 (1994)." [2004 c 153 § 301.]

Retroactive effective date—Effective date—2004 c 153: See note following RCW 82.08.0293.

Effective dates—Part headings not law—2003 c 168: See notes following RCW 82.08.010.

Severability—Effective dates—1982 1st ex.s. c 35: See notes following RCW 82.08.020.

82.08.050 Buyer to pay, seller to collect tax—Statement of tax—Exception—Penalties—Contingent expiration of subsection. (*Effective July 1, 2008.*) (1) The tax hereby imposed shall be paid by the buyer to the seller, and each seller shall collect from the buyer the full amount of the tax payable in respect to each taxable sale in accordance with the schedule of collections adopted by the department pursuant to the provisions of RCW 82.08.060.

(2) The tax required by this chapter, to be collected by the seller, shall be deemed to be held in trust by the seller until paid to the department, and any seller who appropriates or converts the tax collected to his or her own use or to any use other than the payment of the tax to the extent that the money required to be collected is not available for payment on the due date as prescribed in this chapter is guilty of a gross misdemeanor.

(3) In case any seller fails to collect the tax herein imposed or, having collected the tax, fails to pay it to the department in the manner prescribed by this chapter, whether such failure is the result of his or her own acts or the result of acts or conditions beyond his or her control, he or she shall, nevertheless, be personally liable to the state for the amount of the tax, unless the seller has taken from the buyer a resale certificate under RCW 82.04.470, a copy of a direct pay permit issued under RCW 82.32.087, a direct mail form under RCW 82.32.730(5), or other information required under the streamlined sales and use tax agreement, or information required under rules adopted by the department.

(4) Sellers shall not be relieved from personal liability for the amount of the tax unless they maintain proper records of exempt transactions and provide them to the department when requested.

(5) Sellers are not relieved from personal liability for the amount of tax if they fraudulently fail to collect the tax or if

they solicit purchasers to participate in an unlawful claim of exemption.

(6) Sellers are not relieved from personal liability for the amount of tax if they accept an exemption certificate from a purchaser claiming an entity-based exemption if:

(a) The subject of the transaction sought to be covered by the exemption certificate is actually received by the purchaser at a location operated by the seller in Washington; and

(b) Washington provides an exemption certificate that clearly and affirmatively indicates that the claimed exemption is not available in Washington. Graying out exemption reason types on a uniform form and posting it on the department's web site is a clear and affirmative indication that the grayed out exemptions are not available.

(7)(a) Sellers are relieved from personal liability for the amount of tax if they obtain a fully completed exemption certificate or capture the relevant data elements required under the streamlined sales and use tax agreement within ninety days, or a longer period as may be provided by rule by the department, subsequent to the date of sale.

(b) If the seller has not obtained an exemption certificate or all relevant data elements required under the streamlined sales and use tax agreement within the period allowed subsequent to the date of sale, the seller may, within one hundred twenty days, or a longer period as may be provided by rule by the department, subsequent to a request for substantiation by the department, either prove that the transaction was not subject to tax by other means or obtain a fully completed exemption certificate from the purchaser, taken in good faith.

(c) Sellers are relieved from personal liability for the amount of tax if they obtain a blanket exemption certificate for a purchaser with which the seller has a recurring business relationship. The department may not request from a seller renewal of blanket certificates or updates of exemption certificate information or data elements if there is a recurring business relationship between the buyer and seller. For purposes of this subsection (7)(c), a "recurring business relationship" means at least one sale transaction within a period of twelve consecutive months.

(8) The amount of tax, until paid by the buyer to the seller or to the department, shall constitute a debt from the buyer to the seller and any seller who fails or refuses to collect the tax as required with intent to violate the provisions of this chapter or to gain some advantage or benefit, either direct or indirect, and any buyer who refuses to pay any tax due under this chapter is guilty of a misdemeanor.

(9) The tax required by this chapter to be collected by the seller shall be stated separately from the selling price in any sales invoice or other instrument of sale. On all retail sales through vending machines, the tax need not be stated separately from the selling price or collected separately from the buyer. For purposes of determining the tax due from the buyer to the seller and from the seller to the department it shall be conclusively presumed that the selling price quoted in any price list, sales document, contract or other agreement between the parties does not include the tax imposed by this chapter, but if the seller advertises the price as including the tax or that the seller is paying the tax, the advertised price shall not be considered the selling price.

(10) Where a buyer has failed to pay to the seller the tax imposed by this chapter and the seller has not paid the

amount of the tax to the department, the department may, in its discretion, proceed directly against the buyer for collection of the tax, in which case a penalty of ten percent may be added to the amount of the tax for failure of the buyer to pay the same to the seller, regardless of when the tax may be collected by the department; and all of the provisions of chapter 82.32 RCW, including those relative to interest and penalties, shall apply in addition; and, for the sole purpose of applying the various provisions of chapter 82.32 RCW, the twenty-fifth day of the month following the tax period in which the purchase was made shall be considered as the due date of the tax.

(11) Notwithstanding subsections (1) through (10) of this section, any person making sales is not obligated to collect the tax imposed by this chapter if:

(a) The person's activities in this state, whether conducted directly or through another person, are limited to:

(i) The storage, dissemination, or display of advertising;

(ii) The taking of orders; or

(iii) The processing of payments; and

(b) The activities are conducted electronically via a web site on a server or other computer equipment located in Washington that is not owned or operated by the person making sales into this state nor owned or operated by an affiliated person. "Affiliated persons" has the same meaning as provided in RCW 82.04.424.

(12) Subsection (11) of this section expires when: (a) The United States congress grants individual states the authority to impose sales and use tax collection duties on remote sellers; or (b) it is determined by a court of competent jurisdiction, in a judgment not subject to review, that a state can impose sales and use tax collection duties on remote sellers.

(13) For purposes of this section, "seller" includes a certified service provider, as defined in RCW 82.32.020, acting as agent for the seller. [2007 c 6 § 1202. Prior: 2003 c 168 § 203; 2003 c 76 § 3; 2003 c 53 § 400; 2001 c 188 § 4; 1993 sp.s. c 25 § 704; 1992 c 206 § 2; 1986 c 36 § 1; 1985 c 38 § 1; 1971 ex.s. c 299 § 7; 1965 ex.s. c 173 § 15; 1961 c 15 § 82.08.050; prior: 1951 c 44 § 1; 1949 c 228 § 6; 1941 c 71 § 3; 1939 c 225 § 11; 1937 c 227 § 7; 1935 c 180 § 21; Rem. Supp. 1949 § 8370-21.]

Part headings not law—Savings—Effective date—Severability—2007 c 6: See notes following RCW 82.32.020.

Findings—Intent—2007 c 6: See note following RCW 82.14.495.

Effective dates—Part headings not law—2003 c 168: See notes following RCW 82.08.010.

Intent—2003 c 76: See note following RCW 82.04.424.

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

Finding—Intent—Effective date—2001 c 188: See notes following RCW 82.32.087.

Severability—Effective dates—Part headings, captions not law—1993 sp.s. c 25: See notes following RCW 82.04.230.

Effective date—1992 c 206: See note following RCW 82.04.170.

Effective dates—Severability—1971 ex.s. c 299: See notes following RCW 82.04.050.

Project on exemption reporting requirements: RCW 82.32.440.

82.08.145 Delivery charges. (Effective July 1, 2008.)
When computing the tax levied by RCW 82.08.020, if a ship-

ment consists of taxable tangible personal property and non-taxable tangible personal property, and delivery charges are included in the sales price, the seller must collect and remit tax on the percentage of delivery charges allocated to the taxable tangible personal property, but does not have to collect and remit tax on the percentage allocated to exempt tangible personal property. The seller may use either of the following percentages to determine the taxable portion of the delivery charges:

(1) A percentage based on the total sales price of the taxable tangible personal property compared to the total sales price of all tangible personal property in the shipment; or

(2) A percentage based on the total weight of the taxable tangible personal property compared to the total weight of all tangible personal property in the shipment. [2007 c 6 § 801.]

Part headings not law—Savings—Effective date—Severability—2007 c 6: See notes following RCW 82.32.020.

Findings—Intent—2007 c 6: See note following RCW 82.14.495.

82.08.190 Bundled transactions—Definitions. (*Effective July 1, 2008.*) The definitions in this section apply throughout this chapter, unless the context clearly requires otherwise.

(1)(a) "Bundled transaction" means the retail sale of two or more products, except real property and services to real property, where:

(i) The products are otherwise distinct and identifiable; and

(ii) The products are sold for one nonitemized price.

(b) A bundled transaction does not include the sale of any products in which the sales price varies, or is negotiable, based on the selection by the purchaser of the products included in the transaction.

(2) "Distinct and identifiable products" does not include:

(a) Packaging such as containers, boxes, sacks, bags, and bottles, or other materials such as wrapping, labels, tags, and instruction guides, that accompany the retail sale of the products and are incidental or immaterial to the retail sale thereof. Examples of packaging that are incidental or immaterial include grocery sacks, shoeboxes, dry cleaning garment bags, and express delivery envelopes and boxes;

(b) A product provided free of charge with the required purchase of another product. A product is provided free of charge if the sales price of the product purchased does not vary depending on the inclusion of the product provided free of charge; or

(c) Items included in the definition of sales price in RCW 82.08.010.

(3) "One nonitemized price" does not include a price that is separately identified by product on binding sales or other supporting sales-related documentation made available to the customer in paper or electronic form including, but not limited to, an invoice, bill of sale, receipt, contract, service agreement, lease agreement, periodic notice of rates and services, rate card, or price list.

(4) A transaction that otherwise meets the definition of a bundled transaction is not a bundled transaction if it is:

(a) The retail sale of tangible personal property and a service where the tangible personal property is essential to the use of the service, and is provided exclusively in connection

with the service, and the true object of the transaction is the service; or

(b) The retail sale of services where one service is provided that is essential to the use or receipt of a second service and the first service is provided exclusively in connection with the second service and the true object of the transaction is the second service; or

(c) A transaction that includes taxable products and non-taxable products and the purchase price or sales price of the taxable products is de minimis;

(i) As used in this subsection (4)(c), de minimis means the seller's purchase price or sales price of the taxable products is ten percent or less of the total purchase price or sales price of the bundled products;

(ii) Sellers shall use either the purchase price or the sales price of the products to determine if the taxable products are de minimis;

(iii) Sellers shall use the full term of a service contract to determine if the taxable products are de minimis; or

(d) The retail sale of exempt tangible personal property and taxable tangible personal property where:

(i) The transaction includes food and food ingredients, drugs, durable medical equipment, mobility enhancing equipment, over-the-counter drugs, prosthetic devices, all as defined in this chapter, or medical supplies; and

(ii) Where the seller's purchase price or sales price of the taxable tangible personal property is fifty percent or less of the total purchase price or sales price of the bundled tangible personal property. Sellers may not use a combination of the purchase price and sales price of the tangible personal property when making the fifty percent determination for a transaction. [2007 c 6 § 1401.]

Part headings not law—Savings—Effective date—Severability—2007 c 6: See notes following RCW 82.32.020.

Findings—Intent—2007 c 6: See note following RCW 82.14.495.

82.08.195 Bundled transactions—Tax imposed. (*Effective July 1, 2008.*) (1) A bundled transaction is subject to the tax imposed by RCW 82.08.020 if the retail sale of any of its component products would be subject to the tax imposed by RCW 82.08.020.

(2) The transactions described in RCW 82.08.190(4) (a) and (b) are subject to the tax imposed by RCW 82.08.020 if the service that is the true object of the transaction is subject to the tax imposed by RCW 82.08.020. If the service that is the true object of the transaction is not subject to the tax imposed by RCW 82.08.020, the transaction is not subject to the tax imposed by RCW 82.08.020.

(3) The transaction described in RCW 82.08.190(4)(c) is not subject to the tax imposed by RCW 82.08.020.

(4) The transaction described in RCW 82.08.190(4)(d) is not subject to the tax imposed by RCW 82.08.020.

(5) In the case of a bundled transaction that includes any of the following: Telecommunications service, ancillary service, internet access, or audio or video programming service:

(a) If the price is attributable to products that are taxable and products that are not taxable, the portion of the price attributable to the nontaxable products are subject to the tax imposed by RCW 82.08.020 unless the seller can identify by reasonable and verifiable standards the portion from its books

and records that are kept in the regular course of business for other purposes including, but not limited to, nontax purposes;

(b) If the price is attributable to products that are subject to tax at different tax rates, the total price is attributable to the products subject to the tax at the highest tax rate unless the seller can identify by reasonable and verifiable standards the portion of the price attributable to the products subject to the tax imposed by RCW 82.08.020 at the lower rate from its books and records that are kept in the regular course of business for other purposes including, but not limited to, nontax purposes. [2007 c 6 § 1402.]

Part headings not law—Savings—Effective date—Severability—2007 c 6: See notes following RCW 82.32.020.

Findings—Intent—2007 c 6: See note following RCW 82.14.495.

82.08.700 Exemptions—Vessels sold to nonresidents.

(1) The tax levied by RCW 82.08.020 does not apply to sales to nonresident individuals of vessels thirty feet or longer if an individual purchasing a vessel purchases and displays a valid use permit.

(2)(a) An individual claiming exemption from retail sales tax under this section must display proof of his or her current nonresident status at the time of purchase.

(b) Acceptable proof of a nonresident individual's status includes one piece of identification such as a valid driver's license from the jurisdiction in which the out-of-state residency is claimed or a valid identification card that has a photograph of the holder and is issued by the out-of-state jurisdiction. Identification under this subsection (2)(b) must show the holder's residential address and have as one of its legal purposes the establishment of residency in that out-of-state jurisdiction.

(3) Nothing in this section requires the vessel dealer to make tax exempt retail sales to nonresidents. A dealer may choose to make sales to nonresidents, collect the sales tax, and remit the amount of sales tax collected to the state as otherwise provided by law. If the dealer chooses to make a sale to a nonresident without collecting the sales tax, the vendor shall, in good faith, examine the proof of nonresidence, determine whether the proof is acceptable under subsection (2)(b) of this section, and maintain records for each nontaxable sale that shows the type of proof accepted, including any identification numbers where appropriate, and the expiration date, if any.

(4) A vessel dealer shall issue a use permit to a buyer if the dealer is satisfied that the buyer is a nonresident. The use permit shall be in a form and manner required by the department and shall include an affidavit, signed by the purchaser, declaring that the vessel will be used in a manner consistent with this section. The fee for the issuance of a use permit is five hundred dollars for vessels fifty feet in length or less and eight hundred dollars for vessels greater than fifty feet in length. Funds collected under this section and RCW 82.12.700 shall be reported on the dealer's excise tax return and remitted to the department in accordance with RCW 82.32.045. The department shall transmit the fees to the state treasurer to be deposited in the state general fund. The use permit must be displayed on the vessel and is valid for twelve consecutive months from the date of issuance. A use permit is not renewable. A purchaser at the time of purchase must make an irrevocable election to take the exemption autho-

rized in this section or the exemption in either RCW 82.08.0266 or 82.08.02665. A vessel dealer must maintain a copy of the use permit for the dealer's records. Vessel dealers must provide copies of use permits issued by the dealer under this section and RCW 82.12.700 to the department on a quarterly basis.

(5) A nonresident who claims an exemption under this section and who uses a vessel in this state after his or her use permit for that vessel has expired is liable for the tax imposed under RCW 82.08.020 on the original selling price of the vessel and shall pay the tax directly to the department. Interest at the rate provided in RCW 82.32.050 applies to amounts due under this subsection, retroactively to the date the vessel was purchased, and accrues until the full amount of tax due is paid to the department.

(6) Any vessel dealer who makes sales without collecting the tax to a person who does not hold valid identification establishing out-of-state residency, and any dealer who fails to maintain records of sales to nonresidents as provided in this section, is personally liable for the amount of tax due.

(7) Chapter 82.32 RCW applies to the administration of the fee imposed in this section and RCW 82.12.700.

(8) A vessel dealer that issues use permits under this section and RCW 82.12.700 must file with the department all returns in an electronic format as provided or approved by the department. As used in this subsection, "returns" has the same meaning as "return" in RCW 82.32.050.

(a) Any return required to be filed in an electronic format under this subsection is not filed until received by the department in an electronic format provided or approved by the department.

(b) The electronic filing requirement in this subsection ends when a vessel dealer no longer issues use permits, and the dealer has electronically filed all of its returns reporting the fees collected under this section and RCW 82.12.700.

(c) The department may waive the electronic filing requirement in this subsection for good cause shown. [2007 c 22 § 1.]

Effective date—2007 c 22: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect July 1, 2007." [2007 c 22 § 4.]

82.08.705 Exemptions—Financial information delivered electronically. (1) The tax levied by RCW 82.08.020 shall not apply to sales of electronically delivered standard financial information, if the sale is to an investment management company or a financial institution.

(2) For purposes of this section and RCW 82.12.705, the following definitions apply:

(a) "Financial institution" means a business within the scope of chapter 82.14A RCW.

(b) "Investment management company" means an investment adviser registered under the investment advisers act of 1940, as amended, that is primarily engaged in providing investment management services to collective investment funds. For purposes of this subsection (2)(b), the definitions in RCW 82.04.293 apply.

(c)(i) "Standard financial information" means any collection of financial data or facts, not generated or compiled for a specific customer including, but not limited to, financial

market data, bond ratings, credit ratings, and deposit, loan, or mortgage reports. It does not include reports furnished as part of a service described in RCW 82.04.050(3).

(ii) For purposes of this subsection (2)(c), "financial market data" means market pricing information, such as for securities, commodities, and derivatives; corporate actions for publicly and privately traded companies, such as dividend schedules and reorganizations; corporate attributes, such as domicile, currencies used, and exchange where shares are traded; and currency information. [2007 c 182 § 1.]

Effective date—2007 c 182: "This act takes effect August 1, 2007." [2007 c 182 § 3.]

82.08.803 Exemptions—Nebulizers. (Effective July 1, 2008.) (1) An exemption from the tax imposed by RCW 82.08.020 in the form of a refund is provided for sales of nebulizers, including repair, replacement, and component parts for such nebulizers, for human use pursuant to a prescription. In addition, the tax levied by RCW 82.08.020 shall not apply to charges made for labor and services rendered in respect to the repairing, cleaning, altering, or improving of nebulizers. "Nebulizer" means a device, not a building fixture, that converts a liquid medication into a mist so that it can be inhaled.

(2) Sellers shall collect tax on sales subject to this exemption. The buyer shall apply for a refund directly from the department in a form and manner prescribed by the department. [2007 c 6 § 1103; 2004 c 153 § 104.]

Part headings not law—Savings—Effective date—Severability—2007 c 6: See notes following RCW 82.32.020.

Findings—Intent—2007 c 6: See note following RCW 82.14.495.

Retroactive effective date—Effective date—2004 c 153: See note following RCW 82.08.0293.

82.08.855 Exemptions—Replacement parts for qualifying farm machinery and equipment. (1) The tax levied by RCW 82.08.020 does not apply to the sale to an eligible farmer of:

(a) Replacement parts for qualifying farm machinery and equipment;

(b) Labor and services rendered in respect to the installing of replacement parts; and

(c) Labor and services rendered in respect to the repairing of qualifying farm machinery and equipment, provided that during the course of repairing no tangible personal property is installed, incorporated, or placed in, or becomes an ingredient or component of, the qualifying farm machinery and equipment other than replacement parts.

(2)(a) Notwithstanding anything to the contrary in this chapter, if a single transaction involves services that are not exempt under this section and services that would be exempt under this section if provided separately, the exemptions provided in subsection (1)(b) and (c) of this section apply if: (i) The seller makes a separately itemized charge for labor and services described in subsection (1)(b) or (c) of this section; and (ii) the separately itemized charge does not exceed the seller's usual and customary charge for such services.

(b) If the requirements in (a)(i) and (ii) of this subsection (2) are met, the exemption provided in subsection (1)(b) or (c) of this section applies to the separately itemized charge for labor and services described in subsection (1)(b) or (c) of this section.

(3)(a) A person claiming an exemption under this section must keep records necessary for the department to verify eligibility under this section. An exemption is available only when the buyer provides the seller with an exemption certificate issued by the department containing such information as the department requires. The exemption certificate shall be in a form and manner prescribed by the department. The seller shall retain a copy of the certificate for the seller's files.

(b) The department shall provide an exemption certificate to an eligible farmer or renew an exemption certificate, upon application by that eligible farmer. The application must be in a form and manner prescribed by the department and shall contain the following information as required by the department:

(i) The name and address of the applicant;

(ii) The uniform business identifier or tax reporting account number of the applicant, if the applicant is required to be registered with the department;

(iii) The type of farming engaged in;

(iv) Either a copy of the applicant's information as provided in (b)(iv)(A) of this subsection or a declaration as provided in (b)(iv)(B) of this subsection, as elected by the applicant:

(A) A copy of the applicant's Schedule F of Form 1040, Form 1120, or other applicable form filed with the internal revenue service indicating the applicant's gross sales or harvested value of agricultural products for the tax year covered by the return. If the applicant has not filed a federal income tax return for the prior tax year or is not required to file a federal income tax return, the applicant shall provide copies of other documents establishing the amount of the applicant's gross sales or harvested value of agricultural products for the tax year immediately preceding the year in which an application for exemption under this section is submitted to the department;

(B) A declaration signed under penalty of perjury as provided in RCW 9A.72.085 that the applicant is an eligible farmer as defined in subsection (4)(b) of this section. Any person who knowingly makes a materially false statement on an application submitted to the department under the provisions of this section shall be guilty of perjury in the second degree under chapter 9A.72 RCW. In addition, the person is liable for payment of any taxes for which an exemption under this section was claimed, with interest at the rate provided for delinquent taxes, retroactively to the date the exemption was claimed, and penalties as provided under chapter 82.32 RCW;

(v) The name of the individual authorized to sign the certificate, printed in a legible fashion;

(vi) The signature of the authorized individual; and

(vii) Other information the department may require to verify the applicant's eligibility for the exemption.

(c)(i) Except as otherwise provided in this section, exemption certificates take effect on the date issued by the department and are not transferable and are valid for the remainder of the calendar year in which the certificate is issued and the following four calendar years. The department shall attempt to notify holders of exemption certificates of the impending expiration of the certificate at least sixty days before the certificate expires and shall provide an application for renewal of the certificate.

(ii) When a certificate holder merely changes identity or form of ownership of an entity and there is no change in beneficial ownership, the exemption certificate shall be transferred to the new entity upon written notice to the department by the transferor or transferee.

(d)(i) A person who is an eligible farmer as defined in subsection (4)(b)(iii) of this section shall be issued a conditional exemption certificate. The exemption certificate is conditioned upon:

(A) The eligible farmer having gross sales or a harvested value of agricultural products grown, raised, or produced by that person of at least ten thousand dollars in the first full tax year in which the person engages in business as a farmer; or

(B) The eligible farmer, during the first full tax year in which that person engages in business as a farmer, growing, raising, or producing agricultural products having an estimated value at any time during that year of at least ten thousand dollars, if the person will not sell or harvest an agricultural product during the first full tax year in which the person engages in business as a farmer.

(ii) If a person fails to meet the condition provided in (d)(i)(A) or (B) of this subsection, the department shall revoke the exemption certificate. The department shall notify the person in writing of the revocation and the person's responsibility, and due date, for payment of any taxes for which an exemption under this section was claimed. Any taxes for which an exemption under this section was claimed shall be due and payable within thirty days of the date of the notice revoking the certificate. The department shall assess interest on the taxes for which the exemption was claimed. Interest shall be assessed at the rate provided for delinquent excise taxes under chapter 82.32 RCW, retroactively to the date the exemption was claimed, and shall accrue until the taxes for which the exemption was claimed are paid. Penalties shall not be imposed on any tax required to be paid under this subsection (3)(d)(ii) if full payment is received by the due date. Nothing in this subsection (3)(d) prohibits a person from reapplying for an exemption certificate.

(4) The definitions in this subsection apply to this section.

(a) "Agricultural products" has the meaning provided in RCW 82.04.213.

(b) "Eligible farmer" means:

(i) A farmer as defined in RCW 82.04.213 whose gross sales or harvested value of agricultural products grown, raised, or produced by that person is at least ten thousand dollars for the tax year immediately preceding the year in which an application for exemption under this section is submitted to the department;

(ii) The transferee of an exemption certificate under subsection (3)(c)(ii) of this section where the transferred certificate expires before the transferee engages in farming operations for a full tax year, if the combined gross sales or harvested value of agricultural products that the transferor and transferee have grown, raised, or produced meet the requirements of (b)(i) of this subsection;

(iii) A farmer as defined in RCW 82.04.213, who does not meet the definition of "eligible farmer" in (b)(i) or (ii) of this subsection, and who did not engage in farming for the entire tax year immediately preceding the year in which application for exemption under this section is submitted to

the department, because the farmer is either new to farming or newly returned to farming; or

(iv) Anyone who otherwise meets the definition of "eligible farmer" in this subsection except that they are not a "person" as defined in RCW 82.04.030.

(c) "Farm vehicle" has the same meaning as in RCW 46.04.181.

(d) "Harvested value" means the number of units of the agricultural product that were grown, raised, or produced, multiplied by the average sales price of the agricultural product. For purposes of this subsection (4)(d), "average sales price" means the average price per unit of agricultural product received by farmers in this state as reported by the United States department of agriculture's national agricultural statistics service for the twelve-month period that coincides with, or that ends closest to, the end of the relevant tax year, regardless of whether the prices are subject to revision. If the price per unit of an agricultural product received by farmers in this state is not available from the national agricultural statistics service, average sales price may be determined by using the average price per unit of agricultural product received by farmers in this state as reported by a recognized authority for the agricultural product.

(e) "Qualifying farm machinery and equipment" means machinery and equipment used primarily by an eligible farmer for growing, raising, or producing agricultural products. "Qualifying farm machinery and equipment" does not include:

(i) Vehicles as defined in RCW 46.04.670, other than farm tractors as defined in RCW 46.04.180, farm vehicles, and other farm implements. For purposes of this subsection (4)(e)(i), "farm implement" means machinery or equipment manufactured, designed, or reconstructed for agricultural purposes and used primarily by an eligible farmer to grow, raise, or produce agricultural products, but does not include lawn tractors and all-terrain vehicles;

(ii) Aircraft;

(iii) Hand tools and hand-powered tools; and

(iv) Property with a useful life of less than one year.

(f)(i) "Replacement parts" means those parts that replace an existing part, or which are essential to maintain the working condition, of a piece of qualifying farm machinery or equipment.

(ii) Paint, fuel, oil, hydraulic fluids, antifreeze, and similar items are not replacement parts except when installed, incorporated, or placed in qualifying farm machinery and equipment during the course of installing replacement parts as defined in (f)(i) of this subsection or making repairs as described in subsection (1)(c) of this section.

(g) "Tax year" means the period for which a person files its federal income tax return, irrespective of whether the period represents a calendar year, fiscal year, or some other consecutive twelve-month period. If a person is not required to file a federal income tax return, "tax year" means a calendar year. [2007 c 332 § 1; 2006 c 172 § 1.]

Effective date—2006 c 172: "This act takes effect July 1, 2006." [2006 c 172 § 3.]

82.08.865 Exemptions—Diesel, biodiesel, and aircraft fuel for farm fuel users. (1) The tax levied by RCW 82.08.020 does not apply to sales of diesel fuel, biodiesel

fuel, or aircraft fuel, to a farm fuel user for nonhighway use. This exemption applies to a fuel blend if all of the component fuels of the blend would otherwise be exempt under this subsection if the component fuels were sold as separate products. This exemption is available only if the buyer provides the seller with an exemption certificate in a form and manner prescribed by the department. Fuel used for space or water heating for human habitation is not exempt under this section.

(2) The definitions in RCW 82.04.213 and this subsection apply to this section.

(a) "Aircraft fuel" is defined as provided in RCW 82.42.010.

(b) "Biodiesel fuel" is defined as provided in RCW 19.112.010.

(c) "Diesel fuel" is defined as provided in 26 U.S.C. 4083, as amended or renumbered as of January 1, 2006.

(d) "Farm fuel user" means: (i) A farmer; or (ii) a person who provides horticultural services for farmers, such as soil preparation services, crop cultivation services, and crop harvesting services. [2007 c 443 § 1; 2006 c 7 § 1.]

Effective date—2007 c 443: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately [May 11, 2007]." [2007 c 443 § 3.]

Effective date—2006 c 7: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately [March 6, 2006]." [2006 c 7 § 3.]

Additional sales tax exemption for motor vehicle and special fuel: RCW 82.08.0255.

82.08.955 Exemptions—Sales of machinery, equipment, vehicles, and services related to biodiesel blend or E85 motor fuel. (Expires July 1, 2015.) (1) The tax levied by RCW 82.08.020 does not apply to sales of machinery and equipment, or to services rendered in respect to constructing structures, installing, constructing, repairing, cleaning, decorating, altering, or improving of structures or machinery and equipment, or to sales of tangible personal property that becomes an ingredient or component of structures or machinery and equipment, if the machinery, equipment, or structure is used directly for the retail sale of a biodiesel blend or E85 motor fuel. Structures and machinery and equipment that are used for the retail sale of a biodiesel blend or E85 motor fuel and for other purposes are exempt only on the portion used directly for the retail sale of a biodiesel blend or E85 motor fuel.

(2) The tax levied by RCW 82.08.020 does not apply to sales of fuel delivery vehicles or to sales of or charges made for labor and services rendered in respect to installing, repairing, cleaning, altering, or improving the vehicles including repair parts and replacement parts if at least seventy-five percent of the fuel distributed by the vehicles is a biodiesel blend or E85 motor fuel.

(3) A person taking the exemption under this section must keep records necessary for the department to verify eligibility under this section. The exemption is available only when the buyer provides the seller with an exemption certificate in a form and manner prescribed by the department. The seller shall retain a copy of the certificate for the seller's files.

(4) For the purposes of this section, the definitions in RCW 82.04.4334 and this subsection apply.

(a) "Biodiesel blend" means fuel that contains at least twenty percent biodiesel fuel by volume.

(b) "E85 motor fuel" means an alternative fuel that is a blend of ethanol and hydrocarbon of which the ethanol portion is nominally seventy-five to eighty-five percent denatured fuel ethanol by volume that complies with the most recent version of American society of testing and materials specification D 5798.

(c) "Machinery and equipment" means industrial fixtures, devices, and support facilities and tangible personal property that becomes an ingredient or component thereof, including repair parts and replacement parts that are integral and necessary for the delivery of biodiesel blends or E85 motor fuel into the fuel tank of a motor vehicle.

(5) This section expires July 1, 2015. [2007 c 309 § 4; 2003 c 63 § 2.]

Effective date—2003 c 63: See note following RCW 82.04.4334.

82.08.990 Exemptions—Import or export commerce.

The tax imposed by RCW 82.08.020 does not apply to sales of tangible personal property if the sale is exempt from business and occupation tax under RCW 82.04.610. [2007 c 477 § 3.]

Intent—Purpose—2007 c 477: See note following RCW 82.04.610.

82.08.995 Exemptions—Certain limited purpose public corporations, commissions, and authorities.

(1) The tax imposed by RCW 82.08.020 does not apply to sales of tangible personal property and services provided by a public corporation, commission, or authority created under RCW 35.21.660 or 35.21.730 to an eligible entity.

(2) For purposes of this section, "eligible entity" means a limited liability company, a limited partnership, or a single asset entity, described in RCW 82.04.615. [2007 c 381 § 2.]

Chapter 82.12 RCW

USE TAX

Sections

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82.12.865	Exemptions—Diesel, biodiesel, and aircraft fuel for farm fuel users.
82.12.955	Exemptions—Use of machinery, equipment, vehicles, and services related to biodiesel or E85 motor fuel. (<i>Expires July 1, 2015.</i>)
82.12.995	Exemptions—Certain limited purpose public corporations, commissions, and authorities.

82.12.0256 Exemptions—Use of motor vehicle and special fuel—Conditions. The provisions of this chapter shall not apply in respect to the use of:

(1) Special fuel purchased in this state upon which a refund is obtained as provided in RCW 82.38.180(2); and

(2) Motor vehicle and special fuel if:

(a) The fuel is used for the purpose of public transportation and the purchaser is entitled to a refund or an exemption under RCW 82.36.275 or 82.38.080(3); or

(b) The fuel is purchased by a private, nonprofit transportation provider certified under chapter 81.66 RCW and the purchaser is entitled to a refund or an exemption under RCW 82.36.285 or 82.38.080(1)(h); or

(c) The fuel is purchased by a public transportation benefit area created under chapter 36.57A RCW or a county-owned ferry or county ferry district created under chapter 36.54 RCW for use in passenger-only ferry vessels; or

(d) The fuel is taxable under chapter 82.36 or 82.38 RCW: PROVIDED, That the use of motor vehicle and special fuel upon which a refund of the applicable fuel tax is obtained shall not be exempt under this subsection (2)(d), and the director of licensing shall deduct from the amount of such tax to be refunded the amount of tax due under this chapter and remit the same each month to the department of revenue. [2007 c 223 § 10; 2005 c 443 § 6; 1998 c 176 § 5. Prior: 1983 1st ex.s. c 35 § 3; 1983 c 108 § 2; 1980 c 147 § 2; 1980 c 37 § 56. Formerly RCW 82.12.030(6).]

Effective date—2007 c 223: See note following RCW 36.57A.220.

Finding—Intent—Effective date—2005 c 443: See notes following RCW 82.08.0255.

Rules—Findings—Effective date—1998 c 176: See RCW 82.36.800, 82.36.900, and 82.36.901.

Intent—1983 1st ex.s. c 35: See note following RCW 82.08.0255.

Intent—1980 c 37: See note following RCW 82.04.4281.

Diesel and aircraft fuel sales tax exemption for farmers: RCW 82.12.865.

82.12.0277 Exemptions—Certain medical items. (Effective July 1, 2008.) (1) The provisions of this chapter shall not apply in respect to the use of:

(a) Prosthetic devices prescribed, fitted, or furnished for an individual by a person licensed under the laws of this state to prescribe, fit, or furnish prosthetic devices, and the components of such prosthetic devices;

(b) Medicines of mineral, animal, and botanical origin prescribed, administered, dispensed, or used in the treatment of an individual by a person licensed under chapter 18.36A RCW; and

(c) Medically prescribed oxygen, including, but not limited to, oxygen concentrator systems, oxygen enricher systems, liquid oxygen systems, and gaseous, bottled oxygen systems prescribed for an individual by a person licensed under chapter 18.57 or 18.71 RCW for use in the medical treatment of that individual.

(2) In addition, the provisions of this chapter shall not apply in respect to the use of labor and services rendered in respect to the repairing, cleaning, altering, or improving of any of the items exempted under subsection (1) of this section.

(3) The exemption provided by subsection (1) of this section shall not apply to the use of durable medical equipment, other than as specified in subsection (1)(c) of this section, or mobility enhancing equipment.

(4) "Prosthetic device," "durable medical equipment," and "mobility enhancing equipment" have the same mean-

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ings as in RCW 82.08.0283. [2007 c 6 § 1102; 2004 c 153 § 109. Prior: 2003 c 168 § 412; 2003 c 5 § 8; 2001 c 75 § 2; 1998 c 168 § 3; 1997 c 224 § 2; 1996 c 162 § 2; 1991 c 250 § 3; 1986 c 255 § 2; 1980 c 86 § 2; 1980 c 37 § 75. Formerly RCW 82.12.030(25).]

Part headings not law—Savings—Effective date—Severability—2007 c 6: See notes following RCW 82.32.020.

Findings—Intent—2007 c 6: See note following RCW 82.14.495.

Retroactive effective date—Effective date—2004 c 153: See note following RCW 82.08.0293.

Effective dates—Part headings not law—2003 c 168: See notes following RCW 82.08.010.

Finding—Intent—Retroactive application—Effective date—2003 c 5: See notes following RCW 82.12.010.

Effective date—2001 c 75: See note following RCW 82.08.0283.

Effective date—1998 c 168: See note following RCW 82.04.120.

Effective date—1997 c 224: See note following RCW 82.08.0283.

Effective date—1996 c 162: See note following RCW 82.08.0283.

Finding—Intent—1991 c 250: See note following RCW 82.08.0283.

Effective date—1986 c 255: See note following RCW 82.08.0283.

Intent—1980 c 37: See note following RCW 82.04.4281.

82.12.0284 Exemptions—Use of computers or computer components, accessories, or software donated to schools or colleges. The provisions of this chapter shall not apply in respect to the use of computers, computer components, computer accessories, or computer software irrevocably donated to any public or private nonprofit school or college, as defined under chapter 84.36 RCW, in this state. For purposes of this section, "computer" and "computer software" have the same meaning as in RCW 82.04.215. [2007 c 54 § 15; 2003 c 168 § 603; 1983 1st ex.s. c 55 § 7.]

Severability—2007 c 54: See note following RCW 82.04.050.

Effective dates—Part headings not law—2003 c 168: See notes following RCW 82.08.010.

Effective dates—1983 1st ex.s. c 55: See note following RCW 82.08.010.

82.12.035 Credit for retail sales or use taxes paid to other jurisdictions with respect to property used. (Effective July 1, 2008.) A credit shall be allowed against the taxes imposed by this chapter upon the use of tangible personal property, extended warranty, or services taxable under RCW 82.04.050 (2)(a) or (3)(a), in the state of Washington in the amount that the present user thereof or his or her bailor or donor has paid a retail sales or use tax with respect to such property, extended warranty, or service to any other state, possession, territory, or commonwealth of the United States, any political subdivision thereof, the District of Columbia, and any foreign country or political subdivision thereof, prior to the use of such property, extended warranty, or service in Washington. [2007 c 6 § 1203; 2005 c 514 § 108; 2002 c 367 § 5; 1996 c 148 § 6; 1987 c 27 § 2; 1967 ex.s. c 89 § 5.]

Part headings not law—Savings—Effective date—Severability—2007 c 6: See notes following RCW 82.32.020.

Findings—Intent—2007 c 6: See note following RCW 82.14.495.

Effective date—2005 c 514: See note following RCW 83.100.230.

Part headings not law—Severability—2005 c 514: See notes following RCW 82.12.808.

Severability—Effective date—2002 c 367: See notes following RCW 82.04.060.

Severability—Effective date—1996 c 148: See notes following RCW 82.04.050.

82.12.037 Credits and refunds—Bad debts. (Effective July 1, 2008.) (1) A seller is entitled to a credit or refund for use taxes previously paid on bad debts, as that term is used in 26 U.S.C. Sec. 166, as amended or renumbered as of January 1, 2003.

(2) For purposes of this section, "bad debts" does not include:

(a) Amounts due on property that remains in the possession of the seller until the full purchase price is paid;

(b) Expenses incurred in attempting to collect debt; and

(c) Repossessed property.

(3) If a credit or refund of use tax is taken for a bad debt and the debt is subsequently collected in whole or in part, the tax on the amount collected must be paid and reported on the return filed for the period in which the collection is made.

(4) Payments on a previously claimed bad debt are applied first proportionally to the taxable price of the property or service and the sales or use tax thereon, and secondly to interest, service charges, and any other charges.

(5) If the seller uses a certified service provider as defined in RCW 82.32.020 to administer its use tax responsibilities, the certified service provider may claim, on behalf of the seller, the credit or refund allowed by this section. The certified service provider must credit or refund the full amount received to the seller.

(6) The department shall allow an allocation of bad debts among member states to the streamlined sales and use tax agreement, as defined in RCW 82.58.010(1), if the books and records of the person claiming bad debts support the allocation. [2007 c 6 § 103; 2004 c 153 § 304; 1982 1st ex.s. c 35 § 36.]

Part headings not law—Savings—Effective date—Severability—2007 c 6: See notes following RCW 82.32.020.

Findings—Intent—2007 c 6: See note following RCW 82.14.495.

Bad debts—Intent—2004 c 153: See note following RCW 82.08.037.

Retroactive effective date—Effective date—2004 c 153: See note following RCW 82.08.0293.

Severability—Effective dates—1982 1st ex.s. c 35: See notes following RCW 82.08.020.

82.12.145 Delivery charges. (Effective July 1, 2008.) When computing the tax levied by RCW 82.12.020, if a shipment consists of taxable tangible personal property and nontaxable tangible personal property, and delivery charges are included in the purchase price, the consumer must remit tax or the retailer must collect and remit tax on the percentage of delivery charges allocated to the taxable tangible personal property, but does not have to remit or collect and remit tax on the percentage allocated to exempt tangible personal property. The consumer or retailer may use either of the following percentages to determine the taxable portion of the delivery charges:

(1) A percentage based on the total purchase price of the taxable tangible personal property compared to the total purchase price of all tangible personal property in the shipment; or

(2) A percentage based on the total weight of the taxable tangible personal property compared to the total weight of all tangible personal property in the shipment. [2007 c 6 § 802.]

Part headings not law—Savings—Effective date—Severability—2007 c 6: See notes following RCW 82.32.020.

Findings—Intent—2007 c 6: See note following RCW 82.14.495.

82.12.195 Bundled transactions—Tax imposed. (Effective July 1, 2008.) (1) The use of each product acquired in a bundled transaction is subject to the tax imposed by RCW 82.12.020 if the use of any of its component products is subject to the tax imposed by RCW 82.12.020.

(2) The use of each product acquired in a transaction described in RCW 82.08.190(4) (a) or (b) is subject to the tax imposed by RCW 82.12.020 if the service that is the true object of the transaction is subject to the tax imposed by RCW 82.12.020. If the service that is the true object of the transaction is not subject to the tax imposed by RCW 82.12.020, the use of each product acquired in the transaction is not subject to the tax imposed by RCW 82.12.020.

(3) The use of each product acquired in a transaction described in RCW 82.08.190(4)(c) is not subject to the tax imposed by RCW 82.12.020.

(4) The use of each product in a transaction described in RCW 82.08.190(4)(d) is not subject to the tax imposed by RCW 82.12.020.

(5) The definitions in RCW 82.08.190 apply to this section. [2007 c 6 § 1403.]

Part headings not law—Savings—Effective date—Severability—2007 c 6: See notes following RCW 82.32.020.

Findings—Intent—2007 c 6: See note following RCW 82.14.495.

82.12.700 Exemptions—Vessels sold to nonresidents. (1) The provisions of this chapter do not apply in respect to the use of a vessel thirty feet or longer if a nonresident individual:

(a) Purchased the vessel from a vessel dealer in accordance with RCW 82.08.700;

(b) Purchased the vessel in the state from a person other than a vessel dealer, but the nonresident individual purchases and displays a valid use permit from a vessel dealer under this section within fourteen days of the date that the vessel is purchased in this state; or

(c) Acquired the vessel outside the state, but purchases and displays a valid use permit from a vessel dealer under this section within fourteen days of the date that the vessel is first brought into this state.

(2) Any vessel dealer that makes tax exempt sales under RCW 82.08.700 shall issue use permits under this section. A vessel dealer shall issue a use permit under this section if the dealer is satisfied that the individual purchasing the permit is a nonresident. The use permit is valid for twelve consecutive months from the date of issuance. A use permit is not renewable, and an individual may only purchase one use permit for a particular vessel. A person who has been issued a use permit under RCW 82.08.700 for a particular vessel may not purchase a use permit under this section for the same vessel after the use permit issued under RCW 82.08.700 expires. All other requirements and conditions, not inconsistent with the provisions of this section, relating to use permits in RCW

82.08.700, apply to use permits under this section. A person may not claim an exemption under RCW 82.12.0251(1) within twenty-four months after a use permit, issued under this section or RCW 82.08.700, for the same vessel, has expired.

(3)(a) Except as provided in (b) of this subsection, a non-resident who claims an exemption under this section and who uses a vessel in this state after his or her use permit for that vessel has expired is liable for the tax imposed under RCW 82.12.020 based on the value of the vessel at the time that the vessel was either purchased in this state under circumstances in which the exemption under RCW 82.08.700 did not apply or was first brought into this state, as the case may be. Interest at the rate provided in RCW 82.32.050 applies to amounts due under this subsection, retroactively to the date that the vessel was purchased in this state or first brought into the state, and accrues until the full amount of tax due is paid to the department.

(b) A nonresident individual who is exempt under both this section and RCW 82.08.700 and who uses a vessel in this state after his or her use permit for that vessel expires is liable for tax and interest as provided in RCW 82.08.700(5).

(4) Any vessel dealer that issues a use permit to an individual who does not hold valid identification establishing out-of-state residency, and any dealer that fails to maintain records for each use permit issued that shows the type of proof accepted, including any identification numbers where appropriate, and the expiration date, if any, is personally liable for the amount of tax due. [2007 c 22 § 2.]

Effective date—2007 c 22: See note following RCW 82.08.700.

82.12.705 Exemptions—Financial information delivered electronically. The provisions of this chapter shall not apply with respect to the use, by an investment management company or a financial institution, of electronically delivered standard financial information. [2007 c 182 § 2.]

Effective date—2007 c 182: See note following RCW 82.08.705.

82.12.803 Exemptions—Nebulizers. (Effective July 1, 2008.) (1) The provisions of this chapter shall not apply in respect to the use of nebulizers, including repair, replacement, and component parts for such nebulizers, for human use pursuant to a prescription. In addition, the provisions of this chapter shall not apply in respect to labor and services rendered in respect to the repairing, cleaning, altering, or improving of nebulizers. "Nebulizer" has the same meaning as in RCW 82.08.803.

(2) Sellers obligated to collect use tax shall collect tax on sales subject to this exemption. The buyer shall apply for a refund directly from the department in a form and manner prescribed by the department. [2007 c 6 § 1104; 2004 c 153 § 105.]

Part headings not law—Savings—Effective date—Severability—2007 c 6: See notes following RCW 82.32.020.

Findings—Intent—2007 c 6: See note following RCW 82.14.495.

Retroactive effective date—Effective date—2004 c 153: See note following RCW 82.08.0293.

82.12.855 Exemptions—Replacement parts for qualifying farm machinery and equipment. (1) The provisions

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of this chapter do not apply in respect to the use by an eligible farmer of:

(a) Replacement parts for qualifying farm machinery and equipment;

(b) Labor and services rendered in respect to the installing of replacement parts; and

(c) Labor and services rendered in respect to the repairing of qualifying farm machinery and equipment, provided that during the course of repairing no tangible personal property is installed, incorporated, or placed in, or becomes a component of, the qualifying farm machinery and equipment other than replacement parts.

(2)(a) Notwithstanding anything to the contrary in this chapter, if a single transaction involves services that are not exempt under this section and services that would be exempt under this section if provided separately, the exemptions provided in subsection (1)(b) and (c) of this section apply if: (i) The seller makes a separately itemized charge for labor and services described in subsection (1)(b) or (c) of this section; and (ii) the separately itemized charge does not exceed the seller's usual and customary charge for such services.

(b) If the requirements in (a)(i) and (ii) of this subsection (2) are met, the exemption provided in subsection (1)(b) or (c) of this section applies to the separately itemized charge for labor and services described in subsection (1)(b) or (c) of this section.

(3) The definitions and recordkeeping requirements in RCW 82.08.855, other than the exemption certificate requirement, apply to this section.

(4) If a person is an eligible farmer as defined in RCW 82.08.855(4)(b)(iii) who cannot prove income because the person is new to farming or newly returned to farming, the exemption under this section will apply only if one of the conditions in RCW 82.08.855(3)(d)(i)(A) or (B) is met. If the conditions are not met, any taxes for which an exemption under this section was claimed and interest on such taxes must be paid. Amounts due under this subsection shall be in accordance with RCW 82.08.855(3)(d)(ii), except that the due date for payment is January 31st of the year immediately following the first full tax year in which the person engaged in business as a farmer.

(5) Except as provided in subsection (4) of this section, the department shall not assess the tax imposed under this chapter against a person who no longer qualifies as an eligible farmer with respect to the use of any articles or services exempt under subsection (1) of this section, if the person was an eligible farmer when the person first put the articles or services to use in this state. [2007 c 332 § 2; 2006 c 172 § 2.]

Effective date—2006 c 172: See note following RCW 82.08.855.

82.12.865 Exemptions—Diesel, biodiesel, and aircraft fuel for farm fuel users. (1) The provisions of this chapter do not apply with respect to the nonhighway use of diesel fuel, biodiesel fuel, or aircraft fuel, by a farm fuel user. This exemption applies to a fuel blend if all of the component fuels of the blend would otherwise be exempt under this subsection if the component fuels were acquired as separate products. Fuel used for space or water heating for human habitation is not exempt under this section.

(2) The definitions in RCW 82.08.865 apply to this section. [2007 c 443 § 2; 2006 c 7 § 2.]

Effective date—2007 c 443: See note following RCW 82.08.865.

Effective date—2006 c 7: See note following RCW 82.08.865.

Additional use tax exemption for fuel: RCW 82.12.0256.

82.12.955 Exemptions—Use of machinery, equipment, vehicles, and services related to biodiesel or E85 motor fuel. (Expires July 1, 2015.) (1) The provisions of this chapter do not apply in respect to the use of machinery and equipment, or to services rendered in respect to installing, repairing, cleaning, altering, or improving of eligible machinery and equipment, or tangible personal property that becomes an ingredient or component of machinery and equipment used directly for the retail sale of a biodiesel or E85 motor fuel.

(2) The provisions of this chapter do not apply in respect to the use of fuel delivery vehicles including repair parts and replacement parts and to services rendered in respect to installing, repairing, cleaning, altering, or improving the vehicles if at least seventy-five percent of the fuel distributed by the vehicles is a biodiesel or E85 motor fuel.

(3) For the purposes of this section, the definitions in RCW 82.04.4334 and 82.08.955 apply.

(4) This section expires July 1, 2015. [2007 c 309 § 5; 2003 c 63 § 3.]

Effective date—2003 c 63: See note following RCW 82.04.4334.

82.12.995 Exemptions—Certain limited purpose public corporations, commissions, and authorities. (1) The provisions of this chapter do not apply with respect to the use of tangible personal property and services provided by a public corporation, commission, or authority created under RCW 35.21.660 or 35.21.730 to an eligible entity.

(2) For purposes of this section, "eligible entity" means a limited liability company, a limited partnership, or a single asset entity, described in RCW 82.04.615. [2007 c 381 § 3.]

Chapter 82.14 RCW

LOCAL RETAIL SALES AND USE TAXES

Sections

82.14.020	Definitions. (<i>Effective July 1, 2008; contingency, see note following RCW 82.04.530.</i>)
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82.14.390	Sales and use tax for regional centers. (<i>Effective July 1, 2008.</i>)
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82.14.020 Definitions. (Effective July 1, 2008; contingency, see note following RCW 82.04.530.) For purposes of this chapter:

(1) "City" means a city or town;

(2) The meaning ascribed to words and phrases in chapters 82.04, 82.08 and 82.12 RCW, as now or hereafter amended, insofar as applicable, shall have full force and effect with respect to taxes imposed under authority of this chapter;

(3) "Taxable event" shall mean any retail sale, or any use, upon which a state tax is imposed pursuant to chapter 82.08 or 82.12 RCW, as they now exist or may hereafter be amended: PROVIDED, HOWEVER, That the term shall not include a retail sale taxable pursuant to RCW 82.08.150, as now or hereafter amended;

(4) "Treasurer or other legal depository" shall mean the treasurer or legal depository of a county or city. [2007 c 6 § 502; (2005 c 514 § 112 repealed by 2007 c 54 § 2); 2005 c 514 § 111; (2003 c 168 § 503 repealed by 2007 c 54 § 2); 2003 c 168 § 502. Prior: 2002 c 367 § 6; 2002 c 67 § 7; 2001 c 186 § 3; 1997 c 201 § 1; 1983 2nd ex.s. c 3 § 31; 1982 c 211 § 1; 1981 c 144 § 4; 1970 ex.s. c 94 § 3.]

Part headings not law—Savings—Effective date—Severability—2007 c 6: See notes following RCW 82.32.020.

Findings—Intent—2007 c 6: See note following RCW 82.14.495.

Effective date—2005 c 514: See note following RCW 83.100.230.

Part headings not law—Severability—2005 c 514: See notes following RCW 82.12.808.

Effective dates—Part headings not law—2003 c 168: See notes following RCW 82.08.010.

Severability—Effective date—2002 c 367: See notes following RCW 82.04.060.

Finding—Contingency—Court judgment—Effective date—2002 c 67: See note and Reviser's note following RCW 82.04.530.

Finding—Purpose—Effective date—2001 c 186: See notes following RCW 82.08.0202.

Construction—Severability—Effective dates—1983 2nd ex.s. c 3: See notes following RCW 82.04.255.

Intent—Severability—Effective date—1981 c 144: See notes following RCW 82.16.010.

82.14.370 Sales and use tax for public facilities in rural counties. (1) The legislative authority of a rural county may impose a sales and use tax in accordance with the terms of this chapter. The tax is in addition to other taxes authorized by law and shall be collected from those persons who are taxable by the state under chapters 82.08 and 82.12 RCW upon the occurrence of any taxable event within the county. The rate of tax shall not exceed 0.09 percent of the selling price in the case of a sales tax or value of the article used in the case of a use tax, except that for rural counties with population densities between sixty and one hundred persons per square mile, the rate shall not exceed 0.04 percent before January 1, 2000.

(2) The tax imposed under subsection (1) of this section shall be deducted from the amount of tax otherwise required to be collected or paid over to the department of revenue under chapter 82.08 or 82.12 RCW. The department of revenue shall perform the collection of such taxes on behalf of the county at no cost to the county.

(3)(a) Moneys collected under this section shall only be used to finance public facilities serving economic develop-

ment purposes in rural counties and finance personnel in economic development offices. The public facility must be listed as an item in the officially adopted county overall economic development plan, or the economic development section of the county's comprehensive plan, or the comprehensive plan of a city or town located within the county for those counties planning under RCW 36.70A.040. For those counties that do not have an adopted overall economic development plan and do not plan under the growth management act, the public facility must be listed in the county's capital facilities plan or the capital facilities plan of a city or town located within the county.

(b) In implementing this section, the county shall consult with cities, towns, and port districts located within the county and the associate development organization serving the county to ensure that the expenditure meets the goals of chapter 130, Laws of 2004 and the requirements of (a) of this subsection. Each county collecting money under this section shall report, as follows, to the office of the state auditor, within one hundred fifty days after the close of each fiscal year: (i) A list of new projects begun during the fiscal year, showing that the county has used the funds for those projects consistent with the goals of chapter 130, Laws of 2004 and the requirements of (a) of this subsection; and (ii) expenditures during the fiscal year on projects begun in a previous year. Any projects financed prior to June 10, 2004, from the proceeds of obligations to which the tax imposed under subsection (1) of this section has been pledged shall not be deemed to be new projects under this subsection. No new projects funded with money collected under this section may be for justice system facilities.

(c) The definitions in this section apply throughout this section.

(i) "Public facilities" means bridges, roads, domestic and industrial water facilities, sanitary sewer facilities, earth stabilization, storm sewer facilities, railroad, electricity, natural gas, buildings, structures, telecommunications infrastructure, transportation infrastructure, or commercial infrastructure, and port facilities in the state of Washington.

(ii) "Economic development purposes" means those purposes which facilitate the creation or retention of businesses and jobs in a county.

(iii) "Economic development office" means an office of a county, port districts, or an associate development organization as defined in RCW 43.330.010, which promotes economic development purposes within the county.

(4) No tax may be collected under this section before July 1, 1998. No tax may be collected under this section by a county more than twenty-five years after the date that a tax is first imposed under this section.

(5) For purposes of this section, "rural county" means a county with a population density of less than one hundred persons per square mile or a county smaller than two hundred twenty-five square miles as determined by the office of financial management and published each year by the department for the period July 1st to June 30th. [2007 c 478 § 1; 2007 c 250 § 1; 2004 c 130 § 2; 2002 c 184 § 1; 1999 c 311 § 101; 1998 c 55 § 6; 1997 c 366 § 3.]

Reviser's note: This section was amended by 2007 c 250 § 1 and by 2007 c 478 § 1, each without reference to the other. Both amendments are

incorporated in the publication of this section under RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

Effective date—2007 c 478: "This act takes effect August 1, 2007." [2007 c 478 § 2.]

Intent—2004 c 130: "It is the intent of the legislature in enacting this 2004 act to reaffirm the original goals of the 1997 act which first provided distressed counties with the local option sales and use tax contained in RCW 82.14.370. The local option tax is now available to all rural counties and the continuing legislative goal for RCW 82.14.370 is to promote the creation, attraction, expansion, and retention of businesses and provide for family wage jobs." [2004 c 130 § 1.]

Finding—Intent—1999 c 311: "The legislature finds that while Washington's economy is currently prospering, economic growth continues to be uneven, particularly as between metropolitan and rural areas. This has created in effect two Washingtons: One afflicted by inadequate infrastructure to support and attract investment, another suffering from congestion and soaring housing prices. In order to address these problems, the legislature intends to use resources strategically to build on our state's strengths while addressing threats to our prosperity." [1999 c 311 § 1.]

Part headings and subheadings not law—1999 c 311: "Part headings and subheadings used in this act are not any part of the law." [1999 c 311 § 601.]

Effective date—1999 c 311: "Sections 1, 101, 201, 301 through 305, 401, 402, 601, and 605 of this act take effect August 1, 1999." [1999 c 311 § 604.]

Severability—1999 c 311: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1999 c 311 § 606.]

Intent—1997 c 366: "The legislature recognizes the economic hardship that rural distressed areas throughout the state have undergone in recent years. Numerous rural distressed areas across the state have encountered serious economic downturns resulting in significant job loss and business failure. In 1991 the legislature enacted two major pieces of legislation to promote economic development and job creation, with particular emphasis on worker training, income, and emergency services support, along with community revitalization through planning services and infrastructure assistance. However even though these programs have been of assistance, rural distressed areas still face serious economic problems including: Above-average unemployment rates from job losses and below-average employment growth; low rate of business start-ups; and persistent erosion of vitally important resource-driven industries.

The legislature also recognizes that rural distressed areas in Washington have an abiding ability and consistent will to overcome these economic obstacles by building upon their historic foundations of business enterprise, local leadership, and outstanding work ethic.

The legislature intends to assist rural distressed areas in their ongoing efforts to address these difficult economic problems by providing a comprehensive and significant array of economic tools, necessary to harness the persistent and undaunted spirit of enterprise that resides in the citizens of rural distressed areas throughout the state.

The further intent of this act is to provide:

(1) A strategically designed plan of assistance, emphasizing state, local, and private sector leadership and partnership;

(2) A comprehensive and significant array of business assistance, services, and tax incentives that are accountable and performance driven;

(3) An array of community assistance including infrastructure development and business retention, attraction, and expansion programs that will provide a competitive advantage to rural distressed areas throughout Washington; and

(4) Regulatory relief to reduce and streamline zoning, permitting, and regulatory requirements in order to enhance the capability of businesses to grow and prosper in rural distressed areas." [1997 c 366 § 1.]

Goals—1997 c 366: "The primary goals of chapter 366, Laws of 1997 are to:

(1) Promote the ongoing operation of business in rural distressed areas;

(2) Promote the expansion of existing businesses in rural distressed areas;

(3) Attract new businesses to rural distressed areas;

(4) Assist in the development of new businesses from within rural distressed areas;

(5) Provide family wage jobs to the citizens of rural distressed areas; and

(6) Promote the development of communities of excellence in rural distressed areas." [1997 c 366 § 2.]

Severability—1997 c 366: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1997 c 366 § 11.]

Captions and part headings not law—1997 c 366: "Section captions and part headings used in this act are not any part of the law." [1997 c 366 § 12.]

82.14.390 Sales and use tax for regional centers. (Effective until July 1, 2008.) (1) Except as provided in subsection (6) of this section, the governing body of a public facilities district (a) created before July 31, 2002, under chapter 35.57 or 36.100 RCW that commences construction of a new regional center, or improvement or rehabilitation of an existing new regional center, before January 1, 2004; (b) created before July 1, 2006, under chapter 35.57 RCW in a county or counties in which there are no other public facilities districts on June 7, 2006, and in which the total population in the public facilities district is greater than ninety thousand that commences construction of a new regional center before February 1, 2007; (c) created under the authority of RCW 35.57.010(1)(d); or (d) created before September 1, 2007, under chapter 35.57 or 36.100 RCW, in a county or counties in which there are no other public facilities districts on July 22, 2007, and in which the total population in the public facilities district is greater than seventy thousand, that commences construction of a new regional center before January 1, 2009, may impose a sales and use tax in accordance with the terms of this chapter. The tax is in addition to other taxes authorized by law and shall be collected from those persons who are taxable by the state under chapters 82.08 and 82.12 RCW upon the occurrence of any taxable event within the public facilities district. The rate of tax shall not exceed 0.033 percent of the selling price in the case of a sales tax or value of the article used in the case of a use tax.

(2) The tax imposed under subsection (1) of this section shall be deducted from the amount of tax otherwise required to be collected or paid over to the department of revenue under chapter 82.08 or 82.12 RCW. The department of revenue shall perform the collection of such taxes on behalf of the county at no cost to the public facilities district.

(3) No tax may be collected under this section before August 1, 2000. The tax imposed in this section shall expire when the bonds issued for the construction of the regional center and related parking facilities are retired, but not more than twenty-five years after the tax is first collected.

(4) Moneys collected under this section shall only be used for the purposes set forth in RCW 35.57.020 and must be matched with an amount from other public or private sources equal to thirty-three percent of the amount collected under this section, provided that amounts generated from nonvoter approved taxes authorized under chapter 35.57 RCW or nonvoter approved taxes authorized under chapter 36.100 RCW shall not constitute a public or private source. For the purpose of this section, public or private sources includes, but is not limited to cash or in-kind contributions used in all phases of the development or improvement of the regional center, land that is donated and used for the siting of the regional center, cash or in-kind contributions from public or private foundations, or amounts attributed to private sector

partners as part of a public and private partnership agreement negotiated by the public facilities district.

(5) The combined total tax levied under this section shall not be greater than 0.033 percent. If both a public facilities district created under chapter 35.57 RCW and a public facilities district created under chapter 36.100 RCW impose a tax under this section, the tax imposed by a public facilities district created under chapter 35.57 RCW shall be credited against the tax imposed by a public facilities district created under chapter 36.100 RCW.

(6) A public facilities district created under chapter 36.100 RCW is not eligible to impose the tax under this section if the legislative authority of the county where the public facilities district is located has imposed a sales and use tax under RCW 82.14.0485 or 82.14.0494. [2007 c 486 § 2; 2006 c 298 § 1; 2002 c 363 § 4; 1999 c 165 § 13.]

Severability—1999 c 164: See RCW 35.57.900.

82.14.390 Sales and use tax for regional centers. (Effective July 1, 2008.) (1) Except as provided in subsection (7) of this section, the governing body of a public facilities district (a) created before July 31, 2002, under chapter 35.57 or 36.100 RCW that commences construction of a new regional center, or improvement or rehabilitation of an existing new regional center, before January 1, 2004; (b) created before July 1, 2006, under chapter 35.57 RCW in a county or counties in which there are no other public facilities districts on June 7, 2006, and in which the total population in the public facilities district is greater than ninety thousand that commences construction of a new regional center before February 1, 2007; (c) created under the authority of RCW 35.57.010(1)(d); or (d) created before September 1, 2007, under chapter 35.57 or 36.100 RCW, in a county or counties in which there are no other public facilities districts on July 22, 2007, and in which the total population in the public facilities district is greater than seventy thousand, that commences construction of a new regional center before January 1, 2009, may impose a sales and use tax in accordance with the terms of this chapter. The tax is in addition to other taxes authorized by law and shall be collected from those persons who are taxable by the state under chapters 82.08 and 82.12 RCW upon the occurrence of any taxable event within the public facilities district. The rate of tax shall not exceed 0.033 percent of the selling price in the case of a sales tax or value of the article used in the case of a use tax.

(2)(a) The governing body of a public facilities district imposing a sales and use tax under the authority of this section may increase the rate of tax up to 0.037 percent if, within three fiscal years of July 1, 2008, the department determines that, as a result of RCW 82.14.490 and the chapter 6, Laws of 2007 amendments to RCW 82.14.020, a public facilities district's sales and use tax collections for fiscal years after July 1, 2008, have been reduced by a net loss of at least 0.50 percent from the fiscal year before July 1, 2008. The fiscal year in which this section becomes effective is the first fiscal year after July 1, 2008.

(b) The department shall determine sales and use tax collection net losses under this section as provided in RCW 82.14.500 (2) and (3). The department shall provide written notice of its determinations to public facilities districts.

Determinations by the department of a public facilities district's sales and use tax collection net losses as a result of RCW 82.14.490 and the chapter 6, Laws of 2007 amendments to RCW 82.14.020 are final and not appealable.

(c) A public facilities district may increase its rate of tax after it has received written notice from the department as provided in (b) of this subsection. The increase in the rate of tax must be made in 0.001 percent increments and must be the least amount necessary to mitigate the net loss in sales and use tax collections as a result of RCW 82.14.490 and the chapter 6, Laws of 2007 amendments to RCW 82.14.020. The increase in the rate of tax is subject to RCW 82.14.055.

(3) The tax imposed under subsection (1) of this section shall be deducted from the amount of tax otherwise required to be collected or paid over to the department of revenue under chapter 82.08 or 82.12 RCW. The department of revenue shall perform the collection of such taxes on behalf of the county at no cost to the public facilities district.

(4) No tax may be collected under this section before August 1, 2000. The tax imposed in this section shall expire when the bonds issued for the construction of the regional center and related parking facilities are retired, but not more than twenty-five years after the tax is first collected.

(5) Moneys collected under this section shall only be used for the purposes set forth in RCW 35.57.020 and must be matched with an amount from other public or private sources equal to thirty-three percent of the amount collected under this section, provided that amounts generated from nonvoter approved taxes authorized under chapter 35.57 RCW or nonvoter approved taxes authorized under chapter 36.100 RCW shall not constitute a public or private source. For the purpose of this section, public or private sources includes, but is not limited to cash or in-kind contributions used in all phases of the development or improvement of the regional center, land that is donated and used for the siting of the regional center, cash or in-kind contributions from public or private foundations, or amounts attributed to private sector partners as part of a public and private partnership agreement negotiated by the public facilities district.

(6) The combined total tax levied under this section shall not be greater than 0.037 percent. If both a public facilities district created under chapter 35.57 RCW and a public facilities district created under chapter 36.100 RCW impose a tax under this section, the tax imposed by a public facilities district created under chapter 35.57 RCW shall be credited against the tax imposed by a public facilities district created under chapter 36.100 RCW.

(7) A public facilities district created under chapter 36.100 RCW is not eligible to impose the tax under this section if the legislative authority of the county where the public facilities district is located has imposed a sales and use tax under RCW 82.14.0485 or 82.14.0494. [2007 c 486 § 2; 2007 c 6 § 904; 2006 c 298 § 1; 2002 c 363 § 4; 1999 c 165 § 13.]

Reviser's note: This section was amended by 2007 c 6 § 904 and by 2007 c 486 § 2, each without reference to the other. Both amendments are incorporated in the publication of this section under RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

Part headings not law—Savings—Effective date—Severability—2007 c 6: See notes following RCW 82.32.020.

Findings—Intent—2007 c 6: See note following RCW 82.14.495.

[2007 RCW Supp—page 1078]

Severability—1999 c 164: See RCW 35.57.900.

82.14.450 Sales and use tax for counties and cities.

(1) A county legislative authority may submit an authorizing proposition to the county voters at a primary or general election and, if the proposition is approved by a majority of persons voting, impose a sales and use tax in accordance with the terms of this chapter. The title of each ballot measure must clearly state the purposes for which the proposed sales and use tax will be used. Funds raised under this tax shall not supplant existing funds used for these purposes. For purposes of this subsection, existing funds means the actual operating expenditures for the calendar year in which the ballot measure is approved by voters. Actual operating expenditures excludes lost federal funds, lost or expired state grants or loans, extraordinary events not likely to reoccur, changes in contract provisions beyond the control of the county or city receiving the services, and major nonrecurring capital expenditures. The rate of tax under this section shall not exceed three-tenths of one percent of the selling price in the case of a sales tax, or value of the article used, in the case of a use tax.

(2) The tax authorized in this section is in addition to any other taxes authorized by law and shall be collected from those persons who are taxable by the state under chapters 82.08 and 82.12 RCW upon the occurrence of any taxable event within the county.

(3) The retail sale or use of motor vehicles, and the lease of motor vehicles for up to the first thirty-six months of the lease, are exempt from tax imposed under this section.

(4) One-third of all money received under this section shall be used solely for criminal justice purposes. For the purposes of this subsection, "criminal justice purposes" means additional police protection, mitigation of congested court systems, or relief of overcrowded jails or other local correctional facilities.

(5) Money received under this section shall be shared between the county and the cities as follows: Sixty percent shall be retained by the county and forty percent shall be distributed on a per capita basis to cities in the county. [2007 c 380 § 1; 2003 1st sp.s. c 24 § 2.]

Finding—Intent—2003 1st sp.s. c 24: "The legislature finds that local governments in the state of Washington face enormous challenges in the area of criminal justice and public health. It is the legislature's intent to allow general local governments to raise revenues in order to better protect the health and safety of Washington state and its residents. It is further the intent of the legislature to provide such local governments relief from regulatory burdens that do not harm the public health and safety of the citizens of the state as a means of minimizing the need to generate new revenues authorized under this act." [2003 1st sp.s. c 24 § 1.]

Effective date—2003 1st sp.s. c 24: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect July 1, 2003." [2003 1st sp.s. c 24 § 6.]

Severability—2003 1st sp.s. c 24: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [2003 1st sp.s. c 24 § 7.]

82.14.465 Hospital benefit zones—Sales and use tax—Definitions. (1) A city, town, or county that creates a benefit zone and finances public improvements pursuant to chapter 39.100 RCW may impose a sales and use tax in accordance with the terms of this chapter and subject to the

criteria set forth in this section. Except as provided in this section, the tax is in addition to other taxes authorized by law and shall be collected from those persons who are taxable by the state under chapters 82.08 and 82.12 RCW upon the occurrence of any taxable event within the taxing jurisdiction of the city, town, or county. The rate of tax shall not exceed the rate provided in RCW 82.08.020(1) in the case of a sales tax or the rate provided in RCW 82.12.020(5) in the case of a use tax, less the aggregate rates of any other taxes imposed on the same events that are credited against the state taxes imposed under chapters 82.08 and 82.12 RCW. The tax rate shall be no higher than what is reasonably necessary for the local government to receive its entire annual state contribution in a ten-month period of time.

(2) The tax imposed under subsection (1) of this section shall be deducted from the amount of tax otherwise required to be collected or paid over to the department under chapter 82.08 or 82.12 RCW. The department shall perform the collection of such taxes on behalf of the city, town, or county at no cost to the city, town, or county.

(3) No tax may be imposed under this section before July 1, 2007. Before imposing a tax under this section, the city, town, or county shall first have received tax allocation revenues during the preceding calendar year. The tax imposed under this section shall expire on the earlier of the date: (a) The tax allocation revenues are no longer used for public improvements and public improvement costs; (b) the bonds issued under the authority of chapter 39.100 RCW are retired, if the bonds are issued; or (c) that is thirty years after the tax is first imposed.

(4) An ordinance adopted by the legislative authority of a city, town, or county imposing a tax under this section shall provide that:

(a) The tax shall first be imposed on the first day of a fiscal year;

(b) The amount of tax received by the local government in any fiscal year shall not exceed the amount of the state contribution;

(c) The tax shall cease to be distributed for the remainder of any fiscal year in which either:

(i) The amount of tax distributions totals the amount of the state contribution;

(ii) The amount of tax distributions totals the amount of local public sources, dedicated in the previous calendar year to finance public improvements authorized under chapter 39.100 RCW, expended in the previous year for public improvement costs or used to pay for other bonds issued to pay for public improvements; or

(iii) The amount of revenue from taxes imposed under this section by all cities, towns, and counties totals the annual state credit limit as provided in RCW 82.32.700(3);

(d) The tax shall be distributed again, should it cease to be distributed for any of the reasons provided in (c) of this subsection, at the beginning of the next fiscal year, subject to the restrictions in this section; and

(e) Any revenue generated by the tax in excess of the amounts specified in (b) and (c) of this subsection shall belong to the state of Washington.

(5) If both a county and a city or town impose a tax under this section, the tax imposed by the city, town, or county shall be credited as follows:

(a) If the county has created a benefit zone before the city or town, the tax imposed by the county shall be credited against the tax imposed by the city or town, the purpose of such credit is to give priority to the county tax; and

(b) If the city or town has created a benefit zone before the county, the tax imposed by the city or town shall be credited against the tax imposed by the county, the purpose of such credit is to give priority to the city or town tax.

(6) The department shall determine the amount of tax distributions attributable to each city, town, and county imposing a sales and use tax under this section and shall advise a city, town, or county when the tax will cease to be distributed for the remainder of the fiscal year as provided in subsection (4)(c) of this section. Determinations by the department of the amount of taxes attributable to a city, town, or county are final and shall not be used to challenge the validity of any tax imposed under this section. The department shall remit any tax revenues in excess of the amounts specified in subsection (4)(b) and (c) of this section to the state treasurer who shall deposit the moneys in the general fund.

(7) The definitions in this subsection apply throughout this section and RCW 82.14.470 unless the context clearly requires otherwise.

(a) "Base year" means the calendar year immediately following the creation of a benefit zone.

(b) "Benefit zone" has the same meaning as provided in RCW 39.100.010.

(c) "Excess local excise taxes" has the same meaning as provided in RCW 39.100.050.

(d) "Excess state excise taxes" means the amount of excise taxes received by the state during the measurement year from taxable activity within the benefit zone over and above the amount of excise taxes received by the state during the base year from taxable activity within the benefit zone. However, if a local government creates the benefit zone and reasonably determines that no activity subject to tax under chapters 82.08 and 82.12 RCW occurred in the twelve months immediately preceding the creation of the benefit zone within the boundaries of the area that became the benefit zone, "excess state excise taxes" means the entire amount of state excise taxes the state receives during a calendar year period beginning with the calendar year immediately following the creation of the benefit zone and continuing with each measurement year thereafter.

(e) "State excise taxes" means revenues derived from state retail sales and use taxes under chapters 82.08 and 82.12 RCW, less the amount of tax distributions from all local retail sales and use taxes imposed on the same taxable events that are credited against the state retail sales and use taxes under chapters 82.08 and 82.12 RCW except for the local tax authorized in this section.

(f) "Fiscal year" has the same meaning as provided in RCW 39.100.030.

(g) "Measurement year" means a calendar year, beginning with the calendar year following the base year and each calendar year thereafter, that is used annually to measure the amount of excess state excise taxes and excess local excise taxes.

(h) "State contribution" means the lesser of two million dollars or an amount equal to excess state excise taxes received by the state during the preceding calendar year.

(i) "Tax allocation revenues" has the same meaning as provided in RCW 39.100.010.

(j) "Public improvements" and "public improvement costs" have the same meanings as provided in RCW 39.100.010.

(k) "Local public sources" includes, but is not limited to, private monetary contributions, assessments, dedicated local government funds, and tax allocation revenues. "Local public sources" does not include local government funds derived from any state loan or state grant, any local tax that is credited against the state sales and use taxes, or any other state funds. [2007 c 266 § 7; 2006 c 111 § 7.]

Finding—Application—Effective date—2007 c 266: See notes following RCW 39.100.010.

Effective date—2006 c 111: See RCW 39.100.900.

82.14.470 Hospital benefit zones—Local public sources dedicated to finance public improvements—Reporting requirements. (1)(a)(i) Moneys collected from the taxes imposed under RCW 82.14.465 shall be used only for the following purposes:

(A) Principal and interest payments on bonds issued under the authority of RCW 39.100.060;

(B) Principal and interest payments on other bonds issued by the local government to finance public improvements; or

(C) Payments for public improvement costs.

(ii) Moneys collected and used as provided in (a)(i) of this subsection must be matched with an amount from local public sources dedicated through December 31st of the previous calendar year to finance public improvements authorized under chapter 39.100 RCW.

(b) Local public sources are dedicated to finance public improvements if they: (i) Are actually expended to pay public improvement costs or debt service on bonds issued for public improvements; or (ii) are required by law or an agreement to be used exclusively to pay public improvement costs or debt service on bonds issued for public improvements.

(2) A local government shall inform the department by the first day of March of the amount of local public sources dedicated in the preceding calendar year to finance public improvements authorized under chapter 39.100 RCW.

(3) If a local government fails to comply with subsection (2) of this section, no tax may be imposed under RCW 82.14.465 in the subsequent fiscal year.

(4) A local government shall provide a report to the department and the state auditor by March 1st of each year. A local government shall make a good faith effort to provide information required for the report.

The report shall contain the following information:

(a) The amount of tax allocation revenues, taxes under RCW 82.14.465, and local public sources received by the local government during the preceding calendar year, and a summary of how these revenues were expended; and

(b) The names of any businesses known to the local government that have located within the benefit zone as a result of the public improvements undertaken by the local govern-

ment and financed in whole or in part with hospital benefit zone financing.

(5) The department shall make a report available to the public and the legislature by June 1st of each year. The report shall include a list of public improvements undertaken by local governments and financed in whole or in part with hospital benefit zone financing, and it shall also include a summary of the information provided to the department by local governments under subsection (4) of this section. [2007 c 266 § 8; 2006 c 111 § 8.]

Finding—Application—Effective date—2007 c 266: See notes following RCW 39.100.010.

Effective date—2006 c 111: See RCW 39.100.900.

82.14.475 Sales and use tax for the local infrastructure financing tool program. (Expires June 30, 2039.) (1) A sponsoring local government, and any cosponsoring local government, that has been approved by the board to use local infrastructure financing may impose a sales and use tax in accordance with the terms of this chapter and subject to the criteria set forth in this section. Except as provided in this section, the tax is in addition to other taxes authorized by law and shall be collected from those persons who are taxable by the state under chapters 82.08 and 82.12 RCW upon the occurrence of any taxable event within the taxing jurisdiction of the sponsoring local government or cosponsoring local government. The rate of tax shall not exceed the rate provided in RCW 82.08.020(1), less the aggregate rates of any other local sales and use taxes imposed on the same taxable events that are credited against the state sales and use taxes imposed under chapters 82.08 and 82.12 RCW. The rate of tax may be changed only on the first day of a fiscal year as needed. Notice of rate changes must be provided to the department on the first day of March to be effective on July 1st of the next fiscal year.

(2) The tax authorized under subsection (1) of this section shall be credited against the state taxes imposed under chapter 82.08 or 82.12 RCW. The department shall perform the collection of such taxes on behalf of the sponsoring local government or cosponsoring local government at no cost to the sponsoring local government or cosponsoring local government and shall remit the taxes as provided in RCW 82.14.060.

(3)(a) No tax may be imposed under the authority of this section:

(i) Before July 1, 2008;

(ii) Before approval by the board under RCW 39.102.040; and

(iii) Before the sponsoring local government has received local excise tax allocation revenues, local property tax allocation revenues, or both, during the preceding calendar year.

(b) The tax imposed under this section shall expire when the bonds issued under the authority of RCW 39.102.150 are retired, but not more than twenty-five years after the tax is first imposed.

(4) An ordinance adopted by the legislative authority of a sponsoring local government or cosponsoring local government imposing a tax under this section shall provide that:

(a) The tax shall first be imposed on the first day of a fiscal year;

(b) The cumulative amount of tax received by the sponsoring local government, and any cosponsoring local government, in any fiscal year shall not exceed the amount of the state contribution;

(c) The tax shall cease to be distributed for the remainder of any fiscal year in which either:

(i) The amount of tax received by the sponsoring local government, and any cosponsoring local government, equals the amount of the state contribution;

(ii) The amount of revenue from taxes imposed under this section by all sponsoring and cosponsoring local governments equals the annual state contribution limit; or

(iii) The amount of tax received by the sponsoring local government equals the amount of project award granted in the approval notice described in RCW 39.102.040;

(d) Neither the local excise tax allocation revenues nor the local property tax allocation revenues may constitute more than eighty percent of the total local funds as described in RCW 39.102.020(29)(c). This requirement applies beginning January 1st of the fifth calendar year after the calendar year in which the sponsoring local government begins allocating local excise tax allocation revenues under RCW 39.102.110;

(e) The tax shall be distributed again, should it cease to be distributed for any of the reasons provided in (c) of this subsection, at the beginning of the next fiscal year, subject to the restrictions in this section; and

(f) Any revenue generated by the tax in excess of the amounts specified in (c) of this subsection shall belong to the state of Washington.

(5) If a county and city cosponsor a revenue development area, the combined rates of the city and county tax shall not exceed the rate provided in RCW 82.08.020(1), less the aggregate rates of any other local sales and use taxes imposed on the same taxable events that are credited against the state sales and use taxes imposed under chapters 82.08 and 82.12 RCW. The combined amount of distributions received by both the city and county may not exceed the state contribution.

(6) The department shall determine the amount of tax receipts distributed to each sponsoring local government, and any cosponsoring local government, imposing sales and use tax under this section and shall advise a sponsoring or cosponsoring local government when tax distributions for the fiscal year equal the amount of state contribution for that fiscal year as provided in subsection (8) of this section. Determinations by the department of the amount of tax distributions attributable to each sponsoring or cosponsoring local government are final and shall not be used to challenge the validity of any tax imposed under this section. The department shall remit any tax receipts in excess of the amounts specified in subsection (4)(c) of this section to the state treasurer who shall deposit the money in the general fund.

(7) If a sponsoring or cosponsoring local government fails to comply with RCW 39.102.140, no tax may be distributed in the subsequent fiscal year until such time as the sponsoring or cosponsoring local government complies and the department calculates the state contribution amount for such fiscal year.

(8) Each year, the amount of taxes approved by the department for distribution to a sponsoring or cosponsoring

local government in the next fiscal year shall be equal to the state contribution and shall be no more than the total local funds as described in RCW 39.102.020(29)(c). The department shall consider information from reports described in RCW 39.102.140 when determining the amount of state contributions for each fiscal year. A sponsoring or cosponsoring local government shall not receive, in any fiscal year, more revenues from taxes imposed under the authority of this section than the amount approved annually by the department. The department shall not approve the receipt of more distributions of sales and use tax under this section to a sponsoring or cosponsoring local government than is authorized under subsection (4) of this section.

(9) The amount of tax distributions received from taxes imposed under the authority of this section by all sponsoring and cosponsoring local governments is limited annually to not more than seven million five hundred thousand dollars.

(10) The definitions in RCW 39.102.020 apply to this section unless the context clearly requires otherwise.

(11) If a sponsoring local government is a federally recognized Indian tribe, the distribution of the sales and use tax authorized under this section shall be authorized through an interlocal agreement pursuant to chapter 39.34 RCW.

(12) Subject to RCW 39.102.195, the tax imposed under the authority of this section may be applied either to provide for the payment of debt service on bonds issued under RCW 39.102.150 by the sponsoring local government or to pay public improvement costs on a pay-as-you-go basis, or both.

(13) The tax imposed under the authority of this section shall cease to be imposed if the sponsoring local government or cosponsoring local government fails to issue bonds under the authority of RCW 39.102.150 by June 30th of the fifth fiscal year in which the local tax authorized under this section is imposed. [2007 c 229 § 8; 2006 c 181 § 401.]

Application—Severability—Expiration date—2007 c 229: See notes following RCW 39.102.020.

Captions and part headings not law—Severability—Construction—Effective date—Expiration date—2006 c 181: See RCW 39.102.900 through 39.102.904.

82.14.480 Sales and use tax for health sciences and services authorities. (Expires January 1, 2023.) (1) The legislative authority of a local jurisdiction that has created a health sciences and services authority under RCW 35.104.030 may impose a sales and use tax in accordance with the terms of this chapter. The tax is in addition to other taxes authorized by law and shall be collected from those persons who are taxable by the state under chapters 82.08 and 82.12 RCW upon the occurrence of any taxable event within the local jurisdiction. The rate of the tax shall not exceed 0.020 percent of the selling price in the case of a sales tax or the value of the article used in the case of a use tax.

(2) The tax imposed under subsection (1) of this section shall be deducted from the amount of tax otherwise required to be collected or paid over to the department under chapter 82.08 or 82.12 RCW. The department of revenue shall perform the collection of the tax on behalf of the authority at no cost to the authority.

(3) The amounts received under this section may only be used in accordance with RCW 35.104.060 or to finance and

retire the indebtedness incurred pursuant to RCW 35.104.070, in whole or in part.

(4) This section expires January 1, 2023. [2007 c 251 § 11.]

Captions not law—Severability—2007 c 251: See notes following RCW 34.104.010.

82.14.485 Sales and use taxes for regional centers.

(1) In a county with a population under three hundred thousand, the governing body of a public facilities district, which is created before August 1, 2001, under chapter 35.57 RCW or before January 1, 2000, under chapter 36.100 RCW, in which the total population in the public facilities district is greater than ninety thousand and less than one hundred thousand that commences improvement or rehabilitation of an existing regional center, to be used for community events, and artistic, musical, theatrical, or other cultural exhibitions, presentations, or performances and having two thousand or fewer permanent seats, before January 1, 2009, may impose a sales and use tax in accordance with the terms of this chapter. The tax is in addition to other taxes authorized by law and shall be collected from those persons who are taxable by the state under chapters 82.08 and 82.12 RCW upon the occurrence of any taxable event within the public facilities district. The rate of tax for a public facilities district created prior to August 1, 2001, under chapter 35.57 RCW, may not exceed 0.025 percent of the selling price in the case of a sales tax or value of the article used in the case of a use tax. The rate of tax, for a public facilities district created prior to January 1, 2000, under chapter 36.100 RCW, may not exceed 0.020 percent of the selling price in the case of a sales tax or the value of the article used in the case of a use tax.

(2) The tax imposed under subsection (1) of this section shall be deducted from the amount of tax otherwise required to be collected or paid over to the department under chapter 82.08 or 82.12 RCW. The department shall perform the collection of such taxes on behalf of the county at no cost to the public facilities district.

(3) The tax imposed in this section shall expire when the bonds issued for the construction of the regional center and related parking facilities are retired, but not more than twenty-five years after the tax is first collected.

(4) Moneys collected under this section shall only be used for the purposes set forth in RCW 35.57.020 and must be matched with an amount from other public or private sources equal to thirty-three percent of the amount collected under this section, provided that amounts generated from nonvoter-approved taxes authorized under chapter 35.57 RCW may not constitute a public or private source. For the purpose of this section, public or private sources include, but are not limited to cash or in-kind contributions used in all phases of the development or improvement of the regional center, land that is donated and used for the siting of the regional center, cash or in-kind contributions from public or private foundations, or amounts attributed to private sector partners as part of a public and private partnership agreement negotiated by the public facilities district. [2007 c 486 § 3.]

82.14.490 Sourcing—Sales and use taxes. (Effective July 1, 2008.) Sales and use taxes authorized under this [2007 RCW Supp—page 1082]

chapter shall be sourced in accordance with RCW 82.32.730. [2007 c 6 § 503.]

Part headings not law—Savings—Effective date—Severability—2007 c 6: See notes following RCW 82.32.020.

Findings—Intent—2007 c 6: See note following RCW 82.14.495.

82.14.495 Streamlined sales and use tax mitigation account—Creation. (Effective July 1, 2008.)

(1) The streamlined sales and use tax mitigation account is created in the state treasury. The state treasurer shall transfer into the account from the general fund amounts as directed in RCW 82.14.500. Expenditures from the account may be used only for the purpose of mitigating the negative fiscal impacts to local taxing jurisdictions as a result of RCW 82.14.490 and the chapter 6, Laws of 2007 amendments to RCW 82.14.020.

(2) Beginning July 1, 2008, the state treasurer, as directed by the department, shall distribute the funds in the streamlined sales and use tax mitigation account to local taxing jurisdictions in accordance with RCW 82.14.500.

(3) The definitions in this subsection apply throughout this section and RCW 82.14.390 and 82.14.500.

(a) "Agreement" means the same as in RCW 82.32.020.

(b) "Local taxing jurisdiction" means counties, cities, transportation authorities under RCW 82.14.045, public facilities districts under chapters 36.100 and 35.57 RCW, public transportation benefit areas under RCW 82.14.440, and regional transit authorities under chapter 81.112 RCW, that impose a sales and use tax.

(c) "Loss" or "losses" means the local sales and use tax revenue reduction to a local taxing jurisdiction resulting from the sourcing provisions in *RCW 82.14.020 and the chapter 6, Laws of 2007 amendments to RCW 82.14.020.

(d) "Net loss" or "net losses" means a loss offset by any voluntary compliance revenue.

(e) "Voluntary compliance revenue" means the local sales tax revenue gain to each local taxing jurisdiction reported to the department from persons registering through the central registration system authorized under the agreement.

(f) "Working day" has the same meaning as in RCW 82.45.180. [2007 c 6 § 902.]

***Reviser's note:** The reference to RCW 82.14.020 appears to be erroneous. Reference to section 503 of this act, codified as RCW 82.14.490, was apparently intended.

Findings—Intent—2007 c 6: "(1) The legislature finds and declares that:

(a) Washington state's participation as a member state in the streamlined sales and use tax agreement benefits the state, all its local taxing jurisdictions, and its retailing industry, by increasing state and local revenues, improving the state's business climate, and standardizing and simplifying the state's tax structure;

(b) Participation in the streamlined sales and use tax agreement is a matter of statewide concern and is in the best interests of the state, the general public, and all local jurisdictions that impose a sales and use tax under applicable law;

(c) Participation in the streamlined sales and use tax agreement requires the adoption of the agreement's sourcing provisions, which change the location in which a retail sale of delivered tangible personal property occurs for local sales tax purposes from the point of origin to the point of destination;

(d) Changes in the local sales tax sourcing law provisions to conform with the streamlined sales and use tax agreement will cause sales tax revenues to shift among local taxing jurisdictions. The legislature finds that there will be an unintended adverse impact on local taxing jurisdictions that receive less revenues because local tax revenues will be redistributed, with

revenue increases for some jurisdictions and reductions for others, due solely to changes in local sales tax sourcing rules to be implemented under RCW 82.14.490 and the chapter 6, Laws of 2007 amendments to RCW 82.14.020, even though no local taxing jurisdiction has changed its tax rate or tax base;

(e) The purpose of providing mitigation to such jurisdictions is to mitigate the unintended revenue redistribution effect of the sourcing law changes among local governments;

(f) It is in the best interest of the state and all its subdivisions to mitigate the adverse effects of amending the local sales tax sourcing provisions to be in conformance with the streamlined sales and use tax agreement;

(g) Additionally, changes in sourcing laws may have negative implications for industry sectors such as warehousing and manufacturing, as well as jurisdictions that house a concentration of these industries and have made zoning decisions, infrastructure investments, bonding decisions, and land use policy decisions based on point of origin sales tax rules in place before July 1, 2008, and the mitigation provided by RCW 82.14.495, 82.14.500, 82.14.390, and 44.28.815 is intended to help offset those negative implications; and

(h) It is important that the state of Washington maintain its supply of industrial land for present and future economic development activities, and local governments taking advantage of the mitigation provided by RCW 82.14.495, 82.14.500, 82.14.390, and 44.28.815 should strive to maintain the supply of industrial land available for economic development efforts.

(2) The legislature intends that the streamlined sales and use tax mitigation account established in RCW 82.14.495 have the sole objective of mitigating, for negatively affected local taxing jurisdictions, the net local sales tax revenue reductions incurred as a result of RCW 82.14.490 and the chapter 6, Laws of 2007 amendments to RCW 82.14.020." [2007 c 6 § 901.]

Part headings not law—Savings—Effective date—Severability—2007 c 6: See notes following RCW 82.32.020.

82.14.500 Streamlined sales and use tax mitigation account—Funding—Determination of losses. (Effective July 1, 2008.) (1) In order to mitigate local sales tax revenue net losses as a result of the sourcing provisions of the streamlined sales and use tax agreement under this title, the state treasurer shall transfer into the streamlined sales and use tax mitigation account from the general fund the sum of thirty-one million six hundred thousand dollars on July 1, 2008. On July 1, 2009, and each July 1st thereafter, the state treasurer shall transfer into the streamlined sales and use tax mitigation account from the general fund the sum required to mitigate actual net losses as determined under this section.

(2) Beginning July 1, 2008, and continuing until the department determines annual losses under subsection (3) of this section, the department shall determine the amount of local sales tax net loss each local taxing jurisdiction experiences as a result of the sourcing provisions of the streamlined sales and use tax agreement under this title each calendar quarter. The department shall determine losses by analyzing and comparing data from tax return information and tax collections for each local taxing jurisdiction before and after July 1, 2008, on a calendar quarter basis. The department's analysis may be revised and supplemented in consultation with the oversight committee as provided in subsection (4) of this section. To determine net losses, the department shall reduce losses by the amount of voluntary compliance revenue for the calendar quarter analyzed. Beginning December 31, 2008, distributions shall be made quarterly from the streamlined sales and use tax mitigation account by the state treasurer, as directed by the department, to each local taxing jurisdiction, other than public facilities districts for losses in respect to taxes imposed under the authority of RCW 82.14.390, in an amount representing its net losses for the previous calendar quarter. Distributions shall be made on the

last working day of each calendar quarter and shall cease when distributions under subsection (3) of this section begin.

(3)(a) By December 31, 2009, or such later date the department in consultation with the oversight committee determines that sufficient data is available, the department shall determine each local taxing jurisdiction's annual loss. The department shall determine annual losses by comparing at least twelve months of data from tax return information and tax collections for each local taxing jurisdiction before and after July 1, 2008. The department shall not be required to determine annual losses on a recurring basis, but may make any adjustments to annual losses as it deems proper as a result of the annual reviews provided in (b) of this subsection. Beginning the calendar quarter in which the department determines annual losses, and each calendar quarter thereafter, distributions shall be made from the streamlined sales and use tax mitigation account by the state treasurer on the last working day of the calendar quarter, as directed by the department, to each local taxing jurisdiction, other than public facilities districts for losses in respect to taxes imposed under the authority of RCW 82.14.390, in an amount representing one-fourth of the jurisdiction's annual loss reduced by voluntary compliance revenue reported during the previous calendar quarter.

(b) The department's analysis of annual losses shall be reviewed by December 1st of each year and may be revised and supplemented in consultation with the oversight committee as provided in subsection (4) of this section.

(4) The department shall convene an oversight committee to assist in the determination of losses. The committee shall include one representative of one city whose revenues are increased, one representative of one city whose revenues are reduced, one representative of one county whose revenues are increased, one representative of one county whose revenues are decreased, one representative of one transportation authority under RCW 82.14.045 whose revenues are increased, and one representative of one transportation authority under RCW 82.14.045 whose revenues are reduced, as a result of RCW 82.14.490 and the chapter 6, Laws of 2007 amendments to RCW 82.14.020. Beginning July 1, 2008, the oversight committee shall meet quarterly with the department to review and provide additional input and direction on the department's analyses of losses. Local taxing jurisdictions may also present to the oversight committee additional information to improve the department's analyses of the jurisdiction's loss. Beginning January 1, 2010, the oversight committee shall meet at least annually with the department by December 1st.

(5) The rule-making provisions of chapter 34.05 RCW do not apply to this section. [2007 c 6 § 903.]

Part headings not law—Savings—Effective date—Severability—2007 c 6: See notes following RCW 82.32.020.

Findings—Intent—2007 c 6: See note following RCW 82.14.495.

Chapter 82.14B RCW

COUNTIES—TAX ON TELEPHONE ACCESS LINE USE

Sections

- 82.14B.020 Definitions. (*Effective until July 1, 2008.*)
82.14B.020 Definitions. (*Effective July 1, 2008.*)

- 82.14B.030 County enhanced 911 excise tax on use of switched access lines and radio access lines authorized—Amount—State enhanced 911 excise tax—Amount. (*Effective until July 1, 2008; contingency, see note following RCW 82.04.530.*)
- 82.14B.030 County enhanced 911 excise tax on use of switched access lines and radio access lines authorized—Amount—State enhanced 911 excise tax—Amount. (*Effective July 1, 2008; contingency, see note following RCW 82.04.530.*)

82.14B.020 Definitions. (Effective until July 1, 2008.)

As used in this chapter:

(1) "Emergency services communication system" means a multicounty, countywide, or districtwide radio or landline communications network, including an enhanced 911 telephone system, which provides rapid public access for coordinated dispatching of services, personnel, equipment, and facilities for police, fire, medical, or other emergency services.

(2) "Enhanced 911 telephone system" means a public telephone system consisting of a network, data base, and on-premises equipment that is accessed by dialing 911 and that enables reporting police, fire, medical, or other emergency situations to a public safety answering point. The system includes the capability to selectively route incoming 911 calls to the appropriate public safety answering point that operates in a defined 911 service area and the capability to automatically display the name, address, and telephone number of incoming 911 calls at the appropriate public safety answering point.

(3) "Switched access line" means the telephone service line which connects a subscriber's main telephone(s) or equivalent main telephone(s) to the local exchange company's switching office.

(4) "Local exchange company" has the meaning ascribed to it in RCW 80.04.010.

(5) "Radio access line" means the telephone number assigned to or used by a subscriber for two-way local wireless voice service available to the public for hire from a radio communications service company. Radio access lines include, but are not limited to, radio-telephone communications lines used in cellular telephone service, personal communications services, and network radio access lines, or their functional and competitive equivalent. Radio access lines do not include lines that provide access to one-way signaling service, such as paging service, or to communications channels suitable only for data transmission, or to nonlocal radio access line service, such as wireless roaming service, or to a private telecommunications system.

(6) "Radio communications service company" has the meaning ascribed to it in RCW 80.04.010, except that it does not include radio paging providers. It does include those persons or entities that provide commercial mobile radio services, as defined by 47 U.S.C. Sec. 332(d)(1), and both facilities-based and nonfacilities-based resellers.

(7) "Private telecommunications system" has the meaning ascribed to it in RCW 80.04.010.

(8) "Subscriber" means the retail purchaser of telephone service as telephone service is defined in RCW 82.04.065(3).

(9) "Place of primary use" has the meaning ascribed to it in RCW 82.04.065. [2007 c 54 § 16; 2002 c 341 § 7; 1998 c 304 § 2; 1994 c 96 § 2; 1991 c 54 § 10; 1981 c 160 § 2.]

Severability—2007 c 54: See note following RCW 82.04.050.

Severability—Effective date—2002 c 341: See notes following RCW 38.52.501.

Findings—1998 c 304: "The legislature finds that:

(1) The state enhanced 911 excise tax imposed at the current rate of twenty cents per switched access line per month generates adequate tax revenues to enhance the 911 telephone system for switched access lines statewide by December 31, 1998, as mandated in RCW 38.52.510;

(2) The tax revenues generated from the state enhanced 911 excise tax when the tax rate decreases to a maximum of ten cents per switched access line on January 1, 1999, will not be adequate to fund the long-term operation and equipment replacement costs for the enhanced 911 telephone systems in the counties or multicounty regions that receive financial assistance from the state enhanced 911 office;

(3) Some counties or multicounty regions will need financial assistance from the state enhanced 911 office to implement and maintain enhanced 911 because the tax revenue generated from the county enhanced 911 excise tax is not adequate;

(4) Counties with populations of less than seventy-five thousand will need salary assistance to create multicounty regions and counties with populations of seventy-five thousand or more, if requested by smaller counties, will need technical assistance and incentives to provide multicounty services; and

(5) Counties should not request state financial assistance for implementation and maintenance of enhanced 911 for switched access lines unless the county has imposed the maximum enhanced 911 tax authorized in RCW 82.14B.030." [1998 c 304 § 1.]

Effective dates—1998 c 304: "This act takes effect January 1, 1999, except section 14 of this act which takes effect July 1, 1998." [1998 c 304 § 15.]

Finding—Intent—1994 c 96: "(1) The legislature finds that:

(a) Emergency services communication systems, including enhanced 911 telephone systems, are currently funded with revenues from state and local excise taxes imposed on the use of switched access lines;

(b) Users of cellular communication systems and other similar wireless telecommunications systems do not use switched access lines and are not currently subject to these excise taxes; and

(c) The volume of 911 calls by users of cellular communications systems and other similar wireless telecommunications systems has increased in recent years.

(2) The intent of this act is to acknowledge the recommendations regarding 911 emergency communication system funding as detailed in the report to the legislature dated November 1993, entitled "Taxation of Cellular Communications in Washington State," to authorize imposition and collection of the twenty-five cent county tax discussed in chapter 6 of that report, and to require the department of revenue to continue the *study of such funding as detailed in the report." [1994 c 96 § 1.]

***Reviser's note:** See 1992 c 218 and 1994 c 96 § 6.

Effective dates—1994 c 96: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and shall take effect immediately [March 23, 1994], except section 5 of this act shall take effect January 1, 1995." [1994 c 96 § 8.]

Referral to electorate—1991 c 54: See note following RCW 38.52.030.

82.14B.020 Definitions. (Effective July 1, 2008.) As used in this chapter:

(1) "Emergency services communication system" means a multicounty, countywide, or districtwide radio or landline communications network, including an enhanced 911 telephone system, which provides rapid public access for coordinated dispatching of services, personnel, equipment, and facilities for police, fire, medical, or other emergency services.

(2) "Enhanced 911 telephone system" means a public telephone system consisting of a network, data base, and on-premises equipment that is accessed by dialing 911 and that enables reporting police, fire, medical, or other emergency situations to a public safety answering point. The system includes the capability to selectively route incoming 911 calls

to the appropriate public safety answering point that operates in a defined 911 service area and the capability to automatically display the name, address, and telephone number of incoming 911 calls at the appropriate public safety answering point.

(3) "Switched access line" means the telephone service line which connects a subscriber's main telephone(s) or equivalent main telephone(s) to the local exchange company's switching office.

(4) "Local exchange company" has the meaning ascribed to it in RCW 80.04.010.

(5) "Radio access line" means the telephone number assigned to or used by a subscriber for two-way local wireless voice service available to the public for hire from a radio communications service company. Radio access lines include, but are not limited to, radio-telephone communications lines used in cellular telephone service, personal communications services, and network radio access lines, or their functional and competitive equivalent. Radio access lines do not include lines that provide access to one-way signaling service, such as paging service, or to communications channels suitable only for data transmission, or to nonlocal radio access line service, such as wireless roaming service, or to a private telecommunications system.

(6) "Radio communications service company" has the meaning ascribed to it in RCW 80.04.010, except that it does not include radio paging providers. It does include those persons or entities that provide commercial mobile radio services, as defined by 47 U.S.C. Sec. 332(d)(1), and both facilities-based and nonfacilities-based resellers.

(7) "Private telecommunications system" has the meaning ascribed to it in RCW 80.04.010.

(8) "Subscriber" means the retail purchaser of telephone service as telephone service is defined in RCW 82.16.010.

(9) "Place of primary use" has the meaning ascribed to it in RCW 82.04.065. [2007 c 54 § 16; 2007 c 6 § 1009; 2002 c 341 § 7; 1998 c 304 § 2; 1994 c 96 § 2; 1991 c 54 § 10; 1981 c 160 § 2.]

Reviser's note: This section was amended by 2007 c 6 § 1009 and by 2007 c 54 § 16, each without reference to the other. Both amendments are incorporated in the publication of this section under RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

Severability—2007 c 54: See note following RCW 82.04.050.

Part headings not law—Savings—Effective date—Severability—2007 c 6: See notes following RCW 82.32.020.

Findings—Intent—2007 c 6: See note following RCW 82.14.495.

Severability—Effective date—2002 c 341: See notes following RCW 38.52.501.

Findings—1998 c 304: "The legislature finds that:

(1) The state enhanced 911 excise tax imposed at the current rate of twenty cents per switched access line per month generates adequate tax revenues to enhance the 911 telephone system for switched access lines statewide by December 31, 1998, as mandated in RCW 38.52.510;

(2) The tax revenues generated from the state enhanced 911 excise tax when the tax rate decreases to a maximum of ten cents per switched access line on January 1, 1999, will not be adequate to fund the long-term operation and equipment replacement costs for the enhanced 911 telephone systems in the counties or multicounty regions that receive financial assistance from the state enhanced 911 office;

(3) Some counties or multicounty regions will need financial assistance from the state enhanced 911 office to implement and maintain enhanced 911 because the tax revenue generated from the county enhanced 911 excise tax is not adequate;

(4) Counties with populations of less than seventy-five thousand will

need salary assistance to create multicounty regions and counties with populations of seventy-five thousand or more, if requested by smaller counties, will need technical assistance and incentives to provide multicounty services; and

(5) Counties should not request state financial assistance for implementation and maintenance of enhanced 911 for switched access lines unless the county has imposed the maximum enhanced 911 tax authorized in RCW 82.14B.030." [1998 c 304 § 1.]

Effective dates—1998 c 304: "This act takes effect January 1, 1999, except section 14 of this act which takes effect July 1, 1998." [1998 c 304 § 15.]

Finding—Intent—1994 c 96: "(1) The legislature finds that:

(a) Emergency services communication systems, including enhanced 911 telephone systems, are currently funded with revenues from state and local excise taxes imposed on the use of switched access lines;

(b) Users of cellular communication systems and other similar wireless telecommunications systems do not use switched access lines and are not currently subject to these excise taxes; and

(c) The volume of 911 calls by users of cellular communications systems and other similar wireless telecommunications systems has increased in recent years.

(2) The intent of this act is to acknowledge the recommendations regarding 911 emergency communication system funding as detailed in the report to the legislature dated November 1993, entitled "Taxation of Cellular Communications in Washington State," to authorize imposition and collection of the twenty-five cent county tax discussed in chapter 6 of that report, and to require the department of revenue to continue the *study of such funding as detailed in the report." [1994 c 96 § 1.]

***Reviser's note:** See 1992 c 218 and 1994 c 96 § 6.

Effective dates—1994 c 96: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and shall take effect immediately [March 23, 1994], except section 5 of this act shall take effect January 1, 1995." [1994 c 96 § 8.]

Referral to electorate—1991 c 54: See note following RCW 38.52.030.

82.14B.030 County enhanced 911 excise tax on use of switched access lines and radio access lines authorized—Amount—State enhanced 911 excise tax—Amount.

(Effective until July 1, 2008; contingency, see note following RCW 82.04.530.) (1) The legislative authority of a county may impose a county enhanced 911 excise tax on the use of switched access lines in an amount not exceeding fifty cents per month for each switched access line. The amount of tax shall be uniform for each switched access line. Each county shall provide notice of such tax to all local exchange companies serving in the county at least sixty days in advance of the date on which the first payment is due.

(2) The legislative authority of a county may also impose a county enhanced 911 excise tax on the use of radio access lines whose place of primary use is located within the county in an amount not exceeding fifty cents per month for each radio access line. The amount of tax shall be uniform for each radio access line. The county shall provide notice of such tax to all radio communications service companies serving in the county at least sixty days in advance of the date on which the first payment is due. Any county imposing this tax shall include in its ordinance a refund mechanism whereby the amount of any tax ordered to be refunded by the judgment of a court of record, or as a result of the resolution of any appeal therefrom, shall be refunded to the radio communications service company or local exchange company that collected the tax, and those companies shall reimburse the subscribers who paid the tax. The ordinance shall further provide that to the extent the subscribers who paid the tax cannot

be identified or located, the tax paid by those subscribers shall be returned to the county.

(3) A state enhanced 911 excise tax is imposed on all switched access lines in the state. The amount of tax shall not exceed twenty cents per month for each switched access line. The tax shall be uniform for each switched access line. The tax imposed under this subsection shall be remitted to the department of revenue by local exchange companies on a tax return provided by the department. Tax proceeds shall be deposited by the treasurer in the enhanced 911 account created in RCW 38.52.540.

(4) A state enhanced 911 excise tax is imposed on all radio access lines whose place of primary use is located within the state in an amount of twenty cents per month for each radio access line. The tax shall be uniform for each radio access line. The tax imposed under this section shall be remitted to the department of revenue by radio communications service companies, including those companies that resell radio access lines, on a tax return provided by the department. Tax proceeds shall be deposited by the treasurer in the enhanced 911 account created in RCW 38.52.540. The tax imposed under this section is not subject to the state sales and use tax or any local tax.

(5) By August 31st of each year the state enhanced 911 coordinator shall recommend the level for the next year of the state enhanced 911 excise tax imposed by subsection (3) of this section, based on a systematic cost and revenue analysis, to the utilities and transportation commission. The commission shall by the following October 31st determine the level of the state enhanced 911 excise tax for the following year. [2007 c 54 § 17. Prior: 2002 c 341 § 8; 2002 c 67 § 8; 1998 c 304 § 3; 1994 c 96 § 3; 1991 c 54 § 11; 1981 c 160 § 3.]

Severability—2007 c 54: See note following RCW 82.04.050.

Severability—Effective date—2002 c 341: See notes following RCW 38.52.501.

Finding—Contingency—Court judgment—Effective date—2002 c 67: See note and Reviser's note following RCW 82.04.530.

Findings—Effective dates—1998 c 304: See notes following RCW 82.14B.020.

Finding—Intent—Effective dates—1994 c 96: See notes following RCW 82.14B.020.

Referral to electorate—1991 c 54: See note following RCW 38.52.030.

82.14B.030 County enhanced 911 excise tax on use of switched access lines and radio access lines authorized—Amount—State enhanced 911 excise tax—Amount. (Effective July 1, 2008; contingency, see note following RCW 82.04.530.)

(1) The legislative authority of a county may impose a county enhanced 911 excise tax on the use of switched access lines in an amount not exceeding fifty cents per month for each switched access line. The amount of tax shall be uniform for each switched access line. Each county shall provide notice of such tax to all local exchange companies serving in the county at least sixty days in advance of the date on which the first payment is due.

(2) The legislative authority of a county may also impose a county enhanced 911 excise tax on the use of radio access lines whose place of primary use is located within the county in an amount not exceeding fifty cents per month for each radio access line. The amount of tax shall be uniform for

each radio access line. The county shall provide notice of such tax to all radio communications service companies serving in the county at least sixty days in advance of the date on which the first payment is due. Any county imposing this tax shall include in its ordinance a refund mechanism whereby the amount of any tax ordered to be refunded by the judgment of a court of record, or as a result of the resolution of any appeal therefrom, shall be refunded to the radio communications service company or local exchange company that collected the tax, and those companies shall reimburse the subscribers who paid the tax. The ordinance shall further provide that to the extent the subscribers who paid the tax cannot be identified or located, the tax paid by those subscribers shall be returned to the county.

(3) A state enhanced 911 excise tax is imposed on all switched access lines in the state. The amount of tax shall not exceed twenty cents per month for each switched access line. The tax shall be uniform for each switched access line. The tax imposed under this subsection shall be remitted to the department of revenue by local exchange companies on a tax return provided by the department. Tax proceeds shall be deposited by the treasurer in the enhanced 911 account created in RCW 38.52.540.

(4) A state enhanced 911 excise tax is imposed on all radio access lines whose place of primary use is located within the state in an amount of twenty cents per month for each radio access line. The tax shall be uniform for each radio access line. The tax imposed under this section shall be remitted to the department of revenue by radio communications service companies, including those companies that resell radio access lines, on a tax return provided by the department. Tax proceeds shall be deposited by the treasurer in the enhanced 911 account created in RCW 38.52.540. The tax imposed under this section is not subject to the state sales and use tax or any local tax.

(5) By August 31st of each year the state enhanced 911 coordinator shall recommend the level for the next year of the state enhanced 911 excise tax imposed by subsection (3) of this section, based on a systematic cost and revenue analysis, to the utilities and transportation commission. The commission shall by the following October 31st determine the level of the state enhanced 911 excise tax for the following year. [2007 c 54 § 17; 2007 c 6 § 1024. Prior: 2002 c 341 § 8; 2002 c 67 § 8; 1998 c 304 § 3; 1994 c 96 § 3; 1991 c 54 § 11; 1981 c 160 § 3.]

Reviser's note: This section was amended by 2007 c 6 § 1024 and by 2007 c 54 § 17, each without reference to the other. Both amendments are incorporated in the publication of this section under RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

Severability—2007 c 54: See note following RCW 82.04.050.

Part headings not law—Savings—Effective date—Severability—2007 c 6: See notes following RCW 82.32.020.

Findings—Intent—2007 c 6: See note following RCW 82.14.495.

Severability—Effective date—2002 c 341: See notes following RCW 38.52.501.

Finding—Contingency—Court judgment—Effective date—2002 c 67: See note and Reviser's note following RCW 82.04.530.

Findings—Effective dates—1998 c 304: See notes following RCW 82.14B.020.

Finding—Intent—Effective dates—1994 c 96: See notes following RCW 82.14B.020.

Referral to electorate—1991 c 54: See note following RCW 38.52.030.

**Chapter 82.16 RCW
PUBLIC UTILITY TAX**

Sections

82.16.010	Definitions. (<i>Effective July 1, 2008.</i>)
82.16.050	Deductions in computing tax.
82.16.120	Renewable energy system cost recovery—Application to light/power business—Certification—Limitations.
82.16.300	Exemptions—Custom farming services. (<i>Expires December 31, 2020.</i>)

82.16.010 Definitions. (*Effective July 1, 2008.*) For the purposes of this chapter, unless otherwise required by the context:

(1) "Railroad business" means the business of operating any railroad, by whatever power operated, for public use in the conveyance of persons or property for hire. It shall not, however, include any business herein defined as an urban transportation business.

(2) "Express business" means the business of carrying property for public hire on the line of any common carrier operated in this state, when such common carrier is not owned or leased by the person engaging in such business.

(3) "Railroad car business" means the business of operating stock cars, furniture cars, refrigerator cars, fruit cars, poultry cars, tank cars, sleeping cars, parlor cars, buffet cars, tourist cars, or any other kinds of cars used for transportation of property or persons upon the line of any railroad operated in this state when such railroad is not owned or leased by the person engaging in such business.

(4) "Water distribution business" means the business of operating a plant or system for the distribution of water for hire or sale.

(5) "Light and power business" means the business of operating a plant or system for the generation, production or distribution of electrical energy for hire or sale and/or for the wheeling of electricity for others.

(6) "Telegraph business" means the business of affording telegraphic communication for hire.

(7) "Gas distribution business" means the business of operating a plant or system for the production or distribution for hire or sale of gas, whether manufactured or natural.

(8) "Motor transportation business" means the business (except urban transportation business) of operating any motor propelled vehicle by which persons or property of others are conveyed for hire, and includes, but is not limited to, the operation of any motor propelled vehicle as an auto transportation company (except urban transportation business), common carrier or contract carrier as defined by RCW 81.68.010 and 81.80.010: PROVIDED, That "motor transportation business" shall not mean or include the transportation of logs or other forest products exclusively upon private roads or private highways.

(9) "Urban transportation business" means the business of operating any vehicle for public use in the conveyance of persons or property for hire, insofar as (a) operating entirely within the corporate limits of any city or town, or within five miles of the corporate limits thereof, or (b) operating entirely within and between cities and towns whose corporate limits

are not more than five miles apart or within five miles of the corporate limits of either thereof. Included herein, but without limiting the scope hereof, is the business of operating passenger vehicles of every type and also the business of operating cartage, pickup, or delivery services, including in such services the collection and distribution of property arriving from or destined to a point within or without the state, whether or not such collection or distribution be made by the person performing a local or interstate line-haul of such property.

(10)(a) "Public service business" means any of the businesses defined in subsections (1), (2), (3), (4), (5), (6), (7), (8), and (9) of this section or any business subject to control by the state, or having the powers of eminent domain and the duties incident thereto, or any business hereafter declared by the legislature to be of a public service nature, except telephone business and low-level radioactive waste site operating companies as redefined in RCW 81.04.010. It includes, among others, without limiting the scope hereof: Airplane transportation, boom, dock, ferry, pipe line, toll bridge, toll logging road, water transportation and wharf businesses.

(b) The definitions in this subsection (10)(b) apply throughout this subsection (10).

(i) "Competitive telephone service" has the same meaning as in RCW 82.04.065.

(ii) "Network telephone service" means the providing by any person of access to a telephone network, telephone network switching service, toll service, or coin telephone services, or the providing of telephonic, video, data, or similar communication or transmission for hire, via a telephone network, toll line or channel, cable, microwave, or similar communication or transmission system. "Network telephone service" includes the provision of transmission to and from the site of an internet provider via a telephone network, toll line or channel, cable, microwave, or similar communication or transmission system. "Network telephone service" does not include the providing of competitive telephone service, the providing of cable television service, the providing of broadcast services by radio or television stations, nor the provision of internet service as defined in RCW 82.04.297, including the reception of dial-in connection, provided at the site of the internet service provider.

(iii) "Telephone business" means the business of providing network telephone service. It includes cooperative or farmer line telephone companies or associations operating an exchange.

(iv) "Telephone service" means competitive telephone service or network telephone service, or both, as defined in (b)(i) and (ii) of this subsection.

(11) "Tugboat business" means the business of operating tugboats, towboats, wharf boats or similar vessels in the towing or pushing of vessels, barges or rafts for hire.

(12) "Gross income" means the value proceeding or accruing from the performance of the particular public service or transportation business involved, including operations incidental thereto, but without any deduction on account of the cost of the commodity furnished or sold, the cost of materials used, labor costs, interest, discount, delivery costs, taxes, or any other expense whatsoever paid or accrued and without any deduction on account of losses.

(13) The meaning attributed, in chapter 82.04 RCW, to the term "tax year," "person," "value proceeding or accruing," "business," "engaging in business," "in this state," "within this state," "cash discount" and "successor" shall apply equally in the provisions of this chapter. [2007 c 6 § 1023; 1996 c 150 § 1; 1994 c 163 § 4; 1991 c 272 § 14; 1989 c 302 § 203. Prior: 1989 c 302 § 102; 1986 c 226 § 1; 1983 2nd ex.s. c 3 § 32; 1982 2nd ex.s. c 9 § 1; 1981 c 144 § 2; 1965 ex.s. c 173 § 20; 1961 c 293 § 12; 1961 c 15 § 82.16.010; prior: 1959 ex.s. c 3 § 15; 1955 c 389 § 28; 1949 c 228 § 10; 1943 c 156 § 10; 1941 c 178 § 12; 1939 c 225 § 20; 1937 c 227 § 11; 1935 c 180 § 37; Rem. Supp. 1949 § 8370-37.]

Part headings not law—Savings—Effective date—Severability—2007 c 6: See notes following RCW 82.32.020.

Findings—Intent—2007 c 6: See note following RCW 82.14.495.

Effective date—1996 c 150: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and shall take effect immediately [March 25, 1996]." [1996 c 150 § 3.]

Effective dates—1991 c 272: See RCW 81.108.901.

Finding, purpose—1989 c 302: See note following RCW 82.04.120.

Effective date—1986 c 226: "This act shall take effect July 1, 1986." [1986 c 226 § 3.]

Construction—Severability—Effective dates—1983 2nd ex.s. c 3: See notes following RCW 82.04.255.

Effective date—1982 2nd ex.s. c 9: "This act is necessary for the immediate preservation of the public peace, health, and safety, the support of the state government and its existing public institutions, and shall take effect August 1, 1982." [1982 2nd ex.s. c 9 § 4.]

Intent—1981 c 144: "The legislature recognizes that there have been significant changes in the nature of the telephone business in recent years. Once solely the domain of regulated monopolies, the telephone business has now been opened up to competition with respect to most of its services and equipment. As a result of this competition, the state and local excise tax structure in the state of Washington has become discriminatory when applied to regulated telephone company transactions that are similar in nature to those consummated by nonregulated competitors. Telephone companies are forced to operate at a significant state and local tax disadvantage when compared to these nonregulated competitors.

To remedy this situation, it is the intent of the legislature to place telephone companies and nonregulated competitors of telephone companies on an equal excise tax basis with regard to the providing of similar goods and services. Therefore competitive telephone services shall for excise tax purposes only, unless otherwise provided, be treated as retail sales under the applicable state and local business and occupation and sales and use taxes. This shall not affect any requirement that regulated telephone companies have under Title 80 RCW, unless otherwise provided.

Nothing in this act affects the authority and responsibility of the Washington utilities and transportation commission to set fair, just, reasonable, and sufficient rates for telephone service." [1981 c 144 § 1.]

Severability—1981 c 144: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1981 c 144 § 12.]

Effective date—1981 c 144: "This act shall take effect on January 1, 1982." [1981 c 144 § 13.]

Effective date—1965 ex.s. c 173: See note following RCW 82.04.050.

82.16.050 Deductions in computing tax. In computing tax there may be deducted from the gross income the following items:

(1) Amounts derived by municipally owned or operated public service businesses, directly from taxes levied for the support or maintenance thereof. This subsection may not be construed to exempt service charges which are spread on the property tax rolls and collected as taxes;

(2) Amounts derived from the sale of commodities to persons in the same public service business as the seller, for resale as such within this state. This deduction is allowed only with respect to water distribution, gas distribution or other public service businesses which furnish water, gas or any other commodity in the performance of public service businesses;

(3) Amounts actually paid by a taxpayer to another person taxable under this chapter as the latter's portion of the consideration due for services furnished jointly by both, if the total amount has been credited to and appears in the gross income reported for tax by the former;

(4) The amount of cash discount actually taken by the purchaser or customer;

(5) The amount of bad debts, as that term is used in 26 U.S.C. Sec. 166, as amended or renumbered as of January 1, 2003, on which tax was previously paid under this chapter;

(6) Amounts derived from business which the state is prohibited from taxing under the Constitution of this state or the Constitution or laws of the United States;

(7) Amounts derived from the distribution of water through an irrigation system, for irrigation purposes;

(8) Amounts derived from the transportation of commodities from points of origin in this state to final destination outside this state, or from points of origin outside this state to final destination in this state, with respect to which the carrier grants to the shipper the privilege of stopping the shipment in transit at some point in this state for the purpose of storing, manufacturing, milling, or other processing, and thereafter forwards the same commodity, or its equivalent, in the same or converted form, under a through freight rate from point of origin to final destination;

(9) Amounts derived from the transportation of commodities from points of origin in the state to an export elevator, wharf, dock or ship side on tidewater or its navigable tributaries to be forwarded, without intervening transportation, by vessel, in their original form, to interstate or foreign destinations. No deduction is allowed under this subsection when the point of origin and the point of delivery to the export elevator, wharf, dock, or ship side are located within the corporate limits of the same city or town;

(10) Amounts derived from the transportation of agricultural commodities, not including manufactured substances or articles, from points of origin in the state to interim storage facilities in this state for transshipment, without intervening transportation, to an export elevator, wharf, dock, or ship side on tidewater or its navigable tributaries to be forwarded, without intervening transportation, by vessel, in their original form, to interstate or foreign destinations. If agricultural commodities are transshipped from interim storage facilities in this state to storage facilities at a port on tidewater or its navigable tributaries, the same agricultural commodity dealer must operate both the interim storage facilities and the storage facilities at the port.

(a) The deduction under this subsection is available only when the person claiming the deduction obtains a certificate from the agricultural commodity dealer operating the interim storage facilities, in a form and manner prescribed by the department, certifying that:

(i) More than ninety-six percent of all of the type of agricultural commodity delivered by the person claiming the

deduction under this subsection and delivered by all other persons to the dealer's interim storage facilities during the preceding calendar year was shipped by vessel in original form to interstate or foreign destinations; and

(ii) Any of the agricultural commodity that is transshipped to ports on tidewater or its navigable tributaries will be received at storage facilities operated by the same agricultural commodity dealer and will be shipped from such facilities, without intervening transportation, by vessel, in their original form, to interstate or foreign destinations.

(b) As used in this subsection, "agricultural commodity" has the same meaning as agricultural product in RCW 82.04.213;

(11) Amounts derived from the production, sale, or transfer of electrical energy for resale within or outside the state or for consumption outside the state;

(12) Amounts derived from the distribution of water by a nonprofit water association and used for capital improvements by that nonprofit water association;

(13) Amounts paid by a sewerage collection business taxable under RCW 82.16.020(1)(a) to a person taxable under chapter 82.04 RCW for the treatment or disposal of sewage;

(14) Amounts derived from fees or charges imposed on persons for transit services provided by a public transportation agency. For the purposes of this subsection, "public transportation agency" means a municipality, as defined in RCW 35.58.272, and urban public transportation systems, as defined in RCW 47.04.082. Public transportation agencies shall spend an amount equal to the reduction in tax provided by this tax deduction solely to adjust routes to improve access for citizens using food banks and senior citizen services or to extend or add new routes to assist low-income citizens and seniors. [2007 c 330 § 1; 2006 c 336 § 1; 2004 c 153 § 308; 2000 c 245 § 1; 1994 c 124 § 12; 1989 c 302 § 103; 1987 c 207 § 1; 1982 2nd ex.s. c 9 § 3; 1977 ex.s. c 368 § 1; 1967 ex.s. c 149 § 25; 1965 ex.s. c 173 § 22; 1961 c 15 § 82.16.050. Prior: 1959 ex.s. c 3 § 18; 1949 c 228 § 11; 1937 c 227 § 12; 1935 c 180 § 40; Rem. Supp. 1949 § 8370-40.]

Retroactive effective date—Effective date—2004 c 153: See note following RCW 82.08.0293.

Effective date—Application—2000 c 245 § 1: "(1) Section 1 of this act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately [March 31, 2000].

(2) Section 1 of this act applies to all amounts due prior to and after March 31, 2000." [2000 c 245 § 3.]

Finding, purpose—1989 c 302: See note following RCW 82.04.120.

Effective date—1982 2nd ex.s. c 9: See note following RCW 82.16.010.

82.16.120 Renewable energy system cost recovery—Application to light/power business—Certification—Limitations. (1) Any individual, business, or local governmental entity, not in the light and power business or in the gas distribution business, may apply to the light and power business serving the situs of the system, each fiscal year beginning on July 1, 2005, for an investment cost recovery incentive for each kilowatt-hour from a customer-generated electricity renewable energy system installed on its property that is not interconnected to the electric distribution system. No

incentive may be paid for kilowatt-hours generated before July 1, 2005, or after June 30, 2014.

(2) When light and power businesses serving eighty percent of the total customer load in the state adopt uniform standards for interconnection to the electric distribution system, any individual, business, or local governmental entity, not in the light and power business or in the gas distribution business, may apply to the light and power business serving the situs of the system, each fiscal year, for an investment cost recovery incentive for each kilowatt-hour from a customer-generated electricity renewable energy system installed on its property that is not interconnected to the electric distribution system and from a customer-generated electricity renewable energy system installed on its property that is interconnected to the electric distribution system. Uniform standards for interconnection to the electric distribution system means those standards established by light and power businesses that have ninety percent of total requirements the same. No incentive may be paid for kilowatt-hours generated before July 1, 2005, or after June 30, 2014.

(3)(a) Before submitting for the first time the application for the incentive allowed under this section, the applicant shall submit to the department of revenue and to the climate and rural energy development center at the Washington State University, established under RCW 28B.30.642, a certification in a form and manner prescribed by the department that includes, but is not limited to, the following information:

(i) The name and address of the applicant and location of the renewable energy system;

(ii) The applicant's tax registration number;

(iii) That the electricity produced by the applicant meets the definition of "customer-generated electricity" and that the renewable energy system produces electricity with:

(A) Any solar inverters and solar modules manufactured in Washington state;

(B) A wind generator powered by blades manufactured in Washington state;

(C) A solar inverter manufactured in Washington state;

(D) A solar module manufactured in Washington state;

or

(E) Solar or wind equipment manufactured outside of Washington state;

(iv) That the electricity can be transformed or transmitted for entry into or operation in parallel with electricity transmission and distribution systems;

(v) The date that the renewable energy system received its final electrical permit from the applicable local jurisdiction.

(b) Within thirty days of receipt of the certification the department of revenue shall notify the applicant by mail, or electronically as provided in RCW 82.32.135, whether the renewable energy system qualifies for an incentive under this section. The department may consult with the climate and rural energy development center to determine eligibility for the incentive. System certifications and the information contained therein are subject to disclosure under RCW 82.32.330(3)(m).

(4)(a) By August 1st of each year application for the incentive shall be made to the light and power business serving the situs of the system by certification in a form and man-

ner prescribed by the department that includes, but is not limited to, the following information:

(i) The name and address of the applicant and location of the renewable energy system;

(ii) The applicant's tax registration number;

(iii) The date of the notification from the department of revenue stating that the renewable energy system is eligible for the incentives under this section;

(iv) A statement of the amount of kilowatt-hours generated by the renewable energy system in the prior fiscal year.

(b) Within sixty days of receipt of the incentive certification the light and power business serving the situs of the system shall notify the applicant in writing whether the incentive payment will be authorized or denied. The business may consult with the climate and rural energy development center to determine eligibility for the incentive payment. Incentive certifications and the information contained therein are subject to disclosure under RCW 82.32.330(3)(m).

(c)(i) Persons receiving incentive payments shall keep and preserve, for a period of five years, suitable records as may be necessary to determine the amount of incentive applied for and received. Such records shall be open for examination at any time upon notice by the light and power business that made the payment or by the department. If upon examination of any records or from other information obtained by the business or department it appears that an incentive has been paid in an amount that exceeds the correct amount of incentive payable, the business may assess against the person for the amount found to have been paid in excess of the correct amount of incentive payable and shall add thereto interest on the amount. Interest shall be assessed in the manner that the department assesses interest upon delinquent tax under RCW 82.32.050.

(ii) If it appears that the amount of incentive paid is less than the correct amount of incentive payable the business may authorize additional payment.

(5) The investment cost recovery incentive may be paid fifteen cents per economic development kilowatt-hour unless requests exceed the amount authorized for credit to the participating light and power business. For the purposes of this section, the rate paid for the investment cost recovery incentive may be multiplied by the following factors:

(a) For customer-generated electricity produced using solar modules manufactured in Washington state, two and four-tenths;

(b) For customer-generated electricity produced using a solar or a wind generator equipped with an inverter manufactured in Washington state, one and two-tenths;

(c) For customer-generated electricity produced using an anaerobic digester, or by other solar equipment or using a wind generator equipped with blades manufactured in Washington state, one; and

(d) For all other customer-generated electricity produced by wind, eight-tenths.

(6) No individual, household, business, or local governmental entity is eligible for incentives for more than two thousand dollars per year.

(7) If requests for the investment cost recovery incentive exceed the amount of funds available for credit to the participating light and power business, the incentive payments shall be reduced proportionately.

(8) The climate and rural energy development center at Washington State University energy program may establish guidelines and standards for technologies that are identified as Washington manufactured and therefore most beneficial to the state's environment.

(9) The environmental attributes of the renewable energy system belong to the applicant, and do not transfer to the state or the light and power business upon receipt of the investment cost recovery incentive. [2007 c 111 § 101; 2005 c 300 § 3.]

Part headings not law—2007 c 111: "Part headings used in this act are not any part of the law." [2007 c 111 § 401.]

Findings—Intent—Effective date—2005 c 300: See notes following RCW 82.16.110.

82.16.300 Exemptions—Custom farming services. (Expires December 31, 2020.) (1) This chapter shall not apply to any person hauling agricultural products or farm machinery or equipment for a farmer or for a person performing custom farming services, when the person providing the hauling and the farmer or person performing custom farming services are related.

(2) The exemption provided by this section shall not apply to the hauling of any substances or articles manufactured from agricultural products. For the purposes of this subsection, "manufactured" has the same meaning as "to manufacture" in RCW 82.04.120.

(3) The definitions in RCW 82.04.213 and 82.04.625 apply to this section. [2007 c 334 § 2.]

Effective date—Expiration date—2007 c 334: See notes following RCW 82.04.625.

Chapter 82.24 RCW TAX ON CIGARETTES

Sections

82.24.120	Violations—Penalties and interest.
82.24.135	Forfeiture procedure.
82.24.280	Liability from tax increase—Interest and penalties on unpaid tax—Administration.
82.24.552	Enforcement—Administration—Inspection of books and records.

82.24.120 Violations—Penalties and interest. (1) If any person, subject to the provisions of this chapter or any rules adopted by the department of revenue under authority hereof, is found to have failed to affix the stamps required, or to have them affixed as herein provided, or to pay any tax due hereunder, or to have violated any of the provisions of this chapter or rules adopted by the department of revenue in the administration hereof, there shall be assessed and collected from such person, in addition to any tax that may be found due, a remedial penalty equal to the greater of ten dollars per package of unstamped cigarettes or two hundred fifty dollars, plus interest on the amount of the tax at the rate as computed under RCW 82.32.050(2) from the date the tax became due until the date of payment, and upon notice mailed to the last known address of the person or provided electronically as provided in RCW 82.32.135. The amount shall become due and payable in thirty days from the date of the notice. If the amount remains unpaid, the department or its duly authorized

agent may make immediate demand upon such person for the payment of all such taxes, penalties, and interest.

(2) The department, for good reason shown, may waive or cancel all or any part of penalties imposed, but the taxpayer must pay all taxes due and interest thereon, at the rate as computed under RCW 82.32.050(2) from the date the tax became due until the date of payment.

(3) The keeping of any unstamped articles coming within the provisions of this chapter shall be prima facie evidence of intent to violate the provisions of this chapter.

(4) This section does not apply to taxes or tax increases due under RCW 82.24.280. [2007 c 111 § 102; 2006 c 14 § 6; 1996 c 149 § 7; 1995 c 278 § 8; 1990 c 267 § 1; 1975 1st ex.s. c 278 § 64; 1961 c 15 § 82.24.120. Prior: 1949 c 228 § 15; 1939 c 225 § 25; 1935 c 180 § 87; Rem. Supp. 1949 § 8370-87.]

Reviser's note: In an order on motion for reconsideration and request for stay pending appeal dated September 25, 2006, the United States District Court for the Western District ruled that chapter 14, Laws of 2006 is preempted by the Federal Cigarette Labeling and Advertising Act, 15 U.S.C. Sec. 1334(b) only in application of the law to cigarette sampling. (Case No. C06-5223, W.D. Wash. 2006.)

Part headings not law—2007 c 111: See note following RCW 82.16.120.

Finding—Intent—2006 c 14: See note following RCW 70.155.050.

Findings—Intent—Effective date—1996 c 149: See notes following RCW 82.32.050.

Effective date—1995 c 278: See note following RCW 82.24.010.

Effective date—1990 c 267: "This act shall take effect January 1, 1991." [1990 c 267 § 3.]

Construction—Severability—1975 1st ex.s. c 278: See notes following RCW 11.08.160.

82.24.135 Forfeiture procedure. In all cases of seizure of any property made subject to forfeiture under this chapter the department or the board shall proceed as follows:

(1) Forfeiture shall be deemed to have commenced by the seizure. Notice of seizure shall be given to the department or the board immediately if the seizure is made by someone other than an agent of the department or the board authorized to collect taxes.

(2) Upon notification or seizure by the department or the board or upon receipt of property subject to forfeiture under this chapter from any other person, the department or the board shall list and particularly describe the property seized in duplicate and have the property appraised by a qualified person not employed by the department or the board or acting as its agent. Listing and appraisal of the property shall be properly attested by the department or the board and the appraiser, who shall be allowed a reasonable appraisal fee. No appraisal is required if the property seized is judged by the department or the board to be less than one hundred dollars in value.

(3) The department or the board shall cause notice to be served within five days following the seizure or notification to the department or the board of the seizure on the owner of the property seized, if known, on the person in charge thereof, and on any other person having any known right or interest therein, of the seizure and intended forfeiture of the seized property. The notice may be served by any method authorized by law or court rule including but not limited to service by mail. The department may also furnish notice

electronically as provided in RCW 82.32.135. If service is by mail or notice is provided electronically as provided in RCW 82.32.135, the notice shall also be served by certified mail with return receipt requested. Electronic notification or service by mail shall be deemed complete upon mailing the notice, electronically sending the notice, or electronically notifying the person or persons entitled to the notice that the notice is available to be accessed by the person or persons, within the five-day period following the seizure or notification of the seizure to the department or the board.

(4) If no person notifies the department or the board in writing of the person's claim of ownership or right to possession of the items seized within fifteen days of the date of the notice of seizure, the item seized shall be considered forfeited.

(5) If any person notifies the department or the board, in writing, of the person's claim of ownership or right to possession of the items seized within fifteen days of the date of the notice of seizure, the person or persons shall be afforded a reasonable opportunity to be heard as to the claim or right. The hearing shall be before the director or the director's designee or the board or the board's designee, except that any person asserting a claim or right may bring an action for return of the seized items in the superior court of the county in which such property was seized, if the aggregate value of the article or articles involved is more than five hundred dollars. A hearing and any appeal therefrom shall be in accordance with chapter 34.05 RCW. The burden of proof by a preponderance of the evidence shall be upon the person claiming to be the lawful owner or the person claiming to have the lawful right to possession of the items seized. The department or the board shall promptly return the article or articles to the claimant upon a determination that the claimant is the present lawful owner or is lawfully entitled to possession thereof of the items seized. [2007 c 111 § 103; 1998 c 53 § 1; 1987 c 496 § 3.]

Part headings not law—2007 c 111: See note following RCW 82.16.120.

Effective date—1998 c 53: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately [March 18, 1998]." [1998 c 53 § 2.]

82.24.280 Liability from tax increase—Interest and penalties on unpaid tax—Administration. (1) Any additional tax liability arising from a tax rate increase under this chapter shall be paid, along with reports and returns prescribed by the department, on or before the last day of the month in which the increase becomes effective.

(2) If not paid by the due date, interest shall apply to any unpaid tax. Interest shall be calculated at the rate as computed under RCW 82.32.050(2) from the date the tax became due until the date of payment.

(3) If upon examination of any returns or from other information obtained by the department it appears that a tax or penalty has been paid less than that properly due, the department shall assess against the taxpayer such additional amount found to be due. The department shall notify the taxpayer by mail, or electronically as provided in RCW 82.32.135, of the additional amount due, including any applicable penalties and interest. The taxpayer shall pay the addi-

tional amount within thirty days from the date of the notice, or within such further time as the department may provide.

(4) All of chapter 82.32 RCW applies to tax rate increases except: RCW 82.32.050(1) and 82.32.270. [2007 c 111 § 104; 1996 c 149 § 10; 1995 c 278 § 13.]

Part headings not law—2007 c 111: See note following RCW 82.16.120.

Findings—Intent—Effective date—1996 c 149: See notes following RCW 82.32.050.

Effective date—1995 c 278: See note following RCW 82.24.010.

82.24.552 Enforcement—Administration—Inspection of books and records. (1) For the purposes of obtaining information concerning any matter relating to the administration or enforcement of this chapter, the department, the board, or any of its agents may inspect the books, documents, or records of any person transporting cigarettes for sale to any person or entity in the state, and books, documents, or records containing any information relating to the transportation or possession of cigarettes for sale in the possession of a specific common carrier as defined in RCW 81.80.010 doing business in this state, or books, documents, and records of vehicle rental agencies whose vehicles are being rented for the purpose of transporting contraband cigarettes.

(2) If a person neglects or refuses to produce and submit for inspection any book, record, or document as required by this section when requested to do so by the department, the board, or its agent, then the department or the board may seek an order in superior court compelling production of the books, records, or documents. [2007 c 221 § 2.]

Chapter 82.26 RCW

TAX ON TOBACCO PRODUCTS

Sections

82.26.105 Inspection of books, documents, or records of carriers.
82.26.110 When credit may be obtained for tax paid.

82.26.105 Inspection of books, documents, or records of carriers. (1) For the purposes of obtaining information concerning any matter relating to the administration or enforcement of this chapter, the department, the board, or any of its agents may inspect the books, documents, or records of any person transporting tobacco products for sale to any person or entity in the state, and books, documents, or records containing any information relating to the transportation or possession of tobacco products for sale in the possession of a specific common carrier as defined in RCW 81.80.010 doing business in this state, or books, documents, and records of vehicle rental agencies whose vehicles are being rented for the purpose of transporting contraband tobacco products.

(2) If a person neglects or refuses to produce and submit for inspection any book, record, or document as required by this section when requested to do so by the department, the board, or its agent, then the department or the board may seek an order in superior court compelling production of the books, records, or documents. [2007 c 221 § 3; 2005 c 180 § 6.]

Effective date—2005 c 180: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state gov-

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ernment and its existing public institutions, and takes effect July 1, 2005." [2005 c 180 § 25.]

82.26.110 When credit may be obtained for tax paid.

(1)(a) Where tobacco products upon which the tax imposed by this chapter has been reported and paid are shipped or transported outside this state by the distributor to a person engaged in the business of selling tobacco products, to be sold by that person, or are returned to the manufacturer by the distributor or destroyed by the distributor, or are sold by the distributor to the United States or any of its agencies or instrumentalities, or are sold by the distributor to any Indian tribal organization, credit of such tax may be made to the distributor in accordance with rules prescribed by the department.

(b) For purposes of this subsection, the following definitions apply:

(i) "Indian distributor" means a federally recognized Indian tribe or tribal entity that would otherwise meet the definition of distributor under RCW 82.26.010, if federally recognized Indian tribes and tribal entities were not excluded from the definition of person in RCW 82.26.010.

(ii) "Indian retailer" means a federally recognized Indian tribe or tribal entity that would otherwise meet the definition of retailer under RCW 82.26.010, if federally recognized Indian tribes and tribal entities were not excluded from the definition of person in RCW 82.26.010.

(iii) "Indian tribal organization" means a federally recognized Indian tribe, or tribal entity, and includes an Indian distributor or retailer that is owned by an Indian who is an enrolled tribal member conducting business under tribal license or similar tribal approval within Indian country.

(2) Credit allowed under this section shall be determined based on the tax rate in effect for the period for which the tax imposed by this chapter, for which a credit is sought, was paid. [2007 c 221 § 4; 2005 c 180 § 9; 1975 1st ex.s. c 278 § 76; 1961 c 15 § 82.26.110. Prior: 1959 ex.s. c 5 § 21.]

Effective date—2005 c 180: See note following RCW 82.26.105.

Construction—Severability—1975 1st ex.s. c 278: See notes following RCW 11.08.160.

Chapter 82.29A RCW

LEASEHOLD EXCISE TAX

Sections

82.29A.130 Exemptions—Certain property.
82.29A.138 Exemptions—Certain amateur radio repeaters.

82.29A.130 Exemptions—Certain property. The following leasehold interests shall be exempt from taxes imposed pursuant to RCW 82.29A.030 and 82.29A.040:

(1) All leasehold interests constituting a part of the operating properties of any public utility which is assessed and taxed as a public utility pursuant to chapter 84.12 RCW.

(2) All leasehold interests in facilities owned or used by a school, college or university which leasehold provides housing for students and which is otherwise exempt from taxation under provisions of RCW 84.36.010 and 84.36.050.

(3) All leasehold interests of subsidized housing where the fee ownership of such property is vested in the government of the United States, or the state of Washington or any

political subdivision thereof but only if income qualification exists for such housing.

(4) All leasehold interests used for fair purposes of a nonprofit fair association that sponsors or conducts a fair or fairs which receive support from revenues collected pursuant to RCW 67.16.100 and allocated by the director of the department of agriculture where the fee ownership of such property is vested in the government of the United States, the state of Washington or any of its political subdivisions: PROVIDED, That this exemption shall not apply to the leasehold interest of any sublessee of such nonprofit fair association if such leasehold interest would be taxable if it were the primary lease.

(5) All leasehold interests in any property of any public entity used as a residence by an employee of that public entity who is required as a condition of employment to live in the publicly owned property.

(6) All leasehold interests held by enrolled Indians of lands owned or held by any Indian or Indian tribe where the fee ownership of such property is vested in or held in trust by the United States and which are not subleased to other than to a lessee which would qualify pursuant to this chapter, RCW 84.36.451 and 84.40.175.

(7) All leasehold interests in any real property of any Indian or Indian tribe, band, or community that is held in trust by the United States or is subject to a restriction against alienation imposed by the United States: PROVIDED, That this exemption shall apply only where it is determined that contract rent paid is greater than or equal to ninety percent of fair market rental, to be determined by the department of revenue using the same criteria used to establish taxable rent in RCW 82.29A.020(2)(b).

(8) All leasehold interests for which annual taxable rent is less than two hundred fifty dollars per year. For purposes of this subsection leasehold interests held by the same lessee in contiguous properties owned by the same lessor shall be deemed a single leasehold interest.

(9) All leasehold interests which give use or possession of the leased property for a continuous period of less than thirty days: PROVIDED, That for purposes of this subsection, successive leases or lease renewals giving substantially continuous use of possession of the same property to the same lessee shall be deemed a single leasehold interest: PROVIDED FURTHER, That no leasehold interest shall be deemed to give use or possession for a period of less than thirty days solely by virtue of the reservation by the public lessor of the right to use the property or to allow third parties to use the property on an occasional, temporary basis.

(10) All leasehold interests under month-to-month leases in residential units rented for residential purposes of the lessee pending destruction or removal for the purpose of constructing a public highway or building.

(11) All leasehold interests in any publicly owned real or personal property to the extent such leasehold interests arises solely by virtue of a contract for public improvements or work executed under the public works statutes of this state or of the United States between the public owner of the property and a contractor.

(12) All leasehold interests that give use or possession of state adult correctional facilities for the purposes of operating correctional industries under RCW 72.09.100.

(13) All leasehold interests used to provide organized and supervised recreational activities for persons with disabilities of all ages in a camp facility and for public recreational purposes by a nonprofit organization, association, or corporation that would be exempt from property tax under RCW 84.36.030(1) if it owned the property. If the publicly owned property is used for any taxable purpose, the leasehold excise taxes set forth in RCW 82.29A.030 and 82.29A.040 shall be imposed and shall be apportioned accordingly.

(14) All leasehold interests in the public or entertainment areas of a baseball stadium with natural turf and a retractable roof or canopy that is in a county with a population of over one million, that has a seating capacity of over forty thousand, and that is constructed on or after January 1, 1995. "Public or entertainment areas" include ticket sales areas, ramps and stairs, lobbies and concourses, parking areas, concession areas, restaurants, hospitality and stadium club areas, kitchens or other work areas primarily servicing other public or entertainment areas, public rest room areas, press and media areas, control booths, broadcast and production areas, retail sales areas, museum and exhibit areas, scoreboards or other public displays, storage areas, loading, staging, and servicing areas, seating areas and suites, the playing field, and any other areas to which the public has access or which are used for the production of the entertainment event or other public usage, and any other personal property used for these purposes. "Public or entertainment areas" does not include locker rooms or private offices exclusively used by the lessee.

(15) All leasehold interests in the public or entertainment areas of a stadium and exhibition center, as defined in RCW 36.102.010, that is constructed on or after January 1, 1998. For the purposes of this subsection, "public or entertainment areas" has the same meaning as in subsection (14) of this section, and includes exhibition areas.

(16) All leasehold interests in public facilities districts, as provided in chapter 36.100 or 35.57 RCW.

(17) All leasehold interests in property that is: (a) Owned by the United States government or a municipal corporation; (b) listed on any federal or state register of historical sites; and (c) wholly contained within a designated national historic reserve under 16 U.S.C. Sec. 461.

(18) All leasehold interests in the public or entertainment areas of an amphitheater if a private entity is responsible for one hundred percent of the cost of constructing the amphitheater which is not reimbursed by the public owner, both the public owner and the private lessee sponsor events at the facility on a regular basis, the lessee is responsible under the lease or agreement to operate and maintain the facility, and the amphitheater has a seating capacity of over seventeen thousand reserved and general admission seats and is in a county with a population of over three hundred fifty thousand, but less than four hundred twenty-five thousand. For the purposes of this subsection, "public or entertainment areas" include box offices or other ticket sales areas, entrance gates, ramps and stairs, lobbies and concourses, parking areas, concession areas, restaurants, hospitality areas, kitchens or other work areas primarily servicing other public or entertainment areas, public rest room areas, press and media areas, control booths, broadcast and production areas, retail sales areas, museum and exhibit areas, scoreboards or other

public displays, storage areas, loading, staging, and servicing areas, seating areas including lawn seating areas and suites, stages, and any other areas to which the public has access or which are used for the production of the entertainment event or other public usage, and any other personal property used for these purposes. "Public or entertainment areas" does not include office areas used predominately by the lessee. [2007 c 90 § 1. Prior: 2005 c 514 § 601; 2005 c 170 § 1; 1999 c 165 § 21; 1997 c 220 § 202 (Referendum Bill No. 48, approved June 17, 1997); 1995 3rd sp.s. c 1 § 307; 1995 c 138 § 1; 1992 c 123 § 2; 1975-'76 2nd ex.s. c 61 § 13.]

Effective date—2005 c 514: See note following RCW 83.100.230.

Part headings not law—Severability—2005 c 514: See notes following RCW 82.12.808.

Severability—1999 c 164: See RCW 35.57.900.

Referendum—Other legislation limited—Legislators' personal intent not indicated—Reimbursements for election—Voters' pamphlet, election requirements—1997 c 220: See RCW 36.102.800 through 36.102.803.

Part headings not law—Severability—1997 c 220: See RCW 36.102.900 and 36.102.901.

Part headings not law—Effective date—1995 3rd sp.s. c 1: See notes following RCW 82.14.0485.

Effective date—1995 c 138: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and shall take effect immediately [April 27, 1995]." [1995 c 138 § 2.]

82.29A.138 Exemptions—Certain amateur radio repeaters. (1) All leasehold interests in property used for the placement of amateur radio repeaters that are made available for use by, or are used in support of, a public agency in the event of an emergency or potential emergency to which the agency is, or may be, a qualified responder, are exempt from tax under this chapter.

(2) For purposes of this section, "amateur radio repeater" means an electronic device that receives a weak or low-level amateur radio signal and retransmits it at a higher level or higher power, so that the signal can cover longer distances without degradation, and is used by amateur radio operators possessing a valid license issued by the federal communications commission. [2007 c 21 § 1.]

Chapter 82.32 RCW

GENERAL ADMINISTRATIVE PROVISIONS

Sections

82.32.020	Definitions. (<i>Effective July 1, 2008.</i>)
82.32.023	Definition of product for agreement purposes. (<i>Effective July 1, 2008.</i>)
82.32.026	Registration—Seller's agent—Streamlined sales and use tax agreement. (<i>Effective July 1, 2008.</i>)
82.32.030	Registration certificates—Threshold levels—Central registration system. (<i>Effective July 1, 2008.</i>)
82.32.033	Registration certificates—Special events—Promoter's duties—Penalties—Definitions.
82.32.050	Deficient tax or penalty payments—Notice—Interest—Limitations.
82.32.100	Failure to file returns or provide records—Assessment of tax by department—Penalties and interest.
82.32.130	Notice and orders—Service.
82.32.135	Notice, assessment, other information—Electronic delivery.
82.32.140	Taxpayer quitting business—Liability of successor.
82.32.160	Correction of tax—Administrative procedure—Conference—Determination by department.
82.32.170	Reduction of tax after payment—Petition—Conference—Determination by department.

82.32.330	Disclosure of return or tax information. (<i>Effective July 1, 2008.</i>)
82.32.430	Liability for tax rate calculation errors—Geographic information system. (<i>Effective July 1, 2008.</i>)
82.32.520	Sourcing of calls. (<i>Effective until July 1, 2008.</i>)
82.32.520	Sourcing of calls. (<i>Effective July 1, 2008.</i>)
82.32.545	Annual report for airplane manufacturing tax preferences.
82.32.550	Contingent effective date for aerospace tax incentives—Department date determinations and notice requirements.
82.32.555	Telephone service taxes—Identification of taxable and nontaxable charges. (<i>Effective until July 1, 2008.</i>)
82.32.555	Telecommunications and ancillary services taxes—Identification of taxable and nontaxable charges. (<i>Effective July 1, 2008.</i>)
82.32.600	Annual surveys or reports for tax incentives—Electronic filing.
82.32.630	Annual survey for timber tax incentives.
82.32.700	Administration of the sales and use tax for hospital benefit zones.
82.32.715	Monetary allowances—Streamlined sales and use tax agreement.
82.32.720	Vendor compensation—Streamlined sales and use tax agreement. (<i>Contingent effective date.</i>)
82.32.725	Amnesty—Streamlined sales and use tax agreement. (<i>Effective July 1, 2008.</i>)
82.32.730	Sourcing—Streamlined sales and use tax agreement. (<i>Effective July 1, 2008.</i>)
82.32.735	Confidentiality and privacy—Certified service providers—Streamlined sales and use tax agreement. (<i>Effective July 1, 2008.</i>)
82.32.740	Taxability matrix—Liability—Streamlined sales and use tax agreement. (<i>Effective July 1, 2008.</i>)
82.32.745	Software certification by department—Classifications—Liability—Streamlined sales and use tax agreement. (<i>Effective July 1, 2008.</i>)
82.32.750	Purchaser liability—Penalty—Streamlined sales and use tax agreement. (<i>Effective July 1, 2008.</i>)
82.32.755	Sourcing compliance—Taxpayer relief—Interest and penalties—Streamlined sales and use tax agreement. (<i>Effective July 1, 2008.</i>)
82.32.760	Sourcing compliance—Taxpayer relief—Credits—Streamlined sales and use tax agreement.

82.32.020 Definitions. (*Effective July 1, 2008.*) For the purposes of this chapter:

(1) The meaning attributed in chapters 82.01 through 82.27 RCW to the words and phrases "tax year," "taxable year," "person," "company," "gross proceeds of sales," "gross income of the business," "business," "engaging in business," "successor," "gross operating revenue," "gross income," "taxpayer," "retail sale," "seller," "buyer," "purchaser," "extended warranty," and "value of products" shall apply equally to the provisions of this chapter.

(2) The definitions in this subsection apply throughout this chapter, unless the context clearly requires otherwise.

(a) "Agreement" means the streamlined sales and use tax agreement.

(b) "Associate member" means a petitioning state that is found to be in compliance with the agreement and changes to its laws, rules, or other authorities necessary to bring it into compliance are not in effect, but are scheduled to take effect on or before January 1, 2008. The petitioning states, by majority vote, may also grant associate member status to a petitioning state that does not receive an affirmative vote of three-fourths of the petitioning states upon a finding that the state has achieved substantial compliance with the terms of the agreement as a whole, but not necessarily each required provision, measured qualitatively, and there is a reasonable expectation that the state will achieve compliance by January 1, 2008.

(c) "Certified automated system" means software certified under the agreement to calculate the tax imposed by each

jurisdiction on a transaction, determine the amount of tax to remit to the appropriate state, and maintain a record of the transaction.

(d) "Certified service provider" means an agent certified under the agreement to perform all of the seller's sales and use tax functions, other than the seller's obligation to remit tax on its own purchases.

(e)(i) "Member state" means a state that:

(A) Has petitioned for membership in the agreement and submitted a certificate of compliance; and

(B) Before the effective date of the agreement, has been found to be in compliance with the requirements of the agreement by an affirmative vote of three-fourths of the other petitioning states; or

(C) After the effective date of the agreement, has been found to be in compliance with the agreement by a three-fourths vote of the entire governing board of the agreement.

(ii) Membership by reason of (e)(i)(A) and (B) of this subsection is effective on the first day of a calendar quarter at least sixty days after at least ten states comprising at least twenty percent of the total population, as determined by the 2000 federal census, of all states imposing a state sales tax have petitioned for membership and have either been found in compliance with the agreement or have been found to be an associate member under section 704 of the agreement.

(iii) Membership by reason of (e)(i)(A) and (C) of this subsection is effective on the state's proposed date of entry or the first day of the calendar quarter after its petition is approved by the governing board, whichever is later, and is at least sixty days after its petition is approved.

(f) "Model 1 seller" means a seller that has selected a certified service provider as its agent to perform all the seller's sales and use tax functions, other than the seller's obligation to remit tax on its own purchases.

(g) "Model 2 seller" means a seller that has selected a certified automated system to perform part of its sales and use tax functions, but retains responsibility for remitting the tax.

(h) "Model 3 seller" means a seller that has sales in at least five member states, has total annual sales revenue of at least five hundred million dollars, has a proprietary system that calculates the amount of tax due each jurisdiction, and has entered into a performance agreement with the member states that establishes a tax performance standard for the seller. As used in this subsection (2)(h), a seller includes an affiliated group of sellers using the same proprietary system.

(i) "Source" means the location in which the sale or use of tangible personal property, an extended warranty, or a service, subject to tax under chapter 82.08, 82.12, 82.14, or 82.14B RCW, is deemed to occur. [2007 c 6 § 101; 2003 1st sp.s. c 13 § 16; 1983 c 3 § 220; 1961 c 15 § 82.32.020. Prior: 1935 c 180 § 186; RRS § 8370-186.]

Part headings not law—2007 c 6: "Part headings used in this act are not any part of the law." [2007 c 6 § 1702.]

Savings—2007 c 6: "This act does not affect any existing right acquired or liability or obligation incurred under the sections amended or repealed in this act or under any rule or order adopted under those sections, nor does it affect any proceeding instituted under those sections." [2007 c 6 § 1703.]

Effective date—2007 c 6: "Sections 101 through 105, 201, 202, 401, 501 through 503, 601, 701 through 703, 801, 802, 901 through 905, 1001, 1002, 1004, 1005, 1007 through 1013, 1015 through 1017, 1019 through

1024, 1101 through 1104, 1201 through 1203, 1302, 1401 through 1403, 1501, 1502, and 1601 of this act take effect July 1, 2008." [2007 c 6 § 1704.]

Severability—2007 c 6: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [2007 c 6 § 1708.]

Findings—Intent—2007 c 6: See note following RCW 82.14.495.

Effective dates—2003 1st sp.s. c 13: See note following RCW 63.29.020.

82.32.023 Definition of product for agreement purposes. (Effective July 1, 2008.) For purposes of compliance with the requirements of the agreement only, and unless the context requires otherwise, the terms "product" and "products" refer to tangible personal property, services, extended warranties, and anything else that can be sold or used. [2007 c 6 § 104.]

Part headings not law—Savings—Effective date—Severability—2007 c 6: See notes following RCW 82.32.020.

Findings—Intent—2007 c 6: See note following RCW 82.14.495.

82.32.026 Registration—Seller's agent—Streamlined sales and use tax agreement. (Effective July 1, 2008.)

(1) A seller, by written agreement, may appoint a person to represent the seller as its agent. The seller's agent has authority to register the seller with the department under RCW 82.32.030. An agent may also be a certified service provider, with authority to perform all the seller's sales and use tax functions, except that the seller remains responsible for remitting the tax on its own purchases.

(2) The seller or its agent must provide the department with a copy of the written agreement upon request. [2007 c 6 § 201.]

Part headings not law—Savings—Effective date—Severability—2007 c 6: See notes following RCW 82.32.020.

Findings—Intent—2007 c 6: See note following RCW 82.14.495.

82.32.030 Registration certificates—Threshold levels—Central registration system. (Effective July 1, 2008.)

(1) Except as provided in subsections (2) and (3) of this section, if any person engages in any business or performs any act upon which a tax is imposed by the preceding chapters, he or she shall, under such rules as the department of revenue shall prescribe, apply for and obtain from the department a registration certificate. Such registration certificate shall be personal and nontransferable and shall be valid as long as the taxpayer continues in business and pays the tax accrued to the state. In case business is transacted at two or more separate places by one taxpayer, a separate registration certificate for each place at which business is transacted with the public shall be required. Each certificate shall be numbered and shall show the name, residence, and place and character of business of the taxpayer and such other information as the department of revenue deems necessary and shall be posted in a conspicuous place at the place of business for which it is issued. Where a place of business of the taxpayer is changed, the taxpayer must return to the department the existing certificate, and a new certificate will be issued for the new place of business. No person required to be registered under this section shall engage in any business taxable hereunder without first being so registered. The department, by rule, may pro-

vide for the issuance of certificates of registration to temporary places of business.

(2) Unless the person is a dealer as defined in RCW 9.41.010, registration under this section is not required if the following conditions are met:

(a) A person's value of products, gross proceeds of sales, or gross income of the business, from all business activities taxable under chapter 82.04 RCW, is less than twelve thousand dollars per year;

(b) The person's gross income of the business from all activities taxable under chapter 82.16 RCW is less than twelve thousand dollars per year;

(c) The person is not required to collect or pay to the department of revenue any other tax or fee which the department is authorized to collect; and

(d) The person is not otherwise required to obtain a license subject to the master application procedure provided in chapter 19.02 RCW.

(3) All persons who agree to collect and remit sales and use tax to the department under the agreement must register through the central registration system authorized under the agreement. Persons required to register under subsection (1) of this section are not relieved of that requirement because of registration under this subsection (3).

(4) Persons registered under subsection (3) of this section who are not required to register under subsection (1) of this section and who are not otherwise subject to the requirements of chapter 19.02 RCW are not subject to the fees imposed by RCW 19.02.075. [2007 c 6 § 202; 1996 c 111 § 2. Prior: 1994 sp.s. c 7 § 446; 1994 sp.s. c 2 § 2; 1992 c 206 § 8; 1982 1st ex.s. c 4 § 1; 1979 ex.s. c 95 § 1; 1975 1st ex.s. c 278 § 77; 1961 c 15 § 82.32.030; prior: 1941 c 178 § 19, part; 1937 c 227 § 16, part; 1935 c 180 § 187, part; Rem. Supp. 1941 § 8370-187, part.]

Part headings not law—Savings—Effective date—Severability—2007 c 6: See notes following RCW 82.32.020.

Findings—Intent—2007 c 6: See note following RCW 82.14.495.

Findings—Purpose—1996 c 111: "The legislature finds that small businesses play a vital role in the state's current and future economic health. The legislature also finds that the state's excise tax reporting and registration requirements are unduly burdensome for small businesses incurring little or no tax liability. The legislature recognizes the costs associated in complying with the reporting and registration requirements that are hindering the further development of those businesses. For these reasons the legislature with this act simplifies the tax reporting and registration requirements for certain small businesses." [1996 c 111 § 1.]

Effective date—1996 c 111: "This act shall take effect July 1, 1996." [1996 c 111 § 5.]

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

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

Effective date—1994 sp.s. c 2: See note following RCW 82.04.4451.

Effective date—1992 c 206: See note following RCW 82.04.170.

Construction—Severability—1975 1st ex.s. c 278: See notes following RCW 11.08.160.

82.32.033 Registration certificates—Special events—Promoter's duties—Penalties—Definitions. (1) A promoter of a special event within the state of Washington shall not permit a vendor to make or solicit retail sales of tangible personal property or services at the special event unless the promoter makes a good faith effort to obtain verification that

the vendor has obtained a certificate of registration from the department.

(2) A promoter of a special event shall:

(a) Keep, in addition to the records required under RCW 82.32.070, a record of the dates and place of each special event, and the name, address, and registration certificate number of each vendor permitted to make or solicit retail sales of tangible personal property or services at the special event. The record of the date and place of a special event, and the name, address, and registration certificate number of each vendor at the event shall be preserved for a period of one year from the date of a special event; and

(b) Provide to the department, within twenty days of receipt of a written request from the department, a list of vendors permitted to make or solicit retail sales of tangible personal property or services. The list shall be in a form and contain such information as the department may require, and shall include the date and place of the event, and the name, address, and registration certificate number of each vendor.

(3) If a promoter fails to make a good faith effort to comply with the provisions of this section, the promoter is liable for the penalties provided in this subsection (3).

(a) If a promoter fails to make a good faith effort to comply with the provisions of subsection (1) of this section, the department shall impose a penalty of one hundred dollars for each vendor permitted to make or solicit retail sales of tangible personal property or services at the special event.

(b) If a promoter fails to make a good faith effort to comply with the provisions of subsection (2)(b) of this section, the department shall impose a penalty of:

(i) Two hundred fifty dollars if the information requested is not received by the department within twenty days of the department's written request; and

(ii) One hundred dollars for each vendor for whom the information as required by subsection (2)(b) of this section is not provided to the department.

(4) The aggregate of penalties imposed under subsection (3) of this section may not exceed two thousand five hundred dollars for a special event if the promoter has not previously been penalized under this section. Under no circumstances is a promoter liable for sales tax or business and occupation tax not remitted to the department by a vendor at a special event.

(5) The department shall notify a promoter by mail, or electronically as provided in RCW 82.32.135, of any penalty imposed under this section, and the penalty shall be due within thirty days from the date of the notice. If any penalty imposed under this section is not received by the department by the due date, there shall be assessed interest on the unpaid amount beginning the day following the due date until the penalty is paid in full. The rate of interest shall be computed on a daily basis on the amount of outstanding penalty at the rate as computed under RCW 82.32.050(2). The rate computed shall be adjusted annually in the same manner as provided in RCW 82.32.050(1)(c).

(6) For purposes of this section:

(a) "Promoter" means a person who organizes, operates, or sponsors a special event and who contracts with vendors for participation in the special event.

(b) "Special event" means an entertainment, amusement, recreational, educational, or marketing event, whether held on a regular or irregular basis, at which more than one vendor

makes or solicits retail sales of tangible personal property or services. The term includes, but is not limited to: Auto shows, recreational vehicle shows, boat shows, home shows, garden shows, hunting and fishing shows, stamp shows, comic book shows, sports memorabilia shows, craft shows, art shows, antique shows, flea markets, exhibitions, festivals, concerts, swap meets, bazaars, carnivals, athletic contests, circuses, fairs, or other similar activities. "Special event" does not include an event that is organized for the exclusive benefit of any nonprofit organization as defined in RCW 82.04.3651. An event is organized for the exclusive benefit of a nonprofit organization if all of the gross proceeds of retail sales of all vendors at the event inure to the benefit of the nonprofit organization on whose behalf the event is being held. "Special event" does not include athletic contests that involve competition between teams, when such competition consists of more than five contests in a calendar year by at least one team at the same facility or site.

(c) "Vendor" means a person who, at a special event, makes or solicits retail sales of tangible personal property or services.

(7) "Good faith effort to comply" and "good faith effort to obtain" may be shown by, but is not limited to, circumstances where a promoter:

(a) Includes a statement on all written contracts with its vendors that a valid registration certificate number issued by the department of revenue is required for participation in the special event and requires vendors to indicate their registration certificate number on these contracts; and

(b) Provides the department with a list of vendors and their associated registration certificate numbers as provided in subsection (2)(b) of this section.

(8) This section does not apply to:

(a) A special event whose promoter does not charge more than two hundred dollars for a vendor to participate in a special event;

(b) A special event whose promoter charges a percentage of sales instead of, or in addition to, a flat charge for a vendor to participate in a special event if the promoter, in good faith, believes that no vendor will pay more than two hundred dollars to participate in the special event; or

(c) A person who does not organize, operate, or sponsor a special event, but only provides a venue, supplies, furnishings, fixtures, equipment, or services to a promoter of a special event. [2007 c 111 § 105; 2004 c 253 § 1; 2003 1st sp.s. c 13 § 15.]

Part headings not law—2007 c 111: See note following RCW 82.16.120.

Effective dates—2003 1st sp.s. c 13: See note following RCW 63.29.020.

82.32.050 Deficient tax or penalty payments—Notice—Interest—Limitations. (1) If upon examination of any returns or from other information obtained by the department it appears that a tax or penalty has been paid less than that properly due, the department shall assess against the taxpayer such additional amount found to be due and shall add thereto interest on the tax only. The department shall notify the taxpayer by mail, or electronically as provided in RCW 82.32.135, of the additional amount and the additional amount shall become due and shall be paid within thirty days

from the date of the notice, or within such further time as the department may provide.

(a) For tax liabilities arising before January 1, 1992, interest shall be computed at the rate of nine percent per annum from the last day of the year in which the deficiency is incurred until the earlier of December 31, 1998, or the date of payment. After December 31, 1998, the rate of interest shall be variable and computed as provided in subsection (2) of this section. The rate so computed shall be adjusted on the first day of January of each year for use in computing interest for that calendar year.

(b) For tax liabilities arising after December 31, 1991, the rate of interest shall be variable and computed as provided in subsection (2) of this section from the last day of the year in which the deficiency is incurred until the date of payment. The rate so computed shall be adjusted on the first day of January of each year for use in computing interest for that calendar year.

(c) Interest imposed after December 31, 1998, shall be computed from the last day of the month following each calendar year included in a notice, and the last day of the month following the final month included in a notice if not the end of a calendar year, until the due date of the notice. If payment in full is not made by the due date of the notice, additional interest shall be computed until the date of payment. The rate of interest shall be variable and computed as provided in subsection (2) of this section. The rate so computed shall be adjusted on the first day of January of each year for use in computing interest for that calendar year.

(2) For the purposes of this section, the rate of interest to be charged to the taxpayer shall be an average of the federal short-term rate as defined in 26 U.S.C. Sec. 1274(d) plus two percentage points. The rate set for each new year shall be computed by taking an arithmetical average to the nearest percentage point of the federal short-term rate, compounded annually. That average shall be calculated using the rates from four months: January, April, and July of the calendar year immediately preceding the new year, and October of the previous preceding year.

(3) No assessment or correction of an assessment for additional taxes, penalties, or interest due may be made by the department more than four years after the close of the tax year, except (a) against a taxpayer who has not registered as required by this chapter, (b) upon a showing of fraud or of misrepresentation of a material fact by the taxpayer, or (c) where a taxpayer has executed a written waiver of such limitation. The execution of a written waiver shall also extend the period for making a refund or credit as provided in RCW 82.32.060(2).

(4) For the purposes of this section, "return" means any document a person is required by the state of Washington to file to satisfy or establish a tax or fee obligation that is administered or collected by the department of revenue and that has a statutorily defined due date. [2007 c 111 § 106; 2003 c 73 § 1; 1997 c 157 § 1; 1996 c 149 § 2; 1992 c 169 § 1; 1991 c 142 § 9; 1989 c 378 § 19; 1971 ex.s. c 299 § 16; 1965 ex.s. c 141 § 1; 1961 c 15 § 82.32.050. Prior: 1951 1st ex.s. c 9 § 5; 1949 c 228 § 20; 1945 c 249 § 9; 1939 c 225 § 27; 1937 c 227 § 17; 1935 c 180 § 188; Rem. Supp. 1949 § 8370-188.]

Part headings not law—2007 c 111: See note following RCW 82.16.120.

Findings—Intent—1996 c 149: "The legislature finds that a consistent application of interest and penalties is in the best interest of the residents of the state of Washington. The legislature also finds that the goal of the department of revenue's interest and penalty system should be to encourage taxpayers to voluntarily comply with Washington's tax code in a timely manner. The administration of tax programs requires that there be consequences for those taxpayers who do not timely satisfy their reporting and tax obligations, but these consequences should not be so severe as to discourage taxpayers from voluntarily satisfying their tax obligations.

It is the intent of the legislature that, to the extent possible, a single interest and penalty system apply to all tax programs administered by the department of revenue." [1996 c 149 § 1.]

Effective date—1996 c 149: "This act shall take effect January 1, 1997." [1996 c 149 § 20.]

Effective date—Applicability—1992 c 169: "(1) This act shall take effect July 1, 1992.

(2) This act is effective for all written waivers that remain enforceable as of July 1, 1992." [1992 c 169 § 4.]

Effective date—1991 c 142 §§ 9-11: "Sections 9 through 11 of this act shall take effect January 1, 1992." [1991 c 142 § 13.]

Severability—1991 c 142: See RCW 82.32A.900.

Effective dates—Severability—1971 ex.s. c 299: See notes following RCW 82.04.050.

82.32.100 Failure to file returns or provide records—Assessment of tax by department—Penalties and interest.

(1) If any person fails or refuses to make any return or to make available for examination the records required by this chapter, the department shall proceed, in such manner as it may deem best, to obtain facts and information on which to base its estimate of the tax; and to this end the department may examine the records of any such person as provided in RCW 82.32.110.

(2) As soon as the department procures such facts and information as it is able to obtain upon which to base the assessment of any tax payable by any person who has failed or refused to make a return, it shall proceed to determine and assess against such person the tax and any applicable penalties or interest due, but such action shall not deprive such person from appealing the assessment as provided in this chapter. The department shall notify the taxpayer by mail, or electronically as provided in RCW 82.32.135, of the total amount of such tax, penalties, and interest, and the total amount shall become due and shall be paid within thirty days from the date of such notice.

(3) No assessment or correction of an assessment may be made by the department more than four years after the close of the tax year, except (a) against a taxpayer who has not registered as required by this chapter, (b) upon a showing of fraud or of misrepresentation of a material fact by the taxpayer, or (c) where a taxpayer has executed a written waiver of such limitation. The execution of a written waiver shall also extend the period for making a refund or credit as provided in RCW 82.32.060(2). [2007 c 111 § 107; 1992 c 169 § 3; 1989 c 378 § 21; 1971 ex.s. c 299 § 20; 1965 ex.s. c 141 § 4; 1961 c 15 § 82.32.100. Prior: 1951 1st ex.s. c 9 § 10; 1935 c 180 § 194; RRS § 8370-194.]

Part headings not law—2007 c 111: See note following RCW 82.16.120.

Effective date—Applicability—1992 c 169: See note following RCW 82.32.050.

Effective dates—Severability—1971 ex.s. c 299: See notes following RCW 82.04.050.

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82.32.130 Notice and orders—Service. Notwithstanding any other law, any notice or order required by this title to be mailed to any taxpayer may be provided electronically as provided in RCW 82.32.135, served in the manner prescribed by law for personal service of summons and complaint in the commencement of actions in the superior courts of the state. However if the notice or order is mailed, it shall be addressed to the address of the taxpayer as shown by the records of the department, or, if no such address is shown, to such address as the department is able to ascertain by reasonable effort. Failure of the taxpayer to receive such notice or order whether served, mailed, or provided electronically as provided in RCW 82.32.135 shall not release the taxpayer from any tax or any increases or penalties thereon. [2007 c 111 § 108; 1979 ex.s. c 95 § 2; 1975 1st ex.s. c 278 § 81; 1967 c 237 § 20; 1961 c 15 § 82.32.130. Prior: 1935 c 180 § 196; RRS § 8370-196.]

Part headings not law—2007 c 111: See note following RCW 82.16.120.

Construction—Severability—1975 1st ex.s. c 278: See notes following RCW 11.08.160.

82.32.135 Notice, assessment, other information—Electronic delivery. (1) Whenever the department is required to send any assessment, notice, or any other information to persons by regular mail, the department may instead provide the assessment, notice, or other information electronically if the following conditions are met:

(a) The person entitled to receive the information has authorized the department in writing, electronically or otherwise, to provide the assessment, notice, or other information electronically; and

(b) If the assessment, notice, or other information is subject to the confidentiality provisions of RCW 82.32.330, the department must use methods reasonably designed to protect the information from unauthorized disclosure. The provisions of this subsection (1)(b) may be waived by a taxpayer. The waiver must be in writing and may be provided to the department electronically. A person may provide a waiver with respect to a particular item of information or may give a blanket waiver with respect to any item of information or certain items of information to be provided electronically. A blanket waiver will continue until revoked in writing by the taxpayer. Such revocation may be provided to the department electronically in a manner provided or approved by the department.

(2) A person may authorize the department under subsection (1)(a) of this section to provide a particular item of information electronically or may give blanket authorization to provide any item of information or certain items of information electronically. Such blanket authorization will continue until revoked in writing by the taxpayer. Such revocation may be provided to the department electronically in a manner provided or approved by the department.

(3) Any assessment, notice, or other information provided by the department electronically to a person is deemed to be received by the taxpayer on the date that the department electronically sends the information to the person or electronically notifies the person that the information is available to be accessed by the person.

(4) This section also applies to any information that is not expressly required by statute to be sent by regular mail, but is customarily sent by the department using regular mail, to persons entitled to receive the information. [2007 c 111 § 113.]

Part headings not law—2007 c 111: See note following RCW 82.16.120.

82.32.140 Taxpayer quitting business—Liability of successor. (1) Whenever any taxpayer quits business, or sells out, exchanges, or otherwise disposes of more than fifty percent of the fair market value of either its tangible or intangible assets, any tax payable hereunder shall become immediately due and payable, and such taxpayer shall, within ten days thereafter, make a return and pay the tax due.

(2) Any person who becomes a successor shall withhold from the purchase price a sum sufficient to pay any tax due from the taxpayer until such time as the taxpayer shall produce a receipt from the department of revenue showing payment in full of any tax due or a certificate that no tax is due. If any tax is not paid by the taxpayer within ten days from the date of such sale, exchange, or disposal, the successor shall become liable for the payment of the full amount of tax. If the fair market value of the assets acquired by a successor is less than fifty thousand dollars, the successor's liability for payment of the unpaid tax is limited to the fair market value of the assets acquired from the taxpayer. The burden of establishing the fair market value of the assets acquired is on the successor.

(3) The payment of any tax by a successor shall, to the extent thereof, be deemed a payment upon the purchase price; and if such payment is greater in amount than the purchase price the amount of the difference shall become a debt due the successor from the taxpayer.

(4) No successor shall be liable for any tax due from the person from whom the successor has acquired a business or stock of goods if the successor gives written notice to the department of revenue of such acquisition and no assessment is issued by the department of revenue within six months of receipt of such notice against the former operator of the business and a copy thereof mailed to the successor or provided electronically to the successor in accordance with RCW 82.32.135. [2007 c 111 § 109; 2003 1st sp.s. c 13 § 12; 1985 c 414 § 7; 1975 1st ex.s. c 278 § 82; 1961 c 15 § 82.32.140. Prior: 1957 c 88 § 1; 1935 c 180 § 197; RRS § 8370-197.]

Part headings not law—2007 c 111: See note following RCW 82.16.120.

Effective dates—2003 1st sp.s. c 13: See note following RCW 63.29.020.

Construction—Severability—1975 1st ex.s. c 278: See notes following RCW 11.08.160.

82.32.160 Correction of tax—Administrative procedure—Conference—Determination by department. Any person having been issued a notice of additional taxes, delinquent taxes, interest, or penalties assessed by the department, may within thirty days after the issuance of the original notice of the amount thereof or within the period covered by any extension of the due date thereof granted by the department petition the department in writing for a correction of the amount of the assessment, and a conference for examination

and review of the assessment. The petition shall set forth the reasons why the correction should be granted and the amount of the tax, interest, or penalties, which the petitioner believes to be due. The department shall promptly consider the petition and may grant or deny it. If denied, the petitioner shall be notified by mail, or electronically as provided in RCW 82.32.135, thereof forthwith. If a conference is granted, the department shall fix the time and place therefor and notify the petitioner thereof by mail or electronically as provided in RCW 82.32.135. After the conference the department may make such determination as may appear to it to be just and lawful and shall mail a copy of its determination to the petitioner, or provide a copy of its determination electronically as provided in RCW 82.32.135. If no such petition is filed within the thirty-day period the assessment covered by the notice shall become final.

The procedures provided for herein shall apply also to a notice denying, in whole or in part, an application for a pollution control tax exemption and credit certificate, with such modifications to such procedures established by departmental rules and regulations as may be necessary to accommodate a claim for exemption or credit. [2007 c 111 § 110; 1989 c 378 § 22; 1975 1st ex.s. c 158 § 4; 1967 ex.s. c 26 § 49; 1963 ex.s. c 28 § 8; 1961 c 15 § 82.32.160. Prior: 1939 c 225 § 29, part; 1935 c 180 § 199, part; RRS § 8370-199, part.]

Part headings not law—2007 c 111: See note following RCW 82.16.120.

Effective date—1975 1st ex.s. c 158: See note following RCW 82.34.050.

Effective date—1967 ex.s. c 26: See note following RCW 82.01.050.

82.32.170 Reduction of tax after payment—Petition—Conference—Determination by department. Any person, having paid any tax, original assessment, additional assessment, or corrected assessment of any tax, may apply to the department within the time limitation for refund provided in this chapter, by petition in writing for a correction of the amount paid, and a conference for examination and review of the tax liability, in which petition he shall set forth the reasons why the conference should be granted, and the amount in which the tax, interest, or penalty, should be refunded. The department shall promptly consider the petition, and may grant or deny it. If denied, the petitioner shall be notified by mail, or electronically as provided in RCW 82.32.135, thereof forthwith. If a conference is granted, the department shall notify the petitioner by mail, or electronically as provided in RCW 82.32.135, of the time and place fixed therefor. After the hearing the department may make such determination as may appear to it just and lawful, and shall mail a copy of its determination to the petitioner, or provide a copy of its determination electronically as provided in RCW 82.32.135. [2007 c 111 § 111; 1967 ex.s. c 26 § 50; 1961 c 15 § 82.32.170. Prior: 1951 1st ex.s. c 9 § 11; 1939 c 225 § 29, part; 1935 c 180 § 199, part; RRS § 8370-199, part.]

Part headings not law—2007 c 111: See note following RCW 82.16.120.

Effective date—1967 ex.s. c 26: See note following RCW 82.01.050.

82.32.330 Disclosure of return or tax information. (Effective July 1, 2008.) (1) For purposes of this section:

(a) "Disclose" means to make known to any person in any manner whatever a return or tax information;

(b) "Return" means a tax or information return or claim for refund required by, or provided for or permitted under, the laws of this state which is filed with the department of revenue by, on behalf of, or with respect to a person, and any amendment or supplement thereto, including supporting schedules, attachments, or lists that are supplemental to, or part of, the return so filed;

(c) "Tax information" means (i) a taxpayer's identity, (ii) the nature, source, or amount of the taxpayer's income, payments, receipts, deductions, exemptions, credits, assets, liabilities, net worth, tax liability deficiencies, overassessments, or tax payments, whether taken from the taxpayer's books and records or any other source, (iii) whether the taxpayer's return was, is being, or will be examined or subject to other investigation or processing, (iv) a part of a written determination that is not designated as a precedent and disclosed pursuant to RCW 82.32.410, or a background file document relating to a written determination, and (v) other data received by, recorded by, prepared by, furnished to, or collected by the department of revenue with respect to the determination of the existence, or possible existence, of liability, or the amount thereof, of a person under the laws of this state for a tax, penalty, interest, fine, forfeiture, or other imposition, or offense: PROVIDED, That data, material, or documents that do not disclose information related to a specific or identifiable taxpayer do not constitute tax information under this section. Except as provided by RCW 82.32.410, nothing in this chapter shall require any person possessing data, material, or documents made confidential and privileged by this section to delete information from such data, material, or documents so as to permit its disclosure;

(d) "State agency" means every Washington state office, department, division, bureau, board, commission, or other state agency;

(e) "Taxpayer identity" means the taxpayer's name, address, telephone number, registration number, or any combination thereof, or any other information disclosing the identity of the taxpayer; and

(f) "Department" means the department of revenue or its officer, agent, employee, or representative.

(2) Returns and tax information shall be confidential and privileged, and except as authorized by this section, neither the department of revenue nor any other person may disclose any return or tax information.

(3) This section does not prohibit the department of revenue from:

(a) Disclosing such return or tax information in a civil or criminal judicial proceeding or an administrative proceeding:

(i) In respect of any tax imposed under the laws of this state if the taxpayer or its officer or other person liable under Title 82 RCW is a party in the proceeding; or

(ii) In which the taxpayer about whom such return or tax information is sought and another state agency are adverse parties in the proceeding;

(b) Disclosing, subject to such requirements and conditions as the director shall prescribe by rules adopted pursuant to chapter 34.05 RCW, such return or tax information regarding a taxpayer to such taxpayer or to such person or persons as that taxpayer may designate in a request for, or consent to,

such disclosure, or to any other person, at the taxpayer's request, to the extent necessary to comply with a request for information or assistance made by the taxpayer to such other person: PROVIDED, That tax information not received from the taxpayer shall not be so disclosed if the director determines that such disclosure would compromise any investigation or litigation by any federal, state, or local government agency in connection with the civil or criminal liability of the taxpayer or another person, or that such disclosure would identify a confidential informant, or that such disclosure is contrary to any agreement entered into by the department that provides for the reciprocal exchange of information with other government agencies which agreement requires confidentiality with respect to such information unless such information is required to be disclosed to the taxpayer by the order of any court;

(c) Disclosing the name of a taxpayer with a deficiency greater than five thousand dollars and against whom a warrant under RCW 82.32.210 has been either issued or filed and remains outstanding for a period of at least ten working days. The department shall not be required to disclose any information under this subsection if a taxpayer: (i) Has been issued a tax assessment; (ii) has been issued a warrant that has not been filed; and (iii) has entered a deferred payment arrangement with the department of revenue and is making payments upon such deficiency that will fully satisfy the indebtedness within twelve months;

(d) Disclosing the name of a taxpayer with a deficiency greater than five thousand dollars and against whom a warrant under RCW 82.32.210 has been filed with a court of record and remains outstanding;

(e) Publishing statistics so classified as to prevent the identification of particular returns or reports or items thereof;

(f) Disclosing such return or tax information, for official purposes only, to the governor or attorney general, or to any state agency, or to any committee or subcommittee of the legislature dealing with matters of taxation, revenue, trade, commerce, the control of industry or the professions;

(g) Permitting the department of revenue's records to be audited and examined by the proper state officer, his or her agents and employees;

(h) Disclosing any such return or tax information to a peace officer as defined in RCW 9A.04.110 or county prosecuting attorney, for official purposes. The disclosure may be made only in response to a search warrant, subpoena, or other court order, unless the disclosure is for the purpose of criminal tax enforcement. A peace officer or county prosecuting attorney who receives the return or tax information may disclose that return or tax information only for use in the investigation and a related court proceeding, or in the court proceeding for which the return or tax information originally was sought;

(i) Disclosing any such return or tax information to the proper officer of the internal revenue service of the United States, the Canadian government or provincial governments of Canada, or to the proper officer of the tax department of any state or city or town or county, for official purposes, but only if the statutes of the United States, Canada or its provincial governments, or of such other state or city or town or county, as the case may be, grants substantially similar privileges to the proper officers of this state;

(j) Disclosing any such return or tax information to the Department of Justice, including the Bureau of Alcohol, Tobacco, Firearms and Explosives within the Department of Justice, the Department of Defense, the Immigration and Customs Enforcement and the Customs and Border Protection agencies of the United States Department of Homeland Security, the Coast Guard of the United States, and the United States Department of Transportation, or any authorized representative thereof, for official purposes;

(k) Publishing or otherwise disclosing the text of a written determination designated by the director as a precedent pursuant to RCW 82.32.410;

(l) Disclosing, in a manner that is not associated with other tax information, the taxpayer name, entity type, business address, mailing address, revenue tax registration numbers, North American industry classification system or standard industrial classification code of a taxpayer, and the dates of opening and closing of business. This subsection shall not be construed as giving authority to the department to give, sell, or provide access to any list of taxpayers for any commercial purpose;

(m) Disclosing such return or tax information that is also maintained by another Washington state or local governmental agency as a public record available for inspection and copying under the provisions of chapter 42.56 RCW or is a document maintained by a court of record not otherwise prohibited from disclosure;

(n) Disclosing such return or tax information to the United States department of agriculture for the limited purpose of investigating food stamp fraud by retailers;

(o) Disclosing to a financial institution, escrow company, or title company, in connection with specific real property that is the subject of a real estate transaction, current amounts due the department for a filed tax warrant, judgment, or lien against the real property;

(p) Disclosing to a person against whom the department has asserted liability as a successor under RCW 82.32.140 return or tax information pertaining to the specific business of the taxpayer to which the person has succeeded;

(q) Disclosing such return or tax information in the possession of the department relating to the administration or enforcement of the real estate excise tax imposed under chapter 82.45 RCW, including information regarding transactions exempt or otherwise not subject to tax;

(r) Disclosing the least amount of return or tax information necessary for the reports required in RCW 82.32.640 (4) and (5) when the number of taxpayers included in the reports or any part of the reports cannot be classified to prevent the identification of taxpayers or particular returns, reports, tax information, or items in the possession of the department; or

(s) Disclosing to local taxing jurisdictions the identity of sellers granted relief under RCW 82.32.430(5)(b)(i) and the period for which relief is granted.

(4)(a) The department may disclose return or taxpayer information to a person under investigation or during any court or administrative proceeding against a person under investigation as provided in this subsection (4). The disclosure must be in connection with the department's official duties relating to an audit, collection activity, or a civil or criminal investigation. The disclosure may occur only when the person under investigation and the person in possession

of data, materials, or documents are parties to the return or tax information to be disclosed. The department may disclose return or tax information such as invoices, contracts, bills, statements, resale or exemption certificates, or checks. However, the department may not disclose general ledgers, sales or cash receipt journals, check registers, accounts receivable/payable ledgers, general journals, financial statements, expert's workpapers, income tax returns, state tax returns, tax return workpapers, or other similar data, materials, or documents.

(b) Before disclosure of any tax return or tax information under this subsection (4), the department shall, through written correspondence, inform the person in possession of the data, materials, or documents to be disclosed. The correspondence shall clearly identify the data, materials, or documents to be disclosed. The department may not disclose any tax return or tax information under this subsection (4) until the time period allowed in (c) of this subsection has expired or until the court has ruled on any challenge brought under (c) of this subsection.

(c) The person in possession of the data, materials, or documents to be disclosed by the department has twenty days from the receipt of the written request required under (b) of this subsection to petition the superior court of the county in which the petitioner resides for injunctive relief. The court shall limit or deny the request of the department if the court determines that:

(i) The data, materials, or documents sought for disclosure are cumulative or duplicative, or are obtainable from some other source that is more convenient, less burdensome, or less expensive;

(ii) The production of the data, materials, or documents sought would be unduly burdensome or expensive, taking into account the needs of the department, the amount in controversy, limitations on the petitioner's resources, and the importance of the issues at stake; or

(iii) The data, materials, or documents sought for disclosure contain trade secret information that, if disclosed, could harm the petitioner.

(d) The department shall reimburse reasonable expenses for the production of data, materials, or documents incurred by the person in possession of the data, materials, or documents to be disclosed.

(e) Requesting information under (b) of this subsection that may indicate that a taxpayer is under investigation does not constitute a disclosure of tax return or tax information under this section.

(5) Any person acquiring knowledge of any return or tax information in the course of his or her employment with the department of revenue and any person acquiring knowledge of any return or tax information as provided under subsection (3)(f), (g), (h), (i), (j), or (n) of this section, who discloses any such return or tax information to another person not entitled to knowledge of such return or tax information under the provisions of this section, is guilty of a misdemeanor. If the person guilty of such violation is an officer or employee of the state, such person shall forfeit such office or employment and shall be incapable of holding any public office or employment in this state for a period of two years thereafter. [2007 c 6 § 1502; 2006 c 177 § 7. Prior: 2005 c 326 § 1; 2005 c 274 § 361; prior: 2000 c 173 § 1; 2000 c 106 § 1; 1998 c 234 § 1;

1996 c 184 § 5; 1995 c 197 § 1; 1991 c 330 § 1; 1990 c 67 § 1; 1985 c 414 § 9; 1984 c 138 § 12; 1969 ex.s. c 104 § 1; 1963 ex.s. c 28 § 10; 1961 c 15 § 82.32.330; prior: 1943 c 156 § 12; 1935 c 180 § 210; Rem. Supp. 1943 § 8370-210.]

Part headings not law—Savings—Effective date—Severability—2007 c 6: See notes following RCW 82.32.020.

Findings—Intent—2007 c 6: See note following RCW 82.14.495.

Effective date—2006 c 177 §§ 1-9: See note following RCW 82.08.981.

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

Effective date—2000 c 173: "This act takes effect July 1, 2000." [2000 c 173 § 2.]

Effective date—2000 c 106: "This act takes effect July 1, 2000." [2000 c 106 § 13.]

Effective date—1996 c 184: See note following RCW 46.16.010.

Effective date—1995 c 197: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and shall take effect July 1, 1995." [1995 c 197 § 2.]

82.32.430 Liability for tax rate calculation errors—Geographic information system. (Effective July 1, 2008.)

(1) A person who collects and remits sales or use tax to the department and who calculates the tax using geographic information system technology developed and provided by the department shall be held harmless and is not liable for the difference in amount due nor subject to penalties or interest in regards to rate calculation errors resulting from the proper use of such technology.

(2) Except as provided in subsection (3) of this section, the department shall notify sellers who collect and remit sales or use tax to the department of changes in boundaries and rates to taxes imposed under the authority of chapter 82.14 RCW no later than sixty days before the effective date of the change.

(3) The department shall notify sellers who collect and remit sales or use tax to the department and make sales from printed catalogs of changes, as to such sales, of boundaries and rates to taxes imposed under the authority of chapter 82.14 RCW no later than one hundred twenty days before the effective date of the change.

(4) Sellers who have not received timely notice of rate and boundary changes under subsections (2) and (3) of this section due to actions or omissions of the department are not liable for the difference in the amount due until they have received the appropriate period of notice. Purchasers are liable for any uncollected amounts of tax.

(5)(a) Except as provided in (b) of this subsection, sellers registered with the department under RCW 82.32.030(3) and certified service providers must use the address-based geographic information technology system developed and provided by the department to calculate the tax to be collected and remitted to the department and to determine the appropriate local jurisdictions entitled to the tax.

(b)(i) Upon a showing that using the address-based geographic information technology system would cause undue hardship, a seller may be temporarily held harmless and not liable for the difference in amount due nor subject to penalties or interest in regards to rate calculation errors resulting from the proper use of zip code-based technology provided by the department for the period in which relief is granted.

The department shall notify local taxing jurisdictions of the identity of sellers granted relief under this section and the period for which relief is granted.

(ii) The department shall reimburse local taxing jurisdictions for differences in amount due on account of such rate calculation errors occurring during the period in which relief is granted. Purchasers are liable for any uncollected amounts of tax. The department shall retain amounts collected from purchasers that have been reimbursed to local taxing jurisdictions under this subsection (5)(b)(ii). [2007 c 6 § 1501; 2003 c 168 § 207; 2001 c 320 § 11; 2000 c 104 § 4.]

Part headings not law—Savings—Effective date—Severability—2007 c 6: See notes following RCW 82.32.020.

Findings—Intent—2007 c 6: See note following RCW 82.14.495.

Effective dates—Part headings not law—2003 c 168: See notes following RCW 82.08.010.

Effective date—2001 c 320: See note following RCW 11.02.005.

Findings—Intent—Effective date—2000 c 104: See notes following RCW 82.14.055.

82.32.520 Sourcing of calls. (Effective until July 1, 2008.)

(1) Except for the defined telecommunications services listed in this section, the sale of telephone service as defined in RCW 82.04.065 sold on a call-by-call basis shall be sourced to (a) each level of taxing jurisdiction where the call originates and terminates in that jurisdiction or (b) each level of taxing jurisdiction where the call either originates or terminates and in which the service address is also located.

(2) Except for the defined telecommunications services listed in this section, a sale of telephone service as defined in RCW 82.04.065 sold on a basis other than a call-by-call basis, is sourced to the customer's place of primary use.

(3) The sales of telephone service as defined in RCW 82.04.065 that are listed in this section shall be sourced to each level of taxing jurisdiction as follows:

(a) A sale of mobile telecommunications services, other than air-ground radiotelephone service and prepaid calling service, is sourced to the customer's place of primary use as required by RCW 82.08.066.

(b) A sale of postpaid calling service is sourced to the origination point of the telecommunications signal as first identified by either (i) the seller's telecommunications system, or (ii) information received by the seller from its service provider, where the system used to transport such signals is not that of the seller.

(c) A sale of prepaid calling service is sourced as follows:

(i) When a prepaid calling service is received by the purchaser at a business location of the seller, the sale is sourced to that business location;

(ii) When a prepaid calling service is not received by the purchaser at a business location of the seller, the sale is sourced to the location where receipt by the purchaser or the purchaser's donee, designated as such by the purchaser, occurs, including the location indicated by instructions for delivery to the purchaser or donee, known to the seller;

(iii) When (c)(i) and (ii) of this subsection do not apply, the sale is sourced to the location indicated by an address for the purchaser that is available from the business records of the seller that are maintained in the ordinary course of the

seller's business when use of this address does not constitute bad faith;

(iv) When (c)(i), (ii), and (iii) of this subsection do not apply, the sale is sourced to the location indicated by an address for the purchaser obtained during the consummation of the sale, including the address of a purchaser's payment instrument, if no other address is available, when use of this address does not constitute bad faith;

(v) When (c)(i), (ii), (iii), and (iv) of this subsection do not apply, including the circumstance where the seller is without sufficient information to apply those provisions, then the location shall be determined by the address from which tangible personal property was shipped, from which the digital good or the computer software delivered electronically was first available for transmission by the seller, or from which the service defined as a retail sale under RCW 82.04.050 was provided, disregarding for these purposes any location that merely provided the digital transfer of the product sold;

(vi) In the case of a sale of mobile telecommunications service that is a prepaid telecommunications service, (c)(v) of this subsection shall include as an option the location associated with the mobile telephone number.

(d) A sale of a private communication service is sourced as follows:

(i) Service for a separate charge related to a customer channel termination point is sourced to each level of jurisdiction in which such customer channel termination point is located.

(ii) Service where all customer termination points are located entirely within one jurisdiction or levels of jurisdiction is sourced in such jurisdiction in which the customer channel termination points are located.

(iii) Service for segments of a channel between two customer channel termination points located in different jurisdictions and which segment of channel are separately charged is sourced fifty percent in each level of jurisdiction in which the customer channel termination points are located.

(iv) Service for segments of a channel located in more than one jurisdiction or levels of jurisdiction and which segments are not separately billed is sourced in each jurisdiction based on the percentage determined by dividing the number of customer channel termination points in the jurisdiction by the total number of customer channel termination points.

(4) The definitions in this subsection apply throughout this chapter.

(a) "Air-ground radiotelephone service" means air-ground radio service, as defined in 47 C.F.R. Sec. 22.99, as amended or renumbered as of January 1, 2003, in which common carriers are authorized to offer and provide radio telecommunications service for hire to subscribers in aircraft.

(b) "Call-by-call basis" means any method of charging for telecommunications services where the price is measured by individual calls.

(c) "Communications channel" means a physical or virtual path of communications over which signals are transmitted between or among customer channel termination points.

(d) "Customer" means the person or entity that contracts with the seller of telecommunications services. If the end user of telecommunications services is not the contracting party, the end user of the telecommunications service is the

customer of the telecommunications service. "Customer" does not include a reseller of telecommunications service or for mobile telecommunications service of a serving carrier under an agreement to serve the customer outside the home service provider's licensed service area.

(e) "Customer channel termination point" means the location where the customer either inputs or receives the communications.

(f) "End user" means the person who uses the telecommunications service. In the case of an entity, the term end user means the individual who uses the service on behalf of the entity.

(g) "Home service provider" means the same as that term is defined in RCW 82.04.065.

(h) "Mobile telecommunications service" means the same as that term is defined in RCW 82.04.065.

(i) "Place of primary use" means the street address representative of where the customer's use of the telecommunications service primarily occurs, which must be the residential street address or the primary business street address of the customer. In the case of mobile telecommunications services, "place of primary use" must be within the licensed service area of the home service provider.

(j) "Postpaid calling service" means the telecommunications service obtained by making a payment on a call-by-call basis either through the use of a credit card or payment mechanism such as a bank card, travel card, credit card, or debit card, or by charge made to a telephone number that is not associated with the origination or termination of the telecommunications service. A postpaid calling service includes a telecommunications service that would be a prepaid calling service except it is not exclusively a telecommunications service.

(k) "Prepaid calling service" means the right to access exclusively telecommunications services, which must be paid for in advance and which enables the origination of calls using an access number and/or authorization code, whether manually or electronically dialed, and that is sold in predetermined units or dollars of which the number declines with use in a known amount.

(l) "Private communication service" means a telecommunications service that entitles the customer to exclusive or priority use of a communications channel or group of channels between or among termination points, regardless of the manner in which such channel or channels are connected, and includes switching capacity, extension lines, stations, and any other associated services that are provided in connection with the use of such channel or channels.

(m) "Service address" means:

(i) The location of the telecommunications equipment to which a customer's call is charged and from which the call originates or terminates, regardless of where the call is billed or paid;

(ii) If the location in (m)(i) of this subsection is not known, the origination point of the signal of the telecommunications services first identified by either the seller's telecommunications system or in information received by the seller from its service provider, where the system used to transport such signals is not that of the seller;

(iii) If the locations in (m)(i) and (ii) of this subsection are not known, the location of the customer's place of pri-

mary use. [2007 c 54 § 18; 2004 c 153 § 403; 2003 c 168 § 501.]

Severability—2007 c 54: See note following RCW 82.04.050.

Retroactive effective date—Effective date—2004 c 153: See note following RCW 82.08.0293.

Effective dates—Part headings not law—2003 c 168: See notes following RCW 82.08.010.

82.32.520 Sourcing of calls. (Effective July 1, 2008.)

(1) Except for the defined telecommunications services listed in subsection (3) of this section, the sale of telecommunications service as defined in RCW 82.04.065 sold on a call-by-call basis shall be sourced to (a) each level of taxing jurisdiction where the call originates and terminates in that jurisdiction or (b) each level of taxing jurisdiction where the call either originates or terminates and in which the service address is also located.

(2) Except for the defined telecommunications services listed in subsection (3) of this section, a sale of telecommunications service as defined in RCW 82.04.065 sold on a basis other than a call-by-call basis, is sourced to the customer's place of primary use.

(3) The sales of telecommunications service as defined in RCW 82.04.065 that are listed in subsection (3) of this section shall be sourced to each level of taxing jurisdiction as follows:

(a) A sale of mobile telecommunications services, other than air-ground radiotelephone service and prepaid calling service, is sourced to the customer's place of primary use as required by RCW 82.08.066.

(b) A sale of postpaid calling service is sourced to the origination point of the telecommunications signal as first identified by either (i) the seller's telecommunications system, or (ii) information received by the seller from its service provider, where the system used to transport such signals is not that of the seller.

(c) A sale of prepaid calling service or a sale of a prepaid wireless calling service is sourced as follows:

(i) When a prepaid calling service is received by the purchaser at a business location of the seller, the sale is sourced to that business location;

(ii) When a prepaid calling service is not received by the purchaser at a business location of the seller, the sale is sourced to the location where receipt by the purchaser or the purchaser's donee, designated as such by the purchaser, occurs, including the location indicated by instructions for delivery to the purchaser or donee, known to the seller;

(iii) When (c)(i) and (ii) of this subsection do not apply, the sale is sourced to the location indicated by an address for the purchaser that is available from the business records of the seller that are maintained in the ordinary course of the seller's business when use of this address does not constitute bad faith;

(iv) When (c)(i), (ii), and (iii) of this subsection do not apply, the sale is sourced to the location indicated by an address for the purchaser obtained during the consummation of the sale, including the address of a purchaser's payment instrument, if no other address is available, when use of this address does not constitute bad faith;

(v) When (c)(i), (ii), (iii), and (iv) of this subsection do not apply, including the circumstance where the seller is

without sufficient information to apply those provisions, then the location shall be determined by the address from which tangible personal property was shipped, from which the digital good or the computer software delivered electronically was first available for transmission by the seller, or from which the service defined as a retail sale under RCW 82.04.050 was provided, disregarding for these purposes any location that merely provided the digital transfer of the product sold;

(vi) In the case of a sale of prepaid wireless calling service, (c)(v) of this subsection shall include as an option the location associated with the mobile telephone number.

(d) A sale of a private communication service is sourced as follows:

(i) Service for a separate charge related to a customer channel termination point is sourced to each level of jurisdiction in which such customer channel termination point is located.

(ii) Service where all customer termination points are located entirely within one jurisdiction or levels of jurisdiction is sourced in such jurisdiction in which the customer channel termination points are located.

(iii) Service for segments of a channel between two customer channel termination points located in different jurisdictions and which segment of channel are separately charged is sourced fifty percent in each level of jurisdiction in which the customer channel termination points are located.

(iv) Service for segments of a channel located in more than one jurisdiction or levels of jurisdiction and which segments are not separately billed is sourced in each jurisdiction based on the percentage determined by dividing the number of customer channel termination points in the jurisdiction by the total number of customer channel termination points.

(4) The definitions in this subsection apply throughout this chapter.

(a) "Air-ground radiotelephone service" means air-ground radio service, as defined in 47 C.F.R. Sec. 22.99, as amended or renumbered as of January 1, 2003, in which common carriers are authorized to offer and provide radio telecommunications service for hire to subscribers in aircraft.

(b) "Call-by-call basis" means any method of charging for telecommunications services where the price is measured by individual calls.

(c) "Communications channel" means a physical or virtual path of communications over which signals are transmitted between or among customer channel termination points.

(d) "Customer" means the person or entity that contracts with the seller of telecommunications services. If the end user of telecommunications services is not the contracting party, the end user of the telecommunications service is the customer of the telecommunications service. "Customer" does not include a reseller of telecommunications service or for mobile telecommunications service of a serving carrier under an agreement to serve the customer outside the home service provider's licensed service area.

(e) "Customer channel termination point" means the location where the customer either inputs or receives the communications.

(f) "End user" means the person who uses the telecommunications service. In the case of an entity, the term end

user means the individual who uses the service on behalf of the entity.

(g) "Home service provider" means the same as that term is defined in RCW 82.04.065.

(h) "Mobile telecommunications service" means the same as that term is defined in RCW 82.04.065.

(i) "Place of primary use" means the street address representative of where the customer's use of the telecommunications service primarily occurs, which must be the residential street address or the primary business street address of the customer. In the case of mobile telecommunications services, "place of primary use" must be within the licensed service area of the home service provider.

(j) "Postpaid calling service" means the telecommunications service obtained by making a payment on a call-by-call basis either through the use of a credit card or payment mechanism such as a bank card, travel card, credit card, or debit card, or by charge made to a telephone number that is not associated with the origination or termination of the telecommunications service. A postpaid calling service includes a telecommunications service, except a prepaid wireless calling service, that would be a prepaid calling service except it is not exclusively a telecommunications service.

(k) "Prepaid calling service" means the right to access exclusively telecommunications services, which must be paid for in advance and which enables the origination of calls using an access number and/or authorization code, whether manually or electronically dialed, and that is sold in predetermined units or dollars of which the number declines with use in a known amount.

(l) "Prepaid wireless calling service" means a telecommunications service that provides the right to use mobile wireless service as well as other nontelecommunications services, including the download of digital products delivered electronically, content, and ancillary services, which must be paid for in advance that is sold in predetermined units or dollars of which the number declines with use in a known amount.

(m) "Private communication service" means a telecommunications service that entitles the customer to exclusive or priority use of a communications channel or group of channels between or among termination points, regardless of the manner in which such channel or channels are connected, and includes switching capacity, extension lines, stations, and any other associated services that are provided in connection with the use of such channel or channels.

(n) "Service address" means:

(i) The location of the telecommunications equipment to which a customer's call is charged and from which the call originates or terminates, regardless of where the call is billed or paid;

(ii) If the location in (n)(i) of this subsection is not known, the origination point of the signal of the telecommunications services first identified by either the seller's telecommunications system or in information received by the seller from its service provider, where the system used to transport such signals is not that of the seller;

(iii) If the locations in (n)(i) and (ii) of this subsection are not known, the location of the customer's place of primary use. [2007 c 54 § 18; 2007 c 6 § 1001; 2004 c 153 § 403; 2003 c 168 § 501.]

Reviser's note: This section was amended by 2007 c 6 § 1001 and by 2007 c 54 § 18, each without reference to the other. Both amendments are incorporated in the publication of this section under RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

Severability—2007 c 54: See note following RCW 82.04.050.

Part headings not law—Savings—Effective date—Severability—2007 c 6: See notes following RCW 82.32.020.

Findings—Intent—2007 c 6: See note following RCW 82.14.495.

Retroactive effective date—Effective date—2004 c 153: See note following RCW 82.08.0293.

Effective dates—Part headings not law—2003 c 168: See notes following RCW 82.08.010.

82.32.545 Annual report for airplane manufacturing tax preferences. (1) The legislature finds that accountability and effectiveness are important aspects of setting tax policy. In order to make policy choices regarding the best use of limited state resources the legislature needs information on how a tax incentive is used.

(2)(a) A person who reports taxes under RCW 82.04.260(11) or who claims an exemption or credit under RCW 82.04.4461, 82.08.980, 82.12.980, 82.29A.137, 84.36.655, and 82.04.4463 shall make an annual report to the department detailing employment, wages, and employer-provided health and retirement benefits per job at the manufacturing site. The report shall not include names of employees. The report shall also detail employment by the total number of full-time, part-time, and temporary positions. The first report filed under this subsection shall include employment, wage, and benefit information for the twelve-month period immediately before first use of a preferential tax rate under RCW 82.04.260(11), or tax exemption or credit under RCW 82.04.4461, 82.08.980, 82.12.980, 82.29A.137, 84.36.655, and 82.04.4463. The report is due by March 31st following any year in which a preferential tax rate under RCW 82.04.260(11) is used, or tax exemption or credit under RCW 82.04.4461, 82.08.980, 82.12.980, 82.29A.137, 84.36.655, and 82.04.4463 is taken. This information is not subject to the confidentiality provisions of RCW 82.32.330 and may be disclosed to the public upon request.

(b) If a person fails to submit an annual report under (a) of this subsection by the due date of the report, the department shall declare the amount of taxes exempted or credited, or reduced in the case of the preferential business and occupation tax rate, for that year to be immediately due and payable. Excise taxes payable under this subsection are subject to interest but not penalties, as provided under this chapter. This information is not subject to the confidentiality provisions of RCW 82.32.330 and may be disclosed to the public upon request.

(3) By November 1, 2010, and by November 1, 2023, the fiscal committees of the house of representatives and the senate, in consultation with the department, shall report to the legislature on the effectiveness of chapter 1, Laws of 2003 2nd sp. sess. in regard to keeping Washington competitive. The report shall measure the effect of chapter 1, Laws of 2003 2nd sp. sess. on job retention, net jobs created for Washington residents, company growth, diversification of the state's economy, cluster dynamics, and other factors as the committees select. The reports shall include a discussion of principles to apply in evaluating whether the legislature should reenact any or all of the tax preferences in chapter 1,

Laws of 2003 2nd sp. sess. [2007 c 54 § 19; 2003 2nd sp.s. c 1 § 16.]

Severability—2007 c 54: See note following RCW 82.04.050.

Contingent effective date—2003 2nd sp.s. c 1: See RCW 82.32.550.

Finding—2003 2nd sp.s. c 1: See note following RCW 82.04.4461.

82.32.550 Contingent effective date for aerospace tax incentives—Department date determinations and notice requirements. (1)(a) Chapter 1, Laws of 2003 2nd sp. sess. takes effect on the first day of the month in which the governor and a manufacturer of commercial airplanes sign a memorandum of agreement regarding an affirmative final decision to site a significant commercial airplane final assembly facility in Washington state. The department shall provide notice of the effective date of chapter 1, Laws of 2003 2nd sp. sess. to affected taxpayers, the legislature, and others as deemed appropriate by the department.

(b) Chapter 1, Laws of 2003 2nd sp. sess. is contingent upon the siting of a significant commercial airplane final assembly facility in the state of Washington. If a memorandum of agreement under subsection (1) of this section is not signed by June 30, 2005, chapter 1, Laws of 2003 2nd sp. sess. is null and void.

(c)(i) *The department shall make a determination regarding the date final assembly of a superefficient airplane begins in Washington state. The rates in RCW 82.04.260(11) (a)(ii) and (b)(ii) take effect the first day of the month such assembly begins, or July 1, 2007, whichever is later. The department shall provide notice of the effective date of such rates to affected taxpayers, the legislature, and others as deemed appropriate by the department.

(ii) If on December 31, 2007, final assembly of a super-efficient airplane has not begun in Washington state, the department shall provide notice of such to affected taxpayers, the legislature, and others as deemed appropriate by the department.

(2) The definitions in this subsection apply throughout this section.

(a) "Commercial airplane" has its ordinary meaning, which is an airplane certified by the federal aviation administration for transporting persons or property, and any military derivative of such an airplane.

(b) "Component" means a part or system certified by the federal aviation administration for installation or assembly into a commercial airplane.

(c) "Final assembly of a superefficient airplane" means the activity of assembling an airplane from components parts necessary for its mechanical operation such that the finished commercial airplane is ready to deliver to the ultimate consumer.

(d) "Significant commercial airplane final assembly facility" means a location with the capacity to produce at least thirty-six superefficient airplanes a year.

(e) "Siting" means a final decision by a manufacturer to locate a significant commercial airplane final assembly facility in Washington state.

(f) "Superefficient airplane" means a twin aisle airplane that carries between two hundred and three hundred fifty passengers, with a range of more than seven thousand two hundred nautical miles, a cruising speed of approximately mach

.85, and that uses fifteen to twenty percent less fuel than other similar airplanes on the market. [2007 c 54 § 20; 2003 2nd sp.s. c 1 § 17.]

Reviser's note: *(1) The department has notified the office of the code reviser that the rates in RCW 82.04.260(11) (a)(ii) and (b)(ii) became effective July 1, 2007.

(2) Chapter 1, Laws of 2003 2nd sp. sess. took effect December 1, 2003.

Severability—2007 c 54: See note following RCW 82.04.050.

Finding—2003 2nd sp.s. c 1: See note following RCW 82.04.4461.

82.32.555 Telephone service taxes—Identification of taxable and nontaxable charges. (Effective until July 1, 2008.) If a taxing jurisdiction does not subject some charges for telephone services to taxation, but these charges are aggregated with and not separately stated from charges that are subject to taxation, then the charges for nontaxable telephone services may be subject to taxation unless the telephone service provider can reasonably identify charges not subject to the tax, charge, or fee from its books and records that are kept in the regular course of business and for purposes other than merely allocating the sales price of an aggregated charge to the individually aggregated items. [2007 c 54 § 21; 2004 c 76 § 1.]

Severability—2007 c 54: See note following RCW 82.04.050.

82.32.555 Telecommunications and ancillary services taxes—Identification of taxable and nontaxable charges. (Effective July 1, 2008.) If a taxing jurisdiction does not subject some charges for ancillary services or telecommunications service, as those terms are defined in RCW 82.04.065, to taxation, but these charges are aggregated with and not separately stated from charges that are subject to taxation, then the charges for nontaxable ancillary services or telecommunications service, as those terms are defined in RCW 82.04.065, may be subject to taxation unless the telecommunications service provider or ancillary services provider can reasonably identify charges not subject to the tax, charge, or fee from its books and records that are kept in the regular course of business and for purposes other than merely allocating the sales price of an aggregated charge to the individually aggregated items. [2007 c 54 § 21; 2007 c 6 § 1011; 2004 c 76 § 1.]

Reviser's note: This section was amended by 2007 c 6 § 1011 and by 2007 c 54 § 21, each without reference to the other. Both amendments are incorporated in the publication of this section under RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

Severability—2007 c 54: See note following RCW 82.04.050.

Part headings not law—Savings—Effective date—Severability—2007 c 6: See notes following RCW 82.32.020.

Findings—Intent—2007 c 6: See note following RCW 82.14.495.

82.32.600 Annual surveys or reports for tax incentives—Electronic filing. (1) Persons required to file annual surveys or annual reports under RCW 82.04.4452 or 82.32.5351, 82.32.610, 82.32.630, 82.32.635, 82.32.640, or 82.74.040 must electronically file with the department all surveys, reports, returns, and any other forms or information the department requires in an electronic format as provided or approved by the department. As used in this section,

"returns" has the same meaning as "return" in RCW 82.32.050.

(2) Any survey, report, return, or any other form or information required to be filed in an electronic format under subsection (1) of this section is not filed until received by the department in an electronic format.

(3) The department may waive the electronic filing requirement in subsection (1) of this section for good cause shown. [2007 c 54 § 23; 2007 c 54 § 22. Prior: 2006 c 354 § 16; 2006 c 300 § 11; 2006 c 178 § 9; 2006 c 177 § 9; 2006 c 84 § 8; 2005 c 514 § 1002.]

Reviser's note: This section was reenacted by 2007 c 54 § 22 and by 2007 c 54 § 23, each without reference to the other. Both versions are incorporated in the publication of this section under RCW 1.12.025. For rule of construction, see RCW 1.12.025(1).

Severability—2007 c 54: See note following RCW 82.04.050.

Effective dates—2006 c 354: See note following RCW 82.04.4268.

Effective dates—Contingent effective date—2006 c 300: See note following RCW 82.04.261.

Effective date—Severability—2006 c 178: See notes following RCW 82.75.010.

Effective date—2006 c 177 §§ 1-9: See note following RCW 82.08.981.

Effective date—2006 c 84 §§ 2-8: See note following RCW 82.04.2404.

Findings—Intent—2006 c 84: See note following RCW 82.04.2404.

Effective date—2005 c 514 §§ 501 and 1002: See note following RCW 82.04.4463.

Part headings not law—Severability—2005 c 514: See notes following RCW 82.12.808.

82.32.630 Annual survey for timber tax incentives.

(1) The legislature finds that accountability and effectiveness are important aspects of setting tax policy. In order to make policy choices regarding the best use of limited state resources, the legislature needs information on how a tax incentive is used.

(2)(a) A person who reports taxes under RCW 82.04.260(12) shall file a complete annual survey with the department. The survey is due by March 31st following any year in which a person reports taxes under RCW 82.04.260(12). The department may extend the due date for timely filing of annual surveys under this section as provided in RCW 82.32.590. The survey shall include the amount of tax reduced under the preferential rate in RCW 82.04.260(12). The survey shall also include the following information for employment positions in Washington:

- (i) The number of total employment positions;
- (ii) Full-time, part-time, and temporary employment positions as a percent of total employment;
- (iii) The number of employment positions according to the following wage bands: Less than thirty thousand dollars; thirty thousand dollars or greater, but less than sixty thousand dollars; and sixty thousand dollars or greater. A wage band containing fewer than three individuals may be combined with another wage band; and
- (iv) The number of employment positions that have employer-provided medical, dental, and retirement benefits, by each of the wage bands.

(b) The first survey filed under this subsection shall include employment, wage, and benefit information for the

twelve-month period immediately before first use of a preferential tax rate under RCW 82.04.260(12).

(c) As part of the annual survey, the department may request additional information, including the amount of investment in equipment used in the activities taxable under the preferential rate in RCW 82.04.260(12), necessary to measure the results of, or determine eligibility for, the preferential tax rate in RCW 82.04.260(12).

(d) All information collected under this section, except the amount of the tax reduced under the preferential rate in RCW 82.04.260(12), is deemed taxpayer information under RCW 82.32.330. Information on the amount of tax reduced is not subject to the confidentiality provisions of RCW 82.32.330 and may be disclosed to the public upon request, except as provided in (e) of this subsection. If the amount of the tax reduced as reported on the survey is different than the amount actually reduced based on the taxpayer's excise tax returns or otherwise allowed by the department, the amount actually reduced may be disclosed.

(e) Persons for whom the actual amount of the tax reduction is less than ten thousand dollars during the period covered by the survey may request the department to treat the amount of the tax reduction as confidential under RCW 82.32.330.

(f) Small harvesters as defined in RCW 84.33.035 are not required to file the annual survey under this section.

(3) If a person fails to submit a complete annual survey under subsection (2) of this section by the due date or any extension under RCW 82.32.590, the department shall declare the amount of taxes reduced under the preferential rate in RCW 82.04.260(12) for the period covered by the survey to be immediately due and payable. The department shall assess interest, but not penalties, on the taxes. Interest shall be assessed at the rate provided for delinquent excise taxes under this chapter, retroactively to the date the reduced taxes were due, and shall accrue until the amount of the reduced taxes is repaid.

(4) The department shall use the information from the annual survey required under subsection (2) of this section to prepare summary descriptive statistics by category. The department shall report these statistics to the legislature each year by September 1st. The requirement to prepare and report summary descriptive statistics shall cease after September 1, 2025.

(5) By November 1, 2011, and November 1, 2023, the fiscal committees of the house of representatives and the senate, in consultation with the department, shall report to the legislature on the effectiveness of the preferential tax rate provided in RCW 82.04.260(12). The report shall measure the effect of the preferential tax rate provided in RCW 82.04.260(12) on job retention, net jobs created for Washington residents, company growth, and other factors as the committees select. The report shall include a discussion of principles to apply in evaluating whether the legislature should continue the preferential tax rate provided in RCW 82.04.260(12). [2007 c 48 § 6; 2006 c 300 § 9.]

Effective date—2007 c 48: See note following RCW 82.04.260.

Effective dates—Contingent effective date—2006 c 300: See note following RCW 82.04.261.

82.32.700 Administration of the sales and use tax for hospital benefit zones. (1) As a condition to imposing a sales and use tax under RCW 82.14.465, a city, town, or county must apply to the department at least seventy-five days before the effective date of any such tax. The application shall be in a form and manner prescribed by the department and shall include but is not limited to information establishing that the applicant is eligible to impose such a tax, the anticipated effective date for imposing the tax, the estimated number of years that the tax will be imposed, and the estimated amount of tax revenue to be received in each fiscal year that the tax will be imposed. For purposes of this section, "fiscal year" means the year beginning July 1st and ending the following June 30th. The department shall make available forms to be used for this purpose. As part of the application, a city, town, or county must provide to the department a copy of the ordinance creating the benefit zone as required in RCW 39.100.040. The department shall rule on completed applications within sixty days of receipt. The department may begin accepting and approving applications August 1, 2006. No new applications shall be considered by the department after the thirtieth day of September of the third year following the year in which the first application was received by the department.

(2) The authority to impose the local option sales and use taxes under RCW 82.14.465 is on a first-come basis. Priority for collecting the taxes authorized under RCW 82.14.465 among approved applicants shall be based on the date that the approved application was received by the department. As a part of the approval of applications under this section, the department shall approve the amount of tax under RCW 82.14.465 that an applicant may impose. The amount of tax approved by the department shall not exceed the lesser of two million dollars or the average amount of tax revenue that the applicant estimates that it will receive in all fiscal years through the imposition of a sales and use tax under RCW 82.14.465. A city, town, or county shall not receive, in any fiscal year, more revenues from taxes imposed under RCW 82.14.465 than the amount approved by the department. The department shall not approve the receipt of more credit against the state sales and use tax than is authorized under subsection (3) of this section.

(3) No more than two million dollars of credit against the state sales and use tax provided for under RCW 82.14.465(2), may be received in any fiscal year by all cities, towns, and counties imposing a tax under RCW 82.14.465.

(4)(a) The credit against the state sales and use tax shall be available to any city, town, or county imposing a tax under RCW 82.14.465 only as long as the city, town, or county has outstanding indebtedness under chapter 39.100 RCW or the tax allocation revenues are used for public improvement costs, but in no case shall the credit be available for more than thirty years after the tax is first imposed by the city, town, or county.

(b) Local governments may pledge any receipts from taxes levied and collected under chapter 39.100 RCW and RCW 82.14.465 to the repayment of its bonds or bond anticipation notes. A local government shall notify the department when all outstanding indebtedness secured in whole or in part from receipts is no longer outstanding or tax allocation revenues are no longer used for public improvement costs,

and the credit provided for under RCW 82.14.465 shall be terminated.

(5) The department may adopt any rules under chapter 34.05 RCW it considers necessary for the administration of chapter 39.100 RCW. [2007 c 266 § 9; 2006 c 111 § 9.]

Finding—Application—Effective date—2007 c 266: See notes following RCW 39.100.010.

Effective date—2006 c 111: See RCW 39.100.900.

82.32.715 Monetary allowances—Streamlined sales and use tax agreement. (1) The department shall adopt by rule monetary allowances for certified service providers, model 2 sellers, and model 3 sellers and all other sellers that are not model 1 or model 2 sellers. The department may be guided by the provisions for monetary allowances adopted by the governing board of the agreement to determine the amount of the allowances and the conditions under which they are allowed. The monetary allowances must be reasonable and provide adequate incentive for certified service providers and sellers to collect and remit sales and use taxes under the agreement. Monetary allowances will be funded solely from state sales and use taxes.

(2) For certified service providers, the monetary allowance may include a base rate that applies to taxable transactions processed by the certified service provider. Additionally, for a period not to exceed twenty-four months following a seller's registration under RCW 82.32.030(3), the monetary allowance may include a percentage of tax revenue generated by the seller.

(3) For model 2 sellers, the monetary allowance may include a base rate and a percentage of revenue generated by a seller registering under RCW 82.32.030(3), but shall not exceed a period of twenty-four months.

(4) For model 3 sellers and all other sellers that are not model 1 sellers or model 2 sellers, the monetary allowance may include a percentage of tax revenue generated by a seller registering under RCW 82.32.030(3), but shall not exceed a period of twenty-four months. [2007 c 6 § 301.]

Part headings not law—Savings—Severability—2007 c 6: See notes following RCW 82.32.020.

Findings—Intent—2007 c 6: See note following RCW 82.14.495.

82.32.720 Vendor compensation—Streamlined sales and use tax agreement. (Contingent effective date.) (1) The department may adopt by rule vendor compensation for sellers collecting and remitting sales and use taxes. The vendor compensation may include a base rate or a percentage of tax revenue collected by the seller, and may vary by type of seller. The department may be guided by the findings of the cost of collection study performed under the agreement, by cost of collection studies performed by the department, and by vendor compensation provided by other states, to determine reasonable vendor compensation for sellers for the costs to collect and remit sales and use taxes. Vendor compensation will be funded solely from state sales and use taxes.

(2) A seller is not entitled to vendor compensation while the seller or its certified service provider receives a monetary allowance under RCW 82.32.715. [2007 c 6 § 302.]

Contingent effective date—2007 c 6 § 302: "(1) Section 302 of this act takes effect when:

(a) The United States congress grants individual states the authority to

impose sales and use tax collection duties on remote sellers; or

(b) It is determined by a court of competent jurisdiction, in a judgment not subject to review, that a state can impose sales and use tax collection duties on remote sellers.

(2) The department of revenue shall provide notice to affected taxpayers, the legislature, and others as deemed appropriate by the department, if either of the contingencies in this section occurs." [2007 c 6 § 1705.]

Part headings not law—Savings—Severability—2007 c 6: See notes following RCW 82.32.020.

Findings—Intent—2007 c 6: See note following RCW 82.14.495.

82.32.725 Amnesty—Streamlined sales and use tax agreement. (Effective July 1, 2008.) (1) No assessment for taxes imposed or authorized under chapters 82.08, 82.12, and 82.14 RCW, or related penalties or interest, may be made by the department against a seller who:

(a) Within twelve months of the effective date of this state becoming a member state of the agreement, registers under RCW 82.32.030(3) to collect and remit to the department the applicable taxes imposed or authorized under chapters 82.08, 82.12, and 82.14 RCW on sales made to buyers in this state in accordance with the terms of the agreement, if the seller was not otherwise registered in this state in the twelve-month period preceding the effective date of this state becoming a member state of the agreement; and

(b) Continues to be registered and continues to collect and remit to the department the applicable taxes imposed or authorized under chapters 82.08, 82.12, and 82.14 RCW for a period of at least thirty-six months, absent the seller's fraud or intentional misrepresentation of a material fact.

(2) The provisions of subsection (1) of this section preclude an assessment for taxes imposed or authorized under chapters 82.08, 82.12, and 82.14 RCW for sales made to buyers during the period the seller was not registered in this state.

(3) The provisions of this section do not apply to any seller with respect to:

(a) Any matter or matters for which the seller, before registering to collect and remit the applicable taxes imposed or authorized under chapters 82.08, 82.12, and 82.14 RCW, received notice from the department of the commencement of an audit and which audit is not yet finally resolved including any related administrative and judicial processes;

(b) Taxes imposed or authorized under chapters 82.08, 82.12, and 82.14 RCW and collected or remitted to the department by the seller; or

(c) That seller's liability for taxes imposed or authorized under chapters 82.08, 82.12, and 82.14 RCW in that seller's capacity as a buyer.

(4) The limitation periods for making an assessment or correction of an assessment prescribed in RCW 82.32.050(3) and 82.32.100(3) do not run during the thirty-six month period in subsection (1)(b) of this section. [2007 c 6 § 401.]

Part headings not law—Savings—Effective date—Severability—2007 c 6: See notes following RCW 82.32.020.

Findings—Intent—2007 c 6: See note following RCW 82.14.495.

82.32.730 Sourcing—Streamlined sales and use tax agreement. (Effective July 1, 2008.) (1) Except as provided in subsections (5) through (7) of this section, for purposes of collecting or paying sales or use taxes to the appropriate jurisdictions, all sales at retail shall be sourced in accordance with this subsection and subsections (2) through (4) of this section.

(a) When tangible personal property, an extended warranty, or a service defined as a retail sale under RCW 82.04.050 is received by the purchaser at a business location of the seller, the sale is sourced to that business location.

(b) When the tangible personal property, extended warranty, or a service defined as a retail sale under RCW 82.04.050 is not received by the purchaser at a business location of the seller, the sale is sourced to the location where receipt by the purchaser or the purchaser's donee, designated as such by the purchaser, occurs, including the location indicated by instructions for delivery to the purchaser or donee, known to the seller.

(c) When (a) and (b) of this subsection do not apply, the sale is sourced to the location indicated by an address for the purchaser that is available from the business records of the seller that are maintained in the ordinary course of the seller's business when use of this address does not constitute bad faith.

(d) When (a), (b), and (c) of this subsection do not apply, the sale is sourced to the location indicated by an address for the purchaser obtained during the consummation of the sale, including the address of a purchaser's payment instrument, if no other address is available, when use of this address does not constitute bad faith.

(e) When (a), (b), (c), or (d) of this subsection do not apply, including the circumstance where the seller is without sufficient information to apply those provisions, then the location shall be determined by the address from which tangible personal property was shipped, from which the digital good or the computer software delivered electronically was first available for transmission by the seller, or from which the extended warranty or service defined as a retail sale under RCW 82.04.050 was provided, disregarding for these purposes any location that merely provided the digital transfer of the product sold.

(2) The lease or rental of tangible personal property, other than property identified in subsection (3) or (4) of this section, shall be sourced as provided in this subsection.

(a) For a lease or rental that requires recurring periodic payments, the first periodic payment is sourced the same as a retail sale in accordance with subsection (1) of this section. Periodic payments made subsequent to the first payment are sourced to the primary property location for each period covered by the payment. The primary property location shall be as indicated by an address for the property provided by the lessee that is available to the lessor from its records maintained in the ordinary course of business, when use of this address does not constitute bad faith. The property location is not altered by intermittent use at different locations, such as use of business property that accompanies employees on business trips and service calls.

(b) For a lease or rental that does not require recurring periodic payments, the payment is sourced the same as a retail sale in accordance with subsection (1) of this section.

(c) This subsection (2) does not affect the imposition or computation of sales or use tax on leases or rentals based on a lump sum or accelerated basis, or on the acquisition of property for lease.

(3) The lease or rental of motor vehicles, trailers, semi-trailers, or aircraft that do not qualify as transportation equipment shall be sourced as provided in this subsection.

(a) For a lease or rental that requires recurring periodic payments, each periodic payment is sourced to the primary property location. The primary property location is as indicated by an address for the property provided by the lessee that is available to the lessor from its records maintained in the ordinary course of business, when use of this address does not constitute bad faith. This location is not altered by intermittent use at different locations.

(b) For a lease or rental that does not require recurring periodic payments, the payment is sourced the same as a retail sale in accordance with subsection (1) of this section.

(c) This subsection does not affect the imposition or computation of sales or use tax on leases or rentals based on a lump sum or accelerated basis, or on the acquisition of property for lease.

(4) The retail sale, including lease or rental, of transportation equipment shall be sourced the same as a retail sale in accordance with subsection (1) of this section.

(5)(a) A purchaser of direct mail that is not a holder of a direct pay permit shall provide to the seller in conjunction with the purchase either a direct mail form or information that shows the jurisdictions to which the direct mail is delivered to recipients.

(i) Upon receipt of the direct mail form, the seller is relieved of all obligations to collect, pay, or remit the applicable tax and the purchaser is obligated to pay or remit the applicable tax on a direct pay basis. A direct mail form shall remain in effect for all future sales of direct mail by the seller to the purchaser until it is revoked in writing.

(ii) Upon receipt of information from the purchaser showing the jurisdictions to which the direct mail is delivered to recipients, the seller shall collect the tax according to the delivery information provided by the purchaser. In the absence of bad faith, the seller is relieved of any further obligation to collect tax on any transaction where the seller has collected tax pursuant to the delivery information provided by the purchaser.

(b) If the purchaser of direct mail does not have a direct pay permit and does not provide the seller with either a direct mail form or delivery information as required by (a) of this subsection, the seller shall collect the tax according to subsection (1)(e) of this section. This subsection does not limit a purchaser's obligation for sales or use tax to any state to which the direct mail is delivered.

(c) If a purchaser of direct mail provides the seller with documentation of direct pay authority, the purchaser is not required to provide a direct mail form or delivery information to the seller.

(6) The following are sourced to the location at or from which delivery is made to the consumer:

(a) A retail sale of watercraft;

(b) A retail sale of a modular home, manufactured home, or mobile home; and

(c) A retail sale, excluding the lease and rental, of a motor vehicle, trailer, semitrailer, or aircraft, that do not qualify as transportation equipment.

(7) A retail sale of the providing of telecommunications services or ancillary services, as those terms are defined in RCW 82.04.065, shall be sourced in accordance with RCW 82.32.520.

(8) The definitions in this subsection apply throughout this section.

(a) "Delivered electronically" means delivered to the purchaser by means other than tangible storage media.

(b) "Direct mail" means printed material delivered or distributed by United States mail or other delivery service to a mass audience or to addressees on a mailing list provided by the purchaser or at the direction of the purchaser when the cost of the items are not billed directly to the recipients. "Direct mail" includes tangible personal property supplied directly or indirectly by the purchaser to the direct mail seller for inclusion in the package containing the printed material. "Direct mail" does not include multiple items of printed material delivered to a single address.

(c) "Receive" and "receipt" mean taking possession of tangible personal property, making first use of services, or taking possession or making first use of digital goods, whichever comes first. "Receive" and "receipt" do not include possession by a shipping company on behalf of the purchaser.

(d) "Transportation equipment" means:

(i) Locomotives and railcars that are used for the carriage of persons or property in interstate commerce;

(ii) Trucks and truck tractors with a gross vehicle weight rating of ten thousand one pounds or greater, trailers, semi-trailers, or passenger buses that are:

(A) Registered through the international registration plan; and

(B) Operated under authority of a carrier authorized and certificated by the United States department of transportation or another federal authority to engage in the carriage of persons or property in interstate commerce;

(iii) Aircraft that are operated by air carriers authorized and certificated by the United States department of transportation or another federal or foreign authority to engage in the carriage of persons or property in interstate or foreign commerce; or

(iv) Containers designed for use on and component parts attached or secured on the items described in (d)(i) through (iii) of this subsection.

(9) In those instances where there is no obligation on the part of a seller to collect or remit this state's sales or use tax, the use of tangible personal property or of a service, subject to use tax, is sourced to the place of first use in this state. The definition of use in RCW 82.12.010 applies to this subsection. [2007 c 6 § 501.]

Part headings not law—Savings—Effective date—Severability—2007 c 6: See notes following RCW 82.32.020.

Findings—Intent—2007 c 6: See note following RCW 82.14.495.

82.32.735 Confidentiality and privacy—Certified service providers—Streamlined sales and use tax agreement. (Effective July 1, 2008.) (1) A fundamental precept of allowing the use of a certified service provider is to preserve the privacy of consumers by protecting their anonymity. With very limited exceptions, a certified service provider shall perform its tax calculation, remittance, and reporting functions without retaining the personally identifiable information of consumers.

(2) The department shall provide public notification to consumers, including purchasers claiming exemption from

tax, of its practices relating to the collection, use, and retention of personally identifiable information.

(3) When personally identifiable information that has been collected and retained is no longer required to ensure the validity of exemptions from taxation by reason of the consumer's status or the intended use of the goods or services purchased, the information shall no longer be retained by the state of Washington.

(4) When personally identifiable information regarding an individual is retained by or on behalf of the state of Washington, this state shall provide reasonable access for the individual to his or her own information and a right to correct any inaccurately recorded information.

(5) If anyone other than a member state of the agreement, or other than a person authorized by Washington law or the agreement, seeks to discover personally identifiable information, the state of Washington shall make a reasonable and timely effort to notify the individual of the request.

(6) The provisions of this section may be enforced by petitioning the superior court of Thurston county for injunctive relief. [2007 c 6 § 601.]

Part headings not law—Savings—Effective date—Severability—2007 c 6: See notes following RCW 82.32.020.

Findings—Intent—2007 c 6: See note following RCW 82.14.495.

82.32.740 Taxability matrix—Liability—Streamlined sales and use tax agreement. (Effective July 1, 2008.)

(1) The department shall complete a taxability matrix maintained by the member states of the agreement in downloadable format. The matrix contains terms defined in the agreement. The department shall provide notice of changes in the taxability of products or services listed in the matrix.

(2) Sellers and certified service providers are relieved from liability to the state and to local jurisdictions for having charged or collected the incorrect amount of sales or use tax if the error resulted from reliance on erroneous information provided by the department in the taxability matrix. [2007 c 6 § 701.]

Part headings not law—Savings—Effective date—Severability—2007 c 6: See notes following RCW 82.32.020.

Findings—Intent—2007 c 6: See note following RCW 82.14.495.

82.32.745 Software certification by department—Classifications—Liability—Streamlined sales and use tax agreement. (Effective July 1, 2008.)

(1) The department shall review software submitted to the governing board of the agreement for certification as a certified automated system under the terms of the agreement. The review shall include a determination of whether the software adequately classifies this state's product-based sales tax exemptions. Upon completing the review, the department shall certify to the governing board its acceptance or rejection of the classifications made by the system.

(2) Certified service providers and model 2 sellers shall be held harmless and are not liable for sales or use taxes, nor interest or penalties on those taxes, not collected due to reliance on the certification of the department under subsection (1) of this section.

(3) The relief from liability provided to certified service providers and model 2 sellers under subsection (2) of this section does not apply with respect to the incorrect classification

of an item or transaction into a product-based exemption certified by the department unless that item or transaction is contained in a listing of items or transactions within a product definition approved by the governing board or the department.

(4) If the department determines that an item or transaction is incorrectly classified as to its taxability, it shall notify the certified service provider or model 2 seller of the incorrect classification. The certified service provider or model 2 seller has ten days to revise the classification after receipt of notice from the department. Upon the expiration of the ten days, the certified service provider or model 2 seller is liable for the failure to collect the correct amount of sales or use taxes. [2007 c 6 § 702.]

Part headings not law—Savings—Effective date—Severability—2007 c 6: See notes following RCW 82.32.020.

Findings—Intent—2007 c 6: See note following RCW 82.14.495.

82.32.750 Purchaser liability—Penalty—Streamlined sales and use tax agreement. (Effective July 1, 2008.)

(1) Purchasers are relieved from liability for tax, interest, and penalty for having failed to pay the correct amount of sales or use tax in any of the following circumstances:

(a) A purchaser's seller or certified service provider relied on erroneous data provided by the department on tax rates, boundaries, taxing jurisdiction assignments, or in the taxability matrix completed by the department pursuant to RCW 82.32.740;

(b) A purchaser holding a direct pay permit relied on erroneous data provided by the department on tax rates, boundaries, taxing jurisdiction assignments, or in the taxability matrix completed by the department pursuant to RCW 82.32.740;

(c) A purchaser relied on erroneous data provided by the department in the taxability matrix completed by the department pursuant to RCW 82.32.740; or

(d) A purchaser relied on erroneous data provided by the department on tax rates, boundaries, or taxing jurisdiction assignments.

(2) For purposes of this section, "penalty" means an amount imposed for noncompliance that is not fraudulent, willful, or intentional that is in addition to the correct amount of sales or use tax and interest. [2007 c 6 § 703.]

Part headings not law—Savings—Effective date—Severability—2007 c 6: See notes following RCW 82.32.020.

Findings—Intent—2007 c 6: See note following RCW 82.14.495.

82.32.755 Sourcing compliance—Taxpayer relief—Interest and penalties—Streamlined sales and use tax agreement. (Effective July 1, 2008.)

(1) Notwithstanding any other provision in this chapter, no interest or penalties may be imposed on any taxpayer because of errors in collecting or remitting the correct amount of local sales tax arising out of changes in local sales and use tax sourcing rules implemented under RCW 82.14.490 and the chapter 6, Laws of 2007 amendments to RCW 82.14.020 if the taxpayer establishes that:

(a) Immediately before July 1, 2008, the taxpayer was registered with the department and engaged in making sales of tangible personal property that the taxpayer delivered to locations away from its place of business; and

(b) During the calendar year for which the error was made the taxpayer:

(i) Has gross income of the business less than five hundred thousand dollars;

(ii) Has at least five percent of its gross income from sales subject to sales tax derived from sales of tangible personal property delivered to physical locations away from its place of business; and

(iii) Has at least one percent of its gross income from sales subject to sales tax derived from deliveries of tangible personal property to destinations in local jurisdictions imposing sales tax other than the one to which the taxpayer reported the most local sales tax.

(2) The relief from penalty and interest provided by subsection (1) of this section does not apply with respect to transactions occurring more than four years after the close of the calendar year in which *RCW 82.14.490 becomes effective. [2007 c 6 § 1601.]

***Reviser's note:** RCW 82.14.490 takes effect July 1, 2008.

Part headings not law—Savings—Effective date—Severability—2007 c 6: See notes following RCW 82.32.020.

Findings—Intent—2007 c 6: See note following RCW 82.14.495.

82.32.760 Sourcing compliance—Taxpayer relief—Credits—Streamlined sales and use tax agreement. (1) Eligible taxpayers may either:

(a) Use the services of a certified service provider at no cost to themselves for tax reporting periods up to two years after July 1, 2008; or

(b) Claim a credit against the tax imposed under RCW 82.08.020(1) collected and otherwise required to be remitted by the taxpayer as a seller and the tax imposed under RCW 82.04.220. The amount of the credit is equal to the amount of costs incurred within one year of July 1, 2008, in order to comply with changes in local sales and use tax sourcing rules implemented under RCW 82.14.490 and the chapter 6, Laws of 2007 amendments to RCW 82.14.020.

(i) The total amount of credit claimed under this subsection (1)(b) may not exceed one thousand dollars.

(ii) The credit may be claimed until it is used. No refunds may be granted for the credit. The costs that may be used in the calculation of the credit include goods and services purchased, and labor costs incurred, for the purpose of complying with the local sales tax sourcing rules.

(2) The use of a certified service provider under subsection (1)(a) of this section must begin within one year after July 1, 2008, but not before July 1, 2008.

(3) The credit under subsection (1)(b) of this section must first be claimed within one year after July 1, 2008, but not before July 1, 2008. This subsection does not affect the ability of a taxpayer to claim unused credit until it is used.

(4) For purposes of subsection (1) of this section, an "eligible taxpayer" means a taxpayer that:

(a) Immediately before July 1, 2008, was registered with the department and engaged in making sales of tangible personal property that the taxpayer delivered to physical locations away from its place of business; and

(b) During the calendar year in which *RCW 82.14.490 becomes effective:

(i) Has a physical presence in Washington;

(ii) Has gross income of the business less than five hundred thousand dollars;

(iii) Has at least five percent of its gross income from sales subject to sales tax derived from sales of tangible personal property delivered to physical locations away from its place of business; and

(iv) Has at least one percent of its gross income from sales subject to sales tax derived from deliveries of tangible personal property to destinations in local jurisdictions imposing sales tax other than the one to which the taxpayer reported the most local sales tax.

(5) Certified service providers agreeing to provide services to eligible taxpayers under subsection (1)(a) of this section shall be compensated for those services by retaining as a fee an amount adopted by rule by the department. The department may be guided by the provisions for monetary allowances adopted by the governing board of the agreement to determine the amount of the fee. The fee must be reasonable and provide adequate incentive for certified service providers to provide services to eligible taxpayers. The fee will be funded solely from state sales taxes.

(6) Taxpayers that use certified service provider services under subsection (1)(a) of this section but are not eligible taxpayers are immediately liable to the department for the amount retained by the certified service provider as a fee for providing those services to the taxpayer. All administrative provisions of this chapter applicable to the collection of taxes apply to amounts due under this subsection. If any amounts due under this subsection are not paid by the due date of any notice informing the taxpayer of such liability, the department shall apply interest, but not penalties, to amounts remaining due. Interest assessed under this subsection shall be at the rate provided for delinquent excise taxes under this chapter from the day after the due date until the amount due under this subsection is paid in full.

(7) Taxpayers that claim a credit under subsection (1)(b) of this section but are not eligible taxpayers are immediately liable to the department for the amount of credit claimed. If any amounts due under this subsection are not paid by the due date of any notice informing the taxpayer of such liability, the department shall apply interest, but not penalties, to amounts remaining due. Interest assessed under this subsection shall be at the rate provided for delinquent excise taxes under this chapter from the day after the due date until the amount due under this subsection is paid in full.

(8) No application is necessary for either the use of certified service providers under subsection (1)(a) of this section or the tax credit under subsection (1)(b) of this section. The taxpayer must keep records necessary for the department to determine eligibility under this section. The department may prescribe rules and procedures regarding the administration of this section. [2007 c 6 § 1602.]

***Reviser's note:** RCW 82.14.490 takes effect July 1, 2008.

Part headings not law—Savings—Severability—2007 c 6: See notes following RCW 82.32.020.

Findings—Intent—2007 c 6: See note following RCW 82.14.495.

Chapter 82.33 RCW

ECONOMIC AND REVENUE FORECASTS

Sections

- 82.33.050 Employment growth forecast and general state revenue estimates. *(Effective July 1, 2008, if the proposed amendment to Article VII of the state Constitution is approved at the November 2007 general election.)*

82.33.050 Employment growth forecast and general state revenue estimates. *(Effective July 1, 2008, if the proposed amendment to Article VII of the state Constitution is approved at the November 2007 general election.)* The state economic and revenue forecast council shall perform the state employment growth forecast and general state revenue estimates required by Article VII, section . . . (Senate Joint Resolution No. 8206). [2007 c 484 § 3.]

Contingent effective date—2007 c 484 §§ 2-8: See note following RCW 43.79.495.

Chapter 82.33A RCW

ECONOMIC CLIMATE COUNCIL

Sections

- 82.33A.010 Council—Created—Selection of benchmarks—Access to agency information.
82.33A.020 Consulting with Washington economic development commission.

82.33A.010 Council—Created—Selection of benchmarks—Access to agency information. (1) The economic climate council is hereby created.

(2) The council shall, in consultation with the Washington economic development commission, select a series of benchmarks that characterize the competitive environment of the state. The benchmarks should be indicators of the cost of doing business; the education and skills of the work force; a sound infrastructure; and the quality of life. In selecting the appropriate benchmarks, the council shall use the following criteria:

(a) The availability of comparative information for other states and countries;

(b) The timeliness with which benchmark information can be obtained; and

(c) The accuracy and validity of the benchmarks in measuring the economic climate indicators named in this section.

(3) Each year the council shall prepare an official state economic climate report on the present status of benchmarks, changes in the benchmarks since the previous report, and the reasons for the changes. The reports shall include current benchmark comparisons with other states and countries, and an analysis of factors related to the benchmarks that may affect the ability of the state to compete economically at the national and international level.

(4) All agencies of state government shall provide to the council immediate access to all information relating to economic climate reports. [2007 c 232 § 8; 1998 c 245 § 168; 1996 c 152 § 2.]

82.33A.020 Consulting with Washington economic development commission. The economic climate council shall consult with the Washington economic development

commission in selecting benchmarks and developing economic climate reports and benchmarks. The commission shall provide for a process to ensure public participation in the selection of the benchmarks. [2007 c 232 § 9; 1996 c 152 § 4.]

Chapter 82.36 RCW

MOTOR VEHICLE FUEL TAX

Sections

- 82.36.010 Definitions.
82.36.020 Tax levied and imposed—Rate to be computed—Incidence—Distribution.
82.36.022 Tax imposed—Intent.
82.36.025 Motor vehicle fuel tax rate—Expiration of subsection.
82.36.026 Tax liability—General.
82.36.027 Tax liability of terminal operator.
82.36.028 Tax liability—Reciprocity agreements.
82.36.031 Periodic tax reports—Forms—Filing.
82.36.042 Repealed.
82.36.045 Licensees, persons acting as licensees—Tax reports—Deficiencies, failure to file, fraudulent filings, misappropriation, or conversion—Penalties, liability—Mitigation—Reassessment petition, hearing—Notice.
82.36.060 Application for license—Federal certificate of registry—Investigation—Fee—Penalty for false statement—Bond or security—Cancellation.
82.36.080 Penalty for acting without license—Separate licenses for separate activities—Default assessment.
82.36.160 Records to be preserved by licensees.
82.36.180 Examinations and investigations.
82.36.247 Exemption—Racing fuel.
82.36.273 Repealed.
82.36.305 Repealed.
82.36.320 Information may be required.
82.36.340 Examination of books and records.
82.36.360 Repealed.
82.36.370 Refunds for fuel lost or destroyed through fire, flood, leakage, etc.
82.36.373 Repealed.
82.36.380 Violations—Penalties.
82.36.407 Repealed.
82.36.450 Agreement with tribe for fuel taxes.

82.36.010 Definitions. The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

(1) "Blended fuel" means a mixture of motor vehicle fuel and another liquid, other than a de minimis amount of the liquid, that can be used as a fuel to propel a motor vehicle.

(2) "Bond" means a bond duly executed with a corporate surety qualified under chapter 48.28 RCW, which bond is payable to the state of Washington conditioned upon faithful performance of all requirements of this chapter, including the payment of all taxes, penalties, and other obligations arising out of this chapter.

(3) "Bulk transfer" means a transfer of motor vehicle fuel by pipeline or vessel.

(4) "Bulk transfer-terminal system" means the motor vehicle fuel distribution system consisting of refineries, pipelines, vessels, and terminals. Motor vehicle fuel in a refinery, pipeline, vessel, or terminal is in the bulk transfer-terminal system. Motor vehicle fuel in the fuel tank of an engine, motor vehicle, or in a railcar, trailer, truck, or other equipment suitable for ground transportation is not in the bulk transfer-terminal system.

(5) "Department" means the department of licensing.

(6) "Director" means the director of licensing.

(7) "Evasion" or "evade" means to diminish or avoid the computation, assessment, or payment of authorized taxes or fees through:

(a) A knowing: False statement; misrepresentation of fact; or other act of deception; or

(b) An intentional: Omission; failure to file a return or report; or other act of deception.

(8) "Export" means to obtain motor vehicle fuel in this state for sales or distribution outside the state.

(9) "Highway" means every way or place open to the use of the public, as a matter of right, for the purpose of vehicular travel.

(10) "Import" means to bring motor vehicle fuel into this state by a means of conveyance other than the fuel supply tank of a motor vehicle.

(11) "International fuel tax agreement licensee" means a motor vehicle fuel user operating qualified motor vehicles in interstate commerce and licensed by the department under the international fuel tax agreement.

(12) "Licensee" means a person holding a motor vehicle fuel supplier, motor vehicle fuel importer, motor vehicle fuel exporter, motor vehicle fuel blender, motor vehicle distributor, or international fuel tax agreement license issued under this chapter.

(13) "Motor vehicle fuel blender" means a person who produces blended motor fuel outside the bulk transfer-terminal system.

(14) "Motor vehicle fuel distributor" means a person who acquires motor vehicle fuel from a supplier, distributor, or licensee for subsequent sale and distribution.

(15) "Motor vehicle fuel exporter" means a person who purchases motor vehicle fuel in this state and directly exports the fuel by a means other than the bulk transfer-terminal system to a destination outside of the state. If the exporter of record is acting as an agent, the person for whom the agent is acting is the exporter. If there is no exporter of record, the owner of the motor fuel at the time of exportation is the exporter.

(16) "Motor vehicle fuel importer" means a person who imports motor vehicle fuel into the state by a means other than the bulk transfer-terminal system. If the importer of record is acting as an agent, the person for whom the agent is acting is the importer. If there is no importer of record, the owner of the motor vehicle fuel at the time of importation is the importer.

(17) "Motor vehicle fuel supplier" means a person who holds a federal certificate of registry that is issued under the internal revenue code and authorizes the person to enter into federal tax-free transactions on motor vehicle fuel in the bulk transfer-terminal system.

(18) "Motor vehicle" means a self-propelled vehicle designed for operation upon land utilizing motor vehicle fuel as the means of propulsion.

(19) "Motor vehicle fuel" means gasoline and any other inflammable gas or liquid, by whatsoever name the gasoline, gas, or liquid may be known or sold, the chief use of which is as fuel for the propulsion of motor vehicles or motorboats.

(20) "Person" means a natural person, fiduciary, association, or corporation. The term "person" as applied to an association means and includes the partners or members thereof, and as applied to corporations, the officers thereof.

(21) "Position holder" means a person who holds the inventory position in motor vehicle fuel, as reflected by the records of the terminal operator. A person holds the inventory position in motor vehicle fuel if the person has a contractual agreement with the terminal for the use of storage facilities and terminating services at a terminal with respect to motor vehicle fuel. "Position holder" includes a terminal operator that owns motor vehicle fuel in their terminal.

(22) "Rack" means a mechanism for delivering motor vehicle fuel from a refinery or terminal into a truck, trailer, railcar, or other means of nonbulk transfer.

(23) "Refiner" means a person who owns, operates, or otherwise controls a refinery.

(24) "Removal" means a physical transfer of motor vehicle fuel other than by evaporation, loss, or destruction.

(25) "Terminal" means a motor vehicle fuel storage and distribution facility that has been assigned a terminal control number by the internal revenue service, is supplied by pipeline or vessel, and from which reportable motor vehicle fuel is removed at a rack.

(26) "Terminal operator" means a person who owns, operates, or otherwise controls a terminal.

(27) "Two-party exchange" or "buy-sell agreement" means a transaction in which taxable motor vehicle fuel is transferred from one licensed supplier to another licensed supplier under an exchange or buy-sell agreement whereby the supplier that is the position holder agrees to deliver taxable motor vehicle fuel to the other supplier or the other supplier's customer at the rack of the terminal at which the delivering supplier is the position holder. [2007 c 515 § 1; 2001 c 270 § 1; 1998 c 176 § 6. Prior: 1995 c 287 § 1; 1995 c 274 § 20; 1993 c 54 § 1; 1991 c 339 § 13; 1990 c 250 § 79; 1987 c 174 § 1; 1983 1st ex.s. c 49 § 25; 1981 c 342 § 1; 1979 c 158 § 223; 1977 ex.s. c 317 § 1; 1971 ex.s. c 156 § 1; 1967 c 153 § 1; 1965 ex.s. c 79 § 1; 1961 c 15 § 82.36.010; prior: 1939 c 177 § 1; 1933 c 58 § 1; RRS § 8327-1; prior: 1921 c 173 § 1.]

Severability—2007 c 515: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [2007 c 515 § 35.]

Effective date—2007 c 515: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately [May 15, 2007]." [2007 c 515 § 36.]

Severability—1990 c 250: See note following RCW 46.16.301.

Effective date—1987 c 174: "This act is necessary for the immediate preservation of the public peace, health, and safety, the support of the state government and its existing public institutions, and shall take effect June 1, 1987." [1987 c 174 § 8.]

Severability—Effective date—1983 1st ex.s. c 49: See RCW 36.79.900 and 36.79.901.

Effective date—1981 c 342: "This act is necessary for the immediate preservation of the public peace, health, and safety, the support of the state government and its existing public institutions, and shall take effect July 1, 1981. This act shall only take effect upon the passage of Senate Bills No. 3669 and 3699, and if Senate Bills No. 3669 and 3699 are not both enacted by the 1981 regular session of the legislature this amendatory act shall be null and void in its entirety." [1981 c 342 § 12.] Senate Bills No. 3669 and 3699 became 1981 c 315 and 1981 c 316, respectively.

Severability—1981 c 342: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1981 c 342 § 13.]

Effective dates—1977 ex.s. c 317: "This 1977 amendatory act is necessary for the immediate preservation of the public peace, health, and safety, the support of the state government and its existing public institutions, and shall take effect on July 1, 1977, except for section 9, which shall take effect on September 1, 1977." [1977 ex.s. c 317 § 24.]

Severability—1977 ex.s. c 317: "If any provision of this 1977 amendatory act, or its application to any person or circumstance is held invalid, the remainder of the act, or the application of the provision to other persons or circumstances is not affected." [1977 ex.s. c 317 § 23.]

82.36.020 Tax levied and imposed—Rate to be computed—Incidence—Distribution. (1) There is hereby levied and imposed upon motor vehicle fuel licensees, other than motor vehicle fuel distributors, a tax at the rate computed in the manner provided in RCW 82.36.025 on each gallon of motor vehicle fuel.

(2) The tax imposed by subsection (1) of this section is imposed when any of the following occurs:

(a) Motor vehicle fuel is removed in this state from a terminal if the motor vehicle fuel is removed at the rack unless the removal is to a licensed exporter for direct delivery to a destination outside of the state;

(b) Motor vehicle fuel is removed in this state from a refinery if either of the following applies:

(i) The removal is by bulk transfer and the refiner or the owner of the motor vehicle fuel immediately before the removal is not a licensee; or

(ii) The removal is at the refinery rack unless the removal is to a licensed exporter for direct delivery to a destination outside of the state;

(c) Motor vehicle fuel enters into this state if either of the following applies:

(i) The entry is by bulk transfer and the importer is not a licensee; or

(ii) The entry is not by bulk transfer;

(d) Motor vehicle fuel is sold or removed in this state to an unlicensed entity unless there was a prior taxable removal, entry, or sale of the motor vehicle fuel;

(e) Blended motor vehicle fuel is removed or sold in this state by the blender of the fuel. The number of gallons of blended motor vehicle fuel subject to the tax is the difference between the total number of gallons of blended motor vehicle fuel removed or sold and the number of gallons of previously taxed motor vehicle fuel used to produce the blended motor vehicle fuel;

(f) Motor vehicle fuel is sold by a licensed motor vehicle fuel supplier to a motor vehicle fuel distributor, motor vehicle fuel importer, motor vehicle fuel blender, or international fuel tax agreement licensee and the motor vehicle fuel is not removed from the bulk transfer-terminal system.

(3) The proceeds of the motor vehicle fuel excise tax shall be distributed as provided in RCW 46.68.090. [2007 c 515 § 2; 2001 c 270 § 2; 2000 c 103 § 13; 1998 c 176 § 7; 1983 1st ex.s. c 49 § 26; 1982 1st ex.s. c 6 § 1; 1977 ex.s. c 317 § 2; 1974 ex.s. c 28 § 1. Prior: 1973 1st ex.s. c 160 § 1; 1973 1st ex.s. c 124 § 2; 1972 ex.s. c 24 § 1; 1970 ex.s. c 85 § 3; 1967 ex.s. c 145 § 75; 1967 ex.s. c 83 § 2; 1965 ex.s. c 79 § 2; 1963 c 113 § 1; 1961 ex.s. c 7 § 1; 1961 c 15 § 82.36.020; prior: 1957 c 247 § 1; 1955 c 207 § 1; 1951 c 269 § 43; 1949 c 220 § 7; 1939 c 177 § 2; 1933 c 58 § 5; Rem. Supp. 1949 § 8327-5; prior: 1931 c 140 § 2; 1923 c 81 § 1; 1921 c 173 § 2.]

Severability—Effective date—2007 c 515: See notes following RCW 82.36.010.

Severability—Effective date—1983 1st ex.s. c 49: See RCW 36.79.900 and 36.79.901.

Effective dates—Severability—1977 ex.s. c 317: See notes following RCW 82.36.010.

Effective date—1970 ex.s. c 85: See note following RCW 47.60.500.

Disbursal and release of funds—1967 ex.s. c 83: "All funds heretofore accumulated and undistributed to any city and town by reason of the matching requirements of the 1961 amendatory provisions in RCW 82.36.020 and 82.40.290 shall be immediately disbursed and released for use in accordance with the 1967 amendatory provisions of RCW 82.36.020 and 82.40.290.

This section is necessary for the immediate preservation of the public peace, health and safety, the support of the state government and its existing public institutions and shall take effect immediately." [1967 ex.s. c 83 § 63.]

Severability—Effective dates—1967 ex.s. c 83: See RCW 47.26.900 and 47.26.910.

82.36.022 Tax imposed—Intent. It is the intent and purpose of this chapter that the tax shall be imposed at the time and place of the first taxable event and upon the first taxable person within this state. Any person whose activities would otherwise require payment of the tax imposed by RCW 82.36.020 but who is exempt from the tax nevertheless has a precollection obligation for the tax that must be imposed on the first taxable event within this state. Failure to pay the tax with respect to a taxable event shall not prevent tax liability from arising by reason of a subsequent taxable event. [2007 c 515 § 20.]

Severability—Effective date—2007 c 515: See notes following RCW 82.36.010.

82.36.025 Motor vehicle fuel tax rate—Expiration of subsection. (1) A motor vehicle fuel tax rate of twenty-three cents per gallon on motor vehicle fuel shall be imposed on motor vehicle fuel licensees, other than motor vehicle fuel distributors.

(2) Beginning July 1, 2003, an additional and cumulative motor vehicle fuel tax rate of five cents per gallon on motor vehicle fuel shall be imposed on motor vehicle fuel licensees, other than motor vehicle fuel distributors. This subsection (2) expires when the bonds issued for transportation 2003 projects are retired.

(3) Beginning July 1, 2005, an additional and cumulative motor vehicle fuel tax rate of three cents per gallon on motor vehicle fuel shall be imposed on motor vehicle fuel licensees, other than motor vehicle fuel distributors.

(4) Beginning July 1, 2006, an additional and cumulative motor vehicle fuel tax rate of three cents per gallon on motor vehicle fuel shall be imposed on motor vehicle fuel licensees, other than motor vehicle fuel distributors.

(5) Beginning July 1, 2007, an additional and cumulative motor vehicle fuel tax rate of two cents per gallon on motor vehicle fuel shall be imposed on motor vehicle fuel licensees, other than motor vehicle fuel distributors.

(6) Beginning July 1, 2008, an additional and cumulative motor vehicle fuel tax rate of one and one-half cents per gallon on motor vehicle fuel shall be imposed on motor vehicle fuel licensees, other than motor vehicle fuel distributors. [2007 c 515 § 3; 2005 c 314 § 101; 2003 c 361 § 401. Prior: 1999 c 269 § 16; 1999 c 94 § 29; 1994 c 179 § 30; 1991 c 342

§ 57; 1990 c 42 § 101; 1983 1st ex.s. c 49 § 27; 1981 c 342 § 2; 1979 c 158 § 224; 1977 ex.s. c 317 § 6.]

Severability—Effective date—2007 c 515: See notes following RCW 82.36.010.

Effective date—2005 c 314 §§ 101-107, 109, 303-309, and 401: See note following RCW 46.68.290.

Part headings not law—2005 c 314: See note following RCW 46.17.010.

Findings—2003 c 361: "The legislature finds that the state's transportation system is in critical need of repair, restoration, and enhancement. The state's economy, the ability to move goods to market, and the overall mobility and safety of the citizens of the state rely on the state's transportation system. The revenues generated by this act are dedicated to funds, accounts, and activities that are necessary to improve the delivery of state transportation projects and services." [2003 c 361 § 101.]

Part headings not law—2003 c 361: "Part headings used in this act are not any part of the law." [2003 c 361 § 701.]

Severability—2003 c 361: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [2003 c 361 § 702.]

Effective dates—2003 c 361: See note following RCW 82.08.020.

Effective date—1999 c 269: See note following RCW 36.78.070.

Legislative finding—Effective dates—1999 c 94: See notes following RCW 43.84.092.

Effective dates—1991 c 342: See note following RCW 47.26.167.

Purpose of state and local transportation funding program—1990 c 42: "(1) The legislature finds that a new comprehensive funding program is required to maintain the state's commitment to the growing mobility needs of its citizens and commerce. The transportation funding program is intended to satisfy the following state policies and objectives:

(a) Statewide system: Provide for preservation of the existing statewide system and improvements for current and expected capacity needs in rural, established urban, and growing suburban areas throughout the state;

(b) Local flexibility: Provide for necessary state highway improvements, as well as providing local governments with the option to use new funding sources for projects meeting local and regional needs;

(c) Multimodal: Provide a source of funds that may be used for multimodal transportation purposes;

(d) Program compatibility: Implement transportation facilities and services that are consistent with adopted land use and transportation plans and coordinated with recently authorized programs such as the act authorizing creation of transportation benefit districts and the local transportation act of 1988;

(e) Interjurisdictional cooperation: Encourage transportation planning and projects that are multijurisdictional in their conception, development, and benefit, recognizing that mobility problems do not respect jurisdictional boundaries;

(f) Public and private sector: Use a state, local, and private sector partnership that equitably shares the burden of meeting transportation needs.

(2) The legislature further recognizes that the revenues currently available to the state and to counties, cities, and transit authorities for highway, road, and street construction and preservation fall far short of the identified need. The 1988 Washington road jurisdiction study identified a statewide funding shortfall of between \$14.6 and \$19.9 billion to bring existing roads to acceptable standards. The gap between identified transportation needs and available revenues continues to increase. A comprehensive transportation funding program is required to meet the current and anticipated future needs of this state.

(3) The legislature further recognizes the desirability of making certain changes in the collection and distribution of motor vehicle excise taxes with the following objectives: Simplifying administration and collection of the taxes including adoption of a predictable depreciation schedule for vehicles; simplifying the allocation of the taxes among various recipients; and the dedication of a portion of motor vehicle excise taxes for transportation purposes.

(4) The legislature, therefore, declares a need for the three-part funding program embodied in this act: (a) Statewide funding for highways, roads, and streets in urban and rural areas; (b) local option funding authority, available immediately, for the construction and preservation of roads, streets, and transit improvements and facilities; and (c) the creation of a multimodal transportation fund that is funded through dedication of a portion of motor vehicle excise tax. This funding program is intended, by targeting certain

new revenues, to produce a significant increase in the overall capacity of the state, county, and city transportation systems to satisfy and efficiently accommodate the movement of people and goods." [1990 c 42 § 1.]

Headings—1990 c 42: "The index and part and section headings as used in this act do not constitute any part of the law." [1990 c 42 § 502.]

Severability—1990 c 42: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1990 c 42 § 503.]

Effective dates—Application—Implementation—1990 c 42: "(1) Sections 101 through 104, 115 through 117, 201 through 214, 405 through 411, and 503, chapter 42, Laws of 1990 are necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and shall take effect April 1, 1990.

(2) Sections 105 through 114, chapter 42, Laws of 1990 shall take effect September 1, 1990. The additional fees in sections 105 through 108, chapter 42, Laws of 1990 apply for all motor vehicle registrations that expire August 31, 1991, and thereafter.

(3) Sections 301 through 303 and 305 through 328, chapter 42, Laws of 1990 shall take effect September 1, 1990, and apply to the purchase of vehicle registrations that expire August 31, 1991, and thereafter.

(4) Section 304, chapter 42, Laws of 1990 shall take effect July 1, 1991, and apply to all vehicles registered for the first time with an expiration date of June 30, 1992, and thereafter.

(5) The director of licensing may immediately take such steps as are necessary to ensure that the sections of chapter 42, Laws of 1990 are implemented on their effective dates.

(6) *Sections 401 through 404, chapter 42, Laws of 1990 shall take effect September 1, 1990, only if the bonds issued under RCW 47.56.711 for the Spokane river toll bridge have been retired or fully defeased, and shall become null and void if the bonds have not been retired or fully defeased on that date." [1990 c 298 § 38; 1990 c 42 § 504.]

*Reviser's note: The bonds were fully defeased on June 1, 1990.

Severability—Effective date—1983 1st ex.s. c 49: See RCW 36.79.900 and 36.79.901.

Effective date—Severability—1981 c 342: See notes following RCW 82.36.010.

Effective dates—Severability—1977 ex.s. c 317: See notes following RCW 82.36.010.

82.36.026 Tax liability—General. (1) A licensed supplier shall be liable for and pay tax to the department as provided in RCW 82.36.020. On a two-party exchange, or buy-sell agreement between two licensed suppliers, the receiving exchange partner or buyer shall be liable for and pay the tax.

(2) A refiner shall be liable for and pay tax to the department on motor vehicle fuel removed from a refinery as provided in RCW 82.36.020(2)(b).

(3) A licensed importer shall be liable for and pay tax to the department on motor vehicle fuel imported into this state as provided in RCW 82.36.020(2)(c).

(4) A licensed blender shall be liable for and pay tax to the department on the removal or sale of blended motor vehicle fuel as provided in RCW 82.36.020(2)(e).

(5) Nothing in this chapter shall prohibit the licensee liable for payment of the tax under this chapter from including as a part of the selling price an amount equal to the tax. [2007 c 515 § 4; 2001 c 270 § 3; 1998 c 176 § 8.]

Severability—Effective date—2007 c 515: See notes following RCW 82.36.010.

82.36.027 Tax liability of terminal operator. A terminal operator is jointly and severally liable for payment of the tax imposed under RCW 82.36.020(1) if, at the time of removal:

(1) The position holder with respect to the motor vehicle fuel is a person other than the terminal operator and is not a licensee;

(2) The terminal operator is not a licensee;

(3) The position holder has an expired internal revenue service notification certificate issued under 26 C.F.R. Part 48; or

(4) The terminal operator had reason to believe that information on the notification certificate was false. [2007 c 515 § 6; 1998 c 176 § 9.]

Severability—Effective date—2007 c 515: See notes following RCW 82.36.010.

82.36.028 Tax liability—Reciprocity agreements.

International fuel tax agreement licensees, or persons operating motor vehicles under other reciprocity agreements entered into with the state of Washington, are liable for and must pay the tax under RCW 82.36.020 to the department on motor vehicle fuel used to operate motor vehicles on the highways of this state. This provision does not apply if the tax under RCW 82.36.020 has previously been imposed and paid by the international fuel tax agreement licensee or if the use of such fuel is exempt from the tax under this chapter. [2007 c 515 § 5.]

Severability—Effective date—2007 c 515: See notes following RCW 82.36.010.

82.36.031 Periodic tax reports—Forms—Filing. For the purpose of determining the amount of liability for the tax imposed under this chapter, and to periodically update license information, each licensee, other than a motor vehicle fuel distributor or an international fuel tax agreement licensee, shall file monthly tax reports with the department, on a form prescribed by the department. An international fuel tax licensee shall file quarterly tax reports with the department, on a form prescribed by the department.

A report shall be filed with the department even though no motor vehicle fuel tax is due for the reporting period. Each tax report shall contain a declaration by the person making the same, to the effect that the statements contained therein are true and made under penalties of perjury, which declaration has the same force and effect as a verification of the report and is in lieu of the verification. The report shall show information as the department may require for the proper administration and enforcement of this chapter. Tax reports shall be filed on or before the twenty-fifth day of the next succeeding calendar month following the period to which the reports relate. If the final filing date falls on a Saturday, Sunday, or legal holiday the next secular or business day shall be the final filing date.

The department, if it deems it necessary in order to ensure payment of the tax imposed under this chapter, or to facilitate the administration of this chapter, may require the filing of reports and tax remittances at shorter intervals than one month. [2007 c 515 § 8; 1998 c 176 § 11.]

Severability—Effective date—2007 c 515: See notes following RCW 82.36.010.

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

82.36.045 Licensees, persons acting as licensees—Tax reports—Deficiencies, failure to file, fraudulent filings, misappropriation, or conversion—Penalties, liability—Mitigation—Reassessment petition, hearing—Notice. (1) If the department determines that the tax reported by a licensee is deficient, the department shall assess the deficiency on the basis of information available to it, and shall add a penalty of two percent of the amount of the deficiency.

(2) If a licensee, or person acting as such, fails, neglects, or refuses to file a motor vehicle fuel tax report the department shall, on the basis of information available to it, determine the tax liability of the licensee or person for the period during which no report was filed. The department shall add the penalty provided in subsection (1) of this section to the tax. An assessment made by the department under this subsection or subsection (1) of this section is presumed to be correct. In any case, where the validity of the assessment is questioned, the burden is on the person who challenges the assessment to establish by a fair preponderance of evidence that it is erroneous or excessive, as the case may be.

(3) If a licensee or person acting as such files a false or fraudulent report with intent to evade the tax imposed by this chapter, the department shall add to the amount of deficiency a penalty equal to twenty-five percent of the deficiency, in addition to the penalty provided in subsections (1) and (2) of this section and all other penalties prescribed by law.

(4) Motor vehicle fuel tax, penalties, and interest payable under this chapter bears interest at the rate of one percent per month, or fraction thereof, from the first day of the calendar month after the amount or any portion of it should have been paid until the date of payment. If a licensee or person acting as such establishes by a fair preponderance of evidence that the failure to pay the amount of tax due was attributable to reasonable cause and was not intentional or willful, the department may waive the penalty. The department may waive the interest when it determines the cost of processing or collection of the interest exceeds the amount of interest due.

(5) Except in the case of a fraudulent report, neglect or refusal to make a report, or failure to pay or to pay the proper amount, the department shall assess the deficiency under subsection (1) or (2) of this section within five years from the last day of the succeeding calendar month after the reporting period for which the amount is proposed to be determined or within five years after the return is filed, whichever period expires later.

(6) Except in the case of violations of filing a false or fraudulent report, if the department deems mitigation of penalties and interest to be reasonable and in the best interest of carrying out the purpose of this chapter, it may mitigate such assessments upon whatever terms the department deems proper, giving consideration to the degree and extent of the lack of records and reporting errors. The department may ascertain the facts regarding recordkeeping and payment penalties in lieu of more elaborate proceedings under this chapter.

(7) A licensee or person acting as such against whom an assessment is made under subsection (1) or (2) of this section may petition for a reassessment within thirty days after service upon the licensee of notice of the assessment. If the peti-

tion is not filed within the thirty-day period, the amount of the assessment becomes final at the expiration of that period.

If a petition for reassessment is filed within the thirty-day period, the department shall reconsider the assessment and, if the petitioner has so requested in its petition, shall grant the petitioner an oral hearing and give the petitioner twenty days' notice of the time and place of the hearing. The department may continue the hearing from time to time. The decision of the department upon a petition for reassessment becomes final thirty days after service of notice upon the petitioner.

An assessment made by the department becomes due and payable when it becomes final. If it is not paid to the department when due and payable, the department shall add a penalty of ten percent of the amount of the tax.

(8) In a suit brought to enforce the rights of the state under this chapter, the assessment showing the amount of taxes, penalties, interest, and cost unpaid to the state is prima facie evidence of the facts as shown.

(9) A notice of assessment required by this section must be served personally or by certified or registered mail. If it is served by mail, service shall be made by deposit of the notice in the United States mail, postage prepaid, addressed to the respondent at the most current address furnished to the department. [2007 c 515 § 9; 1998 c 176 § 16; 1996 c 104 § 2; 1991 c 339 § 1.]

Severability—Effective date—2007 c 515: See notes following RCW 82.36.010.

82.36.060 Application for license—Federal certificate of registry—Investigation—Fee—Penalty for false statement—Bond or security—Cancellation. (1) An application for a license issued under this chapter shall be made to the department on forms to be furnished by the department and shall contain such information as the department deems necessary.

(2) Every application for a license must contain the following information to the extent it applies to the applicant:

(a) Proof as the department may require concerning the applicant's identity, including but not limited to his or her fingerprints or those of the officers of a corporation making the application;

(b) The applicant's form and place of organization including proof that the individual, partnership, or corporation is licensed to do business in this state;

(c) The qualification and business history of the applicant and any partner, officer, or director;

(d) The applicant's financial condition or history including a bank reference and whether the applicant or any partner, officer, or director has ever been adjudged bankrupt or has an unsatisfied judgment in a federal or state court;

(e) Whether the applicant has been adjudged guilty of a crime that directly relates to the business for which the license is sought and the time elapsed since the conviction is less than ten years, or has suffered a judgment within the preceding five years in a civil action involving fraud, misrepresentation, or conversion and in the case of a corporation or partnership, all directors, officers, or partners.

(3) An applicant for a license as a motor vehicle fuel importer must list on the application each state, province, or country from which the applicant intends to import motor

vehicle fuel and, if required by the state, province, or country listed, must be licensed or registered for motor vehicle fuel tax purposes in that state, province, or country.

(4) An applicant for a license as a motor vehicle fuel exporter must list on the application each state, province, or country to which the exporter intends to export motor vehicle fuel received in this state by means of a transfer outside of the bulk transfer-terminal system and, if required by the state, province, or country listed, must be licensed or registered for motor vehicle fuel tax purposes in that state, province, or country.

(5) An applicant for a license as a motor vehicle fuel supplier must have a federal certificate of registry that is issued under the internal revenue code and authorizes the applicant to enter into federal tax-free transactions on motor vehicle fuel in the terminal transfer system.

(6) After receipt of an application for a license, the director may conduct an investigation to determine whether the facts set forth are true. The director shall require a fingerprint record check of the applicant through the Washington state patrol criminal identification system and the federal bureau of investigation before issuance of a license. The results of the background investigation including criminal history information may be released to authorized department personnel as the director deems necessary. The department shall charge a license holder or license applicant a fee of fifty dollars for each background investigation conducted.

An applicant who makes a false statement of a material fact on the application may be prosecuted for false swearing as defined by RCW 9A.72.040.

(7) Except as provided by subsection (8) of this section, before granting any license issued under this chapter, the department shall require applicant to file with the department, in such form as shall be prescribed by the department, a corporate surety bond duly executed by the applicant as principal, payable to the state and conditioned for faithful performance of all the requirements of this chapter, including the payment of all taxes, penalties, and other obligations arising out of this chapter. The total amount of the bond or bonds shall be fixed by the department and may be increased or reduced by the department at any time subject to the limitations herein provided. In fixing the total amount of the bond or bonds, the department shall require a bond or bonds equivalent in total amount to twice the estimated monthly excise tax determined in such manner as the department may deem proper. If at any time the estimated excise tax to become due during the succeeding month amounts to more than fifty percent of the established bond, the department shall require additional bonds or securities to maintain the marginal ratio herein specified or shall demand excise tax payments to be made weekly or semimonthly to meet the requirements hereof.

The total amount of the bond or bonds required of any licensee shall never be less than five thousand dollars nor more than one hundred thousand dollars.

No recoveries on any bond or the execution of any new bond shall invalidate any bond and no revocation of any license shall effect the validity of any bond but the total recoveries under any one bond shall not exceed the amount of the bond.

In lieu of any such bond or bonds in total amount as herein fixed, a licensee may deposit with the state treasurer, under such terms and conditions as the department may prescribe, a like amount of lawful money of the United States or bonds or other obligations of the United States, the state, or any county of the state, of an actual market value not less than the amount so fixed by the department.

Any surety on a bond furnished by a licensee as provided herein shall be released and discharged from any and all liability to the state accruing on such bond after the expiration of thirty days from the date upon which such surety has lodged with the department a written request to be released and discharged, but this provision shall not operate to relieve, release, or discharge the surety from any liability already accrued or which shall accrue before the expiration of the thirty day period. The department shall promptly, upon receiving any such request, notify the licensee who furnished the bond; and unless the licensee, on or before the expiration of the thirty day period, files a new bond, or makes a deposit in accordance with the requirements of this section, the department shall forthwith cancel the license. Whenever a new bond is furnished by a licensee, the department shall cancel the old bond as soon as the department and the attorney general are satisfied that all liability under the old bond has been fully discharged.

The department may require a licensee to give a new or additional surety bond or to deposit additional securities of the character specified in this section if, in its opinion, the security of the surety bond theretofore filed by such licensee, or the market value of the properties deposited as security by the licensee, shall become impaired or inadequate; and upon the failure of the licensee to give such new or additional surety bond or to deposit additional securities within thirty days after being requested so to do by the department, the department shall forthwith cancel his or her license.

(8) The department may waive the requirements of subsection (7) of this section for licensed distributors if, upon determination by the department, the licensed distributor has sufficient resources, assets, other financial instruments, or other means, to adequately make payments on the estimated monthly motor vehicle fuel tax payments, penalties, and interest arising out of this chapter. The department shall adopt rules to administer this subsection. An application for an international fuel tax agreement license must be made to the department. The application must be filed upon a form prescribed by the department and contain such information as the department may require. The department shall charge a fee of ten dollars per set of international fuel tax agreement decals issued to each applicant or licensee. The department shall transmit the fee to the state treasurer for deposit in the motor vehicle fund. [2007 c 515 § 10; 2001 c 270 § 5; 1998 c 176 § 18; 1996 c 104 § 3; 1994 c 262 § 19; 1973 c 96 § 1; 1961 c 15 § 82.36.060. Prior: 1933 c 58 § 2; RRS § 8327-2.]

Severability—Effective date—2007 c 515: See notes following RCW 82.36.010.

82.36.080 Penalty for acting without license—Separate licenses for separate activities—Default assessment. (1) It shall be unlawful for any person to engage in business in this state as any of the following unless the person is the

holder of an uncanceled license issued by the department authorizing the person to engage in that business:

- (a) Motor vehicle fuel supplier;
- (b) Motor vehicle fuel distributor;
- (c) Motor vehicle fuel exporter;
- (d) Motor vehicle fuel importer;
- (e) Motor vehicle fuel blender; or
- (f) International fuel tax agreement licensee.

(2) A person engaged in more than one activity for which a license is required must have a separate license classification for each activity, but a motor vehicle fuel supplier is not required to obtain a separate license classification for any other activity for which a license is required.

(3) If any person acts as a licensee without first securing the license required herein the excise tax shall be immediately due and payable on account of all motor vehicle fuel distributed or used by the person. The director shall proceed forthwith to determine from the best available sources, the amount of the tax, and the director shall immediately assess the tax in the amount found due, together with a penalty of one hundred percent of the tax, and shall make a certificate of such assessment and penalty. In any suit or proceeding to collect the tax or penalty, or both, such certificate shall be prima facie evidence that the person therein named is indebted to the state in the amount of the tax and penalty therein stated. Any tax or penalty so assessed may be collected in the manner prescribed in this chapter with reference to delinquency in payment of the tax or by an action at law, which the attorney general shall commence and prosecute to final determination at the request of the director. The foregoing remedies of the state shall be cumulative and no action taken pursuant to this section shall relieve any person from the penal provisions of this chapter. [2007 c 515 § 11; 1998 c 176 § 20; 1961 c 15 § 82.36.080. Prior: 1955 c 207 § 5; prior: (i) 1933 c 58 § 3, part; RRS § 8327-3, part. (ii) 1943 c 84 § 2, part; 1933 c 58 § 8, part; Rem. Supp. 1943 § 8327-8, part; prior: 1923 c 81 § 3, part; 1921 c 173 § 5, part.]

Severability—Effective date—2007 c 515: See notes following RCW 82.36.010.

82.36.160 Records to be preserved by licensees.

Every licensee shall maintain in the office of his or her principal place of business in this state, for a period of five years, records of motor vehicle fuel received, sold, distributed, or used by the licensee, in such form as the director may prescribe, together with invoices, bills of lading, and other pertinent papers as may be required under the provisions of this chapter. [2007 c 515 § 12; 1998 c 176 § 27; 1996 c 104 § 5; 1961 c 15 § 82.36.160. Prior: 1957 c 247 § 7; 1933 c 58 § 11; RRS § 8327-11; prior: 1921 c 173 § 6, part.]

Severability—Effective date—2007 c 515: See notes following RCW 82.36.010.

82.36.180 Examinations and investigations. The director, or duly authorized agents, may make such examinations of the records, stocks, facilities, and equipment of any licensee, and make such other investigations as deemed necessary in carrying out the provisions of this chapter. If such examinations or investigations disclose that any reports of licensees theretofore filed with the director pursuant to the requirements of this chapter have shown incorrectly the gal-

lonage of motor vehicle fuel distributed or the tax liability thereon, the director may make such changes in subsequent reports and payments of such licensees as deemed necessary to correct the errors disclosed.

Every such licensee or such other person not maintaining records in this state so that an audit of such records may be made by the director or a duly authorized representative shall be required to make the necessary records available to the director upon request and at a designated office within this state; or, in lieu thereof, the director or a duly authorized representative shall proceed to any out-of-state office at which the records are prepared and maintained to make such examination. [2007 c 515 § 13; 1998 c 176 § 30; 1967 ex.s. c 89 § 6; 1965 ex.s. c 79 § 6; 1961 c 15 § 82.36.180. Prior: 1939 c 177 § 3; 1933 c 58 § 13; RRS § 8327-13; prior: 1921 c 173 § 6, part.]

Severability—Effective date—2007 c 515: See notes following RCW 82.36.010.

82.36.247 Exemption—Racing fuel. Motor vehicle fuel that is used exclusively for racing and is illegal for use on the public highways of this state under state or federal law is exempt from the tax imposed under this chapter. [2007 c 515 § 14.]

Severability—Effective date—2007 c 515: See notes following RCW 82.36.010.

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

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

82.36.320 Information may be required. Any person claiming refund on motor vehicle fuel used other than in motor vehicles as herein provided may be required by the director to also furnish information regarding the amount of motor vehicle fuel purchased from other sources or for other purposes during the period reported for which no refund is claimed. [2007 c 515 § 15; 1961 c 15 § 82.36.320. Prior: 1957 c 218 § 8; prior: 1945 c 38 § 1, part; 1943 c 84 § 5, part; 1937 c 219 § 2, part; 1935 c 109 § 2, part; 1933 c 58 § 18, part; Rem. Supp. 1945 § 8327-18, part; prior: 1923 c 81 § 4, part.]

Severability—Effective date—2007 c 515: See notes following RCW 82.36.010.

82.36.340 Examination of books and records. The director may in order to establish the validity of any claim for refund require the claimant to furnish such additional proof of the validity of the claim as the director may determine, and may examine the books and records of the claimant or said person to whom the fuel was sold for such purpose. The records shall be sufficient to substantiate the accuracy of the claim and shall be in such form and contain such information as the director may require. The failure to maintain such records or to accede to a demand for an examination of such records may be deemed by the director as sufficient cause for denial of all right to the refund claimed on account of the transaction in question. [2007 c 515 § 16; 1961 c 15 § 82.36.340. Prior: 1957 c 218 § 10; prior: 1945 c 38 § 1, part;

1943 c 84 § 5, part; 1937 c 219 § 2, part; 1935 c 109 § 2, part; 1933 c 58 § 18, part; Rem. Supp. 1945 § 8327-18, part; prior: 1923 c 81 § 4, part.]

Severability—Effective date—2007 c 515: See notes following RCW 82.36.010.

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

82.36.370 Refunds for fuel lost or destroyed through fire, flood, leakage, etc. (1) A refund shall be made in the manner provided in this chapter or a credit given to a licensee allowing for the excise tax paid or accrued on all motor vehicle fuel which is lost or destroyed, while the licensee was the owner, through fire, lightning, flood, wind storm, or explosion.

(2) A refund shall be made in the manner provided in this chapter or a credit given allowing for the excise tax paid or accrued on all motor vehicle fuel of five hundred gallons or more which is lost or destroyed, while the licensee was the owner thereof, through leakage or other casualty except evaporation, shrinkage or unknown causes: PROVIDED, That the director shall be notified in writing as to the full circumstances surrounding such loss or destruction and the amount of the loss or destruction within thirty days from the day of discovery of such loss or destruction.

(3) Recovery for such loss or destruction under either subsection (1) or (2) must be susceptible to positive proof thereby enabling the director to conduct such investigation and require such information as the director may deem necessary.

In the event that the director is not satisfied that the fuel was lost or destroyed as claimed, wherefore required information or proof as required hereunder is not sufficient to substantiate the accuracy of the claim, the director may deem as sufficient cause the denial of all right relating to the refund or credit for the excise tax on motor vehicle fuel alleged to be lost or destroyed. [2007 c 515 § 17; 1998 c 176 § 42; 1967 c 153 § 5; 1965 ex.s. c 79 § 15; 1961 c 15 § 82.36.370. Prior: 1957 c 218 § 13; prior: 1945 c 38 § 1, part; 1943 c 84 § 5, part; 1937 c 219 § 2, part; 1935 c 109 § 2, part; 1933 c 58 § 18, part; Rem. Supp. 1945 § 8327-18, part; prior: 1923 c 81 § 4, part.]

Severability—Effective date—2007 c 515: See notes following RCW 82.36.010.

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

82.36.380 Violations—Penalties. (1) It is unlawful for a person or corporation to:

- (a) Evade a tax or fee imposed under this chapter;
- (b) File a false statement of a material fact on a motor fuel license application or motor fuel refund application;
- (c) Act as a motor fuel importer, motor fuel blender, or motor fuel supplier unless the person holds an uncanceled motor fuel license issued by the department authorizing the person to engage in that business;
- (d) Knowingly assist another person to evade a tax or fee imposed by this chapter;

(e) Knowingly operate a conveyance for the purpose of hauling, transporting, or delivering motor vehicle fuel in bulk and not possess an invoice, bill of sale, or other statement showing the name, address, and tax license number of the seller or consignor, the destination, the name, address, and tax license number of the purchaser or consignee, and the number of gallons.

(2) A violation of subsection (1) of this section is a class C felony under chapter 9A.20 RCW. In addition to other penalties and remedies provided by law, the court shall order a person or corporation found guilty of violating subsection (1) of this section to:

(a) Pay the tax or fee evaded plus interest, commencing at the date the tax or fee was first due, at the rate of twelve percent per year, compounded monthly; and

(b) Pay a penalty of one hundred percent of the tax evaded, to the multimodal transportation account of the state.

(3) The tax imposed by this chapter is held in trust by the licensee until paid to the department, and a licensee who appropriates the tax to his or her own use or to any use other than the payment of the tax on the due date as prescribed in this chapter is guilty of a felony or gross misdemeanor in accordance with the theft and anticipatory provisions of Title 9A RCW. A person, partnership, corporation, or corporate officer who fails to pay to the department the tax imposed by this chapter is personally liable to the state for the amount of the tax. [2007 c 515 § 18; 2003 c 358 § 13; 2000 2nd sp.s. c 4 § 9; 1995 c 287 § 2; 1961 c 15 § 82.36.380. Prior: 1949 c 234 § 2, part; 1933 c 58 § 19, part; Rem. Supp. 1949 § 8327-19, part; prior: 1921 c 173 § 12, part.]

Severability—Effective date—2007 c 515: See notes following RCW 82.36.010.

Captions not law—Severability—2003 c 358: See notes following RCW 82.36.470.

Effective dates—2000 2nd sp.s. c 4 §§ 4-10: See note following RCW 43.89.010.

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

82.36.450 Agreement with tribe for fuel taxes. (1) The governor may enter into an agreement with any federally recognized Indian tribe located on a reservation within this state regarding motor vehicle fuel taxes included in the price of fuel delivered to a retail station wholly owned and operated by a tribe, tribal enterprise, or tribal member licensed by the tribe to operate a retail station located on reservation or trust property. The agreement may provide mutually agreeable means to address any tribal immunities or any preemption of the state motor vehicle fuel tax.

(2) The provisions of this section do not repeal existing state/tribal fuel tax agreements or consent decrees in existence on May 15, 2007. The state and the tribe may agree to substitute an agreement negotiated under this section for an existing agreement or consent decree, or to enter into an agreement using a methodology similar to the state/tribal fuel tax agreements in effect on May 15, 2007.

(3) If a new agreement is negotiated, the agreement must:

(a) Require that the tribe or the tribal retailer acquire all motor vehicle fuel only from persons or companies operating

lawfully in accordance with this chapter as a motor vehicle fuel distributor, supplier, importer, or blender, or from a tribal distributor, supplier, importer, or blender lawfully doing business according to all applicable laws;

(b) Provide that the tribe will expend fuel tax proceeds or equivalent amounts on: Planning, construction, and maintenance of roads, bridges, and boat ramps; transit services and facilities; transportation planning; police services; and other highway-related purposes;

(c) Include provisions for audits or other means of ensuring compliance to certify the number of gallons of motor vehicle fuel purchased by the tribe for resale at tribal retail stations, and the use of fuel tax proceeds or their equivalent for the purposes identified in (b) of this subsection. Compliance reports must be delivered to the director of the department of licensing.

(4) Information from the tribe or tribal retailers received by the state or open to state review under the terms of an agreement shall be deemed to be personal information under RCW 42.56.230(3)(b) and exempt from public inspection and copying.

(5) The governor may delegate the power to negotiate fuel tax agreements to the department of licensing.

(6) The department of licensing shall prepare and submit an annual report to the legislature on the status of existing agreements and any ongoing negotiations with tribes. [2007 c 515 § 19; 1995 c 320 § 2.]

Severability—Effective date—2007 c 515: See notes following RCW 82.36.010.

Legislative recognition, belief—1995 c 320: "The legislature recognizes that certain Indian tribes located on reservations within this state dispute the authority of the state to impose a tax upon the tribe, or upon tribal members, based upon the distribution, sale, or other transfer of motor vehicle and other fuels to the tribe or its members when that distribution, sale, or other transfer takes place upon that tribe's reservation. While the legislature believes it has the authority to impose state motor vehicle and other fuel taxes under such circumstances, it also recognizes that all of the state citizens may benefit from resolution of these disputes between the respective governments." [1995 c 320 § 1.]

Severability—1995 c 320: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1995 c 320 § 4.]

Effective date—1995 c 320: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and shall take effect immediately [May 11, 1995]." [1995 c 320 § 5.]

Chapter 82.38 RCW

SPECIAL FUEL TAX ACT

Sections

82.38.030	Tax imposed—Rate—Incidence—Allocation of proceeds—Expiration of subsection.
82.38.031	Tax imposed—Intent.
82.38.032	Payment of tax by international fuel tax agreement licensees or persons operating under other reciprocity agreements.
82.38.035	Tax liability.
82.38.050	Tax liability on leased motor vehicles.
82.38.070	Repealed.
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82.38.081	Repealed.
82.38.100	Trip permits—Fees—Tax—Distributions.
82.38.130	Revocation, suspension, cancellation, and surrender of license—Notice—Bond release, discharge—New or additional bond or surety.
82.38.140	Special fuel records—Reports—Inspection.

82.38.150	Periodic tax reports—Forms—Filing.
82.38.165	Repealed.
82.38.180	Refunds and credits.
82.38.185	Repealed.
82.38.230	Delinquency—Seizure and sale of property—Notice—Distribution of excess.
82.38.270	Violations—Penalties.
82.38.285	Repealed.
82.38.310	Agreement with tribe for fuel taxes.
82.38.320	Bulk storage of special fuel by international fuel tax agreement licensee—Authorization to pay tax at time of filing tax return—Schedule—Report—Exemptions.

82.38.030 Tax imposed—Rate—Incidence—Allocation of proceeds—Expiration of subsection. (1) There is hereby levied and imposed upon special fuel licensees, other than special fuel distributors, a tax at the rate of twenty-three cents per gallon of special fuel, or each one hundred cubic feet of compressed natural gas, measured at standard pressure and temperature.

(2) Beginning July 1, 2003, an additional and cumulative tax rate of five cents per gallon of special fuel, or each one hundred cubic feet of compressed natural gas, measured at standard pressure and temperature shall be imposed on special fuel licensees, other than special fuel distributors. This subsection (2) expires when the bonds issued for transportation 2003 projects are retired.

(3) Beginning July 1, 2005, an additional and cumulative tax rate of three cents per gallon of special fuel, or each one hundred cubic feet of compressed natural gas, measured at standard pressure and temperature shall be imposed on special fuel licensees, other than special fuel distributors.

(4) Beginning July 1, 2006, an additional and cumulative tax rate of three cents per gallon of special fuel, or each one hundred cubic feet of compressed natural gas, measured at standard pressure and temperature shall be imposed on special fuel licensees, other than special fuel distributors.

(5) Beginning July 1, 2007, an additional and cumulative tax rate of two cents per gallon of special fuel, or each one hundred cubic feet of compressed natural gas, measured at standard pressure and temperature shall be imposed on special fuel licensees, other than special fuel distributors.

(6) Beginning July 1, 2008, an additional and cumulative tax rate of one and one-half cents per gallon of special fuel, or each one hundred cubic feet of compressed natural gas, measured at standard pressure and temperature shall be imposed on special fuel licensees, other than special fuel distributors.

(7) Taxes are imposed when:

(a) Special fuel is removed in this state from a terminal if the special fuel is removed at the rack unless the removal is to a licensed exporter for direct delivery to a destination outside of the state, or the removal is by a special fuel supplier for direct delivery to an international fuel tax agreement licensee under RCW 82.38.320;

(b) Special fuel is removed in this state from a refinery if either of the following applies:

(i) The removal is by bulk transfer and the refiner or the owner of the special fuel immediately before the removal is not a licensee; or

(ii) The removal is at the refinery rack unless the removal is to a licensed exporter for direct delivery to a destination outside of the state, or the removal is to a special fuel supplier for direct delivery to an international fuel tax agreement licensee under RCW 82.38.320;

(c) Special fuel enters into this state for sale, consumption, use, or storage, unless the fuel enters this state for direct delivery to an international fuel tax agreement licensee under RCW 82.38.320, if either of the following applies:

(i) The entry is by bulk transfer and the importer is not a licensee; or

(ii) The entry is not by bulk transfer;

(d) Special fuel is sold or removed in this state to an unlicensed entity unless there was a prior taxable removal, entry, or sale of the special fuel;

(e) Blended special fuel is removed or sold in this state by the blender of the fuel. The number of gallons of blended special fuel subject to tax is the difference between the total number of gallons of blended special fuel removed or sold and the number of gallons of previously taxed special fuel used to produce the blended special fuel;

(f) Dyed special fuel is used on a highway, as authorized by the internal revenue code, unless the use is exempt from the special fuel tax;

(g) Dyed special fuel is held for sale, sold, used, or is intended to be used in violation of this chapter;

(h) Special fuel purchased by an international fuel tax agreement licensee under RCW 82.38.320 is used on a highway; and

(i) Special fuel is sold by a licensed special fuel supplier to a special fuel distributor, special fuel importer, or special fuel blender and the special fuel is not removed from the bulk transfer-terminal system. [2007 c 515 § 21; 2005 c 314 § 102; 2003 c 361 § 402; 2002 c 183 § 2; 2001 c 270 § 6; 1998 c 176 § 51; 1996 c 104 § 7; 1989 c 193 § 3; 1983 1st ex.s. c 49 § 30; 1979 c 40 § 3; 1977 ex.s. c 317 § 5; 1975 1st ex.s. c 62 § 1; 1973 1st ex.s. c 156 § 1; 1972 ex.s. c 135 § 2; 1971 ex.s. c 175 § 4.]

Severability—Effective date—2007 c 515: See notes following RCW 82.36.010.

Effective date—2005 c 314 §§ 101-107, 109, 303-309, and 401: See note following RCW 46.68.290.

Part headings not law—2005 c 314: See note following RCW 46.17.010.

Findings—Part headings not law—Severability—2003 c 361: See notes following RCW 82.36.025.

Effective dates—2003 c 361: See note following RCW 82.08.020.

Severability—Effective date—1983 1st ex.s. c 49: See RCW 36.79.900 and 36.79.901.

Effective dates—Severability—1977 ex.s. c 317: See notes following RCW 82.36.010.

82.38.031 Tax imposed—Intent. It is the intent and purpose of this chapter that the tax shall be imposed at the time and place of the first taxable event and upon the first taxable person within this state. Any person whose activities would otherwise require payment of the tax imposed by RCW 82.38.030 but who is exempt from the tax nevertheless has a precollection obligation for the tax that must be imposed on the first taxable event within this state. Failure to pay the tax with respect to a taxable event shall not prevent tax liability from arising by reason of a subsequent taxable event. [2007 c 515 § 33.]

Severability—Effective date—2007 c 515: See notes following RCW 82.36.010.

82.38.032 Payment of tax by international fuel tax agreement licensees or persons operating under other reciprocity agreements. International fuel tax agreement licensees, or persons operating motor vehicles under other reciprocity agreements entered into with the state of Washington, are liable for and must pay the tax under RCW 82.38.030 to the department on special fuel used to operate motor vehicles on the highways of this state. This provision does not apply if the tax under RCW 82.38.030 has previously been imposed and paid by the international fuel tax agreement licensee or if the use of such fuel is exempt from the tax under this chapter. [2007 c 515 § 22; 1998 c 176 § 52.]

Severability—Effective date—2007 c 515: See notes following RCW 82.36.010.

82.38.035 Tax liability. (1) A licensed supplier shall be liable for and pay tax on special fuel to the department as provided in RCW 82.38.030(7)(a). On a two-party exchange, or buy-sell agreement between two licensed suppliers, the receiving exchange partner or buyer shall be liable for and pay the tax.

(2) A refiner shall be liable for and pay tax to the department on special fuel removed from a refinery as provided in RCW 82.38.030(7)(b).

(3) A licensed importer shall be liable for and pay tax to the department on special fuel imported into this state as provided in RCW 82.38.030(7)(c).

(4) A licensed blender shall be liable for and pay tax to the department on the removal or sale of blended special fuel as provided in RCW 82.38.030(7)(e).

(5) A licensed dyed special fuel user shall be liable for and pay tax to the department on the use of dyed special fuel as provided in RCW 82.38.030(7)(f).

(6) Nothing in this chapter prohibits the licensee liable for payment of the tax under this chapter from including as a part of the selling price an amount equal to such tax. [2007 c 515 § 23; 2005 c 314 § 107; 2003 c 361 § 405; 2001 c 270 § 7; 1998 c 176 § 53.]

Severability—Effective date—2007 c 515: See notes following RCW 82.36.010.

Effective date—2005 c 314 §§ 101-107, 109, 303-309, and 401: See note following RCW 46.68.290.

Part headings not law—2005 c 314: See note following RCW 46.17.010.

Findings—Part headings not law—Severability—2003 c 361: See notes following RCW 82.36.025.

Effective dates—2003 c 361: See note following RCW 82.08.020.

82.38.050 Tax liability on leased motor vehicles. A lessor who is engaged regularly in the business of leasing or renting for compensation motor vehicles and equipment he owns without drivers to carriers or other lessees for interstate operation, may be deemed to be the special fuel user when he supplies or pays for the special fuel consumed in such vehicles, and such lessor may be issued an international fuel tax agreement license when application and bond have been properly filed with and approved by the department for such license. Any lessee may exclude motor vehicles of which he or she is the lessee from reports and liabilities pursuant to this chapter, but only if the motor vehicles in question have been

leased from a lessor holding a valid international fuel tax agreement license.

When the license has been secured, such lessor shall make and assign to each motor vehicle leased for interstate operation a photocopy of such license to be carried in the cab compartment of the motor vehicle and on which shall be typed or printed on the back the unit or motor number of the motor vehicle to which it is assigned and the name of the lessee. Such lessor shall be responsible for the proper use of such photocopy of the license issued and its return to the lessor with the motor vehicle to which it is assigned.

The lessor shall be responsible for fuel tax licensing and reporting, as required by this chapter, on the operation of all motor vehicles leased to others for less than thirty days. [2007 c 515 § 24; 1990 c 250 § 82; 1983 c 242 § 1; 1971 ex.s. c 175 § 6.]

Severability—Effective date—2007 c 515: See notes following RCW 82.36.010.

Severability—1990 c 250: See note following RCW 46.16.301.

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

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

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

82.38.100 Trip permits—Fees—Tax—Distributions. (1) Any special fuel user operating a motor vehicle into this state for commercial purposes may make application for a trip permit that shall be good for a period of three consecutive days beginning and ending on the dates specified on the face of the permit issued, and only for the vehicle for which it is issued.

(2) Every permit shall identify, as the department may require, the vehicle for which it is issued and shall be completed in its entirety, signed, and dated by the operator before operation of the vehicle on the public highways of this state. Correction of data on the permit such as dates, vehicle license number, or vehicle identification number invalidates the permit. A violation of, or a failure to comply with, this subsection is a gross misdemeanor.

(3) For each permit issued, there shall be collected a filing fee of one dollar, an administrative fee of fifteen dollars, and an excise tax of nine dollars. Such fees and tax shall be in lieu of the special fuel tax otherwise assessable against the permit holder for importing and using special fuel in a motor vehicle on the public highways of this state, and no report of mileage shall be required with respect to such vehicle. Trip permits will not be issued if the applicant has outstanding fuel taxes, penalties, or interest owing to the state or has had a special fuel license revoked for cause and the cause has not been removed. Five dollars from every fifteen-dollar administration fee shall be deposited into the state patrol highway account and must be used for commercial motor vehicle inspections.

(4) Blank permits may be obtained from field offices of the department of transportation, department of licensing, or

other agents appointed by the department. The department may appoint county auditors or businesses as agents for the purpose of selling trip permits to the public. County auditors or businesses so appointed may retain the filing fee collected for each trip permit to defray expenses incurred in handling and selling the permits.

(5) A surcharge of five dollars is imposed on the issuance of trip permits. The portion of the surcharge paid by motor carriers must be deposited in the motor vehicle fund for the purpose of supporting vehicle weigh stations, weigh-in-motion programs, and the commercial vehicle information systems and networks program. The remaining portion of the surcharge must be deposited in the motor vehicle fund for the purpose of supporting congestion relief programs. All other fees and excise taxes collected by the department for trip permits shall be credited and deposited in the same manner as the special fuel tax collected under this chapter and shall not be subject to exchange, refund, or credit. [2007 c 515 § 25; 2007 c 419 § 17; 1999 c 270 § 2; 1998 c 176 § 62; 1983 c 78 § 1; 1979 c 40 § 6; 1973 1st ex.s. c 156 § 3; 1971 ex.s. c 175 § 11.]

Reviser's note: This section was amended by 2007 c 419 § 17 and by 2007 c 515 § 25, each without reference to the other. Both amendments are incorporated in the publication of this section under RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

Severability—Effective date—2007 c 515: See notes following RCW 82.36.010.

Findings—Short title—Application—2007 c 419: See notes following RCW 46.16.004.

82.38.130 Revocation, suspension, cancellation, and surrender of license—Notice—Bond release, discharge—New or additional bond or surety. The department may revoke the license of any licensee for any of the grounds constituting cause for denial of a license set forth in RCW 82.38.120 or for other reasonable cause. Before revoking such license the department shall notify the licensee to show cause within twenty days of the date of the notice why the license should not be revoked: PROVIDED, That at any time prior to and pending such hearing the department may, in the exercise of reasonable discretion, suspend such license.

The department shall cancel any special fuel license immediately upon surrender thereof by the holder.

Any surety on a bond furnished by a licensee as provided in this chapter shall be released and discharged from any and all liability to the state accruing on such bond after the expiration of forty-five days from the date which such surety shall have lodged with the department a written request to be released and discharged, but this provision shall not operate to relieve, release, or discharge the surety from any liability already accrued or which shall accrue before the expiration of the forty-five day period. The department shall promptly, upon receiving any such request, notify the licensee who furnished the bond, and unless the licensee, on or before the expiration of the forty-five day period, files a new bond, in accordance with this section, the department shall cancel the license.

The department may require a new or additional surety bond of the character specified in RCW 82.38.020(3) if, in its opinion, the security of the surety bond therefor filed by such licensee, shall become impaired or inadequate. Upon failure

of the licensee to give such new or additional surety bond within forty-five days after being requested to do so by the department, or after he or she shall fail or refuse to file reports and remit or pay taxes at the intervals fixed by the department, the department forthwith shall cancel his or her license. [2007 c 515 § 26; 1998 c 176 § 65; 1994 c 262 § 24; 1979 c 40 § 9; 1977 c 26 § 2; 1971 ex.s. c 175 § 14.]

Severability—Effective date—2007 c 515: See notes following RCW 82.36.010.

82.38.140 Special fuel records—Reports—Inspection. (1) Every licensee and every person importing, manufacturing, refining, transporting, blending, or storing special fuel in this state shall keep for a period of not less than five years open to inspection at all times during the business hours of the day to the department or its authorized representatives, a complete record of all special fuel purchased or received and all of such products sold, delivered, or used by them. Such records shall show:

- (a) The date of each receipt;
 - (b) The name and address of the person from whom purchased or received;
 - (c) The number of gallons received at each place of business or place of storage in the state of Washington;
 - (d) The date of each sale or delivery;
 - (e) The number of gallons sold, delivered, or used for taxable purposes;
 - (f) The number of gallons sold, delivered, or used for any purpose not subject to the tax imposed in this chapter;
 - (g) The name, address, and special fuel license number of the purchaser if the special fuel tax is not collected on the sale or delivery;
 - (h) The inventories of special fuel on hand at each place of business at the end of each month.
- (2)(a) All international fuel tax agreement licensees and dyed special fuel users authorized to use dyed special fuel on highway in vehicles licensed for highway operation shall maintain detailed mileage records on an individual vehicle basis.
- (b) Such operating records shall show both on-highway and off-highway usage of special fuel on a daily basis for each vehicle.
 - (c) In the absence of operating records that show both on-highway and off-highway usage of special fuel on a daily basis for each vehicle, fuel consumption must be computed under RCW 82.38.060.

(3) The department may require a person other than a licensee engaged in the business of selling, purchasing, distributing, storing, transporting, or delivering special fuel to submit periodic reports to the department regarding the disposition of the fuel. The reports must be on forms prescribed by the department and must contain such information as the department may require.

(4) Every person operating any conveyance for the purpose of hauling, transporting, or delivering special fuel in bulk shall have and possess during the entire time the person is hauling special fuel, an invoice, bill of sale, or other statement showing the name, address, and license number of the seller or consigner, the destination, name, and address of the purchaser or consignee, license number, if applicable, and the number of gallons. The person hauling such special fuel shall

at the request of any law enforcement officer or authorized representative of the department, or other person authorized by law to inquire into, or investigate those types of matters, produce for inspection such invoice, bill of sale, or other statement and shall permit such official to inspect and gauge the contents of the vehicle. [2007 c 515 § 27; 1998 c 176 § 66. Prior: 1996 c 104 § 10; 1996 c 90 § 2; 1995 c 274 § 22; 1988 c 51 § 1; 1979 c 40 § 10; 1971 ex.s. c 175 § 15.]

Severability—Effective date—2007 c 515: See notes following RCW 82.36.010.

82.38.150 Periodic tax reports—Forms—Filing. For the purpose of determining the amount of liability for the tax herein imposed, and to periodically update license information, each licensee, other than a special fuel distributor, an international fuel tax agreement licensee, or a dyed special fuel user, shall file monthly tax reports with the department, on forms prescribed by the department.

Dyed special fuel users whose estimated yearly tax liability is two hundred fifty dollars or less, shall file a report yearly, and dyed special fuel users whose estimated yearly tax liability is more than two hundred fifty dollars, shall file reports quarterly. Special fuel users licensed under the international fuel tax agreement shall file reports quarterly. Heating oil dealers subject to the pollution liability insurance agency fee and reporting requirements shall remit pollution liability insurance agency returns and any associated payment due to the department annually.

The department shall establish the reporting frequency for each applicant at the time the special fuel license is issued. If it becomes apparent that any licensee is not reporting in accordance with the above schedule, the department shall change the licensee's reporting frequency by giving thirty days' notice to the licensee by mail to the licensee's address of record. A report shall be filed with the department even though no special fuel was used, or tax is due, for the reporting period. Each tax report shall contain a declaration by the person making the same, to the effect that the statements contained therein are true and are made under penalties of perjury, which declaration shall have the same force and effect as a verification of the report and is in lieu of such verification. The report shall show such information as the department may reasonably require for the proper administration and enforcement of this chapter. A licensee shall file a tax report on or before the twenty-fifth day of the next succeeding calendar month following the period to which it relates.

Subject to the written approval of the department, tax reports may cover a period ending on a day other than the last day of the calendar month. Taxpayers granted approval to file reports in this manner will file such reports on or before the twenty-fifth day following the end of the reporting period. No change to this reporting period will be made without the written authorization of the department.

If the final filing date falls on a Saturday, Sunday, or legal holiday the next secular or business day shall be the final filing date. Such reports shall be considered filed or received on the date shown by the post office cancellation mark stamped upon an envelope containing such report properly addressed to the department, or on the date it was mailed if proof satisfactory to the department is available to establish the date it was mailed.

The department, if it deems it necessary in order to insure payment of the tax imposed by this chapter, or to facilitate the administration of this chapter, has the authority to require the filing of reports and tax remittances at shorter intervals than one month if, in its opinion, an existing bond has become insufficient. [2007 c 515 § 28; 1998 c 176 § 67; 1996 c 104 § 11; 1995 c 274 § 23; 1991 c 339 § 15; 1990 c 42 § 203; 1988 c 23 § 1; 1983 c 242 § 3; 1979 c 40 § 11; 1973 1st ex.s. c 156 § 6; 1971 ex.s. c 175 § 16.]

Severability—Effective date—2007 c 515: See notes following RCW 82.36.010.

Purpose—Headings—Severability—Effective dates—Application—Implementation—1990 c 42: See notes following RCW 82.36.025.

Effective date—1988 c 23: "This act shall take effect January 1, 1989." [1988 c 23 § 2.]

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

82.38.180 Refunds and credits. Any person who has purchased special fuel on which tax has been paid may file a claim with the department for a refund of the tax for:

(1) Taxes previously paid on special fuel used for purposes other than for the propulsion of motor vehicles upon the public highways in this state.

(2) Taxes previously paid on special fuel exported for use outside of this state. Special fuel carried from this state in the fuel tank of a motor vehicle is deemed to be exported from this state. Special fuel distributed to a federally recognized Indian tribal reservation located within the state of Washington is not considered exported outside this state.

(3) Tax, penalty, or interest erroneously or illegally collected or paid.

(4) Taxes previously paid on all special fuel which is lost or destroyed, while the licensee shall be the owner thereof, through fire, lightning, flood, wind storm, or explosion.

(5) Taxes previously paid on all special fuel of five hundred gallons or more which is lost or destroyed while the licensee shall be the owner thereof, through leakage or other casualty except evaporation, shrinkage, or unknown causes.

(6) Taxes previously paid on special fuel that is inadvertently mixed with dyed special fuel.

Recovery for such loss or destruction under either subsection (4), (5), or (6) of this section must be susceptible to positive proof thereby enabling the department to conduct such investigation and require such information as it may deem necessary. In the event that the department is not satisfied that the fuel was lost, destroyed, or contaminated as claimed because information or proof as required hereunder is not sufficient to substantiate the accuracy of the claim, it may deem such as sufficient cause to deny all right relating to the refund or credit for the excise tax paid on special fuel alleged to be lost or destroyed.

No refund or claim for credit shall be approved by the department unless the gallons of special fuel claimed as nontaxable satisfy the conditions specifically set forth in this section and the nontaxable event or use occurred during the period covered by the refund claim. Refunds or claims for credit shall not be allowed for anticipated nontaxable use or events. [2007 c 515 § 29; 1998 c 176 § 71; 1972 ex.s. c 138 § 4; 1971 ex.s. c 175 § 19.]

Severability—Effective date—2007 c 515: See notes following RCW 82.36.010.

Effective date—1972 ex.s. c 138: See note following RCW 82.36.280.

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

82.38.230 Delinquency—Seizure and sale of property—Notice—Distribution of excess. Whenever any licensee is delinquent in the payment of any obligation imposed hereunder, and such delinquency continues after notice and demand for payment by the department, the department shall proceed to collect the amount due from the licensee in the following manner: The department shall seize any property subject to the lien of said excise tax, penalty, and interest and thereafter sell it at public auction to pay said obligation and any and all costs that may have been incurred on account of the seizure and sale. Notice of such intended sale and the time and place thereof shall be given to such delinquent licensee and to all persons appearing of record to have an interest in such property. The notice shall be given in writing at least ten days before the date set for the sale by enclosing it in an envelope addressed to the licensee at the licensee's address as the same appears in the records of the department and, in the case of any person appearing of record to have an interest in such property, addressed to such person at his or her last known residence or place of business, and depositing such envelope in the United States mail, postage prepaid. In addition, the notice shall be published for at least ten days before the date set for the sale in a newspaper of general circulation published in the county in which the property seized is to be sold. If there is no newspaper of general circulation in such county, the notice shall be posted in three public places in the county for a period of ten days. The notice shall contain a description of the property to be sold, together with a statement of the amount due under this chapter, the name of the licensee and the further statement that unless such amount is paid on or before the time fixed in the notice the property will be sold in accordance with law.

The department shall then proceed to sell the property in accordance with the law and the notice, and shall deliver to the purchaser a bill of sale or deed which shall vest title in the purchaser. If upon any such sale the moneys received exceed the amount due to the state under this chapter from the delinquent licensee, the excess shall be returned to the licensee and the licensee's receipt obtained for the excess. If any person having an interest in or lien upon the property has filed with the department prior to such sale, notice of such interest or lien, the department shall withhold payment of any such excess to the licensee pending a determination of the rights of the respective parties thereto by a court of competent jurisdiction. If for any reason the receipt of the licensee is not available, the department shall deposit such excess with the state treasurer as trustee for the licensee or the licensee's heirs, successors, or assigns: PROVIDED, That prior to making any seizure of property as provided for in this section, the department may first serve upon the licensee's bondsperson a notice of the delinquency, with a demand for the payment of the amount due. [2007 c 218 § 78; 1998 c 176 § 77; 1979 c 40 § 17; 1971 ex.s. c 175 § 24.]

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

82.38.270 Violations—Penalties. (1) It is unlawful for a person or corporation to:

(a) Have dyed diesel in the fuel supply tank of a vehicle that is licensed or required to be licensed for highway use or maintain dyed diesel in bulk storage for highway use, unless the person or corporation maintains an uncanceled dyed diesel user license or is otherwise exempted by this chapter;

(b) Evade a tax or fee imposed under this chapter;

(c) File a false statement of a material fact on a special fuel license application or special fuel refund application;

(d) Act as a special fuel importer, special fuel blender, or special fuel supplier unless the person holds an uncanceled special fuel license issued by the department authorizing the person to engage in that business;

(e) Knowingly assist another person to evade a tax or fee imposed by this chapter;

(f) Knowingly operate a conveyance for the purpose of hauling, transporting, or delivering special fuel in bulk and not possess an invoice, bill of sale, or other statement showing the name, address, and tax license number of the seller or consignor, the destination, the name, address, and tax license number of the purchaser or consignee, and the number of gallons.

(2)(a) A single violation of subsection (1)(a) of this section is a gross misdemeanor under chapter 9A.20 RCW.

(b) Multiple violations of subsection (1)(a) of this section and violations of subsection (1)(b) through (f) of this section are a class C felony under chapter 9A.20 RCW.

(3) In addition to other penalties and remedies provided by law, the court shall order a person or corporation found guilty of violating subsection (1)(b) through (f) of this section to:

(a) Pay the tax or fee evaded plus interest, commencing at the date the tax or fee was first due, at the rate of twelve percent per year, compounded monthly; and

(b) Pay a penalty of one hundred percent of the tax evaded, to the multimodal transportation account of the state.

(4) The tax imposed by this chapter is held in trust by the licensee until paid to the department, and a licensee who appropriates the tax to his or her own use or to any use other than the payment of the tax on the due date as prescribed in this chapter is guilty of a felony or gross misdemeanor in accordance with the theft and anticipatory provisions of Title 9A RCW. A person, partnership, corporation, or corporate officer who fails to pay to the department the tax imposed by this chapter is personally liable to the state for the amount of the tax. [2007 c 515 § 30; 2003 c 358 § 14; 2000 2nd sp.s. c 4 § 10; 1995 c 287 § 4; 1979 c 40 § 19; 1977 c 26 § 4; 1971 ex.s. c 175 § 28.]

Severability—Effective date—2007 c 515: See notes following RCW 82.36.010.

Captions not law—Severability—2003 c 358: See notes following RCW 82.36.470.

Effective dates—2000 2nd sp.s. c 4 §§ 4-10: See note following RCW 43.89.010.

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

82.38.310 Agreement with tribe for fuel taxes. (1) The governor may enter into an agreement with any federally

recognized Indian tribe located on a reservation within this state regarding special fuel taxes included in the price of fuel delivered to a retail station wholly owned and operated by a tribe, tribal enterprise, or tribal member licensed by the tribe to operate a retail station located on reservation or trust property. The agreement may provide mutually agreeable means to address any tribal immunities or any preemption of the state special fuel tax.

(2) The provisions of this section do not repeal existing state/tribal fuel tax agreements or consent decrees in existence on May 15, 2007. The state and the tribe may agree to substitute an agreement negotiated under this section for an existing agreement or consent decree, or to enter into an agreement using a methodology similar to the state/tribal fuel tax agreements in effect on May 15, 2007.

(3) If a new agreement is negotiated, the agreement must:

(a) Require that the tribe or the tribal retailer acquire all special fuel only from persons or companies operating lawfully in accordance with this chapter as a special fuel distributor, supplier, importer, or blender, or from a tribal distributor, supplier, importer, or blender lawfully doing business according to all applicable laws;

(b) Provide that the tribe will expend fuel tax proceeds or equivalent amounts on: Planning, construction, and maintenance of roads, bridges, and boat ramps; transit services and facilities; transportation planning; police services; and other highway-related purposes;

(c) Include provisions for audits or other means of ensuring compliance to certify the number of gallons of special fuel purchased by the tribe for resale at tribal retail stations, and the use of fuel tax proceeds or their equivalent for the purposes identified in (b) of this subsection. Compliance reports must be delivered to the director of the department of licensing.

(4) Information from the tribe or tribal retailers received by the state or open to state review under the terms of an agreement shall be deemed personal information under RCW 42.56.230(3)(b) and exempt from public inspection and copying.

(5) The governor may delegate the power to negotiate fuel tax agreements to the department of licensing.

(6) The department of licensing shall prepare and submit an annual report to the legislature on the status of existing agreements and any ongoing negotiations with tribes. [2007 c 515 § 31; 1995 c 320 § 3.]

Severability—Effective date—2007 c 515: See notes following RCW 82.36.010.

Legislative recognition, belief—Severability—Effective date—1995 c 320: See notes following RCW 82.36.450.

82.38.320 Bulk storage of special fuel by international fuel tax agreement licensee—Authorization to pay tax at time of filing tax return—Schedule—Report—Exemptions. (1) An international fuel tax agreement licensee who meets the qualifications in subsection (2) of this section may be given special authorization by the department to purchase special fuel delivered into bulk storage without payment of the special fuel tax at the time the fuel is purchased. The special authorization applies only to full truck-trailer loads filled at a terminal rack and delivered directly to

the bulk storage facilities of the special authorization holder. The licensee shall pay special fuel tax on the fuel at the time the licensee files their international fuel tax agreement tax return and accompanying schedule with the department. The accompanying schedule shall be provided in a form and manner determined by the department and shall contain information on purchases and usage of all nondyed special fuel purchased during the reporting period. In addition, by the fifteenth day of the month following the month in which fuel under the special authorization was purchased, the licensee must report to the department, the name of the seller and the number of gallons purchased for each purchase of such fuel, and any other information as the department may require.

(2) To receive or maintain special authorization under subsection (1) of this section, the following conditions regarding the international fuel tax agreement licensee must apply:

(a) During the period encompassing the four consecutive calendar quarters immediately preceding the fourth calendar quarter of the previous year, the number of gallons consumed outside the state of Washington as reported on the licensee's international fuel tax agreement tax returns must have been equal to at least twenty percent of the nondyed special fuel gallons, including fuel used on-road and off-road, purchased by the licensee in the state of Washington, as reported on the accompanying schedules required under subsection (1) of this section;

(b) The licensee must have been licensed under the provisions of the international fuel tax agreement during each of the four consecutive calendar quarters immediately preceding the fourth calendar quarter of the previous year; and

(c) The licensee has not violated the reporting requirements of this section.

(3) Only a licensed special fuel supplier or special fuel importer may sell special fuel to a special authorization holder in the manner prescribed by this section.

(4) A special fuel supplier or importer who sells special fuel under the special authorization provisions of this section is not liable for the special fuel tax on the fuel. The special fuel supplier or importer will report such sales, in a manner prescribed by the department, at the time the special fuel supplier or importer submits the monthly tax report. [2007 c 515 § 32; 1998 c 176 § 83.]

Severability—Effective date—2007 c 515: See notes following RCW 82.36.010.

Chapter 82.45 RCW

EXCISE TAX ON REAL ESTATE SALES

Sections

- 82.45.100 Tax payable at time of sale—Interest, penalties on unpaid or delinquent taxes—Notice—Prohibition on certain assessments or refunds—Deposit of penalties.
- 82.45.195 Exemptions—Standing timber sales.

82.45.100 Tax payable at time of sale—Interest, penalties on unpaid or delinquent taxes—Notice—Prohibition on certain assessments or refunds—Deposit of penalties. (1) Payment of the tax imposed under this chapter is due and payable immediately at the time of sale, and if not paid

within one month thereafter shall bear interest from the time of sale until the date of payment.

(a) Interest imposed before January 1, 1999, shall be computed at the rate of one percent per month.

(b) Interest imposed after December 31, 1998, shall be computed on a monthly basis at the rate as computed under RCW 82.32.050(2). The rate so computed shall be adjusted on the first day of January of each year for use in computing interest for that calendar year. The department of revenue shall provide written notification to the county treasurers of the variable rate on or before December 1st of the year preceding the calendar year in which the rate applies.

(2) In addition to the interest described in subsection (1) of this section, if the payment of any tax is not received by the county treasurer or the department of revenue, as the case may be, within one month of the date due, there shall be assessed a penalty of five percent of the amount of the tax; if the tax is not received within two months of the date due, there shall be assessed a total penalty of ten percent of the amount of the tax; and if the tax is not received within three months of the date due, there shall be assessed a total penalty of twenty percent of the amount of the tax. The payment of the penalty described in this subsection shall be collectible from the seller only, and RCW 82.45.070 does not apply to the penalties described in this subsection.

(3) If the tax imposed under this chapter is not received by the due date, the transferee shall be personally liable for the tax, along with any interest as provided in subsection (1) of this section, unless:

(a) An instrument evidencing the sale is recorded in the official real property records of the county in which the property conveyed is located; or

(b) Either the transferor or transferee notifies the department of revenue in writing of the occurrence of the sale within thirty days following the date of the sale.

(4) If upon examination of any affidavits or from other information obtained by the department or its agents it appears that all or a portion of the tax is unpaid, the department shall assess against the taxpayer the additional amount found to be due plus interest and penalties as provided in subsections (1) and (2) of this section. The department shall notify the taxpayer by mail, or electronically as provided in RCW 82.32.135, of the additional amount and the same shall become due and shall be paid within thirty days from the date of the notice, or within such further time as the department may provide.

(5) No assessment or refund may be made by the department more than four years after the date of sale except upon a showing of:

(a) Fraud or misrepresentation of a material fact by the taxpayer;

(b) A failure by the taxpayer to record documentation of a sale or otherwise report the sale to the county treasurer; or

(c) A failure of the transferor or transferee to report the sale under RCW 82.45.090(2).

(6) Penalties collected on taxes due under this chapter under subsection (2) of this section and RCW 82.32.090 (2) through (7) shall be deposited in the housing trust fund as described in chapter 43.185 RCW. [2007 c 111 § 112; 1997 c 157 § 4; 1996 c 149 § 5; 1993 sp.s. c 25 § 507; 1988 c 286 § 5; 1982 c 176 § 1; 1981 c 167 § 2.]

[2007 RCW Supp—page 1128]

Part headings not law—2007 c 111: See note following RCW 82.16.120.

Findings—Intent—Effective date—1996 c 149: See notes following RCW 82.32.050.

Severability—Effective dates—Part headings, captions not law—1993 sp.s. c 25: See notes following RCW 82.04.230.

Findings—Intent—1993 sp.s. c 25: See note following RCW 82.45.010.

Audits, assessments, and refunds—1982 c 176: See note following chapter digest.

Effective date—1981 c 167: See note following RCW 82.45.150.

82.45.195 Exemptions—Standing timber sales. A sale of standing timber is exempt from tax under this chapter if the gross income from such sale is taxable under RCW 82.04.260(12)(d). [2007 c 48 § 7.]

Effective date—2007 c 48: See note following RCW 82.04.260.

Chapter 82.62 RCW

TAX CREDITS FOR ELIGIBLE BUSINESS PROJECTS IN RURAL COUNTIES

Sections

82.62.010	Definitions. (<i>Effective January 1, 2008.</i>)
82.62.020	Application for tax credits—Contents. (<i>Effective January 1, 2008.</i>)
82.62.030	Allowance of tax credits—Limitations. (<i>Effective January 1, 2008.</i>)
82.62.045	Tax credits for eligible business projects in designated community empowerment zones. (<i>Effective January 1, 2008.</i>)
82.62.050	Tax credit recipients to report to department—Payment of taxes and interest by ineligible recipients. (<i>Effective January 1, 2008.</i>)

82.62.010 Definitions. (*Effective January 1, 2008.*) Unless the context clearly requires otherwise, the definitions in this section apply throughout this chapter.

(1) "Applicant" means a person applying for a tax credit under this chapter.

(2) "Department" means the department of revenue.

(3) "Eligible area" means an area as defined in RCW 82.60.020.

(4)(a) "Eligible business project" means manufacturing or research and development activities which are conducted by an applicant in an eligible area at a specific facility, provided the applicant's average qualified employment positions at the specific facility will be at least fifteen percent greater in the four consecutive full calendar quarters after the calendar quarter during which the first qualified employment position is filled than the applicant's average qualified employment positions at the same facility in the four consecutive full calendar quarters immediately preceding the calendar quarter during which the first qualified employment position is filled.

(b) "Eligible business project" does not include any portion of a business project undertaken by a light and power business as defined in RCW 82.16.010(5) or that portion of a business project creating qualified full-time employment positions outside an eligible area.

(5) "First qualified employment position" means the first qualified employment position filled for which a credit under this chapter is sought.

(6) "Manufacturing" means the same as defined in RCW 82.04.120. "Manufacturing" also includes computer pro-

gramming, the production of computer software, and other computer-related services, and the activities performed by research and development laboratories and commercial testing laboratories.

(7) "Person" has the meaning given in RCW 82.04.030.

(8)(a)(i) "Qualified employment position" means a permanent full-time employee employed in the eligible business project during four consecutive full calendar quarters.

(ii) For seasonal employers, "qualified employment position" also includes the equivalent of a full-time employee in work hours for four consecutive full calendar quarters.

(b) For purposes of this subsection, "full time" means a normal work week of at least thirty-five hours.

(c) Once a permanent, full-time employee has been employed, a position does not cease to be a qualified employment position solely due to periods in which the position goes vacant, as long as:

(i) The cumulative period of any vacancies in that position is not more than one hundred twenty days in the four-quarter period; and

(ii) During a vacancy, the employer is training or actively recruiting a replacement permanent, full-time employee for the position.

(9) "Recipient" means a person receiving tax credits under this chapter.

(10) "Research and development" means the development, refinement, testing, marketing, and commercialization of a product, service, or process before commercial sales have begun. As used in this subsection, "commercial sales" excludes sales of prototypes or sales for market testing if the total gross receipts from such sales of the product, service, or process do not exceed one million dollars.

(11) "Seasonal employee" means an employee of a seasonal employer who works on a seasonal basis. For the purposes of this subsection and subsection (12) of this section, "seasonal basis" means a continuous employment period of less than twelve consecutive months.

(12) "Seasonal employer" means a person who regularly hires more than fifty percent of its employees to work on a seasonal basis. [2007 c 485 § 1; 2001 c 320 § 12; 1999 sp.s. c 9 § 3; 1999 c 164 § 305; 1996 c 290 § 5; 1994 sp.s. c 7 § 705; 1993 sp.s. c 25 § 410; 1988 c 42 § 17; 1986 c 116 § 15.]

Application—2007 c 485: "Sections 1 through 3 and 5 of this act apply with respect to applications for credit under chapter 82.62 RCW received by the department of revenue on or after January 1, 2008." [2007 c 485 § 7.]

Application—Effective date—2007 c 485: See notes following RCW 82.62.020.

Effective date—2001 c 320: See note following RCW 11.02.005.

Intent—Severability—Effective date—1999 sp.s. c 9: See notes following RCW 82.04.120.

Findings—Intent—Part headings and subheadings not law—Effective date—Severability—1999 c 164: See notes following RCW 43.160.010.

Savings—1999 c 164 §§ 301-303, 305, 306, and 601-603: See note following RCW 82.60.020.

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

Severability—Effective dates—Part headings, captions not law—1993 sp.s. c 25: See notes following RCW 82.04.230.

Severability—1988 c 42: See note following RCW 4.24.480.

82.62.020 Application for tax credits—Contents. (*Effective January 1, 2008.*) Application for tax credits under this chapter must be made within ninety consecutive days after the first qualified employment position is filled. The application shall be made to the department in a form and manner prescribed by the department. The application shall contain information regarding the location of the business project, the applicant's average employment, if any, at the facility for the four consecutive full calendar quarters immediately preceding the earlier of the calendar quarter during which the application required by this section is submitted to the department or the first qualified employment position is filled, estimated or actual new employment related to the project, estimated or actual wages of employees related to the project, estimated or actual costs, time schedules for completion and operation, and other information required by the department. The department shall prescribe a method for calculating a seasonal employer's average employment levels. The department shall rule on the application within sixty days. [2007 c 485 § 2; 1986 c 116 § 16.]

Application—2007 c 485: "This act applies prospectively only, except that section 4 of this act applies both prospectively and retroactively." [2007 c 485 § 6.]

Effective date—2007 c 485: "This act takes effect January 1, 2008." [2007 c 485 § 8.]

Application—2007 c 485: See note following RCW 82.62.010.

82.62.030 Allowance of tax credits—Limitations. (*Effective January 1, 2008.*) (1)(a) A person shall be allowed a credit against the tax due under chapter 82.04 RCW as provided in this section. The credit shall equal: (i) Four thousand dollars for each qualified employment position with wages and benefits greater than forty thousand dollars annually that is directly created in an eligible business project and (ii) two thousand dollars for each qualified employment position with wages and benefits less than or equal to forty thousand dollars annually that is directly created in an eligible business project.

(b) For purposes of calculating the amount of credit under (a) of this subsection with respect to qualified employment positions as defined in RCW 82.62.010(8)(a)(ii):

(i) In determining the number of qualified employment positions, a fractional amount is rounded down to the nearest whole number; and

(ii) Wages and benefits for each qualified employment position shall be equal to the quotient derived by dividing: (A) The sum of the wages and benefits earned for the four consecutive full calendar quarter period for which a credit under this chapter is earned by all of the person's new seasonal employees hired during that period; by (B) the number of qualified employment positions plus any fractional amount subject to rounding as provided under (b)(i) of this subsection. For purposes of this chapter, a credit is earned for the four consecutive full calendar quarters after the calendar quarter during which the first qualified employment position is filled.

(2) The department shall keep a running total of all credits allowed under this chapter during each fiscal year. The department shall not allow any credits which would cause the total to exceed seven million five hundred thousand dollars in any fiscal year. If all or part of an application for credit is dis-

allowed under this subsection, the disallowed portion shall be carried over to the next fiscal year. However, the carryover into the next fiscal year is only permitted to the extent that the cap for the next fiscal year is not exceeded.

(3) No recipient may use the tax credits to decertify a union or to displace existing jobs in any community in the state.

(4) The credit may be used against any tax due under chapter 82.04 RCW, and may be carried over until used. No refunds may be granted for credits under this section. [2007 c 485 § 3; 2001 c 320 § 13; 1999 c 164 § 306; 1997 c 366 § 5; 1996 c 1 § 3; 1986 c 116 § 17.]

Application—2007 c 485: See note following RCW 82.62.010.

Application—Effective date—2007 c 485: See notes following RCW 82.62.020.

Effective date—2001 c 320: See note following RCW 11.02.005.

Findings—Intent—Part headings and subheadings not law—Effective date—Severability—1999 c 164: See notes following RCW 43.160.010.

Savings—1999 c 164 §§ 301-303, 305, 306, and 601-603: See note following RCW 82.60.020.

Intent—Goals—Severability—Captions and part headings not law—1997 c 366: See notes following RCW 82.14.370.

Effective date—1996 c 1: See note following RCW 82.04.255.

82.62.045 Tax credits for eligible business projects in designated community empowerment zones. (Effective January 1, 2008.) (1) For the purposes of this section "eligible area" also means a designated community empowerment zone approved under RCW 43.31C.020.

(2) An eligible business project located within an eligible area as defined in this section qualifies for a credit under this chapter for those employees who at the time of hire are residents of the community empowerment zone in which the project is located, if the fifteen percent threshold is met. As used in this subsection, "resident" means the person makes his or her home in the community empowerment zone. A mailing address alone is insufficient to establish that a person is a resident for the purposes of this section.

(3) All other provisions and eligibility requirements of this chapter apply to applicants eligible under this section. [2007 c 485 § 4; 1999 c 164 § 307.]

Application—Effective date—2007 c 485: See notes following RCW 82.62.020.

Findings—Intent—Part headings and subheadings not law—Effective date—Severability—1999 c 164: See notes following RCW 43.160.010.

82.62.050 Tax credit recipients to report to department—Payment of taxes and interest by ineligible recipients. (Effective January 1, 2008.) (1) Each recipient shall submit a report to the department by the last day of the month immediately following the end of the four consecutive full calendar quarter period for which a credit under this chapter is earned. The report shall contain information, as required by the department, from which the department may determine whether the recipient is meeting the requirements of this chapter. If the recipient fails to submit a report or submits an inadequate report, the department may declare the amount of taxes for which a credit has been used to be immediately assessed and payable. The recipient must keep

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records, such as payroll records showing the date of hire and employment security reports, to verify eligibility under this section.

(2) If, on the basis of a report under this section or other information, the department finds that a business project is not eligible for tax credit under this chapter for reasons other than failure to create the required number of qualified employment positions, the amount of taxes for which a credit has been used for the project shall be immediately due.

(3) If, on the basis of a report under this section or other information, the department finds that a business project has failed to create the specified number of qualified employment positions, the department shall assess interest, but not penalties, on the credited taxes for which a credit has been used for the project. The interest shall be assessed at the rate provided for delinquent excise taxes, shall be assessed retroactively to the date of the tax credit, and shall accrue until the taxes for which a credit has been used are repaid. [2007 c 485 § 5; 2001 c 320 § 14; 1986 c 116 § 18.]

Application—2007 c 485: See note following RCW 82.62.010.

Application—Effective date—2007 c 485: See notes following RCW 82.62.020.

Effective date—2001 c 320: See note following RCW 11.02.005.

Chapter 82.72 RCW

TELEPHONE PROGRAM EXCISE TAX ADMINISTRATION

Sections

82.72.010 Definitions. (Effective July 1, 2008.)

82.72.010 Definitions. (Effective July 1, 2008.) The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

(1) "Switched access line" has the meaning provided in RCW 82.14B.020.

(2) "Local exchange company" has the meaning provided in RCW 80.04.010.

(3) "Subscriber" means the retail purchaser of telephone service as telephone service is defined in RCW 82.16.010.

(4) "Telephone program excise taxes" means the taxes on switched access lines imposed by RCW 43.20A.725 and 80.36.430. [2007 c 6 § 1010; 2004 c 254 § 3.]

Part headings not law—Savings—Effective date—Severability—2007 c 6: See notes following RCW 82.32.020.

Findings—Intent—2007 c 6: See note following RCW 82.14.495.

Effective date—2004 c 254: "This act takes effect July 1, 2004." [2004 c 254 § 14.]

Chapter 82.80 RCW

LOCAL OPTION TRANSPORTATION TAXES

Sections

82.80.140 Vehicle fee—Transportation benefit district—Exemptions.

82.80.140 Vehicle fee—Transportation benefit district—Exemptions. (1) Subject to the provisions of RCW 36.73.065, a transportation benefit district under chapter 36.73 RCW may fix and impose an annual vehicle fee, not to exceed one hundred dollars per vehicle registered in the dis-

tract, for each vehicle subject to license tab fees under RCW 46.16.0621 and for each vehicle subject to gross weight fees under RCW 46.16.070 with an unladen weight of six thousand pounds or less.

(2)(a) A district that includes all the territory within the boundaries of the jurisdiction, or jurisdictions, establishing the district may impose by a majority vote of the governing board of the district up to twenty dollars of the vehicle fee authorized in subsection (1) of this section. If the district is countywide, the revenues of the fee shall be distributed to each city within the county by interlocal agreement. The interlocal agreement is effective when approved by the county and sixty percent of the cities representing seventy-five percent of the population of the cities within the county in which the countywide fee is collected.

(b) A district may not impose a fee under this subsection (2):

(i) For a passenger-only ferry transportation improvement unless the vehicle fee is first approved by a majority of the voters within the jurisdiction of the district; or

(ii) That, if combined with the fees previously imposed by another district within its boundaries under RCW 36.73.065(4)(a)(i), exceeds twenty dollars.

If a district imposes or increases a fee under this subsection (2) that, if combined with the fees previously imposed by another district within its boundaries, exceeds twenty dollars, the district shall provide a credit for the previously imposed fees so that the combined vehicle fee does not exceed twenty dollars.

(3) The department of licensing shall administer and collect the fee. The department shall deduct a percentage amount, as provided by contract, not to exceed one percent of the fees collected, for administration and collection expenses incurred by it. The department shall remit remaining proceeds to the custody of the state treasurer. The state treasurer shall distribute the proceeds to the district on a monthly basis.

(4) No fee under this section may be collected until six months after approval under RCW 36.73.065.

(5) The vehicle fee under this section applies only when renewing a vehicle registration, and is effective upon the registration renewal date as provided by the department of licensing.

(6) The following vehicles are exempt from the fee under this section:

(a) Farm tractors or farm vehicles as defined in RCW 46.04.180 and 46.04.181;

(b) Off-road and nonhighway vehicles as defined in RCW 46.09.020;

(c) Vehicles registered under chapter 46.87 RCW and the international registration plan; and

(d) Snowmobiles as defined in RCW 46.10.010. [2007 c 329 § 2; 2005 c 336 § 16.]

Effective date—2005 c 336: See note following RCW 36.73.015.

Title 84

PROPERTY TAXES

Chapters

84.09 General provisions.

84.12 Assessment and taxation of public utilities.

84.14 New and rehabilitated multiple-unit dwellings in urban centers.

84.16 Assessment and taxation of private car companies.

84.33 Timber and forest lands.

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84.36 Exemptions.

84.40 Listing of property.

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84.55 Limitations upon regular property taxes.

84.56 Collection of taxes.

84.64 Lien foreclosure.

Chapter 84.09 RCW

GENERAL PROVISIONS

Sections

84.09.030 Taxing district boundaries—Establishment.

84.09.030 Taxing district boundaries—Establishment. Except as follows, the boundaries of counties, cities, and all other taxing districts, for purposes of property taxation and the levy of property taxes, shall be the established official boundaries of such districts existing on the first day of August of the year in which the property tax levy is made.

The official boundaries of a newly incorporated taxing district shall be established at a different date in the year in which the incorporation occurred as follows:

(1) Boundaries for a newly incorporated city shall be established on the last day of March of the year in which the initial property tax levy is made, and the boundaries of a road district, library district, or fire protection district or districts, that include any portion of the area that was incorporated within its boundaries shall be altered as of this date to exclude this area, if the budget for the newly incorporated city is filed pursuant to RCW 84.52.020 and the levy request of the newly incorporated city is made pursuant to RCW 84.52.070. Whenever a proposed city incorporation is on the March special election ballot, the county auditor shall submit the legal description of the proposed city to the department of revenue on or before the first day of March;

(2) Boundaries for a newly incorporated port district or regional fire protection service authority shall be established on the first day of October if the boundaries of the newly incorporated port district or regional fire protection service authority are coterminous with the boundaries of another taxing district or districts, as they existed on the first day of March of that year;

(3) Boundaries of any other newly incorporated taxing district shall be established on the first day of June of the year in which the property tax levy is made if the taxing district has boundaries coterminous with the boundaries of another taxing district, as they existed on the first day of March of that year;

(4) Boundaries for a newly incorporated water-sewer district shall be established on the fifteenth of June of the year in which the proposition under RCW 57.04.050 authorizing a water district excess levy is approved.

The boundaries of a taxing district shall be established on the first day of June if territory has been added to, or

removed from, the taxing district after the first day of March of that year with boundaries coterminous with the boundaries of another taxing district as they existed on the first day of March of that year. However, the boundaries of a road district, library district, or fire protection district or districts, that include any portion of the area that was annexed to a city or town within its boundaries shall be altered as of this date to exclude this area. In any case where any instrument setting forth the official boundaries of any newly established taxing district, or setting forth any change in such boundaries, is required by law to be filed in the office of the county auditor or other county official, said instrument shall be filed in triplicate. The officer with whom such instrument is filed shall transmit two copies to the county assessor.

No property tax levy shall be made for any taxing district whose boundaries are not established as of the dates provided in this section. [2007 c 285 § 3; 2004 c 129 § 19; 1996 c 230 § 1613; 1994 c 292 § 4. Prior: 1989 c 378 § 8; 1989 c 217 § 1; prior: 1987 c 358 § 1; 1987 c 82 § 1; 1984 c 203 § 9; 1981 c 26 § 4; 1961 c 15 § 84.09.030; prior: 1951 c 116 § 1; 1949 c 65 § 1; 1943 c 182 § 1; 1939 c 136 § 1; Rem. Supp. 1949 § 11106-1. Formerly RCW 84.08.160.]

Captions not law—Severability—2004 c 129: See RCW 52.26.900 and 52.26.901.

Part headings not law—1996 c 230: See notes following RCW 57.02.001.

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

Severability—1984 c 203: See note following RCW 35.43.140.

Chapter 84.12 RCW

ASSESSMENT AND TAXATION OF PUBLIC UTILITIES

Sections

84.12.260 Default valuation by department of revenue—Penalty—Estoppel.

84.12.260 Default valuation by department of revenue—Penalty—Estoppel. (1) If any company shall fail to materially comply with the provisions of RCW 84.12.230, the department shall add to the value of such company, as a penalty for such failure, five percent for every thirty days or fraction thereof, not to exceed ten percent, that the company fails to comply.

(2) If any company, or any of its officers or agents shall refuse or neglect to make any report required by this chapter, or by the department of revenue, or shall refuse to permit an inspection and examination of its records, books, accounts, papers or property requested by the department of revenue, or shall refuse or neglect to appear before the department of revenue in obedience to a subpoena, the department of revenue shall inform itself to the best of its ability of the matters required to be known, in order to discharge its duties with respect to valuation and assessment of the property of such company, and the department shall add to the value so ascertained twenty-five percent as a penalty for such failure or refusal and such company shall be estopped to question or impeach the assessment of the department in any hearing or proceeding thereafter. Such penalty shall be in lieu of the penalty provided for in subsection (1) of this section.

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(3) The department shall waive or cancel the penalty imposed under subsection (1) of this section for good cause shown.

(4) The department shall waive or cancel the penalty imposed under subsection (1) of this section when the circumstances under which the failure to materially comply with the provisions of RCW 84.12.230 do not qualify for waiver or cancellation under subsection (3) of this section if:

(a) The company fully complies with the reporting provisions of RCW 84.12.230 within thirty days of the due date or any extension granted by the department; and

(b) The company has timely complied with the provisions of RCW 84.12.230 for the previous two calendar years. The requirement that a company has timely complied with the provisions of RCW 84.12.230 for the previous two calendar years is waived for any calendar year in which the company was not required to comply with the provisions of RCW 84.12.230. [2007 c 111 § 201; 1984 c 132 § 2; 1975 1st ex.s. c 278 § 164; 1961 c 15 § 84.12.260. Prior: 1935 c 123 § 6; 1925 ex.s. c 130 § 41; 1907 c 131 § 7; 1907 c 78 § 6; 1891 c 140 § 37; 1890 p 544 § 36; RRS § 11156-6. Formerly RCW 84.12.100.]

Application—2007 c 111 §§ 201 and 202: "Sections 201 and 202 of this act apply with respect to annual reports and annual statements originally due on or after July 22, 2007." [2007 c 111 § 203.]

Part headings not law—2007 c 111: See note following RCW 82.16.120.

Construction—Severability—1975 1st ex.s. c 278: See notes following RCW 11.08.160.

Chapter 84.14 RCW

NEW AND REHABILITATED MULTIPLE-UNIT DWELLINGS IN URBAN CENTERS

Sections

84.14.005 Findings.
84.14.007 Purpose.
84.14.010 Definitions.
84.14.020 Exemption—Duration—Valuation.
84.14.030 Application—Requirements.
84.14.040 Designation of residential targeted area—Criteria—Local designation—Hearing—Standards, guidelines.
84.14.050 Application—Procedures.
84.14.060 Approval—Required findings.
84.14.090 Filing requirements upon completion—Owner, city—Determination by city—Notice of intention of city not to file—Extension of deadline—Appeal.
84.14.100 Report—Filing.
84.14.110 Cancellation of exemption—Notice by owner of change in use—Additional tax—Penalty—Interest—Lien—Notice of cancellation—Appeal—Correction of tax rolls.

84.14.005 Findings. The legislature finds:

(1) That in many of Washington's urban centers there is insufficient availability of desirable and convenient residential units, including affordable housing units, to meet the needs of a growing number of the public who would live in these urban centers if these desirable, convenient, attractive, affordable, and livable places to live were available;

(2) That the development of additional and desirable residential units, including affordable housing units, in these urban centers that will attract and maintain a significant increase in the number of permanent residents in these areas will help to alleviate the detrimental conditions and social liability that tend to exist in the absence of a viable mixed

income residential population and will help to achieve the planning goals mandated by the growth management act under RCW 36.70A.020; and

(3) That planning solutions to solve the problems of urban sprawl often lack incentive and implementation techniques needed to encourage residential redevelopment in those urban centers lacking a sufficient variety of residential opportunities, and it is in the public interest and will benefit, provide, and promote the public health, safety, and welfare to stimulate new or enhanced residential opportunities, including affordable housing opportunities, within urban centers through a tax incentive as provided by this chapter. [2007 c 430 § 1; 1995 c 375 § 1.]

84.14.007 Purpose. It is the purpose of this chapter to encourage increased residential opportunities, including affordable housing opportunities, in cities that are required to plan or choose to plan under the growth management act within urban centers where the governing authority of the affected city has found there is insufficient housing opportunities, including affordable housing opportunities. It is further the purpose of this chapter to stimulate the construction of new multifamily housing and the rehabilitation of existing vacant and underutilized buildings for multifamily housing in urban centers having insufficient housing opportunities that will increase and improve residential opportunities, including affordable housing opportunities, within these urban centers. To achieve these purposes, this chapter provides for special valuations in residentially deficient urban centers for eligible improvements associated with multiunit housing, which includes affordable housing. [2007 c 430 § 2; 1995 c 375 § 2.]

84.14.010 Definitions. Unless the context clearly requires otherwise, the definitions in this section apply throughout this chapter.

(1) "Campus facilities master plan" means the area that is defined by the University of Washington as necessary for the future growth and development of its campus facilities for branch campuses authorized under RCW 28B.45.020.

(2) "City" means either (a) a city or town with a population of at least fifteen thousand, (b) the largest city or town, if there is no city or town with a population of at least fifteen thousand, located in a county planning under the growth management act, or (c) a city or town with a population of at least five thousand located in a county subject to the provisions of RCW 36.70A.215.

(3) "Affordable housing" means residential housing that is rented by a person or household whose monthly housing costs, including utilities other than telephone, do not exceed thirty percent of the household's monthly income. For the purposes of housing intended for owner occupancy, "affordable housing" means residential housing that is within the means of low or moderate-income households.

(4) "Household" means a single person, family, or unrelated persons living together.

(5) "Low-income household" means a single person, family, or unrelated persons living together whose adjusted income is at or below eighty percent of the median family income adjusted for family size, for the county where the

project is located, as reported by the United States department of housing and urban development. For cities located in high-cost areas, "low-income household" means a household that has an income at or below one hundred percent of the median family income adjusted for family size, for the county where the project is located.

(6) "Moderate-income household" means a single person, family, or unrelated persons living together whose adjusted income is more than eighty percent but is at or below one hundred fifteen percent of the median family income adjusted for family size, for the county where the project is located, as reported by the United States department of housing and urban development. For cities located in high-cost areas, "moderate-income household" means a household that has an income that is more than one hundred percent, but at or below one hundred fifty percent, of the median family income adjusted for family size, for the county where the project is located.

(7) "High cost area" means a county where the third quarter median house price for the previous year as reported by the Washington center for real estate research at Washington State University is equal to or greater than one hundred thirty percent of the statewide median house price published during the same time period.

(8) "Governing authority" means the local legislative authority of a city having jurisdiction over the property for which an exemption may be applied for under this chapter.

(9) "Growth management act" means chapter 36.70A RCW.

(10) "Multiple-unit housing" means a building having four or more dwelling units not designed or used as transient accommodations and not including hotels and motels. Multifamily units may result from new construction or rehabilitated or conversion of vacant, underutilized, or substandard buildings to multifamily housing.

(11) "Owner" means the property owner of record.

(12) "Permanent residential occupancy" means multiunit housing that provides either rental or owner occupancy on a nontransient basis. This includes owner-occupied or rental accommodation that is leased for a period of at least one month. This excludes hotels and motels that predominately offer rental accommodation on a daily or weekly basis.

(13) "Rehabilitation improvements" means modifications to existing structures, that are vacant for twelve months or longer, that are made to achieve a condition of substantial compliance with existing building codes or modification to existing occupied structures which increase the number of multifamily housing units.

(14) "Residential targeted area" means an area within an urban center that has been designated by the governing authority as a residential targeted area in accordance with this chapter. With respect to designations after July 1, 2007, "residential targeted area" may not include a campus facilities master plan.

(15) "Substantial compliance" means compliance with local building or housing code requirements that are typically required for rehabilitation as opposed to new construction.

(16) "Urban center" means a compact identifiable district where urban residents may obtain a variety of products and services. An urban center must contain:

(a) Several existing or previous, or both, business establishments that may include but are not limited to shops, offices, banks, restaurants, governmental agencies;

(b) Adequate public facilities including streets, sidewalks, lighting, transit, domestic water, and sanitary sewer systems; and

(c) A mixture of uses and activities that may include housing, recreation, and cultural activities in association with either commercial or office, or both, use. [2007 c 430 § 3; 2007 c 185 § 1; 2002 c 146 § 1; 2000 c 242 § 1; 1997 c 429 § 40; 1995 c 375 § 3.]

Reviser's note: This section was amended by 2007 c 185 § 1 and by 2007 c 430 § 3, each without reference to the other. Both amendments are incorporated in the publication of this section under RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

Effective date—2007 c 185: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect July 1, 2007." [2007 c 185 § 3.]

Severability—1997 c 429: See note following RCW 36.70A.3201.

84.14.020 Exemption—Duration—Valuation. (1)(a) The value of new housing construction, conversion, and rehabilitation improvements qualifying under this chapter is exempt from ad valorem property taxation, as follows:

(i) For properties for which applications for certificates of tax exemption eligibility are submitted under chapter 84.14 RCW before July 22, 2007, the value is exempt for ten successive years beginning January 1 of the year immediately following the calendar year of issuance of the certificate; and

(ii) For properties for which applications for certificates of tax exemption eligibility are submitted under chapter 84.14 RCW on or after July 22, 2007, the value is exempt:

(A) For eight successive years beginning January 1st of the year immediately following the calendar year of issuance of the certificate; or

(B) For twelve successive years beginning January 1st of the year immediately following the calendar year of issuance of the certificate, if the property otherwise qualifies for the exemption under chapter 84.14 RCW and meets the conditions in this subsection (1)(a)(ii)(B). For the property to qualify for the twelve-year exemption under this subsection, the applicant must commit to renting or selling at least twenty percent of the multifamily housing units as affordable housing units to low and moderate-income households, and the property must satisfy that commitment and any additional affordability and income eligibility conditions adopted by the local government under this chapter. In the case of projects intended exclusively for owner occupancy, the minimum requirement of this subsection (1)(a)(ii)(B) may be satisfied solely through housing affordable to moderate-income households.

(b) The exemptions provided in (a)(i) and (ii) of this subsection do not include the value of land or nonhousing-related improvements not qualifying under this chapter.

(2) When a local government adopts guidelines pursuant to RCW 84.14.030(2) and includes conditions that must be satisfied with respect to individual dwelling units, rather than with respect to the multiple-unit housing as a whole or some minimum portion thereof, the exemption may, at the local government's discretion, be limited to the value of the quali-

fying improvements allocable to those dwelling units that meet the local guidelines.

(3) In the case of rehabilitation of existing buildings, the exemption does not include the value of improvements constructed prior to the submission of the application required under this chapter. The incentive provided by this chapter is in addition to any other incentives, tax credits, grants, or other incentives provided by law.

(4) This chapter does not apply to increases in assessed valuation made by the assessor on nonqualifying portions of building and value of land nor to increases made by lawful order of a county board of equalization, the department of revenue, or a county, to a class of property throughout the county or specific area of the county to achieve the uniformity of assessment or appraisal required by law.

(5) At the conclusion of the exemption period, the new or rehabilitated housing cost shall be considered as new construction for the purposes of chapter 84.55 RCW. [2007 c 430 § 4; 2002 c 146 § 2; 1999 c 132 § 1; 1995 c 375 § 5.]

84.14.030 Application—Requirements. An owner of property making application under this chapter must meet the following requirements:

(1) The new or rehabilitated multiple-unit housing must be located in a residential targeted area as designated by the city;

(2) The multiple-unit housing must meet guidelines as adopted by the governing authority that may include height, density, public benefit features, number and size of proposed development, parking, income limits for occupancy, limits on rents or sale prices, and other adopted requirements indicated necessary by the city. The required amenities should be relative to the size of the project and tax benefit to be obtained;

(3) The new, converted, or rehabilitated multiple-unit housing must provide for a minimum of fifty percent of the space for permanent residential occupancy. In the case of existing occupied multifamily development, the multifamily housing must also provide for a minimum of four additional multifamily units. Existing multifamily vacant housing that has been vacant for twelve months or more does not have to provide additional multifamily units;

(4) New construction multifamily housing and rehabilitation improvements must be completed within three years from the date of approval of the application;

(5) Property proposed to be rehabilitated must fail to comply with one or more standards of the applicable state or local building or housing codes on or after July 23, 1995. If the property proposed to be rehabilitated is not vacant, an applicant shall provide each existing tenant housing of comparable size, quality, and price and a reasonable opportunity to relocate; and

(6) The applicant must enter into a contract with the city approved by the governing authority, or an administrative official or commission authorized by the governing authority, under which the applicant has agreed to the implementation of the development on terms and conditions satisfactory to the governing authority. [2007 c 430 § 5; 2005 c 80 § 1; 1997 c 429 § 42; 1995 c 375 § 6.]

Severability—1997 c 429: See note following RCW 36.70A.3201.

84.14.040 Designation of residential targeted area—Criteria—Local designation—Hearing—Standards, guidelines. (1) The following criteria must be met before an area may be designated as a residential targeted area:

(a) The area must be within an urban center, as determined by the governing authority;

(b) The area must lack, as determined by the governing authority, sufficient available, desirable, and convenient residential housing, including affordable housing, to meet the needs of the public who would be likely to live in the urban center, if the affordable, desirable, attractive, and livable places to live were available; and

(c) The providing of additional housing opportunity, including affordable housing, in the area, as determined by the governing authority, will assist in achieving one or more of the stated purposes of this chapter.

(2) For the purpose of designating a residential targeted area or areas, the governing authority may adopt a resolution of intention to so designate an area as generally described in the resolution. The resolution must state the time and place of a hearing to be held by the governing authority to consider the designation of the area and may include such other information pertaining to the designation of the area as the governing authority determines to be appropriate to apprise the public of the action intended.

(3) The governing authority shall give notice of a hearing held under this chapter by publication of the notice once each week for two consecutive weeks, not less than seven days, nor more than thirty days before the date of the hearing in a paper having a general circulation in the city where the proposed residential targeted area is located. The notice must state the time, date, place, and purpose of the hearing and generally identify the area proposed to be designated as a residential targeted area.

(4) Following the hearing, or a continuance of the hearing, the governing authority may designate all or a portion of the area described in the resolution of intent as a residential targeted area if it finds, in its sole discretion, that the criteria in subsections (1) through (3) of this section have been met.

(5) After designation of a residential targeted area, the governing authority must adopt and implement standards and guidelines to be utilized in considering applications and making the determinations required under RCW 84.14.060. The standards and guidelines must establish basic requirements for both new construction and rehabilitation, which must include:

(a) Application process and procedures;

(b) Requirements that address demolition of existing structures and site utilization; and

(c) Building requirements that may include elements addressing parking, height, density, environmental impact, and compatibility with the existing surrounding property and such other amenities as will attract and keep permanent residents and that will properly enhance the livability of the residential targeted area in which they are to be located.

(6) The governing authority may adopt and implement, either as conditions to eight-year exemptions or as conditions to an extended exemption period under *RCW 84.14.020(2), or both, more stringent income eligibility, rent, or sale price limits, including limits that apply to a higher percentage of units, than the minimum conditions for an extended exemp-

tion period under *RCW 84.14.020(2). [2007 c 430 § 6; 1995 c 375 § 7.]

*Reviser's note: The reference to RCW 84.14.020(2) appears to be erroneous. RCW 84.14.020(1)(a)(ii)(B) was apparently intended.

84.14.050 Application—Procedures. An owner of property seeking tax incentives under this chapter must complete the following procedures:

(1) In the case of rehabilitation or where demolition or new construction is required, the owner shall secure from the governing authority or duly authorized representative, before commencement of rehabilitation improvements or new construction, verification of property noncompliance with applicable building and housing codes;

(2) In the case of new and rehabilitated multifamily housing, the owner shall apply to the city on forms adopted by the governing authority. The application must contain the following:

(a) Information setting forth the grounds supporting the requested exemption including information indicated on the application form or in the guidelines;

(b) A description of the project and site plan, including the floor plan of units and other information requested;

(c) A statement that the applicant is aware of the potential tax liability involved when the property ceases to be eligible for the incentive provided under this chapter;

(3) The applicant must verify the application by oath or affirmation; and

(4) The application must be accompanied by the application fee, if any, required under RCW 84.14.080. The governing authority may permit the applicant to revise an application before final action by the governing authority. [2007 c 430 § 7; 1999 c 132 § 2; 1997 c 429 § 43; 1995 c 375 § 8.]

Severability—1997 c 429: See note following RCW 36.70A.3201.

84.14.060 Approval—Required findings. (1) The duly authorized administrative official or committee of the city may approve the application if it finds that:

(a) A minimum of four new units are being constructed or in the case of occupied rehabilitation or conversion a minimum of four additional multifamily units are being developed;

(b) If applicable, the proposed multiunit housing project meets the affordable housing requirements as described in RCW 84.14.020;

(c) The proposed project is or will be, at the time of completion, in conformance with all local plans and regulations that apply at the time the application is approved;

(d) The owner has complied with all standards and guidelines adopted by the city under this chapter; and

(e) The site is located in a residential targeted area of an urban center that has been designated by the governing authority in accordance with procedures and guidelines indicated in RCW 84.14.040.

(2) An application may not be approved after July 1, 2007, if any part of the proposed project site is within a campus facilities master plan. [2007 c 430 § 8; 2007 c 185 § 2; 1995 c 375 § 9.]

Reviser's note: This section was amended by 2007 c 185 § 2 and by 2007 c 430 § 8, each without reference to the other. Both amendments are

incorporated in the publication of this section under RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

Effective date—2007 c 185: See note following RCW 84.14.010.

84.14.090 Filing requirements upon completion—Owner, city—Determination by city—Notice of intention of city not to file—Extension of deadline—Appeal. (1) Upon completion of rehabilitation or new construction for which an application for a limited tax exemption under this chapter has been approved and after issuance of the certificate of occupancy, the owner shall file with the city the following:

(a) A statement of the amount of rehabilitation or construction expenditures made with respect to each housing unit and the composite expenditures made in the rehabilitation or construction of the entire property;

(b) A description of the work that has been completed and a statement that the rehabilitation improvements or new construction on the owner's property qualify the property for limited exemption under this chapter;

(c) If applicable, a statement that the project meets the affordable housing requirements as described in RCW 84.14.020; and

(d) A statement that the work has been completed within three years of the issuance of the conditional certificate of tax exemption.

(2) Within thirty days after receipt of the statements required under subsection (1) of this section, the authorized representative of the city shall determine whether the work completed, and the affordability of the units, is consistent with the application and the contract approved by the city and is qualified for a limited tax exemption under this chapter. The city shall also determine which specific improvements completed meet the requirements and required findings.

(3) If the rehabilitation, conversion, or construction is completed within three years of the date the application for a limited tax exemption is filed under this chapter, or within an authorized extension of this time limit, and the authorized representative of the city determines that improvements were constructed consistent with the application and other applicable requirements, including if applicable, affordable housing requirements, and the owner's property is qualified for a limited tax exemption under this chapter, the city shall file the certificate of tax exemption with the county assessor within ten days of the expiration of the thirty-day period provided under subsection (2) of this section.

(4) The authorized representative of the city shall notify the applicant that a certificate of tax exemption is not going to be filed if the authorized representative determines that:

(a) The rehabilitation or new construction was not completed within three years of the application date, or within any authorized extension of the time limit;

(b) The improvements were not constructed consistent with the application or other applicable requirements;

(c) If applicable, the affordable housing requirements as described in RCW 84.14.020 were not met; or

(d) The owner's property is otherwise not qualified for limited exemption under this chapter.

(5) If the authorized representative of the city finds that construction or rehabilitation of multiple-unit housing was not completed within the required time period due to circum-

stances beyond the control of the owner and that the owner has been acting and could reasonably be expected to act in good faith and with due diligence, the governing authority or the city official authorized by the governing authority may extend the deadline for completion of construction or rehabilitation for a period not to exceed twenty-four consecutive months.

(6) The governing authority may provide by ordinance for an appeal of a decision by the deciding officer or authority that an owner is not entitled to a certificate of tax exemption to the governing authority, a hearing examiner, or other city officer authorized by the governing authority to hear the appeal in accordance with such reasonable procedures and time periods as provided by ordinance of the governing authority. The owner may appeal a decision by the deciding officer or authority that is not subject to local appeal or a decision by the local appeal authority that the owner is not entitled to a certificate of tax exemption in superior court under RCW 34.05.510 through 34.05.598, if the appeal is filed within thirty days of notification by the city to the owner of the decision being challenged. [2007 c 430 § 9; 1995 c 375 § 12.]

84.14.100 Report—Filing. (1) Thirty days after the anniversary of the date of the certificate of tax exemption and each year for the tax exemption period, the owner of the rehabilitated or newly constructed property shall file with a designated authorized representative of the city an annual report indicating the following:

(a) A statement of occupancy and vacancy of the rehabilitated or newly constructed property during the twelve months ending with the anniversary date;

(b) A certification by the owner that the property has not changed use and, if applicable, that the property has been in compliance with the affordable housing requirements as described in RCW 84.14.020 since the date of the certificate approved by the city;

(c) A description of changes or improvements constructed after issuance of the certificate of tax exemption; and

(d) Any additional information requested by the city in regards to the units receiving a tax exemption.

(2) All cities, which issue certificates of tax exemption for multiunit housing that conform to the requirements of this chapter, shall report annually by December 31st of each year, beginning in 2007, to the department of community, trade, and economic development. The report must include the following information:

(a) The number of tax exemption certificates granted;

(b) The total number and type of units produced or to be produced;

(c) The number and type of units produced or to be produced meeting affordable housing requirements;

(d) The actual development cost of each unit produced;

(e) The total monthly rent or total sale amount of each unit produced;

(f) The income of each renter household at the time of initial occupancy and the income of each initial purchaser of owner-occupied

units at the time of purchase for each of the units receiving a tax exemption and a summary of these figures for the city; and

(g) The value of the tax exemption for each project receiving a tax exemption and the total value of tax exemptions granted. [2007 c 430 § 10; 1995 c 375 § 13.]

84.14.110 Cancellation of exemption—Notice by owner of change in use—Additional tax—Penalty—Interest—Lien—Notice of cancellation—Appeal—Correction of tax rolls. (1) If improvements have been exempted under this chapter, the improvements continue to be exempted for the applicable period under RCW 84.14.020, so long as they are not converted to another use and continue to satisfy all applicable conditions. If the owner intends to convert the multifamily development to another use, or if applicable, if the owner intends to discontinue compliance with the affordable housing requirements as described in RCW 84.14.020 or any other condition to exemption, the owner shall notify the assessor within sixty days of the change in use or intended discontinuance. If, after a certificate of tax exemption has been filed with the county assessor, the authorized representative of the governing authority discovers that a portion of the property is changed or will be changed to a use that is other than residential or that housing or amenities no longer meet the requirements, including, if applicable, affordable housing requirements, as previously approved or agreed upon by contract between the city and the owner and that the multifamily housing, or a portion of the housing, no longer qualifies for the exemption, the tax exemption must be canceled and the following must occur:

(a) Additional real property tax must be imposed upon the value of the nonqualifying improvements in the amount that would normally be imposed, plus a penalty must be imposed amounting to twenty percent. This additional tax is calculated based upon the difference between the property tax paid and the property tax that would have been paid if it had included the value of the nonqualifying improvements dated back to the date that the improvements were converted to a nonmultifamily use;

(b) The tax must include interest upon the amounts of the additional tax at the same statutory rate charged on delinquent property taxes from the dates on which the additional tax could have been paid without penalty if the improvements had been assessed at a value without regard to this chapter; and

(c) The additional tax owed together with interest and penalty must become a lien on the land and attach at the time the property or portion of the property is removed from multifamily use or the amenities no longer meet applicable requirements, and has priority to and must be fully paid and satisfied before a recognizance, mortgage, judgment, debt, obligation, or responsibility to or with which the land may become charged or liable. The lien may be foreclosed upon expiration of the same period after delinquency and in the same manner provided by law for foreclosure of liens for delinquent real property taxes. An additional tax unpaid on its due date is delinquent. From the date of delinquency until paid, interest must be charged at the same rate applied by law to delinquent ad valorem property taxes.

(2) Upon a determination that a tax exemption is to be canceled for a reason stated in this section, the governing authority or authorized representative shall notify the record owner of the property as shown by the tax rolls by mail,

return receipt requested, of the determination to cancel the exemption. The owner may appeal the determination to the governing authority or authorized representative, within thirty days by filing a notice of appeal with the clerk of the governing authority, which notice must specify the factual and legal basis on which the determination of cancellation is alleged to be erroneous. The governing authority or a hearing examiner or other official authorized by the governing authority may hear the appeal. At the hearing, all affected parties may be heard and all competent evidence received. After the hearing, the deciding body or officer shall either affirm, modify, or repeal the decision of cancellation of exemption based on the evidence received. An aggrieved party may appeal the decision of the deciding body or officer to the superior court under RCW 34.05.510 through 34.05.598.

(3) Upon determination by the governing authority or authorized representative to terminate an exemption, the county officials having possession of the assessment and tax rolls shall correct the rolls in the manner provided for omitted property under RCW 84.40.080. The county assessor shall make such a valuation of the property and improvements as is necessary to permit the correction of the rolls. The value of the new housing construction, conversion, and rehabilitation improvements added to the rolls shall be considered as new construction for the purposes of chapter 84.55 RCW. The owner may appeal the valuation to the county board of equalization under chapter 84.48 RCW and according to the provisions of RCW 84.40.038. If there has been a failure to comply with this chapter, the property must be listed as an omitted assessment for assessment years beginning January 1 of the calendar year in which the noncompliance first occurred, but the listing as an omitted assessment may not be for a period more than three calendar years preceding the year in which the failure to comply was discovered. [2007 c 430 § 11; 2002 c 146 § 3; 2001 c 185 § 1; 1995 c 375 § 14.]

Application—2001 c 185 §§ 1-12: "Sections 1 through 12 of this act apply for [to] taxes levied in 2001 for collection in 2002 and thereafter." [2001 c 185 § 18.]

Chapter 84.16 RCW

ASSESSMENT AND TAXATION OF PRIVATE CAR COMPANIES

Sections

84.16.036 Default valuation by department of revenue—Penalty—Estoppel.

84.16.036 Default valuation by department of revenue—Penalty—Estoppel. (1) If any company shall fail to comply with the provisions of RCW 84.16.020, the department shall add to the value of such company, as a penalty for such failure, five percent for every thirty days or fraction thereof, not to exceed ten percent, that the company fails to comply.

(2) If any company, or its officer or agent, shall refuse or neglect to make any report required by this chapter, or by the department of revenue, or shall refuse or neglect to permit an inspection and examination of its records, books, accounts, papers or property requested by the department of revenue, or shall refuse or neglect to appear before the department in obe-

dience to a summons, the department shall inform itself the best it may of the matters to be known, in order to discharge its duties with respect to valuation and assessment of the property of such company; and the department shall add to the value so ascertained twenty-five percent as a penalty for the failure or refusal of such company to make its report and such company shall be estopped to question or impeach the assessment of the department of revenue in any hearing or proceeding thereafter. Such penalty shall be in lieu of the penalty provided for in subsection (1) of this section.

(3) The department shall waive or cancel the penalty imposed under subsection (1) of this section for good cause shown.

(4) The department shall waive or cancel the penalty imposed under subsection (1) of this section when the circumstances under which the failure to materially comply with the provisions of RCW 84.16.020 do not qualify for waiver or cancellation under subsection (3) of this section if:

(a) The company fully complies with the reporting provisions of RCW 84.16.020 within thirty days of the due date; and

(b) The company has timely complied with the provisions of RCW 84.16.020 for the previous two calendar years. The requirement that a company has timely complied with the provisions of RCW 84.16.020 for the previous two calendar years is waived for any calendar year in which the company was not required to comply with the provisions of RCW 84.16.020. [2007 c 111 § 202; 1984 c 132 § 3; 1975 1st ex.s. c 278 § 178; 1961 c 15 § 84.16.036. Prior: 1933 c 146 § 6; RRS § 11172-6; prior: 1907 c 36 §§ 5, 6. Formerly RCW 84.16.080.]

Application—2007 c 111 §§ 201 and 202: See note following RCW 84.12.260.

Part headings not law—2007 c 111: See note following RCW 82.16.120.

Construction—Severability—1975 1st ex.s. c 278: See notes following RCW 11.08.160.

Chapter 84.33 RCW

TIMBER AND FOREST LANDS

Sections

84.33.0776	Timber harvest excise tax agreement credit.
84.33.081	Distributions from timber tax distribution account—Distributions from county timber tax account.
84.33.088	Reporting requirements on timber purchase. (<i>Expires July 1, 2010.</i>)
84.33.140	Forest land valuation—Notation of forest land designation upon assessment and tax rolls—Notice of continuance—Removal of designation—Compensating tax.

84.33.0776 Timber harvest excise tax agreement credit. A credit is allowed against the tax imposed under RCW 84.33.041 and 84.33.051 for a tribal tax imposed under an agreement authorized by RCW 43.06.480. [2007 c 69 § 4.]

Findings—Intent—2007 c 69: See note following RCW 43.06.475.

84.33.081 Distributions from timber tax distribution account—Distributions from county timber tax account. (1) On the last business day of the second month of each calendar quarter, the state treasurer shall distribute from the tim-

ber tax distribution account to each county the amount of tax collected on behalf of each county under RCW 84.33.051, less each county's proportionate share of appropriations for collection and administration activities under RCW 84.33.051, and shall transfer to the state general fund the amount of tax collected on behalf of the state under RCW 84.33.041, less the amount of the distribution under subsection (7) of this section and the state's proportionate share of appropriations for collection and administration activities under RCW 84.33.041. The county treasurer shall deposit moneys received under this section in a county timber tax account which shall be established by each county. Following receipt of moneys under this section, the county treasurer shall make distributions from any moneys available in the county timber tax account to taxing districts in the county, except the state, under subsections (2) through (4) of this section.

(2) From moneys available, there first shall be a distribution to each taxing district having debt service payments due during the calendar year, based upon bonds issued under authority of a vote of the people conducted pursuant to RCW 84.52.056 and based upon excess levies for a capital project fund authorized pursuant to RCW 84.52.053, of an amount equal to the timber assessed value of the district multiplied by the tax rate levied for payment of the debt service and capital projects: PROVIDED, That in respect to levies for a debt service or capital project fund authorized before July 1, 1984, the amount allocated shall not be less than an amount equal to the same percentage of such debt service or capital project fund represented by timber tax allocations to such payments in calendar year 1984. Distribution under this subsection (2) shall be used only for debt service and capital projects payments. The distribution under this subsection shall be made as follows: One-half of such amount shall be distributed in the first quarter of the year and one-half shall be distributed in the third quarter of the year.

(3) From the moneys remaining after the distributions under subsection (2) of this section, the county treasurer shall distribute to each school district an amount equal to one-half of the timber assessed value of the district or eighty percent of the timber roll of such district in calendar year 1983 as determined under this chapter, whichever is greater, multiplied by the tax rate, if any, levied by the district under RCW 84.52.052 or 84.52.053 for purposes other than debt service payments and capital projects supported under subsection (2) of this section. The distribution under this subsection shall be made as follows: One-half of such amount shall be distributed in the first quarter of the year and one-half shall be distributed in the third quarter of the year.

(4) After the distributions directed under subsections (2) and (3) of this section, if any, each taxing district shall receive an amount equal to the timber assessed value of the district multiplied by the tax rate, if any, levied as a regular levy of the district or as a special levy not included in subsection (2) or (3) of this section.

(5) If there are insufficient moneys in the county timber tax account to make full distribution under subsection (4) of this section, the county treasurer shall multiply the amount to be distributed to each taxing district under that subsection by a fraction. The numerator of the fraction is the county timber tax account balance before making the distribution under that

subsection. The denominator of the fraction is the account balance which would be required to make full distribution under that subsection.

(6) After making the distributions under subsections (2) through (4) of this section in the full amount indicated for the calendar year, the county treasurer shall place any excess revenue up to twenty percent of the total distributions made for the year under subsections (2) through (4) of this section in a reserve status until the beginning of the next calendar year. Any moneys remaining in the county timber tax account after this amount is placed in reserve shall be distributed to each taxing district in the county in the same proportions as the distributions made under subsection (4) of this section.

(7) On the last business day of the second month of each calendar quarter, the state treasurer shall distribute from the timber tax distribution account to each county an amount of tax collected by the state under RCW 84.33.041 equal to the amount of any tribal tax credited against the county's tax under an agreement entered into under RCW 43.06.480. [2007 c 69 § 5; 1985 c 184 § 1; 1984 c 204 § 9.]

Findings—Intent—2007 c 69: See note following RCW 43.06.475.

Application—1985 c 184 § 1: "Section 1 of this act applies to distributions beginning in 1986, and thereafter." [1985 c 184 § 3.]

Savings—Effective date—1984 c 204: See notes following RCW 84.33.035.

84.33.088 Reporting requirements on timber purchase. (Expires July 1, 2010.) (1) A purchaser of privately owned timber in an amount in excess of two hundred thousand board feet in a voluntary sale made in the ordinary course of business shall, on or before the last day of the month following the purchase of the timber, report the particulars of the purchase to the department as required in subsection (2) of this section.

(2) The report required in subsection (1) of this section must contain all information relevant to the value of the timber purchased including, but not limited to, the following, as applicable: Purchaser's name and address, sale date, termination date in sale agreement, total sale price, total acreage involved in the sale, net volume of timber purchased, legal description of the area involved in the sale, road construction or improvements required or completed, timber cruise data, and timber thinning data. A report may be submitted in any reasonable form or, at the purchaser's option, by submitting relevant excerpts of the timber sales contract. A purchaser may comply by submitting the information in the following form:

Purchaser's name:
 Purchaser's address:
 Sale date:
 Termination date:
 Total sale price:
 Total acreage involved:
 Net volume of timber purchased:
 Legal description of sale area:
 Property improvements:
 Timber cruise data:
 Timber thinning data:

(3) A purchaser of privately owned timber involved in a purchase described in subsection (1) of this section, who fails

to report a purchase as required, may be liable for a penalty of two hundred fifty dollars for each failure to report, as determined by the department.

(4) This section expires July 1, 2010. [2007 c 47 § 1; 2003 c 315 § 1; 2001 c 320 § 16.]

Effective date—2007 c 47: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect July 1, 2007." [2007 c 47 § 2.]

Effective date—2001 c 320: See note following RCW 11.02.005.

84.33.140 Forest land valuation—Notation of forest land designation upon assessment and tax rolls—Notice of continuance—Removal of designation—Compensating tax. (1) When land has been designated as forest land under RCW 84.33.130, a notation of the designation shall be made each year upon the assessment and tax rolls. A copy of the notice of approval together with the legal description or assessor's parcel numbers for the land shall, at the expense of the applicant, be filed by the assessor in the same manner as deeds are recorded.

(2) In preparing the assessment roll as of January 1, 2002, for taxes payable in 2003 and each January 1st thereafter, the assessor shall list each parcel of designated forest land at a value with respect to the grade and class provided in this subsection and adjusted as provided in subsection (3) of this section. The assessor shall compute the assessed value of the land using the same assessment ratio applied generally in computing the assessed value of other property in the county. Values for the several grades of bare forest land shall be as follows:

LAND GRADE	OPERABILITY CLASS	VALUES PER ACRE
	1	\$234
1	2	229
	3	217
	4	157
	1	198
2	2	190
	3	183
	4	132
	1	154
3	2	149
	3	148
	4	113
4	1	117
	2	114
	3	113
4	4	86
	1	85
	2	78
	3	77
5	4	52
	1	43
	2	39
6	2	

	3	39
	4	37
	1	21
7	2	21
	3	20
	4	20
8		1

(3) On or before December 31, 2001, the department shall adjust by rule under chapter 34.05 RCW, the forest land values contained in subsection (2) of this section in accordance with this subsection, and shall certify the adjusted values to the assessor who will use these values in preparing the assessment roll as of January 1, 2002. For the adjustment to be made on or before December 31, 2001, for use in the 2002 assessment year, the department shall:

(a) Divide the aggregate value of all timber harvested within the state between July 1, 1996, and June 30, 2001, by the aggregate harvest volume for the same period, as determined from the harvester excise tax returns filed with the department under RCW 84.33.074; and

(b) Divide the aggregate value of all timber harvested within the state between July 1, 1995, and June 30, 2000, by the aggregate harvest volume for the same period, as determined from the harvester excise tax returns filed with the department under RCW 84.33.074; and

(c) Adjust the forest land values contained in subsection (2) of this section by a percentage equal to one-half of the percentage change in the average values of harvested timber reflected by comparing the resultant values calculated under (a) and (b) of this subsection.

(4) For the adjustments to be made on or before December 31, 2002, and each succeeding year thereafter, the same procedure described in subsection (3) of this section shall be followed using harvester excise tax returns filed under RCW 84.33.074. However, this adjustment shall be made to the prior year's adjusted value, and the five-year periods for calculating average harvested timber values shall be successively one year more recent.

(5) Land graded, assessed, and valued as forest land shall continue to be so graded, assessed, and valued until removal of designation by the assessor upon the occurrence of any of the following:

(a) Receipt of notice from the owner to remove the designation;

(b) Sale or transfer to an ownership making the land exempt from ad valorem taxation;

(c) Sale or transfer of all or a portion of the land to a new owner, unless the new owner has signed a notice of forest land designation continuance, except transfer to an owner who is an heir or devisee of a deceased owner, shall not, by itself, result in removal of designation. The signed notice of continuance shall be attached to the real estate excise tax affidavit provided for in RCW 82.45.150. The notice of continuance shall be on a form prepared by the department. If the notice of continuance is not signed by the new owner and attached to the real estate excise tax affidavit, all compensating taxes calculated under subsection (11) of this section shall become due and payable by the seller or transferor at

time of sale. The auditor shall not accept an instrument of conveyance regarding designated forest land for filing or recording unless the new owner has signed the notice of continuance or the compensating tax has been paid, as evidenced by the real estate excise tax stamp affixed thereto by the transferor. The seller, transferor, or new owner may appeal the new assessed valuation calculated under subsection (11) of this section to the county board of equalization in accordance with the provisions of RCW 84.40.038. Jurisdiction is hereby conferred on the county board of equalization to hear these appeals;

(d) Determination by the assessor, after giving the owner written notice and an opportunity to be heard, that:

(i) The land is no longer primarily devoted to and used for growing and harvesting timber. However, land shall not be removed from designation if a governmental agency, organization, or other recipient identified in subsection (13) or (14) of this section as exempt from the payment of compensating tax has manifested its intent in writing or by other official action to acquire a property interest in the designated forest land by means of a transaction that qualifies for an exemption under subsection (13) or (14) of this section. The governmental agency, organization, or recipient shall annually provide the assessor of the county in which the land is located reasonable evidence in writing of the intent to acquire the designated land as long as the intent continues or within sixty days of a request by the assessor. The assessor may not request this evidence more than once in a calendar year;

(ii) The owner has failed to comply with a final administrative or judicial order with respect to a violation of the restocking, forest management, fire protection, insect and disease control, and forest debris provisions of Title 76 RCW or any applicable rules under Title 76 RCW; or

(iii) Restocking has not occurred to the extent or within the time specified in the application for designation of such land.

(6) Land shall not be removed from designation if there is a governmental restriction that prohibits, in whole or in part, the owner from harvesting timber from the owner's designated forest land. If only a portion of the parcel is impacted by governmental restrictions of this nature, the restrictions cannot be used as a basis to remove the remainder of the forest land from designation under this chapter. For the purposes of this section, "governmental restrictions" includes: (a) Any law, regulation, rule, ordinance, program, or other action adopted or taken by a federal, state, county, city, or other governmental entity; or (b) the land's zoning or its presence within an urban growth area designated under RCW 36.70A.110.

(7) The assessor shall have the option of requiring an owner of forest land to file a timber management plan with the assessor upon the occurrence of one of the following:

(a) An application for designation as forest land is submitted; or

(b) Designated forest land is sold or transferred and a notice of continuance, described in subsection (5)(c) of this section, is signed.

(8) If land is removed from designation because of any of the circumstances listed in subsection (5)(a) through (c) of this section, the removal shall apply only to the land affected. If land is removed from designation because of subsection

(5)(d) of this section, the removal shall apply only to the actual area of land that is no longer primarily devoted to the growing and harvesting of timber, without regard to any other land that may have been included in the application and approved for designation, as long as the remaining designated forest land meets the definition of forest land contained in RCW 84.33.035.

(9) Within thirty days after the removal of designation as forest land, the assessor shall notify the owner in writing, setting forth the reasons for the removal. The seller, transferor, or owner may appeal the removal to the county board of equalization in accordance with the provisions of RCW 84.40.038.

(10) Unless the removal is reversed on appeal a copy of the notice of removal with a notation of the action, if any, upon appeal, together with the legal description or assessor's parcel numbers for the land removed from designation shall, at the expense of the applicant, be filed by the assessor in the same manner as deeds are recorded and a notation of removal from designation shall immediately be made upon the assessment and tax rolls. The assessor shall revalue the land to be removed with reference to its true and fair value as of January 1st of the year of removal from designation. Both the assessed value before and after the removal of designation shall be listed. Taxes based on the value of the land as forest land shall be assessed and payable up until the date of removal and taxes based on the true and fair value of the land shall be assessed and payable from the date of removal from designation.

(11) Except as provided in subsection (5)(c), (13), or (14) of this section, a compensating tax shall be imposed on land removed from designation as forest land. The compensating tax shall be due and payable to the treasurer thirty days after the owner is notified of the amount of this tax. As soon as possible after the land is removed from designation, the assessor shall compute the amount of compensating tax and mail a notice to the owner of the amount of compensating tax owed and the date on which payment of this tax is due. The amount of compensating tax shall be equal to the difference between the amount of tax last levied on the land as designated forest land and an amount equal to the new assessed value of the land multiplied by the dollar rate of the last levy extended against the land, multiplied by a number, in no event greater than nine, equal to the number of years for which the land was designated as forest land, plus compensating taxes on the land at forest land values up until the date of removal and the prorated taxes on the land at true and fair value from the date of removal to the end of the current tax year.

(12) Compensating tax, together with applicable interest thereon, shall become a lien on the land which shall attach at the time the land is removed from designation as forest land and shall have priority to and shall be fully paid and satisfied before any recognizance, mortgage, judgment, debt, obligation, or responsibility to or with which the land may become charged or liable. The lien may be foreclosed upon expiration of the same period after delinquency and in the same manner provided by law for foreclosure of liens for delinquent real property taxes as provided in RCW 84.64.050. Any compensating tax unpaid on its due date shall thereupon become delinquent. From the date of delinquency until paid,

interest shall be charged at the same rate applied by law to delinquent ad valorem property taxes.

(13) The compensating tax specified in subsection (11) of this section shall not be imposed if the removal of designation under subsection (5) of this section resulted solely from:

(a) Transfer to a government entity in exchange for other forest land located within the state of Washington;

(b) A taking through the exercise of the power of eminent domain, or sale or transfer to an entity having the power of eminent domain in anticipation of the exercise of such power;

(c) A donation of fee title, development rights, or the right to harvest timber, to a government agency or organization qualified under RCW 84.34.210 and 64.04.130 for the purposes enumerated in those sections, or the sale or transfer of fee title to a governmental entity or a nonprofit nature conservancy corporation, as defined in RCW 64.04.130, exclusively for the protection and conservation of lands recommended for state natural area preserve purposes by the natural heritage council and natural heritage plan as defined in chapter 79.70 RCW and approved for state natural resources conservation area purposes as defined in chapter 79.71 RCW. At such time as the land is not used for the purposes enumerated, the compensating tax specified in subsection (11) of this section shall be imposed upon the current owner;

(d) The sale or transfer of fee title to the parks and recreation commission for park and recreation purposes;

(e) Official action by an agency of the state of Washington or by the county or city within which the land is located that disallows the present use of the land;

(f) The creation, sale, or transfer of forestry riparian easements under RCW 76.13.120;

(g) The creation, sale, or transfer of a fee interest or a conservation easement for the riparian open space program under RCW 76.09.040; or

(h) The sale or transfer of land within two years after the death of the owner of at least a fifty percent interest in the land if the land has been assessed and valued as classified forest land, designated as forest land under this chapter, or classified under chapter 84.34 RCW continuously since 1993. The date of death shown on a death certificate is the date used for the purposes of this subsection (13)(h).

(14) In a county with a population of more than one million inhabitants, the compensating tax specified in subsection (11) of this section shall not be imposed if the removal of designation as forest land under subsection (5) of this section resulted solely from:

(a) An action described in subsection (13) of this section; or

(b) A transfer of a property interest to a government entity, or to a nonprofit historic preservation corporation or nonprofit nature conservancy corporation, as defined in RCW 64.04.130, to protect or enhance public resources, or to preserve, maintain, improve, restore, limit the future use of, or otherwise to conserve for public use or enjoyment, the property interest being transferred. At such time as the property interest is not used for the purposes enumerated, the compensating tax shall be imposed upon the current owner. [2007 c 54 § 24; 2005 c 303 § 13; 2003 c 170 § 5. Prior: 2001 c 305 § 2; 2001 c 249 § 3; 2001 c 185 § 5; 1999 sp.s. c 4 § 703; 1999 c 233 § 21; 1997 c 299 § 2; 1995 c 330 § 2; 1992 c

69 § 2; 1986 c 238 § 2; 1981 c 148 § 9; 1980 c 134 § 3; 1974 ex.s. c 187 § 7; 1973 1st ex.s. c 195 § 93; 1972 ex.s. c 148 § 6; 1971 ex.s. c 294 § 14.]

Severability—2007 c 54: See note following RCW 82.04.050.

Effective date—2005 c 303 §§ 1-14: See note following RCW 79A.15.010.

Purpose—Intent—2003 c 170: See note following RCW 84.33.130.

Application—2001 c 185 §§ 1-12: See note following RCW 84.14.110.

Part headings not law—1999 sp.s. c 4: See note following RCW 77.85.180.

Effective date—1999 c 233: See note following RCW 4.28.320.

Effective date—1997 c 299: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately [May 9, 1997]." [1997 c 299 § 4.]

Effective date—1995 c 330: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and shall take effect immediately [May 11, 1995]." [1995 c 330 § 3.]

Effective date—1992 c 69: See RCW 84.34.923.

Purpose—Severability—Effective dates—1981 c 148: See notes following RCW 84.33.130.

Severability—1974 ex.s. c 187: See note following RCW 84.33.130.

Severability—Effective dates and termination dates—Construction—1973 1st ex.s. c 195: See notes following RCW 84.52.043.

Chapter 84.34 RCW

OPEN SPACE, AGRICULTURAL, TIMBER LANDS—CURRENT USE—CONSERVATION FUTURES

Sections

- 84.34.055 Open space priorities—Open space plan and public benefit rating system.
84.34.108 Removal of classification—Factors—Notice of continuance—Additional tax—Lien—Delinquencies—Exemptions.

84.34.055 Open space priorities—Open space plan and public benefit rating system. (1)(a) The county legislative authority may direct the county planning commission to set open space priorities and adopt, after a public hearing, an open space plan and public benefit rating system for the county. The plan shall consist of criteria for determining eligibility of lands, the process for establishing a public benefit rating system, and an assessed valuation schedule. The assessed valuation schedule shall be developed by the county assessor and shall be a percentage of market value based upon the public benefit rating system. The open space plan, the public benefit rating system, and the assessed valuations schedule shall not be effective until approved by the county legislative authority after at least one public hearing: PROVIDED, That any county which has complied with the procedural requisites of chapter 393, Laws of 1985, prior to July 28, 1985, need not repeat those procedures in order to adopt an open space plan pursuant to chapter 393, Laws of 1985.

(b) County legislative authorities, in open space plans, public benefit rating systems, and assessed valuation schedules, shall give priority consideration to lands used for buffers that are planted with or primarily contain native vegetation.

(c) "Priority consideration" as used in this section may include, but is not limited to, establishing classification eligi-

bility and maintenance criteria for buffers meeting the requirements of (b) of this subsection.

(d) County legislative authorities shall meet the requirements of (b) of this subsection no later than July 1, 2006, unless buffers already receive priority consideration in the existing open space plans, public benefit rating systems, and assessed valuation schedules.

(2) In adopting an open space plan, recognized sources shall be used unless the county does its own survey of important open space priorities or features, or both. Recognized sources include but are not limited to the natural heritage data base; the state office of historic preservation; the recreation and conservation office inventory of dry accretion beach and shoreline features; state, national, county, or city registers of historic places; the shoreline master program; or studies by the parks and recreation commission and by the departments of fish and wildlife and natural resources. Features and sites may be verified by an outside expert in the field and approved by the appropriate state or local agency to be sent to the county legislative authority for final approval as open space.

(3) When the county open space plan is adopted, owners of open space lands then classified under this chapter shall be notified in the same manner as is provided in RCW 84.40.045 of their new assessed value. These lands may be removed from classification, upon request of owner, without penalty within thirty days of notification of value.

(4) The open space plan and public benefit rating system under this section may be adopted for taxes payable in 1986 and thereafter. [2007 c 241 § 73; 2005 c 310 § 1; 1994 c 264 § 76; 1988 c 36 § 62; 1985 c 393 § 3.]

Intent—Effective date—2007 c 241: See notes following RCW 79A.25.005.

84.34.108 Removal of classification—Factors—Notice of continuance—Additional tax—Lien—Delinquencies—Exemptions. (1) When land has once been classified under this chapter, a notation of the classification shall be made each year upon the assessment and tax rolls and the land shall be valued pursuant to RCW 84.34.060 or 84.34.065 until removal of all or a portion of the classification by the assessor upon occurrence of any of the following:

(a) Receipt of notice from the owner to remove all or a portion of the classification;

(b) Sale or transfer to an ownership, except a transfer that resulted from a default in loan payments made to or secured by a governmental agency that intends to or is required by law or regulation to resell the property for the same use as before, making all or a portion of the land exempt from ad valorem taxation;

(c) Sale or transfer of all or a portion of the land to a new owner, unless the new owner has signed a notice of classification continuance, except transfer to an owner who is an heir or devisee of a deceased owner shall not, by itself, result in removal of classification. The notice of continuance shall be on a form prepared by the department. If the notice of continuance is not signed by the new owner and attached to the real estate excise tax affidavit, all additional taxes calculated pursuant to subsection (4) of this section shall become due and payable by the seller or transferor at time of sale. The auditor shall not accept an instrument of conveyance regarding classified land for filing or recording unless the new owner has

signed the notice of continuance or the additional tax has been paid, as evidenced by the real estate excise tax stamp affixed thereto by the treasurer. The seller, transferor, or new owner may appeal the new assessed valuation calculated under subsection (4) of this section to the county board of equalization in accordance with the provisions of RCW 84.40.038. Jurisdiction is hereby conferred on the county board of equalization to hear these appeals;

(d) Determination by the assessor, after giving the owner written notice and an opportunity to be heard, that all or a portion of the land no longer meets the criteria for classification under this chapter. The criteria for classification pursuant to this chapter continue to apply after classification has been granted.

The granting authority, upon request of an assessor, shall provide reasonable assistance to the assessor in making a determination whether the land continues to meet the qualifications of RCW 84.34.020 (1) or (3). The assistance shall be provided within thirty days of receipt of the request.

(2) Land may not be removed from classification because of:

(a) The creation, sale, or transfer of forestry riparian easements under RCW 76.13.120; or

(b) The creation, sale, or transfer of a fee interest or a conservation easement for the riparian open space program under RCW 76.09.040.

(3) Within thirty days after such removal of all or a portion of the land from current use classification, the assessor shall notify the owner in writing, setting forth the reasons for the removal. The seller, transferor, or owner may appeal the removal to the county board of equalization in accordance with the provisions of RCW 84.40.038.

(4) Unless the removal is reversed on appeal, the assessor shall revalue the affected land with reference to its true and fair value on January 1st of the year of removal from classification. Both the assessed valuation before and after the removal of classification shall be listed and taxes shall be allocated according to that part of the year to which each assessed valuation applies. Except as provided in subsection (6) of this section, an additional tax, applicable interest, and penalty shall be imposed which shall be due and payable to the treasurer thirty days after the owner is notified of the amount of the additional tax. As soon as possible, the assessor shall compute the amount of additional tax, applicable interest, and penalty and the treasurer shall mail notice to the owner of the amount thereof and the date on which payment is due. The amount of the additional tax, applicable interest, and penalty shall be determined as follows:

(a) The amount of additional tax shall be equal to the difference between the property tax paid as "open space land," "farm and agricultural land," or "timber land" and the amount of property tax otherwise due and payable for the seven years last past had the land not been so classified;

(b) The amount of applicable interest shall be equal to the interest upon the amounts of the additional tax paid at the same statutory rate charged on delinquent property taxes from the dates on which the additional tax could have been paid without penalty if the land had been assessed at a value without regard to this chapter;

(c) The amount of the penalty shall be as provided in RCW 84.34.080. The penalty shall not be imposed if the removal satisfies the conditions of RCW 84.34.070.

(5) Additional tax, applicable interest, and penalty, shall become a lien on the land which shall attach at the time the land is removed from classification under this chapter and shall have priority to and shall be fully paid and satisfied before any recognizance, mortgage, judgment, debt, obligation or responsibility to or with which the land may become charged or liable. This lien may be foreclosed upon expiration of the same period after delinquency and in the same manner provided by law for foreclosure of liens for delinquent real property taxes as provided in RCW 84.64.050. Any additional tax unpaid on its due date shall thereupon become delinquent. From the date of delinquency until paid, interest shall be charged at the same rate applied by law to delinquent ad valorem property taxes.

(6) The additional tax, applicable interest, and penalty specified in subsection (4) of this section shall not be imposed if the removal of classification pursuant to subsection (1) of this section resulted solely from:

(a) Transfer to a government entity in exchange for other land located within the state of Washington;

(b)(i) A taking through the exercise of the power of eminent domain, or (ii) sale or transfer to an entity having the power of eminent domain in anticipation of the exercise of such power, said entity having manifested its intent in writing or by other official action;

(c) A natural disaster such as a flood, windstorm, earthquake, or other such calamity rather than by virtue of the act of the landowner changing the use of the property;

(d) Official action by an agency of the state of Washington or by the county or city within which the land is located which disallows the present use of the land;

(e) Transfer of land to a church when the land would qualify for exemption pursuant to RCW 84.36.020;

(f) Acquisition of property interests by state agencies or agencies or organizations qualified under RCW 84.34.210 and 64.04.130 for the purposes enumerated in those sections. At such time as these property interests are not used for the purposes enumerated in RCW 84.34.210 and 64.04.130 the additional tax specified in subsection (4) of this section shall be imposed;

(g) Removal of land classified as farm and agricultural land under RCW 84.34.020(2)(e);

(h) Removal of land from classification after enactment of a statutory exemption that qualifies the land for exemption and receipt of notice from the owner to remove the land from classification;

(i) The creation, sale, or transfer of forestry riparian easements under RCW 76.13.120;

(j) The creation, sale, or transfer of a fee interest or a conservation easement for the riparian open space program under RCW 76.09.040; or

(k) The sale or transfer of land within two years after the death of the owner of at least a fifty percent interest in the land if the land has been assessed and valued as classified forest land, designated as forest land under chapter 84.33 RCW, or classified under this chapter continuously since 1993. The date of death shown on a death certificate is the date used for the purposes of this subsection (6)(k). [2007 c 54 § 25; 2003

c 170 § 6. Prior: 2001 c 305 § 3; 2001 c 249 § 14; 2001 c 185 § 7; prior: 1999 sp.s. c 4 § 706; 1999 c 233 § 22; 1999 c 139 § 2; 1992 c 69 § 12; 1989 c 378 § 35; 1985 c 319 § 1; 1983 c 41 § 1; 1980 c 134 § 5; 1973 1st ex.s. c 212 § 12.]

Severability—2007 c 54: See note following RCW 82.04.050.

Purpose—2003 c 170 § 6: "During the regular session of the 2001 legislature, RCW 84.34.108 was amended by section 7, chapter 185, by section 14, chapter 249, and by section 3, chapter 305, each without reference to the other. The purpose of section 6 of this act is to reenact and amend RCW 84.34.108 so that it reflects all amendments made by the legislature and to clarify any misunderstanding as to how the exemption contained in chapter 305, Laws of 2001 is to be applied." [2003 c 170 § 3.]

Purpose—Intent—2003 c 170: See note following RCW 84.33.130.

Application—2001 c 185 §§ 1-12: See note following RCW 84.14.110.

Part headings not law—1999 sp.s. c 4: See note following RCW 77.85.180.

Effective date—1999 c 233: See note following RCW 4.28.320.

Chapter 84.36 RCW

EXEMPTIONS

Sections

84.36.560	Nonprofit organizations that provide rental housing or used space to very low-income households.
84.36.660	Installation of automatic sprinkler system under RCW 19.27.500 through 19.27.520.
84.36.815	Tax exempt status—Initial application—Renewal.
84.36.820	Renewal notice for exempt property—Failure to file before due date, effect.
84.36.825	Late filing penalty.
84.36.830	Review of applications for exemption—Procedure—Approval or denial—Notice.
84.36.840	Statements—Reports—Information—Filing—Requirements.

84.36.560 Nonprofit organizations that provide rental housing or used space to very low-income households. (1) The real and personal property owned or used by a nonprofit entity in providing rental housing for very low-income households or used to provide space for the placement of a mobile home for a very low-income household within a mobile home park is exempt from taxation if:

(a) The benefit of the exemption inures to the nonprofit entity;

(b) At least seventy-five percent of the occupied dwelling units in the rental housing or lots in a mobile home park are occupied by a very low-income household; and

(c) The rental housing or lots in a mobile home park were insured, financed, or assisted in whole or in part through one or more of the following sources:

(i) A federal or state housing program administered by the department of community, trade, and economic development;

(ii) A federal housing program administered by a city or county government;

(iii) An affordable housing levy authorized under RCW 84.52.105; or

(iv) The surcharges authorized by RCW 36.22.178 and 36.22.179 and any of the surcharges authorized in chapter 43.185C RCW.

(2) If less than seventy-five percent of the occupied dwelling units within the rental housing or lots in the mobile home park are occupied by very low-income households, the rental housing or mobile home park is eligible for a partial

exemption on the real property and a total exemption of the housing's or park's personal property as follows:

(a) A partial exemption shall be allowed for each dwelling unit in the rental housing or for each lot in a mobile home park occupied by a very low-income household.

(b) The amount of exemption shall be calculated by multiplying the assessed value of the property reasonably necessary to provide the rental housing or to operate the mobile home park by a fraction. The numerator of the fraction is the number of dwelling units or lots occupied by very low-income households as of December 31st of the first assessment year in which the rental housing or mobile home park becomes operational or on January 1st of each subsequent assessment year for which the exemption is claimed. The denominator of the fraction is the total number of dwelling units or lots occupied as of December 31st of the first assessment year the rental housing or mobile home park becomes operational and January 1st of each subsequent assessment year for which exemption is claimed.

(3) If a currently exempt rental housing unit in a facility with ten units or fewer or mobile home lot in a mobile home park with ten lots or fewer was occupied by a very low-income household at the time the exemption was granted and the income of the household subsequently rises above fifty percent of the median income but remains at or below eighty percent of the median income, the exemption will continue as long as the housing continues to meet the certification requirements of a very low-income housing program listed in subsection (1) of this section. For purposes of this section, median income, as most recently determined by the federal department of housing and urban development for the county in which the rental housing or mobile home park is located, shall be adjusted for family size. However, if a dwelling unit or a lot becomes vacant and is subsequently rented, the income of the new household must be at or below fifty percent of the median income adjusted for family size as most recently determined by the federal department of housing and urban development for the county in which the rental housing or mobile home park is located to remain exempt from property tax.

(4) If at the time of initial application the property is unoccupied, or subsequent to the initial application the property is unoccupied because of renovations, and the property is not currently being used for the exempt purpose authorized by this section but will be used for the exempt purpose within two assessment years, the property shall be eligible for a property tax exemption for the assessment year in which the claim for exemption is submitted under the following conditions:

(a) A commitment for financing to acquire, construct, renovate, or otherwise convert the property to provide housing for very low-income households has been obtained, in whole or in part, by the nonprofit entity claiming the exemption from one or more of the sources listed in subsection (1)(c) of this section;

(b) The nonprofit entity has manifested its intent in writing to construct, remodel, or otherwise convert the property to housing for very low-income households; and

(c) Only the portion of property that will be used to provide housing or lots for very low-income households shall be exempt under this section.

(5) To be exempt under this section, the property must be used exclusively for the purposes for which the exemption is granted, except as provided in RCW 84.36.805.

(6) The nonprofit entity qualifying for a property tax exemption under this section may agree to make payments to the city, county, or other political subdivision for improvements, services, and facilities furnished by the city, county, or political subdivision for the benefit of the rental housing. However, these payments shall not exceed the amount last levied as the annual tax of the city, county, or political subdivision upon the property prior to exemption.

(7) As used in this section:

(a) "Group home" means a single-family dwelling financed, in whole or in part, by one or more of the sources listed in subsection (1)(c) of this section. The residents of a group home shall not be considered to jointly constitute a household, but each resident shall be considered to be a separate household occupying a separate dwelling unit. The individual incomes of the residents shall not be aggregated for purposes of this exemption;

(b) "Mobile home lot" or "mobile home park" means the same as these terms are defined in RCW 59.20.030;

(c) "Occupied dwelling unit" means a living unit that is occupied by an individual or household as of December 31st of the first assessment year the rental housing becomes operational or is occupied by an individual or household on January 1st of each subsequent assessment year in which the claim for exemption is submitted. If the housing facility is comprised of three or fewer dwelling units and there are any unoccupied units on January 1st, the department shall base the amount of the exemption upon the number of occupied dwelling units as of December 31st of the first assessment year the rental housing becomes operational and on May 1st of each subsequent assessment year in which the claim for exemption is submitted;

(d) "Rental housing" means a residential housing facility or group home that is occupied but not owned by very low-income households;

(e) "Very low-income household" means a single person, family, or unrelated persons living together whose income is at or below fifty percent of the median income adjusted for family size as most recently determined by the federal department of housing and urban development for the county in which the rental housing is located and in effect as of January 1st of the year the application for exemption is submitted; and

(f) "Nonprofit entity" means a:

(i) Nonprofit as defined in RCW 84.36.800 that is exempt from income tax under section 501(c) of the federal internal revenue code;

(ii) Limited partnership where a nonprofit as defined in RCW 84.36.800 that is exempt from income tax under section 501(c) of the federal internal revenue code, a public corporation established under RCW 35.21.660, 35.21.670, or 35.21.730, a housing authority created under RCW 35.82.030 or 35.82.300, or a housing authority meeting the definition in RCW 35.82.210(2)(a) is a general partner; or

(iii) Limited liability company where a nonprofit as defined in RCW 84.36.800 that is exempt from income tax under section 501(c) of the federal internal revenue code, a public corporation established under RCW 35.21.660, 35.21.670, or 35.21.730, a housing authority established

under RCW 35.82.030 or 35.82.300, or a housing authority meeting the definition in RCW 35.82.210(2)(a) is a managing member. [2007 c 301 § 1; 2001 1st sp.s. c 7 § 1; 1999 c 203 § 1.]

Application—1999 c 203: "This act applies to taxes levied in 1999 for collection in 2000 and thereafter." [1999 c 203 § 4.]

84.36.660 Installation of automatic sprinkler system under RCW 19.27.500 through 19.27.520. (1) Prior to installation of an automatic sprinkler system under RCW 19.27.500 through 19.27.520, an owner or lessee of property who meets the requirements of this section may apply to the assessor of the county in which the property is located for a special property tax exemption. This application shall be made upon forms prescribed by the department of revenue and supplied by the county assessor.

(a)(i) If a lessee of the property has paid for all expenses associated with the installation and purchase of the automatic sprinkler system, then the benefit of the exemption must inure to the lessee.

(ii) A lessee, otherwise eligible to receive the benefit of the exemption under this section, is entitled to receive such benefit only to the extent that the lessee maintains a valid lease agreement with the property owner for the property in which the automatic sprinkler system was installed pursuant to RCW 19.27.500.

(b) An exemption may be granted under this section only to the property owner or lessee that pays for all expenses associated with the installation and purchase of the automatic sprinkler system. In no event may both the property owner and the lessee receive an exemption under this section in the same calendar year for the installation and purchase of the same automatic sprinkler system.

(c) After December 31, 2009, no new application for a special tax exemption under this section may be: Made by a property owner or lessee; or accepted by the county assessor.

(2) As used in this chapter, "special property tax exemption" means the determination of the assessed value of the property subtracting, for ten years, the increase in value attributable to the installation of an automatic sprinkler system under RCW 19.27.500 through 19.27.520.

(3) The county assessor shall, for ten consecutive assessment years following the calendar year in which application is made, place a special property tax exemption on property classified as eligible. [2007 c 434 § 3; 2005 c 148 § 4.]

84.36.815 Tax exempt status—Initial application—Renewal. (1) In order to qualify for exempt status for any real or personal property under this chapter except personal property under RCW 84.36.600, all foreign national governments; cemeteries; nongovernmental nonprofit corporations, organizations, and associations; hospitals owned and operated by a public hospital district for purposes of exemption under RCW 84.36.040(2); and soil and water conservation districts shall file an initial application on or before March 31st with the state department of revenue. All applications shall be filed on forms prescribed by the department and shall be signed by an authorized agent of the applicant.

(2) In order to requalify for exempt status, all applicants except nonprofit cemeteries shall file an annual renewal declaration on or before March 31st each year. The renewal dec-

laration shall be on forms prescribed by the department of revenue and shall contain a statement certifying the exempt status of the real or personal property owned by the exempt organization. This renewal declaration may be submitted electronically in a format provided or approved by the department. Information may also be required with the renewal declaration to assist the department in determining whether the property tax exemption should continue.

(3) When an organization acquires real property qualified for exemption or converts real property to exempt status, the organization shall file an initial application for the property within sixty days following the acquisition or conversion in accordance with all applicable provisions of subsection (1) of this section. If the application is filed after the expiration of the sixty-day period, a late filing penalty shall be imposed under RCW 84.36.825.

(4) When organizations acquire real property qualified for exemption or convert real property to an exempt use, the property, upon approval of the application for exemption, is entitled to a property tax exemption for property taxes due and payable the following year. If the owner has paid taxes for the year following the year the property qualified for exemption, the owner is entitled to a refund of the amount paid on the property so acquired or converted. [2007 c 111 § 301; 2001 c 126 § 4; 1998 c 311 § 27; 1994 c 123 § 1; 1991 sp.s. c 29 § 6; 1988 c 131 § 1; 1984 c 220 § 10; 1975 1st ex.s. c 291 § 18; 1973 2nd ex.s. c 40 § 9.]

Part headings not law—2007 c 111: See note following RCW 82.16.120.

Application—2001 c 126: See note following RCW 84.36.040.

Applicability—1994 c 123: "This act shall be effective for taxes levied for collection in 1995 and thereafter." [1994 c 123 § 5.]

Findings, intent—Severability—Application—1991 sp.s. c 29: See notes following RCW 84.04.150.

Effective dates—Severability—1975 1st ex.s. c 291: See notes following RCW 82.04.050.

84.36.820 Renewal notice for exempt property—Failure to file before due date, effect. On or before January 1st of each year, the department of revenue shall notify the owners of record of property exempted from property taxation at their last known address about the obligation to file an annual renewal declaration for continued exemption. When a continued exemption is not approved, the department shall notify the assessor of the county in which the property is located who, in turn, shall remove the tax exemption from the property. The failure to file an annual renewal declaration for continued exemption and subsequent removal of the exemption shall not be subject to review as provided in RCW 84.36.850. The department of revenue shall review applications received after the March 31st due date, but these applications shall be subject to late filing penalties provided in RCW 84.36.825. [2007 c 111 § 302; 1984 c 220 § 11; 1975-'76 2nd ex.s. c 127 § 1; 1973 2nd ex.s. c 40 § 10.]

Part headings not law—2007 c 111: See note following RCW 82.16.120.

84.36.825 Late filing penalty. A late filing penalty of ten dollars per month for each month an application or annual renewal declaration is past due shall be required and shall be deposited in the general fund. [2007 c 111 § 303; 1998 c 311

§ 28; 1994 c 123 § 2; 1977 ex.s. c 209 § 2; 1975-'76 2nd ex.s. c 127 § 2; 1975 1st ex.s. c 291 § 19; 1973 2nd ex.s. c 40 § 11.]

Part headings not law—2007 c 111: See note following RCW 82.16.120.

Applicability—1994 c 123: See note following RCW 84.36.815.

Effective dates—Severability—1975 1st ex.s. c 291: See notes following RCW 82.04.050.

84.36.830 Review of applications for exemption—Procedure—Approval or denial—Notice. (1) The department of revenue shall review each application for exemption and approve or deny the application before August 1st of the assessment year for which the application is made. However, exemption applications received after March 31st shall be reviewed and determination made thereon within thirty days of the date received or by August 1st, whichever is later.

(2) The department may request additional relevant information as it deems necessary. The department may also physically inspect the property and satisfy itself as to the use of all parcels before approving or denying the application. After approving an application, the department may also physically inspect the property at regular intervals to ensure compliance with this chapter.

(3) When the department has examined the application and, if applicable, the subject property, it shall either approve or deny the request and clearly state the reasons for denial in written notification by mail to the applicant. The department shall also notify the assessor of the county in which the property is located. The county assessor shall place the property on the assessment roll for the current year. [2007 c 111 § 304; 1998 c 310 § 1; 1984 c 220 § 12; 1975-'76 2nd ex.s. c 127 § 3; 1973 2nd ex.s. c 40 § 12.]

Part headings not law—2007 c 111: See note following RCW 82.16.120.

Effective date—1998 c 310: "This act takes effect January 1, 1999." [1998 c 310 § 2.]

84.36.840 Statements—Reports—Information—Filing—Requirements. (1) In order to determine whether organizations, associations, corporations, or institutions, except those exempted under RCW 84.36.020 and 84.36.030, are exempt from property taxes, and before the exemption shall be allowed for any year, the superintendent or manager or other proper officer of the organization, association, corporation, or institution claiming exemption from taxation shall file with the department of revenue a statement certifying that the income and the receipts thereof, including donations to it, have been applied to the actual expenses of operating and maintaining it, or for its capital expenditures, and to no other purpose. This report shall also include a statement of the receipts and disbursements of the exempt organization, association, corporation, or institution.

(2) Educational institutions claiming exemption under RCW 84.36.050 shall also file a list of all property claimed to be exempt, the purpose for which it is used, the revenue derived from it for the preceding year, the use to which the revenue was applied, the number of students who attended the school or college, the total revenues of the institution with the source from which they were derived, and the purposes to which the revenues were applied, listing the items of such revenues and expenditures in detail.

(3) The reports required under subsections (1) and (2) of this section may be submitted electronically, in a format provided or approved by the department, or mailed to the department. The reports shall be submitted on or before March 31st of each year. The department shall remove the tax exemption from the property of any organization, association, corporation, or institution that does not file the required report with the department on or before the due date. However, the department shall allow a reasonable extension of time for filing upon receipt of a written request on or before the required filing date and for good cause shown therein. [2007 c 111 § 305; 1973 2nd ex.s. c 40 § 14.]

Part headings not law—2007 c 111: See note following RCW 82.16.120.

Chapter 84.40 RCW LISTING OF PROPERTY

Sections

84.40.030 Basis of valuation, assessment, appraisal—One hundred percent of true and fair value—Exceptions—Leasehold estates—Real property—Appraisal—Comparable sales.

84.40.030 Basis of valuation, assessment, appraisal—One hundred percent of true and fair value—Exceptions—Leasehold estates—Real property—Appraisal—Comparable sales. All property shall be valued at one hundred percent of its true and fair value in money and assessed on the same basis unless specifically provided otherwise by law.

Taxable leasehold estates shall be valued at such price as they would bring at a fair, voluntary sale for cash without any deductions for any indebtedness owed including rentals to be paid.

The true and fair value of real property for taxation purposes (including property upon which there is a coal or other mine, or stone or other quarry) shall be based upon the following criteria:

(1) Any sales of the property being appraised or similar properties with respect to sales made within the past five years. The appraisal shall be consistent with the comprehensive land use plan, development regulations under chapter 36.70A RCW, zoning, and any other governmental policies or practices in effect at the time of appraisal that affect the use of property, as well as physical and environmental influences. An assessment may not be determined by a method that assumes a land usage or highest and best use not permitted, for that property being appraised, under existing zoning or land use planning ordinances or statutes or other government restrictions. The appraisal shall also take into account: (a) In the use of sales by real estate contract as similar sales, the extent, if any, to which the stated selling price has been increased by reason of the down payment, interest rate, or other financing terms; and (b) the extent to which the sale of a similar property actually represents the general effective market demand for property of such type, in the geographical area in which such property is located. Sales involving deed releases or similar seller-developer financing arrangements shall not be used as sales of similar property.

(2) In addition to sales as defined in subsection (1) of this section, consideration may be given to cost, cost less depreci-

ation, reconstruction cost less depreciation, or capitalization of income that would be derived from prudent use of the property, as limited by law or ordinance. Consideration should be given to any agreement, between an owner of rental housing and any government agency, that restricts rental income, appreciation, and liquidity; and to the impact of government restrictions on operating expenses and on ownership rights in general of such housing. In the case of property of a complex nature, or being used under terms of a franchise from a public agency, or operating as a public utility, or property not having a record of sale within five years and not having a significant number of sales of similar property in the general area, the provisions of this subsection shall be the dominant factors in valuation. When provisions of this subsection are relied upon for establishing values the property owner shall be advised upon request of the factors used in arriving at such value.

(3) In valuing any tract or parcel of real property, the true and fair value of the land, exclusive of structures thereon shall be determined; also the true and fair value of structures thereon, but the valuation shall not exceed the true and fair value of the total property as it exists. In valuing agricultural land, growing crops shall be excluded. [2007 c 301 § 2; 2001 c 187 § 17; 1998 c 320 § 9. Prior: 1997 c 429 § 34; 1997 c 134 § 1; 1997 c 3 § 104 (Referendum Bill No. 47, approved November 4, 1997); 1994 c 124 § 20; 1993 c 436 § 1; 1988 c 222 § 14; 1980 c 155 § 2; prior: 1973 1st ex.s. c 195 § 96; 1973 1st ex.s. c 187 § 1; 1972 ex.s. c 125 § 2; 1971 ex.s. c 288 § 1; 1971 ex.s. c 43 § 1; 1961 c 15 § 84.40.030; prior: 1939 c 206 § 15; 1925 ex.s. c 130 § 52; 1919 c 142 § 4; 1913 c 140 § 1; 1897 c 71 § 42; 1893 c 124 § 44; 1891 c 140 § 44; 1890 p 547 § 48; RRS § 11135. FORMER PART OF SECTION: 1939 c 116 § 1, part, now codified in RCW 84.40.220.]

Contingent effective date—2001 c 187: See note following RCW 84.70.010.

Application—2001 c 187: See note following RCW 84.40.020.

Severability—1997 c 429: See note following RCW 36.70A.3201.

Application—1997 c 3: "(1) Sections 101 through 126 of this act apply to taxes levied for collection in 1999 and thereafter.

(2) Sections 201 through 207 of this act apply to taxes levied for collection in 1998 and thereafter." [1997 c 3 § 501 (Referendum Bill No. 47, approved November 4, 1997).]

Severability—1997 c 3: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1997 c 3 § 502 (Referendum Bill No. 47, approved November 4, 1997).]

Part headings not law—1997 c 3: "Part headings used in this act are not any part of the law." [1997 c 3 § 503 (Referendum Bill No. 47, approved November 4, 1997).]

Referral to electorate—1997 c 3: "Except for section 401 of this act, the secretary of state shall submit this act to the people for their adoption and ratification, or rejection, at the next general election to be held in this state, in accordance with Article II, section 1 of the state Constitution and the laws adopted to facilitate its operation." [1997 c 3 § 504.] 1997 c 3 (this act) was adopted and ratified by the people at the November 4, 1997, general election (Referendum Bill No. 47).

Effective date—Applicability—1980 c 155: "This act is necessary for the immediate preservation of the public peace, health, and safety, the support of the state government and its existing public institutions, and shall take effect immediately and shall be effective for assessments made in 1980 and years thereafter." [1980 c 155 § 8.]

Severability—Effective dates and termination dates—Construction—1973 1st ex.s. c 195: See notes following RCW 84.52.043.

Severability—Construction—1973 1st ex.s. c 187: "If any provision of this 1973 amendatory act, or its application to any person or circumstance is held invalid, the remainder of this 1973 amendatory act, or the application of the provision to other persons or circumstances is not affected: PROVIDED, That if the leasehold in lieu excise tax imposed by section 4 of this 1973 amendatory act is held invalid, the entirety of the act, except for section 3 and section 15, shall be null and void." [1973 1st ex.s. c 187 § 13.]

Severability—1972 ex.s. c 125: See note following RCW 84.40.045.

Savings—1971 ex.s. c 288: "The amendment or repeal of any statutes by this 1971 amendatory act shall not be construed as invalidating, abating or otherwise affecting any existing right acquired or any liability or obligation incurred under the provisions of the statutes amended or repealed. Such amendment or repeals shall not affect the right of any person to make a claim for exemption during the calendar year 1971 pursuant to RCW 84.36.128." [1971 ex.s. c 288 § 12.]

Severability—1971 ex.s. c 288: "If any provision of this 1971 amendatory act, or its application to any person or circumstance is held invalid, the remainder of the act, or the application of the provision to other persons or circumstances is not affected." [1971 ex.s. c 288 § 28.]

Severability—1971 ex.s. c 43: "If any provision of this act, or its application to any person or circumstance is held invalid, the remainder of the act, or the application of the provision to other persons or circumstances is not affected." [1971 ex.s. c 43 § 6.]

Chapter 84.52 RCW LEVY OF TAXES

Sections

84.52.010	Taxes levied or voted in specific amounts—Effect of constitutional and statutory limitations.
84.52.053	Levies by school districts authorized—When—Procedure.
84.52.054	Excess levies—Ballot contents—Eventual dollar rate on tax rolls.

84.52.010 Taxes levied or voted in specific amounts—Effect of constitutional and statutory limitations. Except as is permitted under RCW 84.55.050, all taxes shall be levied or voted in specific amounts.

The rate percent of all taxes for state and county purposes, and purposes of taxing districts coextensive with the county, shall be determined, calculated and fixed by the county assessors of the respective counties, within the limitations provided by law, upon the assessed valuation of the property of the county, as shown by the completed tax rolls of the county, and the rate percent of all taxes levied for purposes of taxing districts within any county shall be determined, calculated and fixed by the county assessors of the respective counties, within the limitations provided by law, upon the assessed valuation of the property of the taxing districts respectively.

When a county assessor finds that the aggregate rate of tax levy on any property, that is subject to the limitations set forth in RCW 84.52.043 or 84.52.050, exceeds the limitations provided in either of these sections, the assessor shall recompute and establish a consolidated levy in the following manner:

(1) The full certified rates of tax levy for state, county, county road district, and city or town purposes shall be extended on the tax rolls in amounts not exceeding the limitations established by law; however any state levy shall take precedence over all other levies and shall not be reduced for any purpose other than that required by RCW 84.55.010. If, as a result of the levies imposed under RCW 36.54.130, 84.34.230, 84.52.069, 84.52.105, the portion of the levy by a metropolitan park district that was protected under RCW

84.52.120, 84.52.125, and 84.52.135, the combined rate of regular property tax levies that are subject to the one percent limitation exceeds one percent of the true and fair value of any property, then these levies shall be reduced as follows:

(a) The portion of the levy by a fire protection district that is protected under RCW 84.52.125 shall be reduced until the combined rate no longer exceeds one percent of the true and fair value of any property or shall be eliminated;

(b) If the combined rate of regular property tax levies that are subject to the one percent limitation still exceeds one percent of the true and fair value of any property, the levy imposed by a county under RCW 84.52.135 must be reduced until the combined rate no longer exceeds one percent of the true and fair value of any property or must be eliminated;

(c) If the combined rate of regular property tax levies that are subject to the one percent limitation still exceeds one percent of the true and fair value of any property, the levy imposed by a ferry district under RCW 36.54.130 must be reduced until the combined rate no longer exceeds one percent of the true and fair value of any property or must be eliminated;

(d) If the combined rate of regular property tax levies that are subject to the one percent limitation still exceeds one percent of the true and fair value of any property, the portion of the levy by a metropolitan park district that is protected under RCW 84.52.120 shall be reduced until the combined rate no longer exceeds one percent of the true and fair value of any property or shall be eliminated;

(e) If the combined rate of regular property tax levies that are subject to the one percent limitation still exceeds one percent of the true and fair value of any property, then the levies imposed under RCW 84.34.230, 84.52.105, and any portion of the levy imposed under RCW 84.52.069 that is in excess of thirty cents per thousand dollars of assessed value, shall be reduced on a pro rata basis until the combined rate no longer exceeds one percent of the true and fair value of any property or shall be eliminated; and

(f) If the combined rate of regular property tax levies that are subject to the one percent limitation still exceeds one percent of the true and fair value of any property, then the thirty cents per thousand dollars of assessed value of tax levy imposed under RCW 84.52.069 shall be reduced until the combined rate no longer exceeds one percent of the true and fair value of any property or eliminated.

(2) The certified rates of tax levy subject to these limitations by all junior taxing districts imposing taxes on such property shall be reduced or eliminated as follows to bring the consolidated levy of taxes on such property within the provisions of these limitations:

(a) First, the certified property tax levy rates of those junior taxing districts authorized under RCW 36.68.525, 36.69.145, 35.95A.100, and 67.38.130 shall be reduced on a pro rata basis or eliminated;

(b) Second, if the consolidated tax levy rate still exceeds these limitations, the certified property tax levy rates of flood control zone districts shall be reduced on a pro rata basis or eliminated;

(c) Third, if the consolidated tax levy rate still exceeds these limitations, the certified property tax levy rates of all other junior taxing districts, other than fire protection districts, regional fire protection service authorities, library dis-

tricts, the first fifty cent per thousand dollars of assessed valuation levies for metropolitan park districts, and the first fifty cent per thousand dollars of assessed valuation levies for public hospital districts, shall be reduced on a pro rata basis or eliminated;

(d) Fourth, if the consolidated tax levy rate still exceeds these limitations, the first fifty cent per thousand dollars of assessed valuation levies for metropolitan park districts created on or after January 1, 2002, shall be reduced on a pro rata basis or eliminated;

(e) Fifth, if the consolidated tax levy rate still exceeds these limitations, the certified property tax levy rates authorized to fire protection districts under RCW 52.16.140 and 52.16.160 and regional fire protection service authorities under RCW 52.26.140(1) (b) and (c) shall be reduced on a pro rata basis or eliminated; and

(f) Sixth, if the consolidated tax levy rate still exceeds these limitations, the certified property tax levy rates authorized for fire protection districts under RCW 52.16.130, regional fire protection service authorities under RCW 52.26.140(1)(a), library districts, metropolitan park districts created before January 1, 2002, under their first fifty cent per thousand dollars of assessed valuation levy, and public hospital districts under their first fifty cent per thousand dollars of assessed valuation levy, shall be reduced on a pro rata basis or eliminated. [2007 c 54 § 26; 2005 c 122 § 2. Prior: 2004 c 129 § 21; 2004 c 80 § 3; 2003 c 83 § 310; prior: 2002 c 248 § 15; 2002 c 88 § 7; 1995 2nd sp.s. c 13 § 4; 1995 c 99 § 2; 1994 c 124 § 36; 1993 c 337 § 4; 1990 c 234 § 4; 1988 c 274 § 7; 1987 c 255 § 1; 1973 1st ex.s. c 195 § 101; 1973 1st ex.s. c 195 § 146; 1971 ex.s. c 243 § 6; 1970 ex.s. c 92 § 4; 1961 c 15 § 84.52.010; prior: 1947 c 270 § 1; 1925 ex.s. c 130 § 74; Rem. Supp. 1947 § 11235; prior: 1920 ex.s. c 3 § 1; 1897 c 71 § 62; 1893 c 124 § 63.]

Severability—2007 c 54: See note following RCW 82.04.050.

Application—2005 c 122: See note following RCW 84.52.125.

Captions not law—Severability—2004 c 129: See RCW 52.26.900 and 52.26.901.

Effective date—2004 c 80: See note following RCW 84.52.135.

Findings—Intent—Captions, part headings not law—Severability—Effective date—2003 c 83: See notes following RCW 36.57A.200.

Intent—1995 2nd sp.s. c 13: See note following RCW 84.55.012.

Finding—1993 c 337: See note following RCW 84.52.105.

Purpose—1988 c 274: "The legislature finds that, due to statutory and constitutional limitations, the interdependence of the regular property tax levies of the state, counties, county road districts, cities and towns, and junior taxing districts can cause significant reductions in the otherwise authorized levies of those taxing districts, resulting in serious disruptions to essential services provided by those taxing districts. The purpose of this act is to avoid unnecessary reductions in regular property tax revenue without exceeding existing statutory and constitutional tax limitations on cumulative regular property tax levy rates. The legislature declares that it is a purpose of the state, counties, county road districts, cities and towns, public hospital districts, library districts, fire protection districts, metropolitan park districts, and other taxing districts to participate in the methods provided by this act by which revenue levels supporting the services provided by all taxing districts might be maintained." [1988 c 274 § 1.]

Severability—1988 c 274: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1988 c 274 § 13.]

Severability—Effective dates and termination dates—Construction—1973 1st ex.s. c 195: See notes following RCW 84.52.043.

Severability—1971 ex.s. c 243: See RCW 84.34.920.

Intent—1970 ex.s. c 92: "It is the intent of this 1970 amendatory act to prevent a potential doubling of property taxes that might otherwise result from the enforcement of the constitutionally required fifty percent assessment ratio as of January 1, 1970, and to adjust property tax millage rates for subsequent years to levels which will conform to the requirements of any constitutional amendment imposing a one percent limitation on property taxes. It is the further intent of this 1970 amendatory act that the statutory authority of any taxing district to impose excess levies shall not be impaired by reason of the reduction in millage rates for regular property tax levies. This 1970 amendatory act shall be construed to effectuate the legislative intent expressed in this section." [1970 ex.s. c 92 § 1.]

Effective date—Application—1970 ex.s. c 92: "This act shall take effect July 1, 1970 but shall not affect property taxes levied in 1969 or prior years." [1970 ex.s. c 92 § 11.]

84.52.053 Levies by school districts authorized—When—Procedure. (1) The limitations imposed by RCW 84.52.050 through 84.52.056, and 84.52.043 shall not prevent the levy of taxes by school districts, when authorized so to do by the voters of such school district in the manner and for the purposes and number of years allowable under Article VII, section 2(a) of the Constitution of this state. Elections for such taxes shall be held in the year in which the levy is made or, in the case of propositions authorizing two-year through four-year levies for maintenance and operation support of a school district, authorizing two-year levies for transportation vehicle funds established in RCW 28A.160.130, or authorizing two-year through six-year levies to support the construction, modernization, or remodeling of school facilities, which includes the purposes of RCW 28A.320.330(2)(f), in the year in which the first annual levy is made.

(2) Once additional tax levies have been authorized for maintenance and operation support of a school district for a two-year through four-year period as provided under subsection (1) of this section, no further additional tax levies for maintenance and operation support of the district for that period may be authorized. For the purpose of applying the limitation of this subsection, a two-year through six-year levy to support the construction, modernization, or remodeling of school facilities shall not be deemed to be a tax levy for maintenance and operation support of a school district.

(3) A special election may be called and the time therefor fixed by the board of school directors, by giving notice thereof by publication in the manner provided by law for giving notices of general elections, at which special election the proposition authorizing such excess levy shall be submitted in such form as to enable the voters favoring the proposition to vote "yes" and those opposed thereto to vote "no". [2007 c 129 § 3; 1997 c 260 § 1; 1994 c 116 § 1; 1987 1st ex.s. c 2 § 103; 1986 c 133 § 1; 1977 ex.s. c 325 § 3.]

Intent—2007 c 129: See note following RCW 28A.320.330.

Contingent effective date—1997 c 260: "This act takes effect if the proposed amendment to Article VII, section 2 of the state Constitution authorizing school levies for periods not exceeding four years is validly submitted to and is approved and ratified by the voters at the next general election. If the proposed amendment is not approved and ratified, this act is void in its entirety." [1997 c 260 § 2.] House Joint Resolution No. 4208 was approved and ratified by the voters at the November 4, 1997, general election.

Intent—Severability—Effective date—1987 1st ex.s. c 2: See notes following RCW 84.52.0531.

Contingent effective date—1986 c 133: "This act shall take effect on December 15, 1986, if the proposed amendment to Article VII, section 2 of the state Constitution to change the time periods for school levies, House Joint Resolution No. 55, is validly submitted and is approved and ratified by

the voters at a general election held in November, 1986. If the proposed amendment is not so approved and ratified, this act shall be null and void in its entirety." [1986 c 133 § 3.] 1986 House Joint Resolution No. 55 was approved at the November 1986 general election. See Article VII, section 2 and Amendment 79 of the state Constitution.

Severability—Effective date—1977 ex.s. c 325: See notes following RCW 84.52.052.

School district boundary changes: RCW 84.09.037.

School funds enumerated—Deposits—Uses: RCW 28A.320.330.

84.52.054 Excess levies—Ballot contents—Eventual dollar rate on tax rolls. The additional tax provided for in Article VII, section 2 of the state Constitution, and specifically authorized by RCW 84.52.052, 84.52.053, 84.52.0531, and 84.52.130, shall be set forth in terms of dollars on the ballot of the proposition to be submitted to the voters, together with an estimate of the dollar rate of tax levy that will be required to produce the dollar amount; and the county assessor, in spreading this tax upon the rolls, shall determine the eventual dollar rate required to produce the amount of dollars so voted upon, regardless of the estimate of dollar rate of tax levy carried in said proposition. In the case of a school district or fire protection district proposition for a particular period, the dollar amount and the corresponding estimate of the dollar rate of tax levy shall be set forth for each of the years in that period. The dollar amount for each annual levy in the particular period may be equal or in different amounts. [2007 c 54 § 27; 1986 c 133 § 2; 1977 ex.s. c 325 § 2; 1977 c 4 § 2; 1973 1st ex.s. c 195 § 103; 1961 c 15 § 84.52.054. Prior: 1955 c 105 § 1.]

Severability—2007 c 54: See note following RCW 82.04.050.

Contingent effective date—1986 c 133: See note following RCW 84.52.053.

Severability—Effective date—1977 ex.s. c 325: See notes following RCW 84.52.052.

Severability—1977 c 4: See note following RCW 84.52.052.

Severability—Effective dates and termination dates—Construction—1973 1st ex.s. c 195: See notes following RCW 84.52.043.

Chapter 84.55 RCW

LIMITATIONS UPON REGULAR PROPERTY TAXES

Sections

84.55.012	Repealed.
84.55.0121	Repealed.
84.55.050	Election to authorize increase in regular property tax levy—Limited propositions—Procedure.

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

84.55.0121 Repealed. See Supplementary Table of Disposition of Former RCW Sections, this volume.

84.55.050 Election to authorize increase in regular property tax levy—Limited propositions—Procedure.

(1) Subject to any otherwise applicable statutory dollar rate limitations, regular property taxes may be levied by or for a taxing district in an amount exceeding the limitations provided for in this chapter if such levy is authorized by a proposition approved by a majority of the voters of the taxing dis-

trict voting on the proposition at a general election held within the district or at a special election within the taxing district called by the district for the purpose of submitting such proposition to the voters. Any election held pursuant to this section shall be held not more than twelve months prior to the date on which the proposed levy is to be made, except as provided in subsection (2) of this section. The ballot of the proposition shall state the dollar rate proposed and shall clearly state the conditions, if any, which are applicable under subsection (4) of this section.

(2) Subject to statutory dollar limitations, a proposition placed before the voters under this section may authorize annual increases in levies for multiple consecutive years, up to six consecutive years, during which period each year's authorized maximum legal levy shall be used as the base upon which an increased levy limit for the succeeding year is computed, but the ballot proposition must state the dollar rate proposed only for the first year of the consecutive years and must state the limit factor, or a specified index to be used for determining a limit factor, such as the consumer price index, which need not be the same for all years, by which the regular tax levy for the district may be increased in each of the subsequent consecutive years. Elections for this purpose must be held at a primary or general election. The title of each ballot measure must state the specific purposes for which the proposed annual increases during the specified period of up to six consecutive years shall be used, and funds raised under the levy shall not supplant existing funds used for these purposes. For purposes of this subsection, existing funds means the actual operating expenditures for the calendar year in which the ballot measure is approved by voters. Actual operating expenditures excludes lost federal funds, lost or expired state grants or loans, extraordinary events not likely to reoccur, changes in contract provisions beyond the control of the taxing district receiving the services, and major nonrecurring capital expenditures.

(3) After a levy authorized pursuant to this section is made, the dollar amount of such levy shall be used for the purpose of computing the limitations for subsequent levies provided for in this chapter, except as provided in subsection (5) of this section.

(4) If expressly stated, a proposition placed before the voters under subsection (1) or (2) of this section may:

(a) Limit the period for which the increased levy is to be made;

(b) Limit the purpose for which the increased levy is to be made, but if the limited purpose includes making redemption payments on bonds, the period for which the increased levies are made shall not exceed nine years;

(c) Set the levy at a rate less than the maximum rate allowed for the district; or

(d) Include any combination of the conditions in this subsection.

(5) Except as otherwise provided in an approved ballot measure under this section, after the expiration of a limited period under subsection (4)(a) of this section or the satisfaction of a limited purpose under subsection (4)(b) of this section, whichever comes first, subsequent levies shall be computed as if:

(a) The limited proposition under subsection (4) of this section had not been approved; and

(b) The taxing district had made levies at the maximum rates which would otherwise have been allowed under this chapter during the years levies were made under the limited proposition. [2007 c 380 § 2; 2003 1st sp.s. c 24 § 4; 1989 c 287 § 1; 1986 c 169 § 1; 1979 ex.s. c 218 § 3; 1973 1st ex.s. c 195 § 109; 1971 ex.s. c 288 § 24.]

Finding—Intent—Effective date—Severability—2003 1st sp.s. c 24: See notes following RCW 82.14.450.

Severability—Effective dates and termination dates—Construction—1973 1st ex.s. c 195: See notes following RCW 84.52.043.

Savings—Severability—1971 ex.s. c 288: See notes following RCW 84.40.030.

Chapter 84.56 RCW

COLLECTION OF TAXES

Sections

84.56.010	Establishment of tax rolls by treasurer—Public record—Tax roll account—Authority to receive, collect taxes.
84.56.020	Taxes collected by treasurer—Dates of delinquency—Tax statement notice concerning payment by check—Interest—Penalties.
84.56.070	Personal property—Distraint and sale, notice, property incapable of manual delivery, property about to be removed or disposed of.
84.56.090	Distraint and sale of property about to be removed, dissipated, sold, or disposed of—Computation of taxes, entry on rolls, tax liens.

84.56.010 Establishment of tax rolls by treasurer—Public record—Tax roll account—Authority to receive, collect taxes. On or before the first Monday in January next succeeding the date of levy of taxes the county treasurer shall establish tax rolls of his or her county as certified by the county assessor for such assessment year, and said rolls shall be preserved as a public record in the office of the county treasurer. The amount of said taxes levied and extended upon said rolls shall be charged to the treasurer in an account to be designated as treasurer's "Tax roll account" for and said rolls shall be full and sufficient authority for the county treasurer to receive and collect all taxes therein levied: PROVIDED, That the county treasurer shall in no case collect such taxes or issue receipts for the same or enter payment or satisfaction of such taxes upon said assessment rolls before the county treasurer has completed the tax roll for the current year's collection and provided the notification required by RCW 84.56.020. [2007 c 105 § 1; 1994 c 301 § 50; (1975-'76 2nd ex.s. c 10 § 1 expired December 31, 1976); 1965 ex.s. c 7 § 2; 1961 c 15 § 84.56.010. Prior: 1935 c 30 § 1; 1925 ex.s. c 130 § 82; RRS § 11243; prior: 1890 p 561 § 83.]

84.56.020 Taxes collected by treasurer—Dates of delinquency—Tax statement notice concerning payment by check—Interest—Penalties. (1) The county treasurer shall be the receiver and collector of all taxes extended upon the tax rolls of the county, whether levied for state, county, school, bridge, road, municipal or other purposes, and also of all fines, forfeitures or penalties received by any person or officer for the use of his or her county. No treasurer shall accept tax payments or issue receipts for the same until the treasurer has completed the tax roll for the current year's collection and provided notification of the completion of the roll. Notification may be accomplished electronically, by

posting a notice in the office, or through other written communication as determined by the treasurer. All taxes upon real and personal property made payable by the provisions of this title shall be due and payable to the treasurer on or before the thirtieth day of April and, except as provided in this section, shall be delinquent after that date.

(2) Each tax statement shall include a notice that checks for payment of taxes may be made payable to "Treasurer of County" or other appropriate office, but tax statements shall not include any suggestion that checks may be made payable to the name of the individual holding the office of treasurer nor any other individual.

(3) When the total amount of tax or special assessments on personal property or on any lot, block or tract of real property payable by one person is fifty dollars or more, and if one-half of such tax be paid on or before the thirtieth day of April, the remainder of such tax shall be due and payable on or before the thirty-first day of October following and shall be delinquent after that date.

(4) When the total amount of tax or special assessments on any lot, block or tract of real property or on any mobile home payable by one person is fifty dollars or more, and if one-half of such tax be paid after the thirtieth day of April but before the thirty-first day of October, together with the applicable interest and penalty on the full amount of tax payable for that year, the remainder of such tax shall be due and payable on or before the thirty-first day of October following and shall be delinquent after that date.

(5) Delinquent taxes under this section are subject to interest at the rate of twelve percent per annum computed on a monthly basis on the full year amount of tax unpaid from the date of delinquency until paid. Interest shall be calculated at the rate in effect at the time of payment of the tax, regardless of when the taxes were first delinquent. In addition, delinquent taxes under this section are subject to penalties as follows:

(a) A penalty of three percent of the full year amount of tax unpaid shall be assessed on the tax delinquent on June 1st of the year in which the tax is due.

(b) An additional penalty of eight percent shall be assessed on the amount of tax delinquent on December 1st of the year in which the tax is due.

(6) Subsection (5) of this section notwithstanding, no interest or penalties may be assessed during any period of armed conflict on delinquent taxes imposed on the personal residences owned by active duty military personnel who are participating as part of one of the branches of the military involved in the conflict and assigned to a duty station outside the territorial boundaries of the United States.

(7) For purposes of this chapter, "interest" means both interest and penalties.

(8) All collections of interest on delinquent taxes shall be credited to the county current expense fund; but the cost of foreclosure and sale of real property, and the fees and costs of distraint and sale of personal property, for delinquent taxes, shall, when collected, be credited to the operation and maintenance fund of the county treasurer prosecuting the foreclosure or distraint or sale; and shall be used by the county treasurer as a revolving fund to defray the cost of further foreclosure, distraint and sale for delinquent taxes without regard to budget limitations. [2007 c 105 § 2; 2005 c 502 § 7; 2004 c

161 § 6; 1996 c 153 § 1. Prior: 1991 c 245 § 16; 1991 c 52 § 1; 1988 c 222 § 30; 1987 c 211 § 1; 1984 c 131 § 1; 1981 c 322 § 2; 1974 ex.s. c 196 § 1; 1974 ex.s. c 116 § 1; 1971 ex.s. c 288 § 3; 1969 ex.s. c 216 § 3; 1961 c 15 § 84.56.020; prior: 1949 c 21 § 1; 1935 c 30 § 2; 1931 c 113 § 1; 1925 ex.s. c 130 § 83; Rem. Supp. 1949 § 11244; prior: 1917 c 141 § 1; 1899 c 141 § 6; 1897 c 71 § 68; 1895 c 176 § 14; 1893 c 124 § 69; 1890 p 561 § 84; Code 1881 § 2892. Formerly RCW 84.56.020 and 84.56.030.]

Application—2005 c 502 § 7: "Section 7 of this act applies to all taxes levied for collection in 2005 and thereafter." [2005 c 502 § 10.]

Effective date—2005 c 502: See note following RCW 1.12.070.

Effective date—2004 c 161: See note following RCW 28B.10.270.

Applicability—1996 c 153: "This act is effective for taxes levied for collection in 1997 and thereafter." [1996 c 153 § 4.]

Effective date—1988 c 222: See note following RCW 84.40.040.

Effective date—1987 c 211: "This act shall take effect January 1, 1988." [1987 c 211 § 2.]

Applicability—1984 c 131 § 1: "Section 1 of this act applies to taxes payable in 1985 and thereafter." [1984 c 131 § 12.]

Severability—1974 ex.s. c 196: "If any provision of this act, or its application to any person or circumstance is held invalid, the remainder of the act, or the application of the provision to other persons or circumstances is not affected." [1974 ex.s. c 196 § 9.]

Savings—Severability—1971 ex.s. c 288: See notes following RCW 84.40.030.

Advance deposit of taxes on certain platted property: RCW 58.08.040.

Payment of taxes upon loss of exempt status: RCW 84.40.380.

84.56.070 Personal property—Distraint and sale, notice, property incapable of manual delivery, property about to be removed or disposed of. On the fifteenth day of February succeeding the levy of taxes, the county treasurer shall proceed to collect all personal property taxes. The treasurer shall give notice by mail to all persons charged with personal property taxes, and if such taxes are not paid before they become delinquent, the treasurer shall forthwith proceed to collect the same. In the event that he or she is unable to collect the same when due, the treasurer shall prepare papers in distraint, which shall contain a description of the personal property, the amount of taxes, the amount of the accrued interest at the rate provided by law from the date of delinquency, and the name of the owner or reputed owner. The treasurer shall without demand or notice distraint sufficient goods and chattels belonging to the person charged with such taxes to pay the same, with interest at the rate provided by law from the date of delinquency, together with all accruing costs, and shall proceed to advertise the same by posting written notices in three public places in the county in which such property has been distrained, one of which places shall be at the county court house, such notice to state the time when and place where such property will be sold. The county treasurer, or the treasurer's deputy, shall tax the same fees for making the distraint and sale of goods and chattels for the payment of taxes as are allowed by law to sheriffs for making levy and sale of property on execution; traveling fees to be computed from the county seat of the county to the place of making distraint. If the taxes for which such property is distrained, and the interest and costs accruing thereon, are not paid before the date appointed for such sale, which shall be not less than ten days after the taking of such property, such treasurer or trea-

surer's designee shall proceed to sell such property at public auction, or so much thereof as shall be sufficient to pay such taxes, with interest and costs, and if there be any excess of money arising from the sale of any personal property, the treasurer shall pay such excess less any cost of the auction to the owner of the property so sold or to his or her legal representative: PROVIDED, That whenever it shall become necessary to distraint any standing timber owned separately from the ownership of the land upon which the same may stand, or any fish trap, pound net, reef net, set net or drag seine fishing location, or any other personal property as the treasurer shall determine to be incapable or reasonably impracticable of manual delivery, it shall be deemed to have been distrained and taken into possession when the treasurer shall have, at least thirty days before the date fixed for the sale thereof, filed with the auditor of the county wherein such property is located a notice in writing reciting that the treasurer has distrained such property, describing it, giving the name of the owner or reputed owner, the amount of the tax due, with interest, and the time and place of sale; a copy of the notice shall also be sent to the owner or reputed owner at his last known address, by registered letter at least thirty days prior to the date of sale: AND PROVIDED FURTHER, That if the county treasurer has reasonable grounds to believe that any personal property, including mobile homes, manufactured homes, or park model trailers, upon which taxes have been levied, but not paid, is about to be removed from the county where the same has been assessed, or is about to be destroyed, sold or disposed of, the county treasurer may demand such taxes, without the notice provided for in this section, and if necessary may forthwith distraint sufficient goods and chattels to pay the same. [2007 c 295 § 5; 1991 c 245 § 19; (1975-'76 2nd ex.s. c 10 § 2 expired December 31, 1976); 1961 c 15 § 84.56.070. Prior: 1949 c 21 § 2; 1935 c 30 § 4; 1933 c 33 § 1; 1925 ex.s. c 130 § 86; Rem. Supp. 1949 § 11247; prior: 1915 c 137 § 1; 1911 c 24 § 2; 1899 c 141 § 7; 1897 c 71 § 71; 1895 c 176 § 15; 1893 c 124 § 72; 1890 p 561 § 87; Code 1881 § 2903. Formerly RCW 84.56.070, 84.56.080, and 84.56.100.]

Issuance of warrant: RCW 84.56.075.

84.56.090 Distraint and sale of property about to be removed, dissipated, sold, or disposed of—Computation of taxes, entry on rolls, tax liens. Whenever in the judgment of the assessor or the county treasurer personal property is being removed or is about to be removed without the limits of the state, or is being dissipated or about to be dissipated, or is being or about to be sold, disposed of, or removed from the county so as to jeopardize collection of taxes, the treasurer shall immediately prepare papers in distraint, which shall contain a description of the personal property, including mobile homes, manufactured homes, or park model trailers, being or about to be removed, dissipated, sold, disposed of, or removed from the county so as to jeopardize collection of taxes, the amount of the tax, the amount of accrued interest at the rate provided by law from the date of delinquency, and the name of the owner or reputed owner, and he shall without demand or notice distraint sufficient goods and chattels belonging to the person charged with such taxes to pay the same with interest at the rate provided by law from the date of

delinquency, together with all accruing costs, and shall advertise and sell said property as provided in RCW 84.56.070.

If said personal property is being removed or is about to be removed from the limits of the state, is being dissipated or about to be dissipated, or is being or about to be sold, disposed of, or removed from the county so as to jeopardize collection of taxes, at any time subsequent to the first day of January in any year, and prior to the levy of taxes thereon, the taxes upon such property so distrained shall be computed upon the rate of levy for state, county and local purposes for the preceding year; and all taxes collected in advance of levy under this section and RCW 84.56.120, together with the name of the owner and a brief description of the property assessed shall be entered forthwith by the county treasurer upon the personal property tax rolls of such preceding year, and all collections thereon shall be considered and treated in all respects, and without recourse by either the owner or any taxing unit, as collections for such preceding year. Property on which taxes are thus collected shall thereupon become discharged from the lien of any taxes that may thereafter be levied in the year in which payment or collection is made.

Whenever property has been removed from the county wherein it has been assessed, on which the taxes have not been paid, then the county treasurer, or his deputy, shall have the same power to distrain and sell said property for the satisfaction of said taxes as he would have if said property were situated in the county in which the property was taxed, and in addition thereto said treasurer, or his deputy, in the distraint and sale of property for the payment of taxes, shall have the same powers as are now by law given to the sheriff in making levy and sale of property on execution. [2007 c 295 § 6; 1985 c 83 § 1; 1961 c 15 § 84.56.090. Prior: 1949 c 21 § 3; 1939 c 206 § 43; 1937 c 20 § 1; 1925 ex.s. c 130 § 89; Rem. Supp. 1949 § 11250; prior: 1907 c 29 § 1. Formerly RCW 84.56.090, 84.56.110, 84.56.130, and 84.56.140.]

Issuance of warrant: RCW 84.56.075.

Chapter 84.64 RCW LIEN FORECLOSURE

Sections

84.64.200 Prior taxes deemed delinquent—County as bidder at sale—Purchaser to pay all delinquent taxes, interest, or costs.

84.64.200 Prior taxes deemed delinquent—County as bidder at sale—Purchaser to pay all delinquent taxes, interest, or costs. All lots, tracts and parcels of land upon which taxes levied prior to January 9, 1926 remain due and unpaid at the date when such taxes would have become delinquent as provided in the act under which they were levied shall be deemed to be delinquent under the provisions of this title, and the same proceedings may be had to enforce the payment of such unpaid taxes, with interest and costs, and payment enforced and liens foreclosed under and by virtue of the provisions of this chapter. For the purposes of foreclosure under this chapter, the date of delinquency shall be construed to mean the date when the taxes first became delinquent. At all sales of property for which certificates of delinquency are held by the county, if no other bids are received,

the county shall be considered a bidder for the full area of each tract or lot to the amount of all taxes, interest and costs due thereon, and where no bidder appears, acquire title in trust for the taxing districts as absolutely as if purchased by an individual under the provisions of this chapter; all bidders except the county at sales of property for which certificates of delinquency are held by the county shall pay the full amount of taxes, interest and costs for which judgment is rendered, together with all taxes, interest and costs which are delinquent at the time of sale, regardless of whether the taxes, interest, or costs are included in the judgment. [2007 c 295 § 7; 1981 c 322 § 6; 1961 c 15 § 84.64.200. Prior: 1925 ex.s. c 130 § 129; RRS § 11290; prior: 1901 c 178 § 4; 1899 c 141 § 24; 1897 c 71 § 116; 1893 c 124 § 136.]

Title 85

DIKING AND DRAINAGE

Chapters

- 85.05 Diking districts.**
- 85.06 Drainage districts and miscellaneous drainage provisions.**
- 85.08 Diking, drainage, and sewerage improvement districts.**
- 85.24 Diking and drainage districts in two or more counties.**
- 85.28 Private ditches and drains.**
- 85.38 Special district creation and operation.**

Chapter 85.05 RCW DIKING DISTRICTS

Sections

85.05.410 Commissioners—Compensation and expenses.

85.05.410 Commissioners—Compensation and expenses. Members of the board of diking commissioners of any diking district in this state may receive as compensation the sum of up to ninety dollars for actual attendance at official meetings of the district and for each day or part thereof, or in performance of other official services or duties on behalf of the district and shall receive the same compensation as other labor of a like character for all other necessary work or services performed in connection with their duties: PROVIDED, That such compensation shall not exceed eight thousand six hundred forty dollars in one calendar year, except when the commissioners declare an emergency. Allowance of such compensation shall be established and approved at regular meetings of the board, and when a copy of the extracts of minutes of the board meeting relative thereto showing such approval is certified by the secretary of such board and filed with the county auditor, the allowance made shall be paid as are other claims against the district.

Each commissioner is entitled to reimbursement for reasonable expenses actually incurred in connection with such business, including subsistence and lodging, while away from the commissioner's place of residence, and mileage for use of a privately owned vehicle in accordance with chapter 42.24 RCW.

Any commissioner may waive all or any portion of his or her compensation payable under this section as to any month or months during his or her term of office, by a written waiver filed with the secretary as provided in this section. The waiver, to be effective, must be filed any time after the commissioner's election and prior to the date on which the compensation would otherwise be paid. The waiver shall specify the month or period of months for which it is made.

The dollar thresholds established in this section must be adjusted for inflation by the office of financial management every five years, beginning July 1, 2008, based upon changes in the consumer price index during that time period. "Consumer price index" means, for any calendar year, that year's annual average consumer price index, for Washington state, for wage earners and clerical workers, all items, compiled by the bureau of labor and statistics, United States department of labor. If the bureau of labor and statistics develops more than one consumer price index for areas within the state, the index covering the greatest number of people, covering areas exclusively within the boundaries of the state, and including all items shall be used for the adjustments for inflation in this section. The office of financial management must calculate the new dollar threshold and transmit it to the office of the code reviser for publication in the Washington State Register at least one month before the new dollar threshold is to take effect.

A person holding office as commissioner for two or more special purpose districts shall receive only that per diem compensation authorized for one of his or her commissioner positions as compensation for attending an official meeting or conducting official services or duties while representing more than one of his or her districts. However, such commissioner may receive additional per diem compensation if approved by resolution of all boards of the affected commissions. [2007 c 469 § 8; 1998 c 121 § 8; 1991 c 349 § 20; 1985 c 396 § 39; 1974 ex.s. c 39 § 1; 1951 c 30 § 1; 1909 c 171 § 1; 1895 c 117 § 41; RRS § 4291. Formerly RCW 85.04.400.]

Severability—1985 c 396: See RCW 85.38.900.

Chapter 85.06 RCW

DRAINAGE DISTRICTS AND MISCELLANEOUS DRAINAGE PROVISIONS

Sections

85.06.380 Commissioners—Compensation and expenses.

85.06.380 Commissioners—Compensation and expenses. In performing their duties under the provisions of this title the board and members of the board of drainage commissioners may receive as compensation up to ninety dollars per day or portion thereof spent in actual attendance at official meetings of the district, or in performance of other official services or duties on behalf of the district: PROVIDED, That such compensation shall not exceed eight thousand six hundred forty dollars in one calendar year: PROVIDED FURTHER, That such services and compensation are allowed and approved at a regular meeting of the board. Upon the submission of a copy, certified by the secretary, of the extracts of the relevant minutes of the board showing such approval, to the county auditor, the same shall be paid as

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other claims against the district are paid. Each commissioner is entitled to reimbursement for reasonable expenses actually incurred in connection with such business, including subsistence and lodging, while away from the commissioner's place of residence and mileage for use of a privately-owned vehicle in accordance with chapter 42.24 RCW.

Any commissioner may waive all or any portion of his or her compensation payable under this section as to any month or months during his or her term of office, by a written waiver filed with the secretary as provided in this section. The waiver, to be effective, must be filed any time after the commissioner's election and prior to the date on which the compensation would otherwise be paid. The waiver shall specify the month or period of months for which it is made.

The dollar thresholds established in this section must be adjusted for inflation by the office of financial management every five years, beginning July 1, 2008, based upon changes in the consumer price index during that time period. "Consumer price index" means, for any calendar year, that year's annual average consumer price index, for Washington state, for wage earners and clerical workers, all items, compiled by the bureau of labor and statistics, United States department of labor. If the bureau of labor and statistics develops more than one consumer price index for areas within the state, the index covering the greatest number of people, covering areas exclusively within the boundaries of the state, and including all items shall be used for the adjustments for inflation in this section. The office of financial management must calculate the new dollar threshold and transmit it to the office of the code reviser for publication in the Washington State Register at least one month before the new dollar threshold is to take effect.

A person holding office as commissioner for two or more special purpose districts shall receive only that per diem compensation authorized for one of his or her commissioner positions as compensation for attending an official meeting or conducting official services or duties while representing more than one of his or her districts. However, such commissioner may receive additional per diem compensation if approved by resolution of all boards of the affected commissions. [2007 c 469 § 9; 1998 c 121 § 9; 1991 c 349 § 21; 1985 c 396 § 43; 1980 c 23 § 2; 1959 c 209 § 1; 1947 c 76 § 1; 1907 c 62 § 1; 1895 c 115 § 38; RRS § 4338. Formerly RCW 85.04.600.]

Severability—1985 c 396: See RCW 85.38.900.

Chapter 85.08 RCW

DIKING, DRAINAGE, AND SEWERAGE IMPROVEMENT DISTRICTS

Sections

85.08.320 Compensation and expenses of officers and employees—Costs paid by voucher, payroll, or warrant.

85.08.320 Compensation and expenses of officers and employees—Costs paid by voucher, payroll, or warrant. The compensation of the superintendent of construction, the board of appraisers hereinafter provided for, and any special engineer, attorney or agent employed by the district in connection with the improvement, the maximum wages to be paid, and the maximum price of materials to be used, shall be

fixed by the district board of supervisors. Members of the board of supervisors may receive compensation up to ninety dollars per day or portion thereof spent in actual attendance at official meetings of the district, or in performance of other official services or duties on behalf of the district: PROVIDED, That such compensation shall not exceed eight thousand six hundred forty dollars in one calendar year. Each supervisor shall be entitled to reimbursement for reasonable expenses actually incurred in connection with business, including subsistence and lodging while away from the supervisor's place of residence and mileage for use of a privately owned vehicle in accordance with chapter 42.24 RCW. All costs of construction or maintenance done under the direction of the board of supervisors shall be paid upon vouchers or payrolls verified by two of the said supervisors. All costs of construction and all other expenses, fees and charges on account of such improvement shall be paid by warrants drawn by the county auditor upon the county treasurer upon the proper fund, and shall draw interest at a rate determined by the county legislative authority until paid or called by the county treasurer as warrants of the county are called.

Any supervisor may waive all or any portion of his or her compensation payable under this section as to any month or months during his or her term of office, by a written waiver filed with the secretary as provided in this section. The waiver, to be effective, must be filed any time after the supervisor's election and prior to the date on which the compensation would otherwise be paid. The waiver shall specify the month or period of months for which it is made.

The dollar thresholds established in this section must be adjusted for inflation by the office of financial management every five years, beginning July 1, 2008, based upon changes in the consumer price index during that time period. "Consumer price index" means, for any calendar year, that year's annual average consumer price index, for Washington state, for wage earners and clerical workers, all items, compiled by the bureau of labor and statistics, United States department of labor. If the bureau of labor and statistics develops more than one consumer price index for areas within the state, the index covering the greatest number of people, covering areas exclusively within the boundaries of the state, and including all items shall be used for the adjustments for inflation in this section. The office of financial management must calculate the new dollar threshold and transmit it to the office of the code reviser for publication in the Washington State Register at least one month before the new dollar threshold is to take effect.

A person holding office as commissioner for two or more special purpose districts shall receive only that per diem compensation authorized for one of his or her commissioner positions as compensation for attending an official meeting or conducting official services or duties while representing more than one of his or her districts. However, such commissioner may receive additional per diem compensation if approved by resolution of all boards of the affected commissions. [2007 c 469 § 10; 1998 c 121 § 10; 1991 c 349 § 22; 1986 c 278 § 32; 1985 c 396 § 46; 1981 c 156 § 23; 1917 c 130 § 28; 1913 c 176 § 23; RRS § 4428. Formerly RCW 85.08.320 and 85.08.330.]

Severability—1986 c 278: See note following RCW 36.01.010.

Severability—1985 c 396: See RCW 85.38.900.

Chapter 85.24 RCW

DIKING AND DRAINAGE DISTRICTS IN TWO OR MORE COUNTIES

Sections

85.24.080 Board of commissioners—Compensation and expenses.

85.24.080 Board of commissioners—Compensation and expenses. The members of the board may receive as compensation up to ninety dollars per day or portion thereof spent in actual attendance at official meetings of the district, or in performance of other official services or duties on behalf of the district: PROVIDED, That such compensation shall not exceed eight thousand six hundred forty dollars in one calendar year: PROVIDED FURTHER, That the board may fix a different salary for the secretary thereof in lieu of the per diem. Each commissioner is entitled to reimbursement for reasonable expenses actually incurred in connection with such business, including subsistence and lodging, while away from the commissioner's place of residence, and mileage for use of a privately owned vehicle in accordance with chapter 42.24 RCW. The salary and expenses shall be paid by the treasurer of the fund, upon orders made by the board. Each member of the board must before being paid for expenses, take vouchers therefore from the person or persons to whom the particular amount was paid, and must also make affidavit that the amounts were necessarily incurred and expended in the performance of his or her duties.

Any commissioner may waive all or any portion of his or her compensation payable under this section as to any month or months during his or her term of office, by a written waiver filed with the secretary as provided in this section. The waiver, to be effective, must be filed any time after the commissioner's election and prior to the date on which the compensation would otherwise be paid. The waiver shall specify the month or period of months for which it is made.

The dollar thresholds established in this section must be adjusted for inflation by the office of financial management every five years, beginning July 1, 2008, based upon changes in the consumer price index during that time period. "Consumer price index" means, for any calendar year, that year's annual average consumer price index, for Washington state, for wage earners and clerical workers, all items, compiled by the bureau of labor and statistics, United States department of labor. If the bureau of labor and statistics develops more than one consumer price index for areas within the state, the index covering the greatest number of people, covering areas exclusively within the boundaries of the state, and including all items shall be used for the adjustments for inflation in this section. The office of financial management must calculate the new dollar threshold and transmit it to the office of the code reviser for publication in the Washington State Register at least one month before the new dollar threshold is to take effect.

A person holding office as commissioner for two or more special purpose districts shall receive only that per diem compensation authorized for one of his or her commissioner positions as compensation for attending an official meeting or conducting official services or duties while representing

more than one of his or her districts. However, such commissioner may receive additional per diem compensation if approved by resolution of all boards of the affected commissions. [2007 c 469 § 11; 1998 c 121 § 11; 1991 c 349 § 23; 1985 c 396 § 54; 1909 c 225 § 33; RRS § 4393.]

Severability—1985 c 396: See RCW 85.38.900.

Chapter 85.28 RCW

PRIVATE DITCHES AND DRAINS

Sections

- 85.28.130 Drainage of tide or marsh lands—Division of cost between contiguous tracts.
85.28.140 Dike or ditch as common boundary—Division of costs.

85.28.130 Drainage of tide or marsh lands—Division of cost between contiguous tracts. Persons owning or desiring to improve contiguous tracts of tide marsh or swampy lands exposed to the overflow of the tide and capable of being made dry, may separate their respective tracts by a dike or ditch, which shall make and designate their common boundary. In all such cases said dike or ditch shall be constructed at the equal cost and expense of the respective parties, and either party failing to pay his or her contributive share of such expense shall be liable to the party constructing the dike or ditch for such contributive share, or so much thereof as may remain due and unpaid, to be recovered in a civil action in a court of competent jurisdiction and the party constructing such dike shall also be entitled to a lien upon the tract of the party failing to pay his or her contributive share for the construction of said dike, or so much thereof as shall be due, which lien shall be secured and enforced as liens of material suppliers and mechanics are now by law enforced. [2007 c 218 § 95; Code 1881 § 2517; No RRS. Prior: 1877 p 258 § 1.]

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

85.28.140 Dike or ditch as common boundary—Division of costs. Any person or persons who may hereafter take a tract of tide land or marsh and shall desire to adopt as his or her boundary line any dike or ditch heretofore constructed upon and entirely within the boundary line of a neighboring contiguous tract he or she may join on to said tract and adopt said dike as his or her boundary by paying to the owner of the tract upon which said dike is constructed one-half of the cost and expense of the construction thereof, and any person so adopting the dike or ditch of another without contributing his or her half share of the cost or expense thereof shall be liable for his or her said half share, which may be recovered in a civil action in any court of competent jurisdiction, or the owner of the dike or ditch so used may secure a lien upon the tract of land bounded by said dike for the amount due for the use of said dike in accordance with the provisions of the law securing a lien to material suppliers and mechanics: PROVIDED ALWAYS, That when such dike has become the common boundary of two adjacent tracts, it shall be and remain the common boundary and the persons owning the said tracts shall be mutually liable for the expense of keeping it in repair, share and share alike. [2007 c 218 § 96; Code 1881 § 2518; No RRS. Prior: 1877 p 258 § 2.]

[2007 RCW Supp—page 1156]

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

Chapter 85.38 RCW

SPECIAL DISTRICT CREATION AND OPERATION

Sections

- 85.38.075 Governing body—Compensation and expenses.

85.38.075 Governing body—Compensation and expenses. The members of the governing body may each receive up to ninety dollars per day or portion thereof spent in actual attendance at official meetings of the governing body or in performance of other official services or duties on behalf of the district. The governing body shall fix the compensation to be paid to the members, secretary, and all other agents and employees of the district. Compensation for the members shall not exceed eight thousand six hundred forty dollars in one calendar year. A member is entitled to reimbursement for reasonable expenses actually incurred in connection with such business, including subsistence and lodging, while away from the member's place of residence, and mileage for use of a privately owned vehicle in accordance with chapter 42.24 RCW.

Any member may waive all or any portion of his or her compensation payable under this section as to any month or months during his or her term of office, by a written waiver filed with the secretary as provided in this section. The waiver, to be effective, must be filed any time after the member's election and prior to the date on which the compensation would otherwise be paid. The waiver shall specify the month or period of months for which it is made.

The dollar thresholds established in this section must be adjusted for inflation by the office of financial management every five years, beginning July 1, 2008, based upon changes in the consumer price index during that time period. "Consumer price index" means, for any calendar year, that year's annual average consumer price index, for Washington state, for wage earners and clerical workers, all items, compiled by the bureau of labor and statistics, United States department of labor. If the bureau of labor and statistics develops more than one consumer price index for areas within the state, the index covering the greatest number of people, covering areas exclusively within the boundaries of the state, and including all items shall be used for the adjustments for inflation in this section. The office of financial management must calculate the new dollar threshold and transmit it to the office of the code reviser for publication in the Washington State Register at least one month before the new dollar threshold is to take effect.

A person holding office as commissioner for two or more special purpose districts shall receive only that per diem compensation authorized for one of his or her commissioner positions as compensation for attending an official meeting or conducting official services or duties while representing more than one of his or her districts. However, such commissioner may receive additional per diem compensation if approved by resolution of all boards of the affected commissions. [2007 c 469 § 15; 1998 c 121 § 12.]

Title 86
FLOOD CONTROL

Chapters**86.09 Flood control districts—1937 act.****Chapter 86.09 RCW****FLOOD CONTROL DISTRICTS—1937 ACT**

Sections

86.09.283 Board of directors—Compensation and expenses of members and employees.

86.09.283 Board of directors—Compensation and expenses of members and employees. The board of directors may each receive up to ninety dollars per day or portion thereof spent in actual attendance at official meetings of the board, or in performance of other official services or duties on behalf of the board. The board shall fix the compensation to be paid to the directors, secretary, and all other agents and employees of the district. Compensation for the directors shall not exceed eight thousand six hundred forty dollars in one calendar year. A director is entitled to reimbursement for reasonable expenses actually incurred in connection with such business, including subsistence and lodging, while away from the director's place of residence, and mileage for use of a privately owned vehicle in accordance with chapter 42.24 RCW.

Any director may waive all or any portion of his or her compensation payable under this section as to any month or months during his or her term of office, by a written waiver filed with the secretary as provided in this section. The waiver, to be effective, must be filed any time after the director's election and prior to the date on which the compensation would otherwise be paid. The waiver shall specify the month or period of months for which it is made.

The dollar thresholds established in this section must be adjusted for inflation by the office of financial management every five years, beginning July 1, 2008, based upon changes in the consumer price index during that time period. "Consumer price index" means, for any calendar year, that year's annual average consumer price index, for Washington state, for wage earners and clerical workers, all items, compiled by the bureau of labor and statistics, United States department of labor. If the bureau of labor and statistics develops more than one consumer price index for areas within the state, the index covering the greatest number of people, covering areas exclusively within the boundaries of the state, and including all items shall be used for the adjustments for inflation in this section. The office of financial management must calculate the new dollar threshold and transmit it to the office of the code reviser for publication in the Washington State Register at least one month before the new dollar threshold is to take effect.

A person holding office as commissioner for two or more special purpose districts shall receive only that per diem compensation authorized for one of his or her commissioner positions as compensation for attending an official meeting or conducting official services or duties while representing more than one of his or her districts. However, such commis-

sioner may receive additional per diem compensation if approved by resolution of all boards of the affected commissions. [2007 c 469 § 12; 1998 c 121 § 13; 1991 c 349 § 24; 1985 c 396 § 61; 1965 c 26 § 8; 1937 c 72 § 95; RRS § 9663E-95. Formerly RCW 86.08.175, part, and 86.08.195, part.]

Severability—1985 c 396: See RCW 85.38.900.

Title 87
IRRIGATION

Chapters**87.03 Irrigation districts generally.****87.06 Delinquent assessments.****87.84 Irrigation and rehabilitation districts.****Chapter 87.03 RCW****IRRIGATION DISTRICTS GENERALLY**

Sections

87.03.020 Organization of district—Petition—Bond—Notice—Hearing—Order—Notice of election.

87.03.460 Compensation and expenses of directors, officers, employees.

87.03.020 Organization of district—Petition—Bond—Notice—Hearing—Order—Notice of election.

For the purpose of organizing an irrigation district, a petition, signed by the required number of holders of title or evidence of title to land within the proposed district, shall be presented to the board of county commissioners of the county in which the lands, or the greater portion thereof, are situated, which petition shall contain the following:

(1) A description of the lands to be included in the operation of the district, in legal subdivisions or fractions thereof, and the name of the county or counties in which said lands are situated.

(2) The signature and post office address of each petitioner, together with the legal description of the particular lands within the proposed district owned by said respective petitioners.

(3) A general statement of the probable source or sources of water supply and a brief outline of the plan of improvement, which may be in the alternative, contemplated by the organization of the district.

(4) A statement of the number of directors, either three or five, desired for the administration of the district and of the name by which the petitioners desire the district to be designated.

(5) Any other matter deemed material.

(6) A prayer requesting the board to take the steps necessary to organize the district.

The petition must be accompanied by a good and sufficient bond, to be approved by the board of county commissioners, in double the amount of the probable cost of organizing the district, and conditioned that the bondspersons will pay all of the cost in case such organization shall not be effected. Said petition shall be presented at a regular meeting of the said board, or at any special meeting ordered to consider and act upon said petition, and shall be published once a week, for at least two weeks (three issues) before the time

at which the same is to be presented, in some newspaper of general circulation printed and published in the county where said petition is to be presented, together with a notice signed by the clerk of the board of county commissioners stating the time of the meeting at which the same will be presented. There shall also be published a notice of the hearing on said petition in a newspaper published at Olympia, Washington, to be designated by the director of ecology from year to year, which said notice shall be published for at least two weeks (three issues) prior to the date of said meeting and shall contain the name of the county or counties and the number of each township and range in which the lands embraced within the boundaries of the proposed district are situated, also the time, place and purpose for said meeting, which said notice shall be signed by the petitioner whose name first appears upon the said petition. If any portion of the lands within said proposed district lie within another county or counties, then the said petition and notice shall be published for the time above provided in one newspaper printed and published in each of said counties. The said notice, together with a map of the district, shall also be served by registered mail at least thirty days before the said hearing upon the state director of ecology at Olympia, Washington, who shall, at the expense of the district in case it is later organized, otherwise at the expense of the petitioners' bondspersons, make such investigation of the sufficiency of the source and supply of water for the purposes of the proposed district, as he or she may deem necessary, and file a report of his or her findings, together with a statement of his or her costs, with the board of county commissioners at or prior to the time set for said hearing. When the petition is presented, the board of county commissioners shall hear the same, shall receive such evidence as it may deem material, and may adjourn such hearing from time to time, not exceeding four weeks in all, and on the final hearing shall establish and define the boundaries of the district along such lines as in the judgment of the board will best reclaim the lands involved and enter an order to that effect: PROVIDED, That said board shall not modify the boundaries so as to except from the operation of the district any territory within the boundaries outlined in the petition, which is susceptible of irrigation by the same system of works applicable to other lands in such proposed district and for which a water supply is available; nor shall any lands which, in the judgment of said board, will not be benefited, be included within such district; any lands included within any district, which have a partial or full water right shall be given equitable credit therefor in the apportionment of the assessments in this act provided for: AND PROVIDED FURTHER, That any owner, whose lands are susceptible of irrigation from the same source, and in the judgment of the board it is practicable to irrigate the same by the proposed district system, shall, upon application to the board at the time of the hearing, be entitled to have such lands included in the district.

At said hearing the board shall also give the district a name and shall order that an election be held therein for the purpose of determining whether or not the district shall be organized under the provisions of this act and for the purpose of electing directors.

The clerk of the board of county commissioners shall then give notice of the election ordered to be held as aforesaid, which notice shall describe the district boundaries as established, and shall give the name by which said proposed district has been designated, and shall state the purposes and objects of said election, and shall be published once a week, for at least two weeks (three issues) prior to said election, in a newspaper of general circulation published in the county where the petition aforesaid was presented; and if any portion of said proposed district lies within another county or counties, then said notice shall be published in like manner in a newspaper within each of said counties. Said election notice shall also require the electors to cast ballots which shall contain the words "Irrigation District—Yes," and "Irrigation District—No," and also the names of persons to be voted for as directors of the district: PROVIDED, That where in this act publication is required to be made in a newspaper of any county, the same may be made in a newspaper of general circulation in such county, selected by the person or body charged with making the publication and such newspaper shall be the official paper for such purpose. [2007 c 218 § 79; 1988 c 127 § 40; 1923 c 138 § 3; 1921 c 129 § 1; 1919 c 180 § 1; 1915 c 179 § 2; 1913 c 165 § 1; 1895 c 165 § 2; 1889-90 p 671 § 2; RRS § 7418. Formerly RCW 87.01.020, part, 87.01.030, 87.01.040, and 87.01.050.]

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

87.03.460 Compensation and expenses of directors, officers, employees. In addition to their reasonable expenses in accordance with chapter 42.24 RCW, the directors shall each receive an amount for attending meetings and while performing other services for the district. The amount shall be fixed by resolution and entered in the minutes of the proceedings of the board. It shall not exceed ninety dollars for each day or portion thereof spent by a director for such actual attendance at official meetings of the district, or in performance of other official services or duties on behalf of the district. The total amount of such additional compensation received by a director may not exceed eight thousand six hundred forty dollars in a calendar year. The board shall fix the compensation of the secretary and all other employees.

Any director may waive all or any portion of his or her compensation payable under this section as to any month or months during his or her term of office, by a written waiver filed with the secretary as provided in this section. The waiver, to be effective, must be filed any time after the director's election and prior to the date on which the compensation would otherwise be paid. The waiver shall specify the month or period of months for which it is made.

The dollar thresholds established in this section must be adjusted for inflation by the office of financial management every five years, beginning July 1, 2008, based upon changes in the consumer price index during that time period. "Consumer price index" means, for any calendar year, that year's annual average consumer price index, for Washington state, for wage earners and clerical workers, all items, compiled by the bureau of labor and statistics, United States department of labor. If the bureau of labor and statistics develops more than one consumer price index for areas within the state, the index covering the greatest number of people, covering areas exclu-

sively within the boundaries of the state, and including all items shall be used for the adjustments for inflation in this section. The office of financial management must calculate the new dollar threshold and transmit it to the office of the code reviser for publication in the Washington State Register at least one month before the new dollar threshold is to take effect.

A person holding office as commissioner for two or more special purpose districts shall receive only that per diem compensation authorized for one of his or her commissioner positions as compensation for attending an official meeting or conducting official services or duties while representing more than one of his or her districts. However, such commissioner may receive additional per diem compensation if approved by resolution of all boards of the affected commissions. [2007 c 469 § 13; 1998 c 121 § 14; 1990 c 38 § 1; 1984 c 168 § 4; 1980 c 23 § 1; 1979 c 83 § 3; 1975 1st ex.s. c 163 § 2; 1965 c 16 § 1; 1951 c 189 § 1; 1919 c 180 § 14; 1917 c 162 § 8; 1895 c 165 § 23; 1889-90 p 692 § 39; RRS § 7456. Formerly RCW 87.08.100.]

**Chapter 87.06 RCW
DELINQUENT ASSESSMENTS**

Sections

87.06.080 Notice of foreclosure sale—Conduct of sale—Remittal of excess moneys.

87.06.080 Notice of foreclosure sale—Conduct of sale—Remittal of excess moneys. (1) The treasurer shall post notice of the foreclosure sale, at least ten days before the sale, at the following locations: At the courthouse of the county in which the property is located, at the district office, and at a public place in the district. The treasurer shall also publish, at least once and not fewer than ten days before the sale, the notice in any daily or weekly legal newspaper of general circulation in the district.

(2) The notice shall be in substantially the following form:

IRRIGATION ASSESSMENT JUDGMENT SALE

Public notice is hereby given that pursuant to judgment, rendered on, of the superior court of the county of in the state of Washington, that I shall sell the property described below, at a foreclosure sale beginning at (time), on (date), at (location), in the city of, and county of, state of Washington. This sale is made in order to pay for delinquent assessments, costs, and interest owed to The property will be sold to the highest and best bidder but bids will not be accepted for less than the minimum sale price set by the superior court. The minimum sale price is listed on the bid sheet, a copy of which is provided at the treasurer’s office. Payment must be made at time of sale and must be by cash, bank cashier’s check, or a negotiable instrument of equivalent security.

Description of property:

Interested parties and members of the public are invited to participate in this sale. This sale will not take place if by

. (time), on (date), the amount due, is paid in the manner specified by law.

.....
Treasurer for
Irrigation District
Date signed:

(3) The treasurer shall conduct the sale in conformance with the notice and this chapter. If the sale is conducted by the county treasurer, no county or district officer or employee may directly or indirectly be a purchaser. If the irrigation district treasurer conducts the sale, no officer or employee of the district may directly or indirectly be a purchaser.

(4) If the bid amount paid for the property is in excess of the lien amount for which the judgment has been rendered, plus any additional assessments, costs, and interest which have become due after the date of preparation of the certificate of delinquency and before the date of sale, then the excess shall be remitted, on application therefor, to the record owner of the property. The record owner of the property is the person who held title on the date of issuance of the certificate of delinquency. Assignments of interests, deeds, or other documents executed or recorded after filing the certificate of delinquency shall not affect the payment of excess funds to the record owner. If no claim for the excess is received by the treasurer within three years after the date of the sale, the treasurer, at expiration of the three-year period, shall deposit the excess in the current expense fund of the district. [2007 c 63 § 1; 1988 c 134 § 8.]

**Chapter 87.84 RCW
IRRIGATION AND REHABILITATION DISTRICTS**

Sections

87.84.020 Petition to convert irrigation district to an irrigation and rehabilitation district, contents—Bond for costs.

87.84.020 Petition to convert irrigation district to an irrigation and rehabilitation district, contents—Bond for costs. A petition to convert an existing irrigation district to an irrigation and rehabilitation district shall be signed by at least fifty holders of title or evidence of title to land within the district. The petition shall contain the following:

- (1) The legal description of the property to be served.
- (2) The signature and address of each petitioner, together with the legal description of the lands within the district owned by each.
- (3) Any other matter deemed material.

The petition shall be accompanied by a bond, to be approved by the board, in double the amount of the probable cost of organizing the district, and conditioned that the bondsperson will pay all the costs if the organization is not effected. [2007 c 218 § 80; 1961 c 226 § 3.]

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

Title 88

NAVIGATION AND HARBOR
IMPROVEMENTS

Chapters

- 88.02 Vessel registration.
 88.16 Pilotage act.
 88.40 Transport of petroleum products—Financial responsibility.
 88.46 Vessel oil spill prevention and response.

Chapter 88.02 RCW

VESSEL REGISTRATION

Sections

- 88.02.030 Exceptions from vessel registration—Use of excess document identification fee for boating safety programs—Rules.
 88.02.050 Application—Registration fee and excise tax—Registration number and decal—Registration periods—Renewals—Marine oil refuse dump and holding tank information—Transfer of registrations. (*Expires June 30, 2012.*)
 88.02.050 Application—Registration fee and excise tax—Registration number and decal—Registration periods—Renewals—Marine oil refuse dump and holding tank information—Transfer of registrations. (*Effective June 30, 2012.*)
 88.02.230 Exemption from vessel dealer requirements.
 88.02.270 Derelict vessel removal surcharge. (*Expires January 1, 2014.*)

88.02.030 Exceptions from vessel registration—Use of excess document identification fee for boating safety programs—Rules. Vessel registration is required under this chapter except for the following:

- (1) Military or public vessels of the United States, except recreational-type public vessels;
- (2) Vessels owned by a state or subdivision thereof, used principally for governmental purposes and clearly identifiable as such;
- (3) Vessels either (a) registered or numbered under the laws of a country other than the United States; or (b) having a valid United States customs service cruising license issued pursuant to 19 C.F.R. Sec. 4.94. On or before the sixty-first day of use in the state, any vessel in the state under this subsection shall obtain an identification document from the department of licensing, its agents, or subagents indicating when the vessel first came into the state. At the time of any issuance of an identification document, a thirty dollar identification document fee shall be paid by the vessel owner to the department of licensing for the cost of providing the identification document by the department of licensing. Five dollars from each such transaction must be deposited in the derelict vessel removal account created in RCW 79.100.100. Any moneys remaining from the fee after the payment of costs and the deposit to the derelict vessel removal account shall be allocated to counties by the state treasurer for approved boating safety programs under RCW 88.02.045. The department of licensing shall adopt rules to implement its duties under this subsection, including issuing and displaying the identification document and collecting the thirty dollar fee;
- (4) Vessels that have been issued a valid number under federal law or by an approved issuing authority of the state of principal operation. However, a vessel that is validly registered in another state but that is removed to this state for principal use is subject to registration under this chapter. The

issuing authority for this state shall recognize the validity of the numbers previously issued for a period of sixty days after arrival in this state;

(5) Vessels owned by a nonresident if the vessel is located upon the waters of this state exclusively for repairs, alteration, or reconstruction, or any testing related to the repair, alteration, or reconstruction conducted in this state if an employee of the repair, alteration, or construction facility is on board the vessel during any testing. However, any vessel owned by a nonresident is located upon the waters of this state exclusively for repairs, alteration, reconstruction, or testing for a period longer than sixty days, that the nonresident shall file an affidavit with the department of revenue verifying the vessel is located upon the waters of this state for repair, alteration, reconstruction, or testing and shall continue to file such affidavit every sixty days thereafter, while the vessel is located upon the waters of this state exclusively for repairs, alteration, reconstruction, or testing;

(6) Vessels equipped with propulsion machinery of less than ten horsepower that:

- (a) Are owned by the owner of a vessel for which a valid vessel number has been issued;
- (b) Display the number of that numbered vessel followed by the suffix "1" in the manner prescribed by the department; and

(c) Are used as a tender for direct transportation between that vessel and the shore and for no other purpose;

(7) Vessels under sixteen feet in overall length which have no propulsion machinery of any type or which are not used on waters subject to the jurisdiction of the United States or on the high seas beyond the territorial seas for vessels owned in the United States and are powered by propulsion machinery of ten or less horsepower;

(8) Vessels with no propulsion machinery of any type for which the primary mode of propulsion is human power;

(9) Vessels primarily engaged in commerce which have or are required to have a valid marine document as a vessel of the United States. Commercial vessels which the department of revenue determines have the external appearance of vessels which would otherwise be required to register under this chapter, must display decals issued annually by the department of revenue that indicate the vessel's exempt status;

(10) Vessels primarily engaged in commerce which are owned by a resident of a country other than the United States;

(11) Vessels owned by a nonresident individual brought into the state for his or her use or enjoyment while temporarily within the state for not more than six months in any continuous twelve-month period, unless the vessel is used in conducting a nontransitory business activity within the state. However, the vessel must have been issued a valid number under federal law or by an approved issuing authority of the state of principal operation. On or before the sixty-first day of use in the state, any vessel temporarily in the state under this subsection shall obtain an identification document from the department of licensing, its agents, or subagents indicating when the vessel first came into the state. An identification document shall be valid for a period of two months. At the time of any issuance of an identification document, a twenty-five dollar identification document fee shall be paid by the vessel owner to the department of licensing for the cost of providing the identification document by the department

of licensing. Any moneys remaining from the fee after payment of costs shall be allocated to counties by the state treasurer for approved boating safety programs under RCW 88.02.045. The department of licensing shall adopt rules to implement its duties under this subsection, including issuing and displaying the identification document and collecting the twenty-five dollar fee; and

(12) Vessels used in this state by a nonresident individual possessing a valid use permit issued under RCW 82.08.700 or 82.12.700. [2007 c 22 § 3; 2002 c 286 § 12; 1998 c 198 § 1; 1997 c 83 § 1; 1991 c 339 § 30. Prior: 1989 c 393 § 13; 1989 c 102 § 1; 1985 c 452 § 1; 1984 c 250 § 2; 1983 2nd ex.s. c 3 § 44; 1983 c 7 § 16.]

Effective date—2007 c 22: See note following RCW 82.08.700.

Severability—Effective date—2002 c 286: See RCW 79.100.900 and 79.100.901.

Effective date—1998 c 198: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately [March 27, 1998]." [1998 c 198 § 2.]

Effective date—1985 c 452: "This act is necessary for the immediate preservation of the public peace, health, and safety, the support of the state government and its existing public institutions, and shall take effect July 1, 1985." [1985 c 452 § 2.]

Construction—Severability—Effective dates—1983 2nd ex.s. c 3: See notes following RCW 82.04.255.

Commission to adopt rules: RCW 79A.60.595.

Partial exemption from ad valorem taxes of ships and vessels exempt from excise tax under RCW 88.02.030(9): RCW 84.36.080.

88.02.050 Application—Registration fee and excise tax—Registration number and decal—Registration periods—Renewals—Marine oil refuse dump and holding tank information—Transfer of registrations. (Expires June 30, 2012.) (1) Application for a vessel registration shall be made to the department or its authorized agent in the manner and upon forms prescribed by the department. The application shall state the name and address of each owner of the vessel and such other information as may be required by the department, shall be signed by at least one owner, and shall be accompanied by a vessel registration fee of ten dollars and fifty cents per year and the excise tax imposed under chapter 82.49 RCW.

(2) Five additional dollars must be collected annually from every vessel registration application. These moneys must be distributed in the following manner:

(a) Two dollars must be deposited into the derelict vessel removal account established in RCW 79.100.100. If the department of natural resources indicates that the balance of the derelict vessel removal account, not including any transfer or appropriation of funds into the account or funds deposited into the account collected under RCW 88.02.270, reaches one million dollars as of March 1st of any year, the collection of the two-dollar fee must be suspended for the following fiscal year.

(b) One dollar and fifty cents must be deposited in the aquatic invasive species prevention account created in RCW 77.12.879.

(c) One dollar must be deposited into the freshwater aquatic algae control account created in RCW 43.21A.667.

(d) Fifty cents must be deposited into the aquatic invasive species enforcement account created in RCW 43.43.400.

(3) Any fees required for licensing agents under RCW 46.01.140 shall be in addition to the ten dollar and fifty cent annual registration fee and the five-dollar fee created in subsection (2) of this section.

(4) Upon receipt of the application and the registration fee, the department shall assign a registration number and issue a decal for each vessel. The registration number and decal shall be issued and affixed to the vessel in a manner prescribed by the department consistent with the standard numbering system for vessels set forth in volume 33, part 174, of the code of federal regulations. A valid decal affixed as prescribed shall indicate compliance with the annual registration requirements of this chapter.

(5) The vessel registrations and decals are valid for a period of one year, except that the director of licensing may extend or diminish vessel registration periods, and the decals therefor, for the purpose of staggered renewal periods. For registration periods of more or less than one year, the department may collect prorated annual registration fees and excise taxes based upon the number of months in the registration period. Vessel registrations are renewable every year in a manner prescribed by the department upon payment of the vessel registration fee, excise tax, and the derelict vessel fee. Upon renewing a vessel registration, the department shall issue a new decal to be affixed as prescribed by the department.

(6) When the department issues either a notice to renew a vessel registration or a decal for a new or renewed vessel registration, it shall also provide information on the location of marine oil recycling tanks and sewage holding tank pumping stations. This information will be provided to the department by the state parks and recreation commission in a form ready for distribution. The form will be developed and prepared by the state parks and recreation commission with the cooperation of the department of ecology. The department, the state parks and recreation commission, and the department of ecology shall enter into a memorandum of agreement to implement this process.

(7) A person acquiring a vessel from a dealer or a vessel already validly registered under this chapter shall, within fifteen days of the acquisition or purchase of the vessel, apply to the department or its authorized agent for transfer of the vessel registration, and the application shall be accompanied by a transfer fee of one dollar. [2007 c 342 § 5; 2005 c 464 § 2; 2002 c 286 § 13; 1993 c 244 § 38; 1989 c 17 § 1; 1983 2nd ex.s. c 3 § 45; 1983 c 7 § 18.]

Expiration date—2007 c 342 § 5: "Section 5 of this act expires June 30, 2012." [2007 c 342 § 9.]

Findings—Intent—2005 c 464: "The legislature finds that aquatic invasive species and freshwater aquatic algae are causing economic, environmental, and public health problems that affect the citizens and aquatic resources of our state. Many highly destructive species, such as the zebra mussel, are currently not found in Washington's waters and efforts should be made to prevent the introduction or spread of these aquatic invasive species into our state waters. Preventing new introductions is significantly less expensive and causes far less ecological damage than trying to control new infestations.

The legislature also finds that freshwater algae, particularly blue-green algae, are also seriously degrading the water quality and recreational value of a number of our lakes. Blue-green algae can produce toxins that inhibit recreational uses and pose a threat to humans and pets.

It is therefore the intent of the legislature to clarify the roles of the different state agencies involved in these issues in order to address the threat of aquatic invasive species and the problem caused by aquatic freshwater algae,

and to provide a dedicated fund source to prevent and control further impacts." [2005 c 464 § 1.]

Application—2005 c 464 § 2: "Section 2 of this act applies to vessel registration fees that are due or become due on or after August 1, 2005." [2005 c 464 § 6.]

Expiration date—2005 c 464 § 2: "Section 2 of this act expires June 30, 2012." [2005 c 464 § 7.]

Severability—Effective date—2002 c 286: See RCW 79.100.900 and 79.100.901.

Application—1993 c 244 § 38: "Section 38 of this act [the 1993 amendments to RCW 88.02.050] applies to registrations expiring June 30, 1995, and thereafter." [1993 c 244 § 43.]

Intent—1993 c 244: See note following RCW 79A.60.010.

Construction—Severability—Effective dates—1983 2nd ex.s. c 3: See notes following RCW 82.04.255.

88.02.050 Application—Registration fee and excise tax—Registration number and decal—Registration periods—Renewals—Marine oil refuse dump and holding tank information—Transfer of registrations. (*Effective June 30, 2012.*) Application for a vessel registration shall be made to the department or its authorized agent in the manner and upon forms prescribed by the department. The application shall state the name and address of each owner of the vessel and such other information as may be required by the department, shall be signed by at least one owner, and shall be accompanied by a vessel registration fee of ten dollars and fifty cents per year and the excise tax imposed under chapter 82.49 RCW. In addition, two additional dollars must be collected annually from every vessel registration application. These moneys must be deposited into the derelict vessel removal account established in RCW 79.100.100. If the department of natural resources indicates that the balance of the derelict vessel removal account, not including any transfer or appropriation of funds into the account or funds deposited into the account collected under RCW 88.02.270, reaches one million dollars as of March 1st of any year, the collection of the two-dollar fee must be suspended for the following fiscal year. Any fees required for licensing agents under RCW 46.01.140 shall be in addition to the ten dollar and fifty cent annual registration fee and the two-dollar derelict vessel fee.

Upon receipt of the application and the registration fee, the department shall assign a registration number and issue a decal for each vessel. The registration number and decal shall be issued and affixed to the vessel in a manner prescribed by the department consistent with the standard numbering system for vessels set forth in volume 33, part 174, of the code of federal regulations. A valid decal affixed as prescribed shall indicate compliance with the annual registration requirements of this chapter.

The vessel registrations and decals are valid for a period of one year, except that the director of licensing may extend or diminish vessel registration periods, and the decals therefor, for the purpose of staggered renewal periods. For registration periods of more or less than one year, the department may collect prorated annual registration fees and excise taxes based upon the number of months in the registration period. Vessel registrations are renewable every year in a manner prescribed by the department upon payment of the vessel registration fee, excise tax, and the derelict vessel fee. Upon

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renewing a vessel registration, the department shall issue a new decal to be affixed as prescribed by the department.

When the department issues either a notice to renew a vessel registration or a decal for a new or renewed vessel registration, it shall also provide information on the location of marine oil recycling tanks and sewage holding tank pumping stations. This information will be provided to the department by the state parks and recreation commission in a form ready for distribution. The form will be developed and prepared by the state parks and recreation commission with the cooperation of the department of ecology. The department, the state parks and recreation commission, and the department of ecology shall enter into a memorandum of agreement to implement this process.

A person acquiring a vessel from a dealer or a vessel already validly registered under this chapter shall, within fifteen days of the acquisition or purchase of the vessel, apply to the department or its authorized agent for transfer of the vessel registration, and the application shall be accompanied by a transfer fee of one dollar. [2007 c 342 § 6; 2002 c 286 § 13; 1993 c 244 § 38; 1989 c 17 § 1; 1983 2nd ex.s. c 3 § 45; 1983 c 7 § 18.]

Effective date—2007 c 342 § 6: "Section 6 of this act takes effect June 30, 2012." [2007 c 342 § 10.]

Severability—Effective date—2002 c 286: See RCW 79.100.900 and 79.100.901.

Application—1993 c 244 § 38: "Section 38 of this act applies to registrations expiring June 30, 1995, and thereafter." [1993 c 244 § 43.]

Intent—1993 c 244: See note following RCW 79A.60.010.

Construction—Severability—Effective dates—1983 2nd ex.s. c 3: See notes following RCW 82.04.255.

88.02.230 Exemption from vessel dealer requirements. (1) The department may exempt from compliance with the vessel dealer requirements of this chapter, any person who is engaged in the business of selling in this state at wholesale or retail, human-powered watercraft which is: (a) Under sixteen feet in length; (b) unable to be powered by propulsion machinery or wind propulsion as designed by the manufacturer; and (c) not designed for use on commonly-used navigable waters.

(2) Any person engaged in the business of selling at wholesale or retail, exempt and nonexempt watercraft under this section shall only be required to comply with the provisions of this chapter in regard to the sale of nonexempt watercraft.

(3) An auction company licensed under chapter 18.11 RCW and licensed as a motor vehicle dealer under chapter 46.70 RCW may sell at auction, without registering as a vessel dealer, all vessels that a vessel dealer is authorized to sell, so long as the sale of vessels is incidental to the auction company's primary source of business and the length of any vessel being sold is no greater than twenty-five feet. The auction company shall comply with all other vessel dealer requirements of this chapter and rules adopted under this chapter if the registration fees and surety bond requirements in RCW 88.02.060 are waived. [2007 c 378 § 1; 1990 c 250 § 90.]

Severability—1990 c 250: See note following RCW 46.16.301.

88.02.270 Derelict vessel removal surcharge. (*Expires January 1, 2014.*) (1) In order to address the signif-

licant backlog of derelict vessels that have accumulated in our state's waters that pose a threat to the health and safety of the people and to our environment, the legislature intends to collect a derelict vessel removal surcharge.

(2) In addition to the fees collected under RCW 88.02.050, the department shall collect an annual derelict vessel removal surcharge of one dollar effective with vessel registrations that are due or will become due on or after January 1, 2008. The revenue generated from the derelict vessel surcharge must be deposited into the derelict vessel removal account established under RCW 79.100.100, and is to be used only for the removal of vessels that are less than seventy-five feet in length.

(3) This section expires January 1, 2014. [2007 c 342 § 7.]

Chapter 88.16 RCW PILOTAGE ACT

Sections

88.16.090 Pilots' licenses—Qualifications—Duration—Annual fee—Examinations and evaluations—Training program and license—Penalty—Reporting requirements.

88.16.090 Pilots' licenses—Qualifications—Duration—Annual fee—Examinations and evaluations—Training program and license—Penalty—Reporting requirements. (1) A person may pilot any vessel subject to this chapter on waters covered by this chapter only if licensed to pilot such vessels on such waters under this chapter.

(2)(a) A person is eligible to be licensed as a pilot if the person:

(i) Is a citizen of the United States;

(ii) Is over the age of twenty-five years and under the age of seventy years;

(iii) Is a resident of the state of Washington at the time of licensure as a pilot;

(iv)(A) Holds at the time of application, as a minimum, a United States government license as master of steam or motor vessels of not more than one thousand six hundred gross register tons (three thousand international tonnage convention tons) upon oceans, near coastal waters, or inland waters; or the then most equivalent federal license as determined by the board; any such license to have been held by the applicant for a period of at least two years before application;

(B) Holds at the time of licensure as a pilot, after successful completion of the board-required training program, a first class United States endorsement without restrictions on the United States government license for the pilotage district in which the pilot applicant desires to be licensed; however, all applicants for a pilot examination scheduled to be given before July 1, 2008, must have the United States pilotage endorsement at the time of application; and

(C) The board may establish such other federal license requirements for applicants and pilots as it deems appropriate; and

(v) Successfully completes a board-specified training program.

(b) In addition to the requirements of (a) of this subsection, a pilot applicant must meet such other qualifications as may be required by the board.

(c) A person applying for a license under this section shall not have been convicted of an offense involving drugs or the personal consumption of alcohol in the twelve months prior to the date of application. This restriction does not apply to license renewals under this section.

(3) The board may establish such other training license and pilot license requirements as it deems appropriate.

(4) Pilot applicants shall be evaluated and ranked in a manner specified by the board based on their experience, other qualifications as may be set by the board, performance on a written examination or examinations established by the board, and performance in such other evaluation exercises as may be required by the board, for entry into a board-specified training program.

When the board determines that the demand for pilots requires entry of an applicant into the training program it shall issue a training license to that applicant, but under no circumstances may an applicant be issued a training license more than four years after taking the written entry examination. The training license authorizes the trainee to do such actions as are specified in the training program.

After the completion of the training program the board shall evaluate the trainee's performance and knowledge. The board, as it deems appropriate, may then issue a pilot license, delay the issuance of the pilot license, deny the issuance of the pilot license, or require further training and evaluation.

(5) The board may appoint a special independent committee or may contract with a firm knowledgeable and experienced in the development of professional tests and evaluations for development and grading of the examinations and other evaluation methods. Active licensed state pilots may be consulted for the general development of any examinations and evaluation exercises but shall have no knowledge of the specific questions. The pilot members of the board may participate in the grading of examinations. If the board does appoint a special examination or evaluation development committee it is authorized to pay the members of the committee the same compensation and travel expenses as received by members of the board. Any person who willfully gives advance knowledge of information contained on a pilot examination or other evaluation exercise is guilty of a gross misdemeanor.

(6) Pilots are licensed under this section for a term of five years from and after the date of the issuance of their respective state licenses. Licenses must thereafter be renewed as a matter of course, unless the board withholds the license for good cause. Each pilot shall pay to the state treasurer an annual license fee in an amount set by the board by rule. The fees established under this subsection may be increased in excess of the fiscal growth factor as provided in RCW 43.135.055 through the fiscal year ending June 30, 2009. The fees must be deposited in the state treasury to the credit of the pilotage account. The board may assess partially active or inactive pilots a reduced fee.

(7) All pilots and applicants are subject to an annual physical examination by a physician chosen by the board. The physician shall examine the applicant's heart, blood pressure, circulatory system, lungs and respiratory system, eyesight, hearing, and such other items as may be prescribed by the board. After consultation with a physician and the United States coast guard, the board shall establish minimum

health standards to ensure that pilots licensed by the state are able to perform their duties. Within ninety days of the date of each annual physical examination, and after review of the physician's report, the board shall make a determination of whether the pilot or applicant is fully able to carry out the duties of a pilot under this chapter. The board may in its discretion check with the appropriate authority for any convictions of offenses involving drugs or the personal consumption of alcohol in the prior twelve months.

(8) The board may require vessel simulator training for a pilot applicant and shall require vessel simulator training for a licensed pilot subject to RCW 88.16.105. The board shall also require vessel simulator training in the first year of active duty for a new pilot and at least once every five years for all active pilots.

(9) The board shall prescribe, pursuant to chapter 34.05 RCW, such reporting requirements and review procedures as may be necessary to assure the accuracy and validity of license and service claims. Willful misrepresentation of such required information by a pilot applicant shall result in disqualification of the pilot applicant. [2007 c 518 § 706; 2005 c 26 § 2; 1999 sp.s. c 1 § 607; 1995 c 175 § 1; 1991 c 200 § 1002. Prior: 1990 c 116 § 27; 1990 c 112 § 1; 1987 c 264 § 2; 1986 c 122 § 1; 1981 c 303 § 1; 1979 ex.s. c 207 § 3; 1977 ex.s. c 337 § 7; 1967 c 15 § 5; 1935 c 18 § 8; RRS § 9871-8; prior: 1907 c 147 § 1; 1888 p 176 § 8.]

Severability—Effective date—2007 c 518: See notes following RCW 46.68.170.

Effective date—2005 c 26: See note following RCW 88.16.035.

Severability—Effective date—1999 sp.s. c 1: See notes following RCW 43.19.1906.

Effective date—1995 c 175: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and shall take effect July 1, 1995." [1995 c 175 § 2.]

Effective dates—Severability—1991 c 200: See RCW 90.56.901 and 90.56.904.

Findings—Severability—1990 c 116: See notes following RCW 90.56.210.

Severability—1977 ex.s. c 337: See note following RCW 88.16.005.

Chapter 88.40 RCW

TRANSPORT OF PETROLEUM PRODUCTS— FINANCIAL RESPONSIBILITY

Sections

88.40.011 Definitions.

88.40.011 Definitions. The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

(1) "Barge" means a vessel that is not self-propelled.

(2) "Cargo vessel" means a self-propelled ship in commerce, other than a tank vessel, fishing vessel, or a passenger vessel, of three hundred or more gross tons.

(3) "Bulk" means material that is stored or transported in a loose, unpackaged liquid, powder, or granular form capable of being conveyed by a pipe, bucket, chute, or belt system.

(4) "Covered vessel" means a tank vessel, cargo vessel, or passenger vessel.

(5) "Department" means the department of ecology.

(6) "Director" means the director of the department of ecology.

(7)(a) "Facility" means any structure, group of structures, equipment, pipeline, or device, other than a vessel, located on or near the navigable waters of the state that transfers oil in bulk to or from any vessel with an oil carrying capacity over two hundred fifty barrels or pipeline, that is used for producing, storing, handling, transferring, processing, or transporting oil in bulk.

(b) A facility does not include any: (i) Railroad car, motor vehicle, or other rolling stock while transporting oil over the highways or rail lines of this state; (ii) retail motor vehicle motor fuel outlet; (iii) facility that is operated as part of an exempt agricultural activity as provided in RCW 82.04.330; (iv) underground storage tank regulated by the department or a local government under chapter 90.76 RCW; or (v) marine fuel outlet that does not dispense more than three thousand gallons of fuel to a ship that is not a covered vessel, in a single transaction.

(8) "Fishing vessel" means a self-propelled commercial vessel of three hundred or more gross tons that is used for catching or processing fish.

(9) "Gross tons" means tonnage as determined by the United States coast guard under 33 C.F.R. section 138.30.

(10) "Hazardous substances" means any substance listed as of March 1, 2003, in Table 302.4 of 40 C.F.R. Part 302 adopted under section 101(14) of the federal comprehensive environmental response, compensation, and liability act of 1980, as amended by P.L. 99-499. The following are not hazardous substances for purposes of this chapter:

(a) Wastes listed as F001 through F028 in Table 302.4; and

(b) Wastes listed as K001 through K136 in Table 302.4.

(11) "Navigable waters of the state" means those waters of the state, and their adjoining shorelines, that are subject to the ebb and flow of the tide and/or are presently used, have been used in the past, or may be susceptible for use to transport intrastate, interstate, or foreign commerce.

(12) "Oil" or "oils" means oil of any kind that is liquid at atmospheric temperature and any fractionation thereof, including, but not limited to, crude oil, petroleum, gasoline, fuel oil, diesel oil, biological oils and blends, oil sludge, oil refuse, and oil mixed with wastes other than dredged spoil. Oil does not include any substance listed as of March 1, 2003, in Table 302.4 of 40 C.F.R. Part 302 adopted under section 101(14) of the federal comprehensive environmental response, compensation, and liability act of 1980, as amended by P.L. 99-499.

(13) "Offshore facility" means any facility located in, on, or under any of the navigable waters of the state, but does not include a facility any part of which is located in, on, or under any land of the state, other than submerged land.

(14) "Onshore facility" means any facility any part of which is located in, on, or under any land of the state, other than submerged land, that because of its location, could reasonably be expected to cause substantial harm to the environment by discharging oil into or on the navigable waters of the state or the adjoining shorelines.

(15)(a) "Owner or operator" means (i) in the case of a vessel, any person owning, operating, or chartering by demise, the vessel; (ii) in the case of an onshore or offshore

facility, any person owning or operating the facility; and (iii) in the case of an abandoned vessel or onshore or offshore facility, the person who owned or operated the vessel or facility immediately before its abandonment.

(b) "Operator" does not include any person who owns the land underlying a facility if the person is not involved in the operations of the facility.

(16) "Passenger vessel" means a ship of three hundred or more gross tons with a fuel capacity of at least six thousand gallons carrying passengers for compensation.

(17) "Ship" means any boat, ship, vessel, barge, or other floating craft of any kind.

(18) "Spill" means an unauthorized discharge of oil into the waters of the state.

(19) "Tank vessel" means a ship that is constructed or adapted to carry, or that carries, oil in bulk as cargo or cargo residue, and that:

(a) Operates on the waters of the state; or

(b) Transfers oil in a port or place subject to the jurisdiction of this state.

(20) "Waters of the state" includes lakes, rivers, ponds, streams, inland waters, underground water, salt waters, estuaries, tidal flats, beaches and lands adjoining the seacoast of the state, sewers, and all other surface waters and watercourses within the jurisdiction of the state of Washington. [2007 c 347 § 4; 2003 c 56 § 2; 2000 c 69 § 30; 1992 c 73 § 12; 1991 c 200 § 702.]

Finding—Intent—2003 c 56: "The legislature finds that the current financial responsibility laws for vessels are in need of update and revision. The legislature intends that, whenever possible, the standards set for Washington state provide the highest level of protection consistent with other western states and to ultimately achieve a more uniform system of financial responsibility on the Pacific Coast." [2003 c 56 § 1.]

Effective dates—Severability—1992 c 73: See RCW 82.23B.902 and 90.56.905.

Effective dates—Severability—1991 c 200: See RCW 90.56.901 and 90.56.904.

Chapter 88.46 RCW

VESSEL OIL SPILL PREVENTION AND RESPONSE

Sections

88.46.010 Definitions.

88.46.010 Definitions. The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

(1) "Best achievable protection" means the highest level of protection that can be achieved through the use of the best achievable technology and those staffing levels, training procedures, and operational methods that provide the greatest degree of protection achievable. The director's determination of best achievable protection shall be guided by the critical need to protect the state's natural resources and waters, while considering (a) the additional protection provided by the measures; (b) the technological achievability of the measures; and (c) the cost of the measures.

(2) "Best achievable technology" means the technology that provides the greatest degree of protection taking into consideration (a) processes that are being developed, or could feasibly be developed, given overall reasonable expenditures

on research and development, and (b) processes that are currently in use. In determining what is best achievable technology, the director shall consider the effectiveness, engineering feasibility, and commercial availability of the technology.

(3) "Cargo vessel" means a self-propelled ship in commerce, other than a tank vessel or a passenger vessel, of three hundred or more gross tons, including but not limited to, commercial fish processing vessels and freighters.

(4) "Bulk" means material that is stored or transported in a loose, unpackaged liquid, powder, or granular form capable of being conveyed by a pipe, bucket, chute, or belt system.

(5) "Covered vessel" means a tank vessel, cargo vessel, or passenger vessel.

(6) "Department" means the department of ecology.

(7) "Director" means the director of the department of ecology.

(8) "Discharge" means any spilling, leaking, pumping, pouring, emitting, emptying, or dumping.

(9)(a) "Facility" means any structure, group of structures, equipment, pipeline, or device, other than a vessel, located on or near the navigable waters of the state that transfers oil in bulk to or from a tank vessel or pipeline, that is used for producing, storing, handling, transferring, processing, or transporting oil in bulk.

(b) A facility does not include any: (i) Railroad car, motor vehicle, or other rolling stock while transporting oil over the highways or rail lines of this state; (ii) retail motor vehicle motor fuel outlet; (iii) facility that is operated as part of an exempt agricultural activity as provided in RCW 82.04.330; (iv) underground storage tank regulated by the department or a local government under chapter 90.76 RCW; or (v) marine fuel outlet that does not dispense more than three thousand gallons of fuel to a ship that is not a covered vessel, in a single transaction.

(10) "Marine facility" means any facility used for tank vessel wharfage or anchorage, including any equipment used for the purpose of handling or transferring oil in bulk to or from a tank vessel.

(11) "Navigable waters of the state" means those waters of the state, and their adjoining shorelines, that are subject to the ebb and flow of the tide and/or are presently used, have been used in the past, or may be susceptible for use to transport intrastate, interstate, or foreign commerce.

(12) "Oil" or "oils" means oil of any kind that is liquid at atmospheric temperature and any fractionation thereof, including, but not limited to, crude oil, petroleum, gasoline, fuel oil, diesel oil, biological oils and blends, oil sludge, oil refuse, and oil mixed with wastes other than dredged spoil. Oil does not include any substance listed in Table 302.4 of 40 C.F.R. Part 302 adopted August 14, 1989, under section 101(14) of the federal comprehensive environmental response, compensation, and liability act of 1980, as amended by P.L. 99-499.

(13) "Offshore facility" means any facility located in, on, or under any of the navigable waters of the state, but does not include a facility any part of which is located in, on, or under any land of the state, other than submerged land. "Offshore facility" does not include a marine facility.

(14) "Onshore facility" means any facility any part of which is located in, on, or under any land of the state, other than submerged land, that because of its location, could rea-

sonably be expected to cause substantial harm to the environment by discharging oil into or on the navigable waters of the state or the adjoining shorelines.

(15)(a) "Owner or operator" means (i) in the case of a vessel, any person owning, operating, or chartering by demise, the vessel; (ii) in the case of an onshore or offshore facility, any person owning or operating the facility; and (iii) in the case of an abandoned vessel or onshore or offshore facility, the person who owned or operated the vessel or facility immediately before its abandonment.

(b) "Operator" does not include any person who owns the land underlying a facility if the person is not involved in the operations of the facility.

(16) "Passenger vessel" means a ship of three hundred or more gross tons with a fuel capacity of at least six thousand gallons carrying passengers for compensation.

(17) "Person" means any political subdivision, government agency, municipality, industry, public or private corporation, copartnership, association, firm, individual, or any other entity whatsoever.

(18) "Ship" means any boat, ship, vessel, barge, or other floating craft of any kind.

(19) "Spill" means an unauthorized discharge of oil into the waters of the state.

(20) "Tank vessel" means a ship that is constructed or adapted to carry, or that carries, oil in bulk as cargo or cargo residue, and that:

(a) Operates on the waters of the state; or

(b) Transfers oil in a port or place subject to the jurisdiction of this state.

(21) "Waters of the state" includes lakes, rivers, ponds, streams, inland waters, underground water, salt waters, estuaries, tidal flats, beaches and lands adjoining the seacoast of the state, sewers, and all other surface waters and water-courses within the jurisdiction of the state of Washington.

(22) "Worst case spill" means: (a) In the case of a vessel, a spill of the entire cargo and fuel of the vessel complicated by adverse weather conditions; and (b) in the case of an onshore or offshore facility, the largest foreseeable spill in adverse weather conditions. [2007 c 347 § 5; 2000 c 69 § 1; 1992 c 73 § 18; 1991 c 200 § 414.]

Effective dates—Severability—1992 c 73: See RCW 82.23B.902 and 90.56.905.

Title 89

RECLAMATION, SOIL CONSERVATION, AND LAND SETTLEMENT

Chapters

89.08 Conservation districts.

89.10 Farmland preservation.

Chapter 89.08 RCW

CONSERVATION DISTRICTS

Sections

89.08.520 Water quality and habitat protection grant programs—Development of outcome-focused performance measures.

89.08.530 Agricultural conservation easements program.

89.08.540 Agricultural conservation easements account.

89.08.570 Crop purchase contracts for dedicated energy crops.
89.08.580 Puget Sound partners.

89.08.520 Water quality and habitat protection grant programs—Development of outcome-focused performance measures. (1) In administering grant programs to improve water quality and protect habitat, the commission shall:

(a) Require grant recipients to incorporate the environmental benefits of the project into their grant applications;

(b) In its grant prioritization and selection process, consider:

(i) The statement of environmental benefits;

(ii) Whether, except as conditioned by RCW 89.08.580, the applicant is a Puget Sound partner, as defined in RCW 90.71.010; and

(iii) Whether the project is referenced in the action agenda developed by the Puget Sound partnership under RCW 90.71.310; and

(c) Not provide funding, after January 1, 2010, for projects designed to address the restoration of Puget Sound that are in conflict with the action agenda developed by the Puget Sound partnership under RCW 90.71.310.

(2)(a) The commission shall also develop appropriate outcome-focused performance measures to be used both for management and performance assessment of the grant program.

(b) The commission shall work with the districts to develop uniform performance measures across participating districts and to the extent possible, the commission should coordinate its performance measure system with other natural resource-related agencies as defined in RCW 43.41.270. The commission shall consult with affected interest groups in implementing this section. [2007 c 341 § 28; 2001 c 227 § 3.]

Severability—Effective date—2007 c 341: See RCW 90.71.906 and 90.71.907.

Findings—Intent—2001 c 227: See note following RCW 43.41.270.

89.08.530 Agricultural conservation easements program. (1) The agricultural conservation easements program is created. The state conservation commission shall manage the program and adopt rules as necessary to implement the legislature's intent.

(2) The commission shall report to the legislature on an on-going basis regarding potential funding sources for the purchase of agricultural conservation easements under the program and recommend changes to existing funding authorized by the legislature.

(3) All funding for the program shall be deposited into the agricultural conservation easements account created in RCW 89.08.540. Expenditures from the account shall be made to local governments and private nonprofits on a match or no match required basis at the discretion of the commission. Moneys in the account may be used to purchase easements in perpetuity or to purchase or lease easements for a fixed term.

(4) Easements purchased with money from the agricultural conservation easements account run with the land. [2007 c 352 § 4; 2002 c 280 § 2.]

Intent—2002 c 280: "Among the rising costs that are increasingly driving Washington farmers out of business is the cost of land. Many of our old-

est, well-established farms, often on the fringes of established communities, are under growing pressure to be sold for uses other than agriculture. In the face of these rising land costs, new farmers are finding it increasingly difficult to be able to afford to purchase farmland.

At the same time, the conversion of these prime farmlands to development costs our communities open and green space, reduces our access to local quality food, diminishes our cultural and historic roots, often represents a fiscal loss for governments, and frequently results in environmental costs including reduced flood detention, loss of surface water filtration, diminished aquifer recharge, loss of habitat and connective wildlife migration corridors, and loss of opportunities to protect riparian lands.

These concerns, among others, are leading the federal government and local jurisdictions around our state to provide funding for local programs to purchase agricultural conservation easements that help keep farmers in farming and farmland in agriculture. It is the intent of the legislature to create a Washington purchase of agricultural conservation easements program that will facilitate the use of federal funds, ease the burdens of local governments launching similar programs at the local level, and help local governments fight the conversion of agricultural lands they have not otherwise protected through their planning processes." [2002 c 280 § 1.]

89.08.540 Agricultural conservation easements account. (1) The agricultural conservation easements account is created in the custody of the state treasurer. All receipts from legislative appropriations, other sources as directed by the legislature, and gifts, grants, or endowments from public or private sources must be deposited into the account. Expenditures from the account may be used only for the purchase of easements in perpetuity or for the purchase or lease of easements for a fixed term under the agricultural conservation easements program. Only the state conservation commission, or the executive director of the commission on the commission's behalf, may authorize expenditures from the account. The account is subject to allotment procedures under chapter 43.88 RCW, but an appropriation is not required for expenditures.

(2) The commission is authorized to receive and expend gifts, grants, or endowments from public or private sources that are made available, in trust or otherwise, for the use and benefit of the agricultural conservation easements program. [2007 c 352 § 5; 2002 c 280 § 3.]

Intent—2002 c 280: See note following RCW 89.08.530.

89.08.570 Crop purchase contracts for dedicated energy crops. In addition to any other authority provided by law, conservation districts are authorized to enter into crop purchase contracts for a dedicated energy crop for the purposes of producing, selling, and distributing biodiesel produced from Washington state feedstocks, cellulosic ethanol, and cellulosic ethanol blend fuels. [2007 c 348 § 207.]

Findings—Part headings not law—2007 c 348: See RCW 43.325.005 and 43.325.903.

89.08.580 Puget Sound partners. When administering water quality and habitat protection grants under this chapter, the commission shall give preference only to Puget Sound partners, as defined in RCW 90.71.010, in comparison to other entities that are eligible to be included in the definition of Puget Sound partner. Entities that are not eligible to be a Puget Sound partner due to geographic location, composition, exclusion from the scope of the Puget Sound action agenda developed by the Puget Sound partnership under RCW 90.71.310, or for any other reason, shall not be given

less preferential treatment than Puget Sound partners. [2007 c 341 § 29.]

Severability—Effective date—2007 c 341: See RCW 90.71.906 and 90.71.907.

Chapter 89.10 RCW FARMLAND PRESERVATION

Sections

89.10.005	Findings.
89.10.010	Office of farmland preservation.
89.10.020	Farmland preservation task force. (<i>Expires January 1, 2011.</i>)
89.10.900	Captions not law—2007 c 352.

89.10.005 Findings. The legislature finds that maintaining the capacity to provide adequate food and fiber resources is essential to the long-term sustainability of the state's citizens and economy. The nation's population has reached three hundred million and will continue to increase for the foreseeable future. Further, the world population is now over six billion and is projected to reach nine billion by the year 2050.

In Washington state, the population is growing by over one million people every decade with much of this growth occurring in western Washington. This growth is increasing the competition for land not only for housing, but also associated retail, commercial, industrial, and leisure industries.

The legislature finds that many once-productive agricultural areas in western Washington have been overtaken and irreversibly converted to nonagricultural uses. Other agricultural areas in the state have diminished to the point that they are dangerously close to losing the land mass necessary to be economically viable. Further, only a limited number of areas in western Washington still retain a sufficient agricultural land base and the necessary agricultural infrastructure to continue to be economically viable both in the short term and the long term.

The legislature recognizes that because this significant decline has largely occurred in less than a half century, it is imperative that mechanisms be established at the state level to focus attention, take the action needed to retain agricultural land, and ensure the opportunity for future generations to farm these lands.

The legislature finds that history shows that previous advanced civilizations in the world were founded on highly productive agricultural lands and food production systems but when the land or its productivity was lost, the civilizations declined. In contrast, other civilizations have existed for millennia because they maintained their agricultural land base, its productivity, and economic conditions sufficient to maintain stewardship of their land.

The legislature finds that there is a finite quantity of high quality agricultural land and that often this agricultural land is mistakenly viewed as an expendable resource. The legislature finds that the retention of agricultural land is desirable, not only to produce food, livestock, and other agricultural products, but also to maintain our state economy and preferable environmental conditions. For these reasons, and because it is essential that agricultural production be sufficient to meet the needs of our growing population, commitment to the retention of agricultural land should be reflected at the state

policy level by the creation of an office of farmland preservation to support the retention of farmland and the viability of farming for future generations. [2007 c 352 § 1.]

89.10.010 Office of farmland preservation. (1) The office of farmland preservation is created and shall be located within the state conservation commission.

(2) Staff support for the office shall be provided by the state conservation commission.

(3) The office of farmland preservation may:

(a) Provide advice and assist the state conservation commission in implementing the provisions of RCW 89.08.530 and 89.08.540, including the merits of leasing or purchasing easements for fixed terms in addition to purchasing easements in perpetuity;

(b) Develop recommendations for the funding level and for the use of the agricultural conservation easements account established in RCW 89.08.540 with the guidance of the farmland preservation task force established under RCW 89.10.020;

(c) With input from the task force created in RCW 89.10.020, provide an analysis of the major factors that have led to past declines in the amount and use of agricultural lands in Washington and of the factors that will likely affect retention and economic viability of these lands into the future including, but not limited to, pressures to convert land to nonagricultural uses, loss of processing plants and markets, loss of profitability, productivity, and competitive advantage, urban sprawl, water availability and quality, restrictions on agricultural land use, and conversion to recreational or other uses;

(d) Develop model programs and tools, including innovative economic incentives for landowners, to retain agricultural land for agricultural production, with the guidance from the farmland preservation task force created under RCW 89.10.020;

(e) Provide technical assistance to localities as they develop and implement programs, mechanisms, and tools to encourage the retention of agricultural lands;

(f) Develop a grant process and an eligibility certification process for localities to receive grants for local programs and tools to retain agricultural lands for agricultural production;

(g) Provide analysis and recommendations as to the continued development and implementation of the farm transition program including, but not limited to, recommending:

(i) Assistance in the preparation of business plans for the transition of business interests;

(ii) Assistance in the facilitation of transfers of existing properties and agricultural operations to interested buyers; and

(iii) Research assistance on agricultural, financial, marketing, and other related transition matters;

(h) Begin the development of a farm transition program to assist in the transition of farmland and related businesses from one generation to the next, aligning the farm transition program closely with the farmland preservation effort to assure complementary functions; and

(i) Serve as a clearinghouse for incentive programs that would consolidate and disseminate information relating to conservation programs that are accessible to landowners and

assist owners of agricultural lands to secure financial assistance to implement conservation easements and other projects. [2007 c 352 § 2.]

89.10.020 Farmland preservation task force. (Expires January 1, 2011.) (1) The farmland preservation task force is established with the following voting members:

(a) Six farmer representatives, one from each of six regions delineated by the state conservation commission at least one of whom is a commercial livestock producer, of which at least two representatives shall be under the age of forty-five, appointed by the governor from persons nominated by recognized agricultural organizations;

(b) A representative of the state conservation commission, appointed by the chair of the state conservation commission;

(c) A representative of the department of agriculture, appointed by the director;

(d) A representative of counties in eastern Washington, appointed by the Washington state association of counties;

(e) A representative of counties in western Washington, appointed by the Washington state association of counties;

(f) Two members of the senate, one from each major political caucus, appointed by the president of the senate;

(g) Two members of the house of representatives, one from each major political caucus, appointed by the speaker of the house of representatives;

(h) A representative of the office of the governor, appointed by the governor; and

(i) A representative of conservation districts, appointed by the state association of conservation districts.

(2) The following persons shall be requested to participate as nonvoting members of the farmland preservation task force:

(a) A representative of the federal natural resources conservation service with knowledge of federal agricultural land retention programs and funding sources, appointed by the state conservationist; and

(b) A person with technical expertise from the department of community, trade, and economic development, appointed by the agency's director.

(3) The task force shall meet at least twice a year. The task force shall be staffed by the state conservation commission. The chair of the task force shall be elected for a term of one year by the voting members of the task force.

(4) Nonlegislative members of the task force are entitled to be reimbursed for travel expenses in accordance with RCW 43.03.050 and 43.03.060 by the state conservation commission. Legislative members of the task force are entitled to be reimbursed for travel expenses in accordance with RCW 44.04.120.

(5) This section expires January 1, 2011. [2007 c 352 § 3.]

89.10.900 Captions not law—2007 c 352. Captions used in this act are not any part of the law. [2007 c 352 § 8.]

Title 90

WATER RIGHTS—ENVIRONMENT

Chapters

- 90.16** Appropriation of water for public and industrial purposes.
90.46 Reclaimed water use.
90.48 Water pollution control.
90.50A Water pollution control facilities—Federal capitalization grants.
90.54 Water resources act of 1971.
90.56 Oil and hazardous substance spill prevention and response.
90.58 Shoreline management act of 1971.
90.71 Puget Sound water quality protection.
90.72 Shellfish protection districts.
90.76 Underground storage tanks.
90.82 Watershed planning.
90.88 Aquatic rehabilitation zones.

Chapter 90.16 RCW

APPROPRIATION OF WATER FOR PUBLIC AND INDUSTRIAL PURPOSES

Sections

- 90.16.050 Use of water for power development—Annual license fee—Progress report—Exceptions to the fee schedule.
 90.16.090 Disposition of fees.

90.16.050 Use of water for power development—Annual license fee—Progress report—Exceptions to the fee schedule. (1) Every person, firm, private or municipal corporation, or association hereinafter called "claimant", claiming the right to the use of water within or bordering upon the state of Washington for power development, shall on or before the first day of January of each year pay to the state of Washington in advance an annual license fee, based upon the theoretical water power claimed under each and every separate claim to water according to the following schedule:

(a) For projects in operation: For each and every theoretical horsepower claimed up to and including one thousand horsepower, at the rate of eighteen cents per horsepower; for each and every theoretical horsepower in excess of one thousand horsepower, up to and including ten thousand horsepower, at the rate of three and six-tenths cents per horsepower; for each and every theoretical horsepower in excess of ten thousand horsepower, at the rate of one and eight-tenths cents per horsepower.

(b) For federal energy regulatory commission projects in operation, the following fee schedule applies in addition to the fees in (a) of this subsection: For each theoretical horsepower of capacity up to and including one thousand horsepower, at the rate of thirty-two cents per horsepower; for each theoretical horsepower in excess of one thousand horsepower, up to and including ten thousand horsepower, at the rate of six and four-tenths cents per horsepower; for each theoretical horsepower in excess of ten thousand horsepower, at the rate of three and two-tenths cents per horsepower.

(c) To justify the appropriate use of fees collected under (b) of this subsection, the department of ecology shall submit

a progress report to the appropriate committees of the legislature prior to December 31, 2009, and biennially thereafter until December 31, 2017.

(i) The progress report will: (A) Describe how license fees were expended in the federal energy regulatory commission licensing process during the current biennium, and expected workload and full-time equivalent employees for federal energy regulatory commission licensing in the next biennium; (B) include any recommendations based on consultation with the departments of ecology and fish and wildlife, hydropower project operators, and other interested parties; and (C) recognize hydropower operators that exceed their environmental regulatory requirements.

(ii) The fees required in (b) of this subsection expire June 30, 2017. The biennial progress reports submitted by the department of ecology will serve as a record for considering the extension of the fee structure in (b) of this subsection.

(2) The following are exceptions to the fee schedule in subsection (1) of this section:

(a) For undeveloped projects, the fee shall be at one-half the rates specified for projects in operation; for projects partly developed and in operation the fees paid on that portion of any project that shall have been developed and in operation shall be the full annual license fee specified in subsection (1) of this section for projects in operation, and for the remainder of the power claimed under such project the fees shall be the same as for undeveloped projects.

(b) The fees required in subsection (1) of this section do not apply to any hydropower project owned by the United States.

(c) The fees required in subsection (1) of this section do not apply to the use of water for the generation of fifty horsepower or less.

(d) The fees required in subsection (1) of this section for projects developed by an irrigation district in conjunction with the irrigation district's water conveyance system shall be reduced by fifty percent to reflect the portion of the year when the project is not operable.

(e) Any irrigation district or other municipal subdivision of the state, developing power chiefly for use in pumping of water for irrigation, upon the filing of a statement showing the amount of power used for irrigation pumping, is exempt from the fees in subsection (1) of this section to the extent of the power used for irrigation pumping. [2007 c 286 § 1; 1929 c 105 § 1; RRS § 11575-1.]

90.16.090 Disposition of fees. (1) All fees paid under provisions of this chapter, shall be credited by the state treasurer to the reclamation account created in RCW 89.16.020 and subject to legislative appropriation, be allocated and expended by the director of ecology for:

(a) Investigations and surveys of natural resources in cooperation with the federal government, or independently thereof, including stream gaging, hydrographic, topographic, river, underground water, mineral and geological surveys; and

(b) Expenses associated with staff at the departments of ecology and fish and wildlife working on federal energy regulatory commission relicensing and license implementation.

(2) Unless otherwise required by the omnibus biennial appropriations acts, the expenditures for these purposes must

be proportional to the revenues collected under RCW 90.16.050(1). [2007 c 286 § 2; 1988 c 127 § 79; 1973 c 106 § 39; 1939 c 209 § 1; 1929 c 105 § 3; RRS § 11575-3.]

Chapter 90.46 RCW

RECLAIMED WATER USE

Sections

- 90.46.005 Findings—Coordination of efforts—Development of facilities encouraged.
- 90.46.015 Rules—Coordination with department of health—Consultation with advisory committee.
- 90.46.120 Use of water from wastewater treatment facility—Consideration in regional water supply plan or potable water supply service planning—Consideration in reviewing provisions for water supplies for short plat, short subdivision, or subdivision.

90.46.005 Findings—Coordination of efforts—Development of facilities encouraged. The legislature finds that by encouraging the use of reclaimed water while assuring the health and safety of all Washington citizens and the protection of its environment, the state of Washington will continue to use water in the best interests of present and future generations.

To facilitate the immediate use of reclaimed water for uses approved by the departments of ecology and health, the state shall expand both direct financial support and financial incentives for capital investments in water reuse and reclaimed water to effectuate the goals of this chapter. The legislature further directs the department of health and the department of ecology to coordinate efforts towards developing an efficient and streamlined process for creating and implementing processes for the use of reclaimed water.

It is hereby declared that the people of the state of Washington have a primary interest in the development of facilities to provide reclaimed water to replace potable water in nonpotable applications, to supplement existing surface and ground water supplies, and to assist in meeting the future water requirements of the state.

The legislature further finds and declares that the utilization of reclaimed water by local communities for domestic, agricultural, industrial, recreational, and fish and wildlife habitat creation and enhancement purposes, including wetland enhancement, will contribute to the peace, health, safety, and welfare of the people of the state of Washington. To the extent reclaimed water is appropriate for beneficial uses, it should be so used to preserve potable water for drinking purposes, contribute to the restoration and protection of instream flows that are crucial to preservation of the state's salmonid fishery resources, contribute to the restoration of Puget Sound by reducing wastewater discharge, provide a drought resistant source of water supply for nonpotable needs, or be a source of supply integrated into state, regional, and local strategies to respond to population growth and global warming. Use of reclaimed water constitutes the development of new basic water supplies needed for future generations and local and regional water management planning should consider coordination of infrastructure, development, storage, water reclamation and reuse, and source exchange as strategies to meet water demands associated with population growth and impacts of global warming.

The legislature further finds and declares that the use of reclaimed water is not inconsistent with the policy of antidegradation of state waters announced in other state statutes, including the water pollution control act, chapter 90.48 RCW and the water resources act, chapter 90.54 RCW.

The legislature finds that other states, including California, Florida, and Arizona, have successfully used reclaimed water to supplement existing water supplies without threatening existing resources or public health.

It is the intent of the legislature that the department of ecology and the department of health undertake the necessary steps to encourage the development of water reclamation facilities so that reclaimed water may be made available to help meet the growing water requirements of the state.

The legislature further finds and declares that reclaimed water facilities are water pollution control facilities as defined in chapter 70.146 RCW and are eligible for financial assistance as provided in chapter 70.146 RCW. The legislature finds that funding demonstration projects will ensure the future use of reclaimed water. The demonstration projects in RCW 90.46.110 are varied in nature and will provide the experience necessary to test different facets of the standards and refine a variety of technologies so that water purveyors can begin to use reclaimed water technology in a more cost-effective manner. This is especially critical in smaller cities and communities where the feasibility for such projects is great, but there are scarce resources to develop the necessary facilities.

The legislature further finds that the agricultural processing industry can play a critical and beneficial role in promoting the efficient use of water by having the opportunity to develop and reuse agricultural industrial process water from food processing. [2007 c 445 § 2; 2001 c 69 § 1; 1997 c 355 § 1; 1995 c 342 § 1; 1992 c 204 § 1.]

Findings—Intent—2007 c 445: "(1) Since the 1992 enactment of the reclaimed water act, the value of reclaimed water as a new source of supply has received increasing recognition across the state and across the nation. New information on the matters in this section has increased awareness of the need to better manage, protect, and conserve water resources and to use reclaimed water in that process. The legislature now finds the following:

(a) Global warming and climate change. Global warming has reduced the volume of glaciers in the North Cascade mountains to between eighteen to thirty-two percent since 1983, and up to seventy-five percent of the glaciers are at risk of disappearing under projected temperatures for this century. Mountain snow pack has declined at virtually every measurement location in the Pacific Northwest, reducing the proportion of annual river flow to Puget Sound during summer months by eighteen percent since 1948. Global warming has also shifted peak stream flows earlier in the year in watersheds covering much of Washington state, including the Columbia river basin, jeopardizing the state's salmon fisheries. The state's recent report on the economic impacts of climate change indicate that water resources will be one of the areas most affected, and that many utilities may need to invest major resources in new supply and conservation measures. Developing and implementing adaptation strategies, such as water conservation that includes the use of reclaimed water, can extend existing water supply systems to help address the global warming impacts. In particular, because reclaimed water uses existing sources of supply and fairly constant base flows of wastewater, it has year-round dependability, without regard to any given year's climate variability. This is particularly important during summer months, when outdoor demands peak and stream flows are critical for fish.

(b) Puget Sound. The governor has initiated a Puget Sound partnership, with a request for an initial strategy to address high priority problems. In December, the partnership delivered a strategy that includes expanded use of reclaimed water both in order to improve the Puget Sound's water quality by reducing wastewater discharges and by replacing current sources of supply for nonpotable uses that detrimentally affect stream flows and habitat.

(c) Salmon recovery. The federal fisheries services recently approved

a salmon recovery plan for the Puget Sound, which was developed across multiple watersheds by numerous local governments, tribal governments, and other parties to achieve sustainable populations of salmon and other species. That plan includes an adaptive management component where continued efforts will be made to address issues, including problems with instream flows, identified as a limiting factor in virtually all the watersheds, through strategies that will be developed by regional and watershed implementation groups. A potentially significant strategy may be the substitution of reclaimed water for nonpotable uses where it will benefit streams and habitat.

(d) Water quality. Increasingly stringent federal standards for water quality are forcing a number of communities to develop strategies for wastewater treatment that, in addition to providing higher treatment levels, will reduce the quantity of discharges. For many of those communities, facilities to produce reclaimed water will be a necessary approach to achieve both water quality and water supply objectives.

(e) Watershed plans. Under the watershed planning act of 1997, approximately two-thirds of the watersheds in the state have used a bottom-up approach to developing collaborative plans for meeting future water supply needs. Many of those plans include the use of reclaimed water for meeting those needs.

(f) Columbia river water management. Pursuant to legislation and funding provided in 2006, federal, state, and local governments and agencies, along with tribal governments, user groups, environmental organizations, and others are developing a comprehensive strategy for the mainstem Columbia that will ensure supplies for future growth while protecting stream flows and fish habitat. The strategy will include multiple tools that may include the potential development of new storage, conservation measures, and water use efficiency. One pathway toward conservation and efficiency is likely to be identification and implementation of reclaimed water opportunities.

(g) Development schedule. The time frame required to plan, design, construct, and begin use of reclaimed water can be extensive due to the public information and acceptance efforts required in addition to planning, design, and environmental assessment required for infrastructure projects. This extended time frame necessitates the initiation of reclaimed water projects as soon as possible.

(2) It is therefore the intent of the legislature to:

(a) Effectuate and reinvigorate the original intent behind the reclaimed water act to expand the use of reclaimed water for nonpotable uses throughout the state;

(b) Restate and emphasize the use of reclaimed water as a matter of water resource management policy;

(c) Address current barriers to the use of reclaimed water, where changes in state law will resolve such issues;

(d) Develop information from the state agencies responsible for promoting the use of reclaimed water and address regulatory, financial, planning, and other barriers to the expanded use of reclaimed water, relying on state agency expertise and experience with reclaimed water;

(e) Facilitate achieving state, regional, and local objectives through use of reclaimed water for water supply purposes in high priority areas of the state, and in regional and local watershed and water planning;

(f) Provide planning tools to local governments to incorporate reclaimed water and related water conservation into land use plans, consistent with water planning;

(g) Expand the scope of work of the advisory committee established under chapter 279, Laws of 2006 to identify other reclaimed water issues that should be addressed; and

(h) Provide initial funding, and evaluate options for providing additional direct state funding, for reclaimed water projects." [2007 c 445 § 1.]

Construction—1995 c 342: "This act shall not be construed as affecting any existing right acquired or liability or obligation incurred under the sections amended or repealed in this act or under any rule or order adopted under those sections, nor as affecting any proceeding instituted under those sections." [1995 c 342 § 10.]

Effective date—1995 c 342: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and shall take effect immediately [May 11, 1995]." [1995 c 342 § 11.]

90.46.015 Rules—Coordination with department of health—Consultation with advisory committee.

Interim reports—2006 c 279: "(1) In order to identify and pursue other measures to facilitate achieving the objectives in RCW 90.46.005 for

expanded, appropriate, and safe use of reclaimed water, the department of ecology and the department of health shall provide the legislature with relevant information through periodic progress reports, as provided in this section.

(2) The department of ecology shall provide interim reports to the appropriate committees of the legislature by January 1, 2008, and January 1, 2009, that summarize the steps taken to that date towards the final rule making required by RCW 90.46.015. The reports shall include, at a minimum, a summary of participation in the rule advisory committee, the topics considered by the department, and issues identified by the rule advisory committee as barriers to expanded use of reclaimed water that may not be addressed within the rules to be adopted by the department.

(3) In addition to subsection (2) of this section, the department shall form a subtask force consisting of not more than ten members chosen from the existing rule advisory committee, and reclaimed water users, to further identify and recommend actions to increase the promotion of reclaimed water as a water supply and water resource management option. At a minimum, the subtask force shall consider (a) issues assigned by the rule advisory committee; (b) staffing levels, resources, and roles within both state agencies; (c) optimizing organizational structure; (d) unresolved legal issues specific to reclaimed water use; and (e) a more appropriate name to describe reclaimed water. Information regarding these topics shall be appended to the required interim reports as the topics are considered by the advisory group." [2007 c 445 § 5; 2006 c 279 § 3.]

90.46.120 Use of water from wastewater treatment facility—Consideration in regional water supply plan or potable water supply service planning—Consideration in reviewing provisions for water supplies for short plat, short subdivision, or subdivision. (1) The owner of a wastewater treatment facility that is reclaiming water with a permit issued under this chapter has the exclusive right to any reclaimed water generated by the wastewater treatment facility. Use, distribution, and the recovery from aquifer storage of reclaimed water by the owner of the wastewater treatment facility is exempt from the permit requirements of RCW 90.03.250 and 90.44.060, provided that a permit for recovery of reclaimed water from aquifer storage and recovery shall be reviewed under the standards established under RCW 90.03.370(2). Revenues derived from the reclaimed water facility shall be used only to offset the cost of operation of the wastewater utility fund or other applicable source of system-wide funding.

(2) If the proposed use or uses of reclaimed water are intended to augment or replace potable water supplies or create the potential for the development of additional potable water supplies, such use or uses shall be considered in the development of any regional water supply plan or plans addressing potable water supply service by multiple water purveyors. Such water supply plans include plans developed by multiple jurisdictions under the relevant provisions of chapters 43.20, 70.116, 90.44, and 90.82 RCW, and the water supply provisions under the utility element of chapter 36.70A RCW. The method by which such plans are approved shall remain unchanged. The owner of a wastewater treatment facility that proposes to reclaim water shall be included as a participant in the development of such regional water supply plan or plans.

(3) Where opportunities for the use of reclaimed water exist within the period of time addressed by a water system plan, a water supply plan, or a coordinated water system plan developed under chapters 43.20, 70.116, 90.44, and 90.82 RCW, and the water supply provisions under the utility element of chapter 36.70A RCW, these plans must be developed and coordinated to ensure that opportunities for reclaimed

water are evaluated. The requirements of this subsection (3) do not apply to water system plans developed under chapter 43.20 RCW for utilities serving less than one thousand service connections.

(4) The provisions of any plan for reclaimed water, developed under the authorities in subsections (2) and (3) of this section, should be included by a city, town, or county in reviewing provisions for water supplies in a proposed short plat, short subdivision, or subdivision under chapter 58.17 RCW, where reclaimed water supplies may be proposed for nonpotable purposes in the short plat, short subdivision, or subdivision. [2007 c 445 § 3; 2003 1st sp.s. c 5 § 13; 1997 c 444 § 1.]

Findings—Intent—2007 c 445: See note following RCW 90.46.005.

Severability—2003 1st sp.s. c 5: See note following RCW 90.03.015.

Severability—1997 c 444: See note following RCW 90.46.010.

Chapter 90.48 RCW

WATER POLLUTION CONTROL

Sections

- 90.48.110 Plans and proposed methods of operation and maintenance of sewerage or disposal systems to be submitted to department—Exceptions—Time limitations.
- 90.48.162 Waste disposal permits required of counties, municipalities and public corporations.
- 90.48.260 Federal clean water act—Department designated as state agency, authority—Delegation of authority—Powers, duties, and functions.
- 90.48.310 Application of barley straw to waters of the state.
- 90.48.366 Discharge of oil into waters of the state—Compensation schedule.
- 90.48.368 Discharge of oil into waters of the state—Preassessment screening.

90.48.110 Plans and proposed methods of operation and maintenance of sewerage or disposal systems to be submitted to department—Exceptions—Time limitations. (1) Except under subsection (2) of this section, all engineering reports, plans, and specifications for the construction of new sewerage systems, sewage treatment or disposal plants or systems, or for improvements or extensions to existing sewerage systems or sewage treatment or disposal plants, and the proposed method of future operation and maintenance of said facility or facilities, shall be submitted to and be approved by the department, before construction thereof may begin. No approval shall be given until the department is satisfied that said plans and specifications and the methods of operation and maintenance submitted are adequate to protect the quality of the state's waters as provided for in this chapter. Approval under this chapter is not required for large on-site sewage systems permitted by the department of health under chapter 70.118B RCW or for on-site sewage systems regulated by local health jurisdictions under rules of the state board of health.

(2) To promote efficiency in service delivery and inter-governmental cooperation in protecting the quality of the state's waters, the department may delegate the authority for review and approval of engineering reports, plans, and specifications for the construction of new sewerage systems, sewage treatment or disposal plants or systems, or for improvements or extensions to existing sewerage system or sewage treatment or disposal plants, and the proposed method of

future operations and maintenance of said facility or facilities and industrial pretreatment systems, to local units of government requesting such delegation and meeting criteria established by the department.

(3) For any new or revised general sewer plan submitted for review under this section, the department shall review and either approve, conditionally approve, reject, or request amendments within ninety days of the receipt of the submission of the plan. The department may extend this ninety-day time limitation for new submittals by up to an additional ninety days if insufficient time exists to adequately review the general sewer plan. For rejections of plans or extensions of the timeline, the department shall provide in writing to the local government entity the reason for such action. In addition, the governing body of the local government entity and the department may mutually agree to an extension of the deadlines contained in this section. [2007 c 343 § 13; 2002 c 161 § 5; 1994 c 118 § 1; 1987 c 109 § 130; 1967 c 13 § 10; 1945 c 216 § 17; Rem. Supp. 1945 § 10964q.]

Captions and part headings not law—2007 c 343: See RCW 70.118B.900.

Purpose—Short title—Construction—Rules—Severability—Captions—1987 c 109: See notes following RCW 43.21B.001.

90.48.162 Waste disposal permits required of counties, municipalities and public corporations. Any county or any municipal or public corporation operating or proposing to operate a sewerage system, including any system which collects only domestic sewerage, which results in the disposal of waste material into the waters of the state shall procure a permit from the department of ecology before so disposing of such materials. This section is intended to extend the permit system of RCW 90.48.160 to counties and municipal or public corporations and the provisions of RCW 90.48.170 through 90.48.200 and 90.52.040 shall be applicable to the permit requirement imposed under this section. A permit under this chapter is not required for large on-site sewage systems permitted by the department of health under chapter 70.118B RCW or for on-site sewage systems permitted by local health jurisdictions under rules of the state board of health. [2007 c 343 § 12; 1972 ex.s. c 140 § 1.]

Captions and part headings not law—2007 c 343: See RCW 70.118B.900.

90.48.260 Federal clean water act—Department designated as state agency, authority—Delegation of authority—Powers, duties, and functions. The department of ecology is hereby designated as the state water pollution control agency for all purposes of the federal clean water act as it exists on February 4, 1987, and is hereby authorized to participate fully in the programs of the act as well as to take all action necessary to secure to the state the benefits and to meet the requirements of that act. With regard to the national estuary program established by section 320 of that act, the department shall exercise its responsibility jointly with the Puget Sound partnership, created in RCW 90.71.210. The department of ecology may delegate its authority under this chapter, including its national pollutant discharge elimination permit system authority and duties regarding animal feeding operations and concentrated animal feeding operations, to the department of agriculture through a memorandum of under-

standing. Until any such delegation receives federal approval, the department of agriculture's adoption or issuance of animal feeding operation and concentrated animal feeding operation rules, permits, programs, and directives pertaining to water quality shall be accomplished after reaching agreement with the director of the department of ecology. Adoption or issuance and implementation shall be accomplished so that compliance with such animal feeding operation and concentrated animal feeding operation rules, permits, programs, and directives will achieve compliance with all federal and state water pollution control laws. The powers granted herein include, among others, and notwithstanding any other provisions of chapter 90.48 RCW or otherwise, the following:

(1) Complete authority to establish and administer a comprehensive state point source waste discharge or pollution discharge elimination permit program which will enable the department to qualify for full participation in any national waste discharge or pollution discharge elimination permit system and will allow the department to be the sole agency issuing permits required by such national system operating in the state of Washington subject to the provisions of RCW 90.48.262(2). Program elements authorized herein may include, but are not limited to: (a) Effluent treatment and limitation requirements together with timing requirements related thereto; (b) applicable receiving water quality standards requirements; (c) requirements of standards of performance for new sources; (d) pretreatment requirements; (e) termination and modification of permits for cause; (f) requirements for public notices and opportunities for public hearings; (g) appropriate relationships with the secretary of the army in the administration of his responsibilities which relate to anchorage and navigation, with the administrator of the environmental protection agency in the performance of his duties, and with other governmental officials under the federal clean water act; (h) requirements for inspection, monitoring, entry, and reporting; (i) enforcement of the program through penalties, emergency powers, and criminal sanctions; (j) a continuing planning process; and (k) user charges.

(2) The power to establish and administer state programs in a manner which will insure the procurement of moneys, whether in the form of grants, loans, or otherwise; to assist in the construction, operation, and maintenance of various water pollution control facilities and works; and the administering of various state water pollution control management, regulatory, and enforcement programs.

(3) The power to develop and implement appropriate programs pertaining to continuing planning processes, area-wide waste treatment management plans, and basin planning.

The governor shall have authority to perform those actions required of him or her by the federal clean water act. [2007 c 341 § 55; 2003 c 325 § 7; 1988 c 220 § 1; 1983 c 270 § 1; 1979 ex.s. c 267 § 1; 1973 c 155 § 4; 1967 c 13 § 24.]

Severability—Effective date—2007 c 341: See RCW 90.71.906 and 90.71.907.

Intent—Finding—2003 c 325: See note following RCW 90.64.030.

Severability—1983 c 270: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1983 c 270 § 5.]

90.48.310 Application of barley straw to waters of the state. (1) Notwithstanding any other provisions of this chapter, the application of barley straw to waters of the state for the purposes of water clarification does not require a state waste discharge permit as long as the following provisions are met:

(a) The barley straw is applied at a rate of up to two hundred twenty-five pounds per acre of surface water;

(b) Whole bales or tightly packed straw are not used. Straw must be loosely packed in nylon or mesh bags;

(c) Bags of straw are placed where control is desired, such as around docks and swim areas, and around inlets to aid in aeration or mixing;

(d) The bags must be staked or anchored in place;

(e) Straw is placed in early spring, prior to the growth of algae; and

(f) Bags are removed four to six months after placement and must not be left in the water over winter.

(2) The placement of barley straw into waters of the state in any other instance is not authorized absent a permit.

(3) This section does not alter any permit requirement that may exist under chapter 77.55 RCW. [2007 c 30 § 1.]

90.48.366 Discharge of oil into waters of the state—Compensation schedule. The department, in consultation with the departments of fish and wildlife and natural resources, and the parks and recreation commission, shall adopt rules establishing a compensation schedule for the discharge of oil in violation of this chapter and chapter 90.56 RCW. The amount of compensation assessed under this schedule shall be no less than one dollar per gallon of oil spilled and no greater than one hundred dollars per gallon of oil spilled. The compensation schedule shall reflect adequate compensation for unquantifiable damages or for damages not quantifiable at reasonable cost for any adverse environmental, recreational, aesthetic, or other effects caused by the spill and shall take into account:

(1) Characteristics of any oil spilled, such as toxicity, dispersibility, solubility, and persistence, that may affect the severity of the effects on the receiving environment, living organisms, and recreational and aesthetic resources;

(2) The sensitivity of the affected area as determined by such factors as: (a) The location of the spill; (b) habitat and living resource sensitivity; (c) seasonal distribution or sensitivity of living resources; (d) areas of recreational use or aesthetic importance; (e) the proximity of the spill to important habitats for birds, aquatic mammals, fish, or to species listed as threatened or endangered under state or federal law; (f) significant archaeological resources as determined by the department of archaeology and historic preservation; and (g) other areas of special ecological or recreational importance, as determined by the department; and

(3) Actions taken by the party who spilled oil or any party liable for the spill that: (a) Demonstrate a recognition and affirmative acceptance of responsibility for the spill, such as the immediate removal of oil and the amount of oil removed from the environment; or (b) enhance or impede the detection of the spill, the determination of the quantity of oil spilled, or the extent of damage, including the unauthorized removal of evidence such as injured fish or wildlife. [2007 c

347 § 1; 1994 sp.s. c 9 § 855; 1992 c 73 § 28; 1991 c 200 § 812; 1989 c 388 § 2.]

Severability—Headings and captions not law—Effective date—1994 sp.s. c 9: See RCW 18.79.900 through 18.79.902.

Effective dates—Severability—1992 c 73: See RCW 82.23B.902 and 90.56.905.

Effective dates—Severability—1991 c 200: See RCW 90.56.901 and 90.56.904.

Intent—Application—Captions—Severability—1989 c 388: See notes following RCW 90.56.010.

90.48.368 Discharge of oil into waters of the state—Preassessment screening. (1) The department shall adopt rules establishing a formal process for preassessment screening of damages resulting from spills in the waters of the state causing the death of, or injury to, fish, animals, vegetation, or other resources of the state. The rules shall specify the conditions under which the department shall convene a preassessment screening committee. The preassessment screening process shall occur concurrently with reconnaissance activities. The committee shall use information obtained from reconnaissance activities as well as any other relevant resource and resource use information. For each incident, the committee shall determine whether a damage assessment investigation should be conducted, or, whether the compensation schedule authorized under RCW 90.48.366 and 90.48.367 should be used to assess damages. The committee may accept restoration or enhancement projects or studies proposed by the liable parties in lieu of some or all of: (a) The compensation schedule authorized under RCW 90.48.366 and 90.48.367; or (b) the claims from damage assessment studies authorized under RCW 90.48.142.

(2) A preassessment screening committee may consist of representatives of the departments of ecology, archaeology and historic preservation, fish and wildlife, health, and natural resources, and the parks and recreation commission, as well as other federal, state, and local agencies, and tribal and local governments whose presence would enhance the reconnaissance or damage assessment aspects of spill response. The department shall chair the committee and determine which representatives will be needed on a spill-by-spill basis.

(3) The committee shall consider the following factors when determining whether a damage assessment study authorized under RCW 90.48.367 should be conducted: (a) Whether evidence from reconnaissance investigations suggests that injury has occurred or is likely to occur to publicly owned resources; (b) the potential loss in services provided by resources injured or likely to be injured and the expected value of the potential loss; (c) whether a restoration project to return lost services is technically feasible; (d) the accuracy of damage quantification methods that could be used and the anticipated cost-effectiveness of applying each method; (e) the extent to which likely injury to resources can be verified with available quantification methods; and (f) whether the injury, once quantified, can be translated into monetary values with sufficient precision or accuracy.

(4) When a resource damage assessment is required for an oil spill in the waters of the state, as defined in RCW 90.56.010, the state trustee agency responsible for the resource and habitat damaged shall conduct the damage

assessment and pursue all appropriate remedies with the responsible party.

(5) Oil spill damage assessment studies authorized under RCW 90.48.367 may only be conducted if the committee, after considering the factors enumerated in subsection (3) of this section, determines that the damages to be investigated are quantifiable at a reasonable cost and that proposed assessment studies are clearly linked to quantification of the damages incurred.

(6) As new information becomes available, the committee may reevaluate the scope of damage assessment using the factors listed in subsection (3) of this section and may reduce or expand the scope of damage assessment as appropriate.

(7) The preassessment screening process shall provide for the ongoing involvement of persons who may be liable for damages resulting from an oil spill. The department may negotiate with a potentially liable party to perform restoration and enhancement projects or studies which may substitute for all or part of the compensation authorized under RCW 90.48.366 and 90.48.367 or the damage assessment studies authorized under RCW 90.48.367.

(8) For the purposes of this section and RCW 90.48.367, the cost of a damage assessment shall be considered "reasonable" when the anticipated cost of the damage assessment is expected to be less than the anticipated damage that may have occurred or may occur. [2007 c 347 § 2; 1994 c 264 § 92; 1992 c 73 § 29; 1991 c 200 § 814; 1989 c 388 § 4.]

Effective dates—Severability—1992 c 73: See RCW 82.23B.902 and 90.56.905.

Effective dates—Severability—1991 c 200: See RCW 90.56.901 and 90.56.904.

Intent—Application—Captions—Severability—1989 c 388: See notes following RCW 90.56.010.

Chapter 90.50A RCW

WATER POLLUTION CONTROL FACILITIES— FEDERAL CAPITALIZATION GRANTS

Sections

- 90.50A.030 Use of moneys in fund.
- 90.50A.040 Administration of fund.
- 90.50A.080 Puget Sound partners.

90.50A.030 Use of moneys in fund. The department shall use the moneys in the water pollution control revolving fund to provide financial assistance as provided in the water quality act of 1987 and as provided in RCW 90.50A.040:

(1) To make loans, on the condition that:

(a) Such loans are made at or below market interest rates, including interest free loans, at terms not to exceed twenty years;

(b) Annual principal and interest payments will commence not later than one year after completion of any project and all loans will be fully amortized not later than twenty years after project completion;

(c) The recipient of a loan will establish a dedicated source of revenue for repayment of loans; and

(d) The fund will be credited with all payments of principal and interest on all loans.

(2) Loans may be made for the following purposes:

(a) To public bodies for the construction or replacement of water pollution control facilities as defined in section 212 of the federal water quality act of 1987;

(b) For the implementation of a management program established under section 319 of the federal water quality act of 1987 relating to the management of nonpoint sources of pollution, subject to the requirements of that act; and

(c) For development and implementation of a conservation and management plan under section 320 of the federal water quality act of 1987 relating to the national estuary program, subject to the requirements of that act.

(3) The department may also use the moneys in the fund for the following purposes:

(a) To buy or refinance the water pollution control facilities' debt obligations of public bodies at or below market rates, if such debt was incurred after March 7, 1985;

(b) To guarantee, or purchase insurance for, public body obligations for water pollution control facility construction or replacement or activities if the guarantee or insurance would improve credit market access or reduce interest rates, or to provide loans to a public body for this purpose;

(c) As a source of revenue or security for the payment of principal and interest on revenue or general obligation bonds issued by the state if the proceeds of the sale of such bonds will be deposited in the fund;

(d) To earn interest on fund accounts; and

(e) To pay the expenses of the department in administering the water pollution control revolving fund according to administrative reserves authorized by federal and state law.

(4) The department shall present a biennial progress report on the use of moneys from the account to the appropriate committees of the legislature. The report shall consist of a list of each recipient, project description, and amount of the grant, loan, or both.

(5) The department may not use the moneys in the water pollution control revolving fund for grants. [2007 c 341 § 38; 1996 c 37 § 4; 1988 c 284 § 4.]

Severability—Effective date—2007 c 341: See RCW 90.71.906 and 90.71.907.

90.50A.040 Administration of fund. Moneys deposited in the water pollution control revolving fund shall be administered by the department. In administering the fund, the department shall:

(1) Consistent with RCW 90.50A.030 and 90.50A.080, allocate funds for loans in accordance with the annual project priority list in accordance with section 212 of the federal water pollution control act as amended in 1987, and allocate funds under sections 319 and 320 according to the provisions of that act;

(2) Use accounting, audit, and fiscal procedures that conform to generally accepted government accounting standards;

(3) Prepare any reports required by the federal government as a condition to awarding federal capitalization grants;

(4) Adopt by rule any procedures or standards necessary to carry out the provisions of this chapter;

(5) Enter into agreements with the federal environmental protection agency;

(6) Cooperate with local, substate regional, and interstate entities regarding state assessment reports and state manage-

ment programs related to the nonpoint source management programs as noted in section 319(c) of the federal water pollution control act amendments of 1987 and estuary programs developed under section 320 of that act;

(7) Comply with provisions of the water quality act of 1987; and

(8) After January 1, 2010, not provide funding for projects designed to address the restoration of Puget Sound that are in conflict with the action agenda developed by the Puget Sound partnership under RCW 90.71.310. [2007 c 341 § 39; 1988 c 284 § 5.]

Severability—Effective date—2007 c 341: See RCW 90.71.906 and 90.71.907.

90.50A.080 Puget Sound partners. (1) In administering the fund, the department shall give priority consideration to:

(a) A public body that is a Puget Sound partner, as defined in RCW 90.71.010; and

(b) A project that is referenced in the action agenda developed by the Puget Sound partnership under RCW 90.71.310.

(2) When implementing this section, the department shall give preference only to Puget Sound partners, as defined in RCW 90.71.010, in comparison to other entities that are eligible to be included in the definition of Puget Sound partner. Entities that are not eligible to be a Puget Sound partner due to geographic location, composition, exclusion from the scope of the Puget Sound action agenda developed under RCW 90.71.310, or for any other reason, shall not be given less preferential treatment than Puget Sound partners. [2007 c 341 § 40.]

Severability—Effective date—2007 c 341: See RCW 90.71.906 and 90.71.907.

Chapter 90.54 RCW

WATER RESOURCES ACT OF 1971

Sections

- 90.54.020 General declaration of fundamentals for utilization and management of waters of the state.
- 90.54.180 Water use efficiency and conservation programs and practices.

90.54.020 General declaration of fundamentals for utilization and management of waters of the state. Utilization and management of the waters of the state shall be guided by the following general declaration of fundamentals:

(1) Uses of water for domestic, stock watering, industrial, commercial, agricultural, irrigation, hydroelectric power production, mining, fish and wildlife maintenance and enhancement, recreational, and thermal power production purposes, and preservation of environmental and aesthetic values, and all other uses compatible with the enjoyment of the public waters of the state, are declared to be beneficial.

(2) Allocation of waters among potential uses and users shall be based generally on the securing of the maximum net benefits for the people of the state. Maximum net benefits shall constitute total benefits less costs including opportunities lost.

(3) The quality of the natural environment shall be protected and, where possible, enhanced as follows:

(a) Perennial rivers and streams of the state shall be retained with base flows necessary to provide for preservation of wildlife, fish, scenic, aesthetic and other environmental values, and navigational values. Lakes and ponds shall be retained substantially in their natural condition. Withdrawals of water which would conflict therewith shall be authorized only in those situations where it is clear that overriding considerations of the public interest will be served.

(b) Waters of the state shall be of high quality. Regardless of the quality of the waters of the state, all wastes and other materials and substances proposed for entry into said waters shall be provided with all known, available, and reasonable methods of treatment prior to entry. Notwithstanding that standards of quality established for the waters of the state would not be violated, wastes and other materials and substances shall not be allowed to enter such waters which will reduce the existing quality thereof, except in those situations where it is clear that overriding considerations of the public interest will be served. Technology-based effluent limitations or standards for discharges for municipal water treatment plants located on the Chehalis, Columbia, Cowlitz, Lewis, or Skagit river shall be adjusted to reflect credit for substances removed from the plant intake water if:

(i) The municipality demonstrates that the intake water is drawn from the same body of water into which the discharge is made; and

(ii) The municipality demonstrates that no violation of receiving water quality standards or appreciable environmental degradation will result.

(4) The development of multipurpose water storage facilities shall be a high priority for programs of water allocation, planning, management, and efficiency. The department, other state agencies, local governments, and planning units formed under *section 107 or 108 of this act shall evaluate the potential for the development of new storage projects and the benefits and effects of storage in reducing damage to stream banks and property, increasing the use of land, providing water for municipal, industrial, agricultural, power generation, and other beneficial uses, and improving stream flow regimes for fisheries and other instream uses.

(5) Adequate and safe supplies of water shall be preserved and protected in potable condition to satisfy human domestic needs.

(6) Multiple-purpose impoundment structures are to be preferred over single-purpose structures. Due regard shall be given to means and methods for protection of fishery resources in the planning for and construction of water impoundment structures and other artificial obstructions.

(7) Federal, state, and local governments, individuals, corporations, groups and other entities shall be encouraged to carry out practices of conservation as they relate to the use of the waters of the state. In addition to traditional development approaches, improved water use efficiency, conservation, and use of reclaimed water shall be emphasized in the management of the state's water resources and in some cases will be a potential new source of water with which to meet future needs throughout the state. Use of reclaimed water shall be encouraged through state and local planning and programs with incentives for state financial assistance recognizing programs and plans that encourage the use of conservation and reclaimed water use, and state agencies shall continue to

review and reduce regulatory barriers and streamline permitting for the use of reclaimed water where appropriate.

(8) Development of water supply systems, whether publicly or privately owned, which provide water to the public generally in regional areas within the state shall be encouraged. Development of water supply systems for multiple domestic use which will not serve the public generally shall be discouraged where water supplies are available from water systems serving the public.

(9) Full recognition shall be given in the administration of water allocation and use programs to the natural interrelationships of surface and ground waters.

(10) Expressions of the public interest will be sought at all stages of water planning and allocation discussions.

(11) Water management programs, including but not limited to, water quality, flood control, drainage, erosion control and storm runoff are deemed to be in the public interest. [2007 c 445 § 8; 1997 c 442 § 201; 1989 c 348 § 1; 1987 c 399 § 2; 1971 ex.s. c 225 § 2.]

***Reviser's note:** Sections 107 and 108 of this act were vetoed by the governor.

Findings—Intent—2007 c 445: See note following RCW 90.46.005.

Part headings not law—Severability—1997 c 442: See RCW 90.82.900 and 90.82.901.

Severability—1989 c 348: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1989 c 348 § 13.]

Rights not impaired—1989 c 348: See RCW 90.54.920.

90.54.180 Water use efficiency and conservation programs and practices. Consistent with the fundamentals of water resource policy set forth in this chapter, state and local governments, individuals, corporations, groups and other entities shall be encouraged to carry out water use efficiency and conservation programs and practices consistent with the following:

(1) Water efficiency and conservation programs should utilize an appropriate mix of economic incentives, cost share programs, regulatory programs, and technical and public information efforts. Programs which encourage voluntary participation are preferred.

(2) Increased water use efficiency and reclaimed water should receive consideration as a potential source of water in state and local water resource planning processes. In determining the cost-effectiveness of alternative water sources, consideration should be given to the benefits of conservation, waste water recycling, and impoundment of waters. Where reclaimed water is a feasible replacement source of water, it shall be used by state agencies and state facilities for nonpotable water uses in lieu of the use of potable water. For purposes of this requirement, feasible replacement source means (a) the reclaimed water is of adequate quality and quantity for the proposed use; (b) the proposed use is approved by the departments of ecology and health; (c) the reclaimed water can be reliably supplied by a local public agency or public water system; and (d) the cost of the reclaimed water is reasonable relative to the costs of conservation or other potentially available supplies of potable water, after taking into account all costs and benefits, including environmental costs and benefits.

(3) In determining the cost-effectiveness of alternative water sources, full consideration should be given to the benefits of storage which can reduce the damage to stream banks and property, increase the utilization of land, provide water for municipal, industrial, agricultural, and other beneficial uses, provide for the generation of electric power from renewable resources, and improve stream flow regimes for fishery and other instream uses.

(4) Entities receiving state financial assistance for construction of water source expansion or acquisition of new sources shall develop, and implement if cost-effective, a water use efficiency and conservation element of a water supply plan pursuant to RCW 43.20.230(1).

(5) State programs to improve water use efficiency should focus on those areas of the state in which water is overappropriated; areas that experience diminished streamflows or aquifer levels; regional areas that the governor has identified as high priority for investments in improved water quality and quantity, including the Spokane river, the Columbia river basin, and the Puget Sound; areas most likely to be affected by global warming; and areas where projected water needs, including those for instream flows, exceed available supplies.

(6) Existing and future generations of citizens of the state of Washington should be made aware of the importance of the state's water resources and the need for wise and efficient use and development of this vital resource. In order to increase this awareness, state agencies should integrate public information programs on increasing water use efficiency into existing public information efforts. This effort shall be coordinated with other levels of government, including local governments and Indian tribes. [2007 c 445 § 9; 1989 c 348 § 5.]

Findings—Intent—2007 c 445: See note following RCW 90.46.005.

Severability—1989 c 348: See note following RCW 90.54.020.

Chapter 90.56 RCW

OIL AND HAZARDOUS SUBSTANCE SPILL PREVENTION AND RESPONSE

Sections

90.56.010 Definitions.
90.56.330 Additional penalties.

90.56.010 Definitions. The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

(1) "Best achievable protection" means the highest level of protection that can be achieved through the use of the best achievable technology and those staffing levels, training procedures, and operational methods that provide the greatest degree of protection achievable. The director's determination of best achievable protection shall be guided by the critical need to protect the state's natural resources and waters, while considering (a) the additional protection provided by the measures; (b) the technological achievability of the measures; and (c) the cost of the measures.

(2) "Best achievable technology" means the technology that provides the greatest degree of protection taking into consideration (a) processes that are being developed, or could

feasibly be developed, given overall reasonable expenditures on research and development, and (b) processes that are currently in use. In determining what is best achievable technology, the director shall consider the effectiveness, engineering feasibility, and commercial availability of the technology.

(3) "Board" means the pollution control hearings board.

(4) "Cargo vessel" means a self-propelled ship in commerce, other than a tank vessel or a passenger vessel, three hundred or more gross tons, including but not limited to, commercial fish processing vessels and freighters.

(5) "Bulk" means material that is stored or transported in a loose, unpackaged liquid, powder, or granular form capable of being conveyed by a pipe, bucket, chute, or belt system.

(6) "Committee" means the preassessment screening committee established under RCW 90.48.368.

(7) "Covered vessel" means a tank vessel, cargo vessel, or passenger vessel.

(8) "Department" means the department of ecology.

(9) "Director" means the director of the department of ecology.

(10) "Discharge" means any spilling, leaking, pumping, pouring, emitting, emptying, or dumping.

(11)(a) "Facility" means any structure, group of structures, equipment, pipeline, or device, other than a vessel, located on or near the navigable waters of the state that transfers oil in bulk to or from a tank vessel or pipeline, that is used for producing, storing, handling, transferring, processing, or transporting oil in bulk.

(b) A facility does not include any: (i) Railroad car, motor vehicle, or other rolling stock while transporting oil over the highways or rail lines of this state; (ii) underground storage tank regulated by the department or a local government under chapter 90.76 RCW; (iii) motor vehicle motor fuel outlet; (iv) facility that is operated as part of an exempt agricultural activity as provided in RCW 82.04.330; or (v) marine fuel outlet that does not dispense more than three thousand gallons of fuel to a ship that is not a covered vessel, in a single transaction.

(12) "Fund" means the state coastal protection fund as provided in RCW 90.48.390 and 90.48.400.

(13) "Having control over oil" shall include but not be limited to any person using, storing, or transporting oil immediately prior to entry of such oil into the waters of the state, and shall specifically include carriers and bailees of such oil.

(14) "Marine facility" means any facility used for tank vessel wharfage or anchorage, including any equipment used for the purpose of handling or transferring oil in bulk to or from a tank vessel.

(15) "Navigable waters of the state" means those waters of the state, and their adjoining shorelines, that are subject to the ebb and flow of the tide and/or are presently used, have been used in the past, or may be susceptible for use to transport intrastate, interstate, or foreign commerce.

(16) "Necessary expenses" means the expenses incurred by the department and assisting state agencies for (a) investigating the source of the discharge; (b) investigating the extent of the environmental damage caused by the discharge; (c) conducting actions necessary to clean up the discharge; (d) conducting predamage and damage assessment studies; and (e) enforcing the provisions of this chapter and collecting for damages caused by a discharge.

(17) "Oil" or "oils" means oil of any kind that is liquid at atmospheric temperature and any fractionation thereof, including, but not limited to, crude oil, petroleum, gasoline, fuel oil, diesel oil, biological oils and blends, oil sludge, oil refuse, and oil mixed with wastes other than dredged spoil. Oil does not include any substance listed in Table 302.4 of 40 C.F.R. Part 302 adopted August 14, 1989, under section 101(14) of the federal comprehensive environmental response, compensation, and liability act of 1980, as amended by P.L. 99-499.

(18) "Offshore facility" means any facility located in, on, or under any of the navigable waters of the state, but does not include a facility any part of which is located in, on, or under any land of the state, other than submerged land.

(19) "Onshore facility" means any facility any part of which is located in, on, or under any land of the state, other than submerged land, that because of its location, could reasonably be expected to cause substantial harm to the environment by discharging oil into or on the navigable waters of the state or the adjoining shorelines.

(20)(a) "Owner or operator" means (i) in the case of a vessel, any person owning, operating, or chartering by demise, the vessel; (ii) in the case of an onshore or offshore facility, any person owning or operating the facility; and (iii) in the case of an abandoned vessel or onshore or offshore facility, the person who owned or operated the vessel or facility immediately before its abandonment.

(b) "Operator" does not include any person who owns the land underlying a facility if the person is not involved in the operations of the facility.

(21) "Passenger vessel" means a ship of three hundred or more gross tons with a fuel capacity of at least six thousand gallons carrying passengers for compensation.

(22) "Person" means any political subdivision, government agency, municipality, industry, public or private corporation, copartnership, association, firm, individual, or any other entity whatsoever.

(23) "Ship" means any boat, ship, vessel, barge, or other floating craft of any kind.

(24) "Spill" means an unauthorized discharge of oil or hazardous substances into the waters of the state.

(25) "Tank vessel" means a ship that is constructed or adapted to carry, or that carries, oil in bulk as cargo or cargo residue, and that:

(a) Operates on the waters of the state; or

(b) Transfers oil in a port or place subject to the jurisdiction of this state.

(26) "Waters of the state" includes lakes, rivers, ponds, streams, inland waters, underground water, salt waters, estuaries, tidal flats, beaches and lands adjoining the seacoast of the state, sewers, and all other surface waters and watercourses within the jurisdiction of the state of Washington.

(27) "Worst case spill" means: (a) In the case of a vessel, a spill of the entire cargo and fuel of the vessel complicated by adverse weather conditions; and (b) in the case of an onshore or offshore facility, the largest foreseeable spill in adverse weather conditions. [2007 c 347 § 6; 2000 c 69 § 15; 1992 c 73 § 31; 1991 c 200 § 102; 1990 c 116 § 2; 1989 c 388 § 6; 1985 c 316 § 5; 1971 ex.s. c 180 § 1; 1970 ex.s. c 88 § 1; 1969 ex.s. c 133 § 10. Formerly RCW 90.48.315.]

Effective dates—1992 c 73: See RCW 82.23B.902.

Findings—Severability—1990 c 116: See notes following RCW 90.56.210.

Intent—1989 c 388: "The legislature finds that oil spills can cause significant damage to the environment and natural resources held in trust by and for the people of this state. Some of these damages are unquantifiable, and others cannot be quantified at a reasonable cost. Both quantifiable and unquantifiable damages often occur despite prompt containment and cleanup measures. Due to the inability to measure the exact nature and extent of certain types of damages, current damage assessment methodologies used by the state inadequately assess the damage caused by oil spills.

In light of the magnitude of environmental and natural resource damage which may be caused by oil spills, and the importance of fishing, tourism, recreation, and Washington's natural abundance and beauty to the quality of life and economic future of the people of this state, the legislature declares that compensation should be sought for those damages that cannot be quantified at a reasonable cost and for those unquantifiable damages that result from oil spills. This compensation is intended to ensure that the public does not bear substantial losses caused by oil pollution for which compensation may not otherwise be received." [1989 c 388 § 1.]

Application—1989 c 388: "This act applies prospectively only, and not retroactively. It applies only to causes of action which arise after May 13, 1989." [1989 c 388 § 12.]

Captions not law—1989 c 388: "Section headings as used in this act do not constitute any part of the law." [1989 c 388 § 13.]

Severability—1989 c 388: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1989 c 388 § 14.]

Severability—1969 ex.s. c 133: "If any provision of this 1969 act or the application thereof to any person or circumstance is held invalid, this 1969 act can be given effect without the invalid provision or application; and to this end the provisions of this 1969 act are declared to be severable. This 1969 act shall be liberally construed to effectuate its purpose." [1969 ex.s. c 133 § 12.]

Marine oil pollution—Baseline study program: RCW 43.21A.405 through 43.21A.420.

90.56.330 Additional penalties. Except as otherwise provided in RCW 90.56.390, any person who negligently discharges oil, or causes or permits the entry of the same, shall incur, in addition to any other penalty as provided by law, a penalty in an amount of up to one hundred thousand dollars for every such violation, and for each day the spill poses risks to the environment as determined by the director. Any person who intentionally or recklessly discharges or causes or permits the entry of oil into the waters of the state shall incur, in addition to any other penalty authorized by law, a penalty of up to five hundred thousand dollars for every such violation and for each day the spill poses risks to the environment as determined by the director. The amount of the penalty shall be determined by the director after taking into consideration the size of the business of the violator, the gravity of the violation, the previous record of the violator in complying, or failing to comply, with the provisions of chapter 90.48 RCW, the speed and thoroughness of the collection and removal of the oil, and such other considerations as the director deems appropriate. Every act of commission or omission which procures, aids or abets in the violation shall be considered a violation under the provisions of this section and subject to the penalty herein provided for. The penalty provided for in this section shall be imposed pursuant to RCW 43.21B.300. [2007 c 347 § 3; 1992 c 73 § 36; 1990 c 116 § 20; 1989 c 388 § 9; 1987 c 109 § 20; 1985 c 316 § 7; 1970 ex.s. c 88 § 9; 1969 ex.s. c 133 § 7. Formerly RCW 90.48.350.]

Effective dates—1992 c 73: See RCW 82.23B.902.

Findings—Severability—1990 c 116: See notes following RCW 90.56.210.

Intent—Application—Captions—Severability—1989 c 388: See notes following RCW 90.56.010.

Purpose—Short title—Construction—Rules—Severability—Captions—1987 c 109: See notes following RCW 43.21B.001.

Chapter 90.58 RCW

SHORELINE MANAGEMENT ACT OF 1971

Sections

90.58.030	Definitions and concepts.
90.58.080	Timetable for local governments to develop or amend master programs—Review of master programs—Grants.

90.58.030 Definitions and concepts. As used in this chapter, unless the context otherwise requires, the following definitions and concepts apply:

(1) Administration:

(a) "Department" means the department of ecology;

(b) "Director" means the director of the department of ecology;

(c) "Local government" means any county, incorporated city, or town which contains within its boundaries any lands or waters subject to this chapter;

(d) "Person" means an individual, partnership, corporation, association, organization, cooperative, public or municipal corporation, or agency of the state or local governmental unit however designated;

(e) "Hearing board" means the shoreline hearings board established by this chapter.

(2) Geographical:

(a) "Extreme low tide" means the lowest line on the land reached by a receding tide;

(b) "Ordinary high water mark" on all lakes, streams, and tidal water is that mark that will be found by examining the bed and banks and ascertaining where the presence and action of waters are so common and usual, and so long continued in all ordinary years, as to mark upon the soil a character distinct from that of the abutting upland, in respect to vegetation as that condition exists on June 1, 1971, as it may naturally change thereafter, or as it may change thereafter in accordance with permits issued by a local government or the department: PROVIDED, That in any area where the ordinary high water mark cannot be found, the ordinary high water mark adjoining salt water shall be the line of mean higher high tide and the ordinary high water mark adjoining fresh water shall be the line of mean high water;

(c) "Shorelines of the state" are the total of all "shorelines" and "shorelines of statewide significance" within the state;

(d) "Shorelines" means all of the water areas of the state, including reservoirs, and their associated shorelands, together with the lands underlying them; except (i) shorelines of statewide significance; (ii) shorelines on segments of streams upstream of a point where the mean annual flow is twenty cubic feet per second or less and the wetlands associated with such upstream segments; and (iii) shorelines on lakes less than twenty acres in size and wetlands associated with such small lakes;

(e) "Shorelines of statewide significance" means the following shorelines of the state:

(i) The area between the ordinary high water mark and the western boundary of the state from Cape Disappointment on the south to Cape Flattery on the north, including harbors, bays, estuaries, and inlets;

(ii) Those areas of Puget Sound and adjacent salt waters and the Strait of Juan de Fuca between the ordinary high water mark and the line of extreme low tide as follows:

(A) Nisqually Delta—from DeWolf Bight to Tatsolo Point,

(B) Birch Bay—from Point Whitehorn to Birch Point,

(C) Hood Canal—from Tala Point to Foulweather Bluff,

(D) Skagit Bay and adjacent area—from Brown Point to Yokeko Point, and

(E) Padilla Bay—from March Point to William Point;

(iii) Those areas of Puget Sound and the Strait of Juan de Fuca and adjacent salt waters north to the Canadian line and lying seaward from the line of extreme low tide;

(iv) Those lakes, whether natural, artificial, or a combination thereof, with a surface acreage of one thousand acres or more measured at the ordinary high water mark;

(v) Those natural rivers or segments thereof as follows:

(A) Any west of the crest of the Cascade range downstream of a point where the mean annual flow is measured at one thousand cubic feet per second or more,

(B) Any east of the crest of the Cascade range downstream of a point where the annual flow is measured at two hundred cubic feet per second or more, or those portions of rivers east of the crest of the Cascade range downstream from the first three hundred square miles of drainage area, whichever is longer;

(vi) Those shorelands associated with (i), (ii), (iv), and (v) of this subsection (2)(e);

(f) "Shorelands" or "shoreland areas" means those lands extending landward for two hundred feet in all directions as measured on a horizontal plane from the ordinary high water mark; floodways and contiguous floodplain areas landward two hundred feet from such floodways; and all wetlands and river deltas associated with the streams, lakes, and tidal waters which are subject to the provisions of this chapter; the same to be designated as to location by the department of ecology.

(i) Any county or city may determine that portion of a one-hundred-year-flood plain to be included in its master program as long as such portion includes, as a minimum, the floodway and the adjacent land extending landward two hundred feet therefrom.

(ii) Any city or county may also include in its master program land necessary for buffers for critical areas, as defined in chapter 36.70A RCW, that occur within shorelines of the state, provided that forest practices regulated under chapter 76.09 RCW, except conversions to nonforest land use, on lands subject to the provisions of this subsection (2)(f)(ii) are not subject to additional regulations under this chapter;

(g) "Floodway" means the area, as identified in a master program, that either: (i) Has been established in federal emergency management agency flood insurance rate maps or floodway maps; or (ii) consists of those portions of a river valley lying streamward from the outer limits of a watercourse upon which flood waters are carried during periods of

flooding that occur with reasonable regularity, although not necessarily annually, said floodway being identified, under normal condition, by changes in surface soil conditions or changes in types or quality of vegetative ground cover condition, topography, or other indicators of flooding that occurs with reasonable regularity, although not necessarily annually. Regardless of the method used to identify the floodway, the floodway shall not include those lands that can reasonably be expected to be protected from flood waters by flood control devices maintained by or maintained under license from the federal government, the state, or a political subdivision of the state;

(h) "Wetlands" means areas that are inundated or saturated by surface water or groundwater at a frequency and duration sufficient to support, and that under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soil conditions. Wetlands generally include swamps, marshes, bogs, and similar areas. Wetlands do not include those artificial wetlands intentionally created from nonwetland sites, including, but not limited to, irrigation and drainage ditches, grass-lined swales, canals, detention facilities, wastewater treatment facilities, farm ponds, and landscape amenities, or those wetlands created after July 1, 1990, that were unintentionally created as a result of the construction of a road, street, or highway. Wetlands may include those artificial wetlands intentionally created from nonwetland areas to mitigate the conversion of wetlands.

(3) Procedural terms:

(a) "Guidelines" means those standards adopted to implement the policy of this chapter for regulation of use of the shorelines of the state prior to adoption of master programs. Such standards shall also provide criteria to local governments and the department in developing master programs;

(b) "Master program" shall mean the comprehensive use plan for a described area, and the use regulations together with maps, diagrams, charts, or other descriptive material and text, a statement of desired goals, and standards developed in accordance with the policies enunciated in RCW 90.58.020;

(c) "State master program" is the cumulative total of all master programs approved or adopted by the department of ecology;

(d) "Development" means a use consisting of the construction or exterior alteration of structures; dredging; drilling; dumping; filling; removal of any sand, gravel, or minerals; bulkheading; driving of piling; placing of obstructions; or any project of a permanent or temporary nature which interferes with the normal public use of the surface of the waters overlying lands subject to this chapter at any state of water level;

(e) "Substantial development" shall mean any development of which the total cost or fair market value exceeds five thousand dollars, or any development which materially interferes with the normal public use of the water or shorelines of the state. The dollar threshold established in this subsection (3)(e) must be adjusted for inflation by the office of financial management every five years, beginning July 1, 2007, based upon changes in the consumer price index during that time period. "Consumer price index" means, for any calendar year, that year's annual average consumer price index, Seat-

tle, Washington area, for urban wage earners and clerical workers, all items, compiled by the bureau of labor and statistics, United States department of labor. The office of financial management must calculate the new dollar threshold and transmit it to the office of the code reviser for publication in the Washington State Register at least one month before the new dollar threshold is to take effect. The following shall not be considered substantial developments for the purpose of this chapter:

(i) Normal maintenance or repair of existing structures or developments, including damage by accident, fire, or elements;

(ii) Construction of the normal protective bulkhead common to single family residences;

(iii) Emergency construction necessary to protect property from damage by the elements;

(iv) Construction and practices normal or necessary for farming, irrigation, and ranching activities, including agricultural service roads and utilities on shorelands, and the construction and maintenance of irrigation structures including but not limited to head gates, pumping facilities, and irrigation channels. A feedlot of any size, all processing plants, other activities of a commercial nature, alteration of the contour of the shorelands by leveling or filling other than that which results from normal cultivation, shall not be considered normal or necessary farming or ranching activities. A feedlot shall be an enclosure or facility used or capable of being used for feeding livestock hay, grain, silage, or other livestock feed, but shall not include land for growing crops or vegetation for livestock feeding and/or grazing, nor shall it include normal livestock wintering operations;

(v) Construction or modification of navigational aids such as channel markers and anchor buoys;

(vi) Construction on shorelands by an owner, lessee, or contract purchaser of a single family residence for his own use or for the use of his or her family, which residence does not exceed a height of thirty-five feet above average grade level and which meets all requirements of the state agency or local government having jurisdiction thereof, other than requirements imposed pursuant to this chapter;

(vii) Construction of a dock, including a community dock, designed for pleasure craft only, for the private non-commercial use of the owner, lessee, or contract purchaser of single and multiple family residences. This exception applies if either: (A) In salt waters, the fair market value of the dock does not exceed two thousand five hundred dollars; or (B) in fresh waters, the fair market value of the dock does not exceed ten thousand dollars, but if subsequent construction having a fair market value exceeding two thousand five hundred dollars occurs within five years of completion of the prior construction, the subsequent construction shall be considered a substantial development for the purpose of this chapter;

(viii) Operation, maintenance, or construction of canals, waterways, drains, reservoirs, or other facilities that now exist or are hereafter created or developed as a part of an irrigation system for the primary purpose of making use of system waters, including return flow and artificially stored groundwater for the irrigation of lands;

(ix) The marking of property lines or corners on state owned lands, when such marking does not significantly interfere with normal public use of the surface of the water;

(x) Operation and maintenance of any system of dikes, ditches, drains, or other facilities existing on September 8, 1975, which were created, developed, or utilized primarily as a part of an agricultural drainage or diking system;

(xi) Site exploration and investigation activities that are prerequisite to preparation of an application for development authorization under this chapter, if:

(A) The activity does not interfere with the normal public use of the surface waters;

(B) The activity will have no significant adverse impact on the environment including, but not limited to, fish, wildlife, fish or wildlife habitat, water quality, and aesthetic values;

(C) The activity does not involve the installation of a structure, and upon completion of the activity the vegetation and land configuration of the site are restored to conditions existing before the activity;

(D) A private entity seeking development authorization under this section first posts a performance bond or provides other evidence of financial responsibility to the local jurisdiction to ensure that the site is restored to preexisting conditions; and

(E) The activity is not subject to the permit requirements of RCW 90.58.550;

(xii) The process of removing or controlling an aquatic noxious weed, as defined in RCW 17.26.020, through the use of an herbicide or other treatment methods applicable to weed control that are recommended by a final environmental impact statement published by the department of agriculture or the department jointly with other state agencies under chapter 43.21C RCW. [2007 c 328 § 1; 2003 c 321 § 2; 2002 c 230 § 2; 1996 c 265 § 1. Prior: 1995 c 382 § 10; 1995 c 255 § 5; 1995 c 237 § 1; 1987 c 474 § 1; 1986 c 292 § 1; 1982 1st ex.s. c 13 § 2; 1980 c 2 § 3; 1979 ex.s. c 84 § 3; 1975 1st ex.s. c 182 § 1; 1973 1st ex.s. c 203 § 1; 1971 ex.s. c 286 § 3.]

Finding—Intent—2003 c 321: "(1) The legislature finds that the final decision and order in *Everett Shorelines Coalition v. City of Everett and Washington State Department of Ecology*, Case No. 02-3-0009c, issued on January 9, 2003, by the central Puget Sound growth management hearings board was a case of first impression interpreting the addition of the shoreline management act into the growth management act, and that the board considered the appeal and issued its final order and decision without the benefit of shorelines guidelines to provide guidance on the implementation of the shoreline management act and the adoption of shoreline master programs.

(2) This act is intended to affirm the legislature's intent that:

(a) The shoreline management act be read, interpreted, applied, and implemented as a whole consistent with decisions of the shoreline hearings board and Washington courts prior to the decision of the central Puget Sound growth management hearings board in *Everett Shorelines Coalition v. City of Everett and Washington State Department of Ecology*;

(b) The goals of the growth management act, including the goals and policies of the shoreline management act, set forth in RCW 36.70A.020 and included in RCW 36.70A.020 by RCW 36.70A.480, continue to be listed without an order of priority; and

(c) Shorelines of statewide significance may include critical areas as defined by RCW 36.70A.030(5), but that shorelines of statewide significance are not critical areas simply because they are shorelines of statewide significance.

(3) The legislature intends that critical areas within the jurisdiction of the shoreline management act shall be governed by the shoreline management act and that critical areas outside the jurisdiction of the shoreline management act shall be governed by the growth management act. The legislature further intends that the quality of information currently required by the

shoreline management act to be applied to the protection of critical areas within shorelines of the state shall not be limited or changed by the provisions of the growth management act." [2003 c 321 § 1.]

Finding—Intent—2002 c 230: "The legislature finds that the dollar threshold for what constitutes substantial development under the shoreline management act has not been changed since 1986. The legislature recognizes that the effects of inflation have brought in many activities under the jurisdiction of chapter 90.58 RCW that would have been exempted under its original provisions. It is the intent of the legislature to modify the current dollar threshold for what constitutes substantial development under the shoreline management act, and to have this threshold readjusted on a five-year basis." [2002 c 230 § 1.]

Severability—Effective date—1995 c 255: See RCW 17.26.900 and 17.26.901.

Severability—1986 c 292: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1986 c 292 § 5.]

Intent—1980 c 2; 1979 ex.s. c 84: "The legislature finds that high tides and hurricane force winds on February 13, 1979, caused conditions resulting in the catastrophic destruction of the Hood Canal bridge on state route 104, a state highway on the federal-aid system; and, as a consequence, the state of Washington has sustained a sudden and complete failure of a major segment of highway system with a disastrous impact on transportation services between the counties of Washington's Olympic peninsula and the remainder of the state. The governor has by proclamation found that these conditions constitute an emergency. To minimize the economic loss and hardship to residents of the Puget Sound and Olympic peninsula regions, it is the intent of 1979 ex.s. c 84 to authorize the department of transportation to undertake immediately all necessary actions to restore interim transportation services across Hood Canal and Puget Sound and upon the Kitsap and Olympic peninsulas and to design and reconstruct a permanent bridge at the site of the original Hood Canal bridge. The department of transportation is directed to proceed with such actions in an environmentally responsible manner that would meet the substantive objectives of the state environmental policy act and the shorelines management act, and shall consult with the department of ecology in the planning process. The exemptions from the state environmental policy act and the shorelines management act contained in RCW 43.21C.032 and 90.58.030 are intended to approve and ratify the timely actions of the department of transportation taken and to be taken to restore interim transportation services and to reconstruct a permanent Hood Canal bridge without procedural delays." [1980 c 2 § 1; 1979 ex.s. c 84 § 1.]

90.58.080 Timetable for local governments to develop or amend master programs—Review of master programs—Grants. (1) Local governments shall develop or amend a master program for regulation of uses of the shorelines of the state consistent with the required elements of the guidelines adopted by the department in accordance with the schedule established by this section.

(2)(a) Subject to the provisions of subsections (5) and (6) of this section, each local government subject to this chapter shall develop or amend its master program for the regulation of uses of shorelines within its jurisdiction according to the following schedule:

(i) On or before December 1, 2005, for the city of Port Townsend, the city of Bellingham, the city of Everett, Snohomish county, and Whatcom county;

(ii) On or before December 1, 2009, for King county and the cities within King county greater in population than ten thousand;

(iii) Except as provided by (a)(i) and (ii) of this subsection, on or before December 1, 2011, for Clallam, Clark, Jefferson, King, Kitsap, Pierce, Snohomish, Thurston, and Whatcom counties and the cities within those counties;

(iv) On or before December 1, 2012, for Cowlitz, Island, Lewis, Mason, San Juan, Skagit, and Skamania counties and the cities within those counties;

(v) On or before December 1, 2013, for Benton, Chelan, Douglas, Grant, Kittitas, Spokane, and Yakima counties and the cities within those counties; and

(vi) On or before December 1, 2014, for Adams, Asotin, Columbia, Ferry, Franklin, Garfield, Grays Harbor, Klickitat, Lincoln, Okanogan, Pacific, Pend Oreille, Stevens, Wahkiakum, Walla Walla, and Whitman counties and the cities within those counties.

(b) Nothing in this subsection (2) shall preclude a local government from developing or amending its master program prior to the dates established by this subsection (2).

(3)(a) Following approval by the department of a new or amended master program, local governments required to develop or amend master programs on or before December 1, 2009, as provided by subsection (2)(a)(i) and (ii) of this section, shall be deemed to have complied with the schedule established by subsection (2)(a)(iii) of this section and shall not be required to complete master program amendments until seven years after the applicable dates established by subsection (2)(a)(iii) of this section. Any jurisdiction listed in subsection (2)(a)(i) of this section that has a new or amended master program approved by the department on or after March 1, 2002, but before July 27, 2003, shall not be required to complete master program amendments until seven years after the applicable date provided by subsection (2)(a)(iii) of this section.

(b) Following approval by the department of a new or amended master program, local governments choosing to develop or amend master programs on or before December 1, 2009, shall be deemed to have complied with the schedule established by subsection (2)(a)(iii) through (vi) of this section and shall not be required to complete master program amendments until seven years after the applicable dates established by subsection (2)(a)(iii) through (vi) of this section.

(4) Local governments shall conduct a review of their master programs at least once every seven years after the applicable dates established by subsection (2)(a)(iii) through (vi) of this section. Following the review required by this subsection (4), local governments shall, if necessary, revise their master programs. The purpose of the review is:

(a) To assure that the master program complies with applicable law and guidelines in effect at the time of the review; and

(b) To assure consistency of the master program with the local government's comprehensive plan and development regulations adopted under chapter 36.70A RCW, if applicable, and other local requirements.

(5) Local governments are encouraged to begin the process of developing or amending their master programs early and are eligible for grants from the department as provided by RCW 90.58.250, subject to available funding. Except for those local governments listed in subsection (2)(a)(i) and (ii) of this section, the deadline for completion of the new or amended master programs shall be two years after the date the grant is approved by the department. Subsequent master program review dates shall not be altered by the provisions of this subsection.

(6)(a) Grants to local governments for developing and amending master programs pursuant to the schedule established by this section shall be provided at least two years

before the adoption dates specified in subsection (2) of this section. To the extent possible, the department shall allocate grants within the amount appropriated for such purposes to provide reasonable and adequate funding to local governments that have indicated their intent to develop or amend master programs during the biennium according to the schedule established by subsection (2) of this section. Any local government that applies for but does not receive funding to comply with the provisions of subsection (2) of this section may delay the development or amendment of its master program until the following biennium.

(b) Local governments with delayed compliance dates as provided in (a) of this subsection shall be the first priority for funding in subsequent biennia, and the development or amendment compliance deadline for those local governments shall be two years after the date of grant approval.

(c) Failure of the local government to apply in a timely manner for a master program development or amendment grant in accordance with the requirements of the department shall not be considered a delay resulting from the provisions of (a) of this subsection.

(7) Notwithstanding the provisions of this section, all local governments subject to the requirements of this chapter that have not developed or amended master programs on or after March 1, 2002, shall, no later than December 1, 2014, develop or amend their master programs to comply with guidelines adopted by the department after January 1, 2003.

(8) Local governments may be provided an additional year beyond the deadlines in this section to complete their master program or amendment. The department shall grant the request if it determines that the local government is likely to adopt or amend its master program within the additional year. [2007 c 170 § 1; 2003 c 262 § 2; 1995 c 347 § 305; 1974 ex.s. c 61 § 1; 1971 ex.s. c 286 § 8.]

Finding—Severability—Part headings and table of contents not law—1995 c 347: See notes following RCW 36.70A.470.

Chapter 90.71 RCW

PUGET SOUND WATER QUALITY PROTECTION

Sections

90.71.005	Repealed.
90.71.010	Definitions.
90.71.015	Repealed.
90.71.020	Repealed.
90.71.030	Repealed.
90.71.040	Repealed.
90.71.050	Repealed.
90.71.060	Puget Sound assessment and monitoring program.
90.71.070	Repealed.
90.71.080	Repealed.
90.71.100	Recodified as RCW 70.118.140.
90.71.110	Puget Sound scientific research account.
90.71.200	Findings—Intent.
90.71.210	Puget Sound partnership—Created.
90.71.220	Leadership council—Membership.
90.71.230	Leadership council—Powers and duties.
90.71.240	Executive director—Appointment—Authority.
90.71.250	Ecosystem coordination board—Membership—Duties.
90.71.260	Development of the action agenda—Integration of watershed programs and ecosystem-level plans.
90.71.270	Science panel—Creation—Membership.
90.71.280	Science panel—Duties.
90.71.290	Science panel—Strategic science program—Puget Sound science update—Biennial science work plan.
90.71.300	Action agenda—Goals and objectives.
90.71.310	Action agenda—Development—Elements revision and updates.

90.71.320	Action agenda—Biennial budget requests.
90.71.330	Funding from partnership—Accountability.
90.71.340	Fiscal accountability—Fiscal incentives and disincentives for implementation of the action agenda.
90.71.350	Accountability for achieving and implementing action agenda—Noncompliance.
90.71.360	Limitations on authority.
90.71.370	Report to the governor and legislature—State of the Sound report—Review of programs.
90.71.380	Assessment of basin-wide restoration progress.
90.71.390	Performance audits of the partnership.
90.71.400	Puget Sound recovery account.
90.71.900	Repealed.
90.71.901	Repealed.
90.71.902	Decodified.
90.71.903	Decodified.
90.71.904	Transfer of powers, duties, and functions—References to chair of the Puget Sound action team.
90.71.905	Captions not law.
90.71.906	Severability—2007 c 341.
90.71.907	Effective date—2007 c 341.

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

90.71.010 Definitions. Unless the context clearly requires otherwise, the definitions in this section apply throughout this chapter.

(1) "Action agenda" means the comprehensive schedule of projects, programs, and other activities designed to achieve a healthy Puget Sound ecosystem that is authorized and further described in RCW 90.71.300 and 90.71.310.

(2) "Action area" means the geographic areas delineated as provided in RCW 90.71.260.

(3) "Benchmarks" means measurable interim milestones or achievements established to demonstrate progress towards a goal, objective, or outcome.

(4) "Board" means the ecosystem coordination board.

(5) "Council" means the leadership council.

(6) "Environmental indicator" means a physical, biological, or chemical measurement, statistic, or value that provides a proximate gauge, or evidence of, the state or condition of Puget Sound.

(7) "Implementation strategies" means the strategies incorporated on a biennial basis in the action agenda developed under RCW 90.71.310.

(8) "Nearshore" means the area beginning at the crest of coastal bluffs and extending seaward through the marine photics zone, and to the head of tide in coastal rivers and streams. "Nearshore" also means both shoreline and estuaries.

(9) "Panel" means the Puget Sound science panel.

(10) "Partnership" means the Puget Sound partnership.

(11) "Puget Sound" means Puget Sound and related inland marine waters, including all salt waters of the state of Washington inside the international boundary line between Washington and British Columbia, and lying east of the junction of the Pacific Ocean and the Strait of Juan de Fuca, and the rivers and streams draining to Puget Sound as mapped by water resource inventory areas 1 through 19 in WAC 173-500-040 as it exists on July 1, 2007.

(12) "Puget Sound partner" means an entity that has been recognized by the partnership, as provided in RCW 90.71.340, as having consistently achieved outstanding progress in implementing the 2020 action agenda.

(13) "Watershed groups" means all groups sponsoring or administering watershed programs, including but not limited to local governments, private sector entities, watershed planning units, watershed councils, shellfish protection areas, regional fishery enhancement groups, marine resource[s] committees including those working with the Northwest straits commission, nearshore groups, and watershed lead entities.

(14) "Watershed programs" means and includes all watershed-level plans, programs, projects, and activities that relate to or may contribute to the protection or restoration of Puget Sound waters. Such programs include jurisdiction-wide programs regardless of whether more than one watershed is addressed. [2007 c 341 § 2; 1996 c 138 § 2.]

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

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

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

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

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

90.71.060 Puget Sound assessment and monitoring program. In addition to other powers and duties specified in this chapter, the panel, with the approval of the council, shall guide the implementation and coordination of a Puget Sound assessment and monitoring program. [2007 c 341 § 22; 1996 c 138 § 7.]

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

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

90.71.100 Recodified as RCW 70.118.140. See Supplementary Table of Disposition of Former RCW Sections, this volume.

90.71.110 Puget Sound scientific research account. The Puget Sound scientific research account is created in the state treasury. All gifts, grants, federal moneys, or appropriations made to the account must be deposited into the account. Moneys in the account may be spent only after appropriation. Expenditures from the account may be used only for research programs and projects selected pursuant to *section 2 of this act. [2007 c 345 § 3.]

*Reviser's note: Section 2 of this act was vetoed by the governor.

Findings—2007 c 345: "Although research about conditions in Puget Sound have been studied during the past several decades, the legislature finds that there is no coordinated, focused, comprehensive Puget Sound science program capable of setting research priorities for Puget Sound science.

The legislature finds that environmental problems in Puget Sound are complex and that research is needed to provide information that can guide protective and restorative actions, and to explore and understand the impacts of a changing environment. The legislature also finds that there is no predictable funding process for Puget Sound research projects, including the aquatic rehabilitation zone one. The legislature declares that the state needs a process to focus the scientific effort on the Puget Sound ecosystem and to distribute research funds." [2007 c 345 § 1.]

90.71.200 Findings—Intent. (1) The legislature finds that:

(a) Puget Sound, including Hood Canal, and the waters that flow to it are a national treasure and a unique resource. Residents enjoy a way of life centered around these waters that depends upon clean and healthy marine and freshwater resources.

(b) Puget Sound is in serious decline, and Hood Canal is in a serious crisis. This decline is indicated by loss of and damage to critical habit, rapid decline in species populations, increases in aquatic nuisance species, numerous toxics contaminated sites, urbanization and attendant storm water drainage, closure of beaches to shellfish harvest due to disease risks, low-dissolved oxygen levels causing death of marine life, and other phenomena. If left unchecked, these conditions will worsen.

(c) Puget Sound must be restored and protected in a more coherent and effective manner. The current system is highly fragmented. Immediate and concerted action is necessary by all levels of government working with the public, nongovernmental organizations, and the private sector to ensure a thriving natural system that exists in harmony with a vibrant economy.

(d) Leadership, accountability, government transparency, thoughtful and responsible spending of public funds, and public involvement will be integral to the success of efforts to restore and protect Puget Sound.

(2) The legislature therefore creates a new Puget Sound partnership to coordinate and lead the effort to restore and protect Puget Sound, and intends that all governmental entities, including federal and state agencies, tribes, cities, counties, ports, and special purpose districts, support and help implement the partnership's restoration efforts. The legislature further intends that the partnership will:

(a) Define a strategic action agenda prioritizing necessary actions, both basin-wide and within specific areas, and creating an approach that addresses all of the complex connections among the land, water, web of species, and human needs. The action agenda will be based on science and include clear, measurable goals for the recovery of Puget Sound by 2020;

(b) Determine accountability for performance, oversee the efficiency and effectiveness of money spent, educate and engage the public, and track and report results to the legislature, the governor, and the public;

(c) Not have regulatory authority, nor authority to transfer the responsibility for, or implementation of, any state regulatory program, unless otherwise specifically authorized by the legislature.

(3) It is the goal of the state that the health of Puget Sound be restored by 2020. [2007 c 341 § 1.]

90.71.210 Puget Sound partnership—Created. An agency of state government, to be known as the Puget Sound partnership, is created to oversee the restoration of the environmental health of Puget Sound by 2020. The agency shall consist of a leadership council, an executive director, an ecosystem coordination board, and a Puget Sound science panel. [2007 c 341 § 3.]

90.71.220 Leadership council—Membership. (1) The partnership shall be led by a leadership council composed of seven members appointed by the governor, with the advice and consent of the senate. The governor shall appoint members who are publicly respected and influential, are interested in the environmental and economic prosperity of Puget Sound, and have demonstrated leadership qualities. The governor shall designate one of the seven members to serve as chair and a vice-chair shall be selected annually by the membership of the council.

(2) The initial members shall be appointed as follows:

(a) Three of the initial members shall be appointed for a term of two years;

(b) Two of the initial members shall be appointed for a term of three years; and

(c) Two of the initial members shall be appointed for a term of four years.

(3) The initial members' successors shall be appointed for terms of four years each, except that any person chosen to fill a vacancy shall be appointed only for the unexpired term of the member whom he or she succeeds.

(4) Members of the council are eligible for reappointment.

(5) Any member of the council may be removed by the governor for cause.

(6) Members whose terms expire shall continue to serve until reappointed or replaced by a new member.

(7) A majority of the council constitutes a quorum for the transaction of business.

(8) Council decisions and actions require majority vote approval of all councilmembers. [2007 c 341 § 4.]

90.71.230 Leadership council—Powers and duties.

(1) The leadership council shall have the power and duty to:

(a) Provide leadership and have responsibility for the functions of the partnership, including adopting, revising, and guiding the implementation of the action agenda, allocating funds for Puget Sound recovery, providing progress and other reports, setting strategic priorities and benchmarks, adopting and applying accountability measures, and making appointments to the board and panel;

(b) Adopt rules, in accordance with chapter 34.05 RCW;

(c) Create subcommittees and advisory committees as appropriate to assist the council;

(d) Enter into, amend, and terminate contracts with individuals, corporations, or research institutions to effectuate the purposes of this chapter;

(e) Make grants to governmental and nongovernmental entities to effectuate the purposes of this chapter;

(f) Receive such gifts, grants, and endowments, in trust or otherwise, for the use and benefit of the partnership to effectuate the purposes of this chapter;

(g) Promote extensive public awareness, education, and participation in Puget Sound protection and recovery;

(h) Work collaboratively with the Hood Canal coordinating council established in chapter 90.88 RCW on Hood Canal-specific issues;

(i) Maintain complete and consolidated financial information to ensure that all funds received and expended to implement the action agenda have been accounted for; and

(j) Such other powers and duties as are necessary and appropriate to carry out the provisions of this chapter.

(2) The council may delegate functions to the chair and to the executive director, however the council may not delegate its decisional authority regarding developing or amending the action agenda.

(3) The council shall work closely with existing organizations and all levels of government to ensure that the action agenda and its implementation are scientifically sound, efficient, and achieve necessary results to accomplish recovery of Puget Sound to health by 2020.

(4) The council shall support, engage, and foster collaboration among watershed groups to assist in the recovery of Puget Sound.

(5) When working with federally recognized Indian tribes to develop and implement the action agenda, the council shall conform to the procedures and standards required in a government-to-governmental relationship with tribes under the 1989 Centennial Accord between the state of Washington and the sovereign tribal governments in the state of Washington.

(6) Members of the council shall be compensated in accordance with RCW 43.03.220 and be reimbursed for travel expenses in accordance with RCW 43.03.050 and 43.03.060. [2007 c 341 § 5.]

90.71.240 Executive director—Appointment—Authority. (1) The partnership shall be administered by an executive director who serves as a communication link between all levels of government, the private sector, tribes, nongovernmental organizations, the council, the board, and the panel. The executive director shall be accountable to the council and the governor for effective communication, actions, and results.

(2) The executive director shall be appointed by and serve at the pleasure of the governor, in consultation with the council. The governor shall consider the recommendations of the council when appointing the executive director.

(3) The executive director shall have complete charge of and supervisory powers over the partnership, subject to the guidance from the council.

(4) The executive director shall employ a staff, who shall be state employees under Title 41 RCW.

(5) Upon approval of the council, the executive director may take action to create a private nonprofit entity, which may take the form of a nonprofit corporation, to assist the partnership in restoring Puget Sound by:

(a) Raising money and other resources through charitable giving, donations, and other appropriate mechanisms;

(b) Engaging and educating the public regarding Puget Sound's health, including efforts and opportunities to restore Puget Sound ecosystems; and

(c) Performing other similar activities as directed by the partnership. [2007 c 341 § 6.]

90.71.250 Ecosystem coordination board—Membership—Duties. (1) The council shall convene the ecosystem coordination board not later than October 1, 2007.

(2) The board shall consist of the following:

(a) One representative from the geographic area of each of the action areas specified in RCW 90.71.260, appointed by the council. The council shall solicit nominations from, at a minimum, counties, cities, and watershed groups;

(b) Two members representing general business interests, one of whom shall represent in-state general small business interests, both appointed by the council;

(c) Two members representing environmental interests, appointed by the council;

(d) Three representatives of tribal governments located in Puget Sound, invited by the governor to participate as members of the board;

(e) One representative each from counties, cities, and port districts, appointed by the council from nominations submitted by statewide associations representing such local governments;

(f) Three representatives of state agencies with environmental management responsibilities in Puget Sound, representing the interests of all state agencies, one of whom shall be the commissioner of public lands or his or her designee; and

(g) Three representatives of federal agencies with environmental management responsibilities in Puget Sound, representing the interests of all federal agencies and invited by the governor to participate as members of the board.

(3) The president of the senate shall appoint two senators, one from each major caucus, as legislative liaisons to the board. The speaker of the house of representatives shall appoint two representatives, one from each major caucus, as legislative liaisons to the board.

(4) The board shall elect one of its members as chair, and one of its members as vice-chair.

(5) The board shall advise and assist the council in carrying out its responsibilities in implementing this chapter, including development and implementation of the action agenda. The board's duties include:

(a) Assisting cities, counties, ports, tribes, watershed groups, and other governmental and private organizations in the compilation of local programs for consideration for inclusion in the action agenda as provided in RCW 90.71.260;

(b) Upon request of the council, reviewing and making recommendations regarding activities, projects, and programs proposed for inclusion in the action agenda, including assessing existing ecosystem scale management, restoration and protection plan elements, activities, projects, and programs for inclusion in the action agenda;

(c) Seeking public and private funding and the commitment of other resources for plan implementation;

(d) Assisting the council in conducting public education activities regarding threats to Puget Sound and about local implementation strategies to support the action agenda; and

(e) Recruiting the active involvement of and encouraging the collaboration and communication among government-

tal and nongovernmental entities, the private sector, and citizens working to achieve the recovery of Puget Sound.

(6) Members of the board, except for federal and state employees, shall be reimbursed for travel expenses in accordance with RCW 43.03.050 and 43.03.060. [2007 c 341 § 7.]

90.71.260 Development of the action agenda—Integration of watershed programs and ecosystem-level plans. (1) The partnership shall develop the action agenda in part upon the foundation of existing watershed programs that address or contribute to the health of Puget Sound. To ensure full consideration of these watershed programs in a timely manner to meet the required date for adoption of the action agenda, the partnership shall rely largely upon local watershed groups, tribes, cities, counties, special purpose districts, and the private sector, who are engaged in developing and implementing these programs.

(2) The partnership shall organize this work by working with these groups in the following geographic action areas of Puget Sound, which collectively encompass all of the Puget Sound basin and include the areas draining to the marine waters in these action areas:

- (a) Strait of Juan de Fuca;
- (b) The San Juan Islands;
- (c) Whidbey Island;
- (d) North central Puget Sound;
- (e) South central Puget Sound;
- (f) South Puget Sound; and
- (g) Hood Canal.

(3) The council shall define the geographic delineations of these action areas based upon the common issues and interests of the entities in these action areas, and upon the characteristics of the Sound's physical structure, and the water flows into and within the Sound.

(4) The executive director, working with the board representatives from each action area, shall invite appropriate tribes, local governments, and watershed groups to convene for the purpose of compiling the existing watershed programs relating or contributing to the health of Puget Sound. The participating groups should work to identify the applicable local plan elements, projects, and programs, together with estimated budget, timelines, and proposed funding sources, that are suitable for adoption into the action agenda. This may include a prioritization among plan elements, projects, and programs.

(5) The partnership may provide assistance to watershed groups in those action areas that are developing and implementing programs included within the action agenda, and to improve coordination among the groups to improve and accelerate the implementation of the action agenda.

(6) The executive director, working with the board, shall also compile and assess ecosystem scale management, restoration, and protection plans for the Puget Sound basin.

(a) At a minimum, the compilation shall include the Puget Sound nearshore estuary project, clean-up plans for contaminated aquatic lands and shorelands, aquatic land management plans, state resource management plans, habitat conservation plans, and recovery plans for salmon, orca, and other species in Puget Sound that are listed under the federal endangered species act.

(b) The board should work to identify and assess applicable ecosystem scale plan elements, projects, and programs, together with estimated budget, timelines, and proposed funding sources, that are suitable for adoption into the action agenda.

(c) When the board identifies conflicts or disputes among ecosystem scale projects or programs, the board may convene the agency managers in an attempt to reconcile the conflicts with the objective of advancing the protection and recovery of Puget Sound.

(d) If it determines that doing so will increase the likelihood of restoring Puget Sound by 2020, the partnership may explore the utility of federal assurances under the endangered species act, 16 U.S.C. Sec. 1531 et seq., and shall confer with the federal services administering that act.

(7) The executive director shall integrate and present the proposed elements from watershed programs and ecosystem-level plans to the council for consideration for inclusion in the action agenda not later than July 1, 2008. [2007 c 341 § 8.]

90.71.270 Science panel—Creation—Membership.

(1) The council shall appoint a nine-member Puget Sound science panel to provide independent, nonrepresentational scientific advice to the council and expertise in identifying environmental indicators and benchmarks for incorporation into the action agenda.

(2) In establishing the panel, the council shall request the Washington academy of sciences, created in chapter 70.220 RCW, to nominate fifteen scientists with recognized expertise in fields of science essential to the recovery of Puget Sound. Nominees should reflect the full range of scientific and engineering disciplines involved in Puget Sound recovery. At a minimum, the Washington academy of sciences shall consider making nominations from scientists associated with federal, state, and local agencies, tribes, the business and environmental communities, members of the K-12, college, and university communities, and members of the board. The solicitation should be to all sectors, and candidates may be from all public and private sectors. Persons nominated by the Washington academy of sciences must disclose any potential conflicts of interest, and any financial relationship with any leadership councilmember, and disclose sources of current financial support and contracts relating to Puget Sound recovery.

(3) The panel shall select a chair and a vice-chair. Panel members shall serve four-year terms, except that the council shall determine initial terms of two, three, and four years to provide for staggered terms. The council shall determine reappointments and select replacements or additional members of the panel. No panel member may serve longer than twelve years.

(4) The executive director shall designate a lead staff scientist to coordinate panel actions, and administrative staff to support panel activities. The legislature intends to provide ongoing funding for staffing of the panel to ensure that it has sufficient capacity to provide independent scientific advice.

(5) The executive director of the partnership and the science panel shall explore a shared state and federal responsibility for the staffing and administration of the panel. In the event that a federally sponsored Puget Sound recovery office

is created, the council may propose that such office provide for staffing and administration of the panel.

(6) The panel shall assist the council in developing and revising the action agenda, making recommendations to the action agenda, and making recommendations to the council for updates or revisions.

(7) Members of the panel shall be reimbursed for travel expenses under RCW 43.03.050 and 43.03.060, and based upon the availability of funds, the council may contract with members of the panel for compensation for their services under chapter 39.29 RCW. If appointees to the panel are employed by the federal, state, tribal, or local governments, the council may enter into interagency personnel agreements. [2007 c 341 § 9.]

90.71.280 Science panel—Duties. (1) The panel shall:

(a) Assist the council, board, and executive director in carrying out the obligations of the partnership, including preparing and updating the action agenda;

(b) As provided in RCW 90.71.290, assist the partnership in developing an ecosystem level strategic science program that:

(i) Addresses monitoring, modeling, data management, and research; and

(ii) Identifies science gaps and recommends research priorities;

(c) Develop and provide oversight of a competitive peer-reviewed process for soliciting, strategically prioritizing, and funding research and modeling projects;

(d) Provide input to the executive director in developing biennial implementation strategies; and

(e) Offer an ecosystem-wide perspective on the science work being conducted in Puget Sound and by the partnership.

(2) The panel should collaborate with other scientific groups and consult other scientists in conducting its work. To the maximum extent possible, the panel should seek to integrate the state-sponsored Puget Sound science program with the Puget Sound science activities of federal agencies, including working toward an integrated research agenda and Puget Sound science work plan.

(3) By July 31, 2008, the panel shall identify environmental indicators measuring the health of Puget Sound, and recommend environmental benchmarks that need to be achieved to meet the goals of the action agenda. The council shall confer with the panel on incorporating the indicators and benchmarks into the action agenda. [2007 c 341 § 10.]

90.71.290 Science panel—Strategic science program—Puget Sound science update—Biennial science work plan. (1) The strategic science program shall be developed by the panel with assistance and staff support provided by the executive director. The science program may include:

(a) Continuation of the Puget Sound assessment and monitoring program, as provided in RCW 90.71.060, as well as other monitoring or modeling programs deemed appropriate by the executive director;

(b) Development of a monitoring program, in addition to the provisions of RCW 90.71.060, including baselines, protocols, guidelines, and quantifiable performance measures, to be recommended as an element of the action agenda;

(c) Recommendations regarding data collection and management to facilitate easy access and use of data by all participating agencies and the public; and

(d) A list of critical research needs.

(2) The strategic science program may not become an official document until a majority of the members of the council votes for its adoption.

(3) A Puget Sound science update shall be developed by the panel with assistance and staff support provided by the executive director. The panel shall submit the initial update to the executive director by April 2010, and subsequent updates as necessary to reflect new scientific understandings. The update shall:

(a) Describe the current scientific understanding of various physical attributes of Puget Sound;

(b) Serve as the scientific basis for the selection of environmental indicators measuring the health of Puget Sound; and

(c) Serve as the scientific basis for the status and trends of those environmental indicators.

(4) The executive director shall provide the Puget Sound science update to the Washington academy of sciences, the governor, and appropriate legislative committees, and include:

(a) A summary of information in existing updates; and

(b) Changes adopted in subsequent updates and in the state of the Sound reports produced pursuant to RCW 90.71.370.

(5) A biennial science work plan shall be developed by the panel, with assistance and staff support provided by the executive director, and approved by the council. The biennial science work plan shall include, at a minimum:

(a) Identification of recommendations from scientific and technical reports relating to Puget Sound;

(b) A description of the Puget Sound science-related activities being conducted by various entities in the region, including studies, models, monitoring, research, and other appropriate activities;

(c) A description of whether the ongoing work addresses the recommendations and, if not, identification of necessary actions to fill gaps;

(d) Identification of specific biennial science work actions to be done over the course of the work plan, and how these actions address science needs in Puget Sound; and

(e) Recommendations for improvements to the ongoing science work in Puget Sound. [2007 c 341 § 11.]

90.71.300 Action agenda—Goals and objectives. (1) The action agenda shall consist of the goals and objectives in this section, implementation strategies to meet measurable outcomes, benchmarks, and identification of responsible entities. By 2020, the action agenda shall strive to achieve the following goals:

(a) A healthy human population supported by a healthy Puget Sound that is not threatened by changes in the ecosystem;

(b) A quality of human life that is sustained by a functioning Puget Sound ecosystem;

(c) Healthy and sustaining populations of native species in Puget Sound, including a robust food web;

(d) A healthy Puget Sound where freshwater, estuary, nearshore, marine, and upland habitats are protected, restored, and sustained;

(e) An ecosystem that is supported by ground water levels as well as river and stream flow levels sufficient to sustain people, fish, and wildlife, and the natural functions of the environment;

(f) Fresh and marine waters and sediments of a sufficient quality so that the waters in the region are safe for drinking, swimming, shellfish harvest and consumption, and other human uses and enjoyment, and are not harmful to the native marine mammals, fish, birds, and shellfish of the region.

(2) The action agenda shall be developed and implemented to achieve the following objectives:

(a) Protect existing habitat and prevent further losses;

(b) Restore habitat functions and values;

(c) Significantly reduce toxics entering Puget Sound fresh and marine waters;

(d) Significantly reduce nutrients and pathogens entering Puget Sound fresh and marine waters;

(e) Improve water quality and habitat by managing storm water runoff;

(f) Provide water for people, fish and wildlife, and the environment;

(g) Protect ecosystem biodiversity and recover imperiled species; and

(h) Build and sustain the capacity for action. [2007 c 341 § 12.]

90.71.310 Action agenda—Development—Elements revision and updates. (1) The council shall develop a science-based action agenda that leads to the recovery of Puget Sound by 2020 and achievement of the goals and objectives established in RCW 90.71.300. The action agenda shall:

(a) Address all geographic areas of Puget Sound including upland areas and tributary rivers and streams that affect Puget Sound;

(b) Describe the problems affecting Puget Sound's health using supporting scientific data, and provide a summary of the historical environmental health conditions of Puget Sound so as to determine past levels of pollution and restorative actions that have established the current health conditions of Puget Sound;

(c) Meet the goals and objectives described in RCW 90.71.300, including measurable outcomes for each goal and objective specifically describing what will be achieved, how it will be quantified, and how progress towards outcomes will be measured. The action agenda shall include near-term and long-term benchmarks designed to ensure continuous progress needed to reach the goals, objectives, and designated outcomes by 2020. The council shall consult with the panel in developing these elements of the plan;

(d) Identify and prioritize the strategies and actions necessary to restore and protect Puget Sound and to achieve the goals and objectives described in RCW 90.71.300;

(e) Identify the agency, entity, or person responsible for completing the necessary strategies and actions, and potential sources of funding;

(f) Include prioritized actions identified through the assembled proposals from each of the seven action areas and

the identification and assessment of ecosystem scale programs as provided in RCW 90.71.260;

(g) Include specific actions to address aquatic rehabilitation zone one, as defined in RCW 90.88.010;

(h) Incorporate any additional goals adopted by the council; and

(i) Incorporate appropriate actions to carry out the biennial science work plan created in RCW 90.71.290.

(2) In developing the action agenda and any subsequent revisions, the council shall, when appropriate, incorporate the following:

(a) Water quality, water quantity, sediment quality, watershed, marine resource, and habitat restoration plans created by governmental agencies, watershed groups, and marine and shoreline groups. The council shall consult with the board in incorporating these plans;

(b) Recovery plans for salmon, orca, and other species in Puget Sound listed under the federal endangered species act;

(c) Existing plans and agreements signed by the governor, the commissioner of public lands, other state officials, or by federal agencies;

(d) Appropriate portions of the Puget Sound water quality management plan existing on July 1, 2007.

(3) Until the action agenda is adopted, the existing Puget Sound management plan and the 2007-09 Puget Sound biennial plan shall remain in effect. The existing Puget Sound management plan shall also continue to serve as the comprehensive conservation and management plan for the purposes of the national estuary program described in section 320 of the federal clean water act, until replaced by the action agenda and approved by the United States environmental protection agency as the new comprehensive conservation and management plan.

(4) The council shall adopt the action agenda by September 1, 2008. The council shall revise the action agenda as needed, and revise the implementation strategies every two years using an adaptive management process informed by tracking actions and monitoring results in Puget Sound. In revising the action agenda and the implementation strategies, the council shall consult the panel and the board and provide opportunity for public review and comment. Biennial updates shall:

(a) Contain a detailed description of prioritized actions necessary in the biennium to achieve the goals, objectives, outcomes, and benchmarks of progress identified in the action agenda;

(b) Identify the agency, entity, or person responsible for completing the necessary action; and

(c) Establish biennial benchmarks for near-term actions.

(5) The action agenda shall be organized and maintained in a single document to facilitate public accessibility to the plan. [2007 c 341 § 13.]

90.71.320 Action agenda—Biennial budget requests.

(1) State agencies responsible for implementing elements of the action agenda shall:

(a) Provide to the partnership by June 1st of each even-numbered year their estimates of the actions and the budget resources needed for the forthcoming biennium to implement their portion of the action agenda; and

(b) Work with the partnership in the development of biennial budget requests to achieve consistency with the action agenda to be submitted to the governor for consideration in the governor's biennial budget request. The agencies shall seek the concurrence of the partnership in the proposed funding levels and sources included in this proposed budget.

(2) If a state agency submits an amount different from that developed in subsection (1)(a) of this section as part of its biennial budget request, the partnership and state agency shall jointly identify the differences and the reasons for these differences and present this information to the office of financial management by October 1st of each even-numbered year. [2007 c 341 § 14.]

90.71.330 Funding from partnership—Accountability. (1) Any funding made available directly to the partnership from the Puget Sound recovery account created in RCW 90.71.400 and used by the partnership for loans, grants, or funding transfers to other entities shall be prioritized according to the action agenda developed pursuant to RCW 90.71.310.

(2) The partnership shall condition, with interagency agreements, any grants or funding transfers to other entities from the Puget Sound recovery account to ensure accountability in the expenditure of the funds and to ensure that the funds are used by the recipient entity in the manner determined by the partnership to be the most consistent with the priorities of the action agenda. Any conditions placed on federal funding under this section shall incorporate and be consistent with requirements under signed agreements between the entity and the federal government.

(3) If the partnership finds that the provided funding was not used as instructed in the interagency agreement, the partnership may suspend or further condition future funding to the recipient entity.

(4) The partnership shall require any entity that receives funds for implementing the action agenda to publicly disclose and account for expenditure of those funds. [2007 c 341 § 15.]

90.71.340 Fiscal accountability—Fiscal incentives and disincentives for implementation of the action agenda. (1) The legislature intends that fiscal incentives and disincentives be used as accountability measures designed to achieve consistency with the action agenda by:

(a) Ensuring that projects and activities in conflict with the action agenda are not funded;

(b) Aligning environmental investments with strategic priorities of the action agenda; and

(c) Using state grant and loan programs to encourage consistency with the action agenda.

(2) The council shall adopt measures to ensure that funds appropriated for implementation of the action agenda and identified by proviso or specifically referenced in the omnibus appropriations act pursuant to RCW 43.88.030(1)(g) are expended in a manner that will achieve the intended results. In developing such performance measures, the council shall establish criteria for the expenditure of the funds consistent with the responsibilities and timelines under the action agenda, and require reporting and tracking of funds

expended. The council may adopt other measures, such as requiring interagency agreements regarding the expenditure of provisoed or specifically referenced Puget Sound funds.

(3) The partnership shall work with other state agencies providing grant and loan funds or other financial assistance for projects and activities that impact the health of the Puget Sound ecosystem under chapters 43.155, 70.105D, 70.146, 77.85, 79.105, 79A.15, 89.08, and 90.50A RCW to, within the authorities of the programs, develop consistent funding criteria that prohibits funding projects and activities that are in conflict with the action agenda.

(4) The partnership shall develop a process and criteria by which entities that consistently achieve outstanding progress in implementing the action agenda are designated as Puget Sound partners. State agencies shall work with the partnership to revise their grant, loan, or other financial assistance allocation criteria to create a preference for entities designated as Puget Sound partners for funds allocated to the Puget Sound basin, pursuant to RCW 43.155.070, 70.105D.070, 70.146.070, 77.85.130, 79.105.150, 79A.15.040, 89.08.520, and 90.50A.040. This process shall be developed on a timeline that takes into consideration state grant and loan funding cycles.

(5) Any entity that receives state funds to implement actions required in the action agenda shall report biennially to the council on progress in completing the action and whether expected results have been achieved within the time frames specified in the action agenda. [2007 c 341 § 16.]

90.71.350 Accountability for achieving and implementing action agenda—Noncompliance. (1) The council is accountable for achieving the action agenda. The legislature intends that all governmental entities within Puget Sound will exercise their existing authorities to implement the applicable provisions of the action agenda.

(2) The partnership shall involve the public and implementing entities to develop standards and processes by which the partnership will determine whether implementing entities are taking actions consistent with the action agenda and achieving the outcomes identified in the action agenda. Among these measures, the council may hold management conferences with implementing entities to review and assess performance in undertaking implementation strategies with a particular focus on compliance with and enforcement of existing laws. Where the council identifies an inconsistency with the action agenda, the council shall offer support and assistance to the entity with the objective of remedying the inconsistency. The results of the conferences shall be included in the state of the Sound report required under RCW 90.71.370.

(3) In the event the council determines that an entity is in substantial noncompliance with the action agenda, it shall provide notice of this finding and supporting information to the entity. The council or executive director shall thereafter meet and confer with the entity to discuss the finding and, if appropriate, develop a corrective action plan. If no agreement is reached, the council shall hold a public meeting to present its findings and the proposed corrective action plan. If the entity is a state agency, the meeting shall include representatives of the governor's office and office of financial management. If the entity is a local government, the meeting

shall be held in the jurisdiction and electoral representatives from the jurisdictions shall be invited to attend. If, after this process, the council finds that substantial noncompliance continues, the council shall issue written findings and document its conclusions. The council may recommend to the governor that the entity be ineligible for state financial assistance until the substantial noncompliance is remedied. Instances of noncompliance shall be included in the state of the Sound report required under RCW 90.71.370.

(4) The council shall provide a forum for addressing and resolving problems, conflicts, or a substantial lack of progress in a specific area that it has identified in the implementation of the action agenda, or that citizens or implementing entities bring to the council. The council may use conflict resolution mechanisms such as but not limited to, technical and financial assistance, facilitated discussions, and mediation to resolve the conflict. Where the parties and the council are unable to resolve the conflict, and the conflict significantly impairs the implementation of the action agenda, the council shall provide its analysis of the conflict and recommendations resolution to the governor, the legislature, and to those entities with jurisdictional authority to resolve the conflict.

(5) When the council or an implementing entity identifies a statute, rule, ordinance or policy that conflicts with or is an impediment to the implementation of the action agenda, or identifies a deficiency in existing statutory authority to accomplish an element of the action agenda, the council shall review the matter with the implementing entities involved. The council shall evaluate the merits of the conflict, impediment, or deficiency, and make recommendations to the legislature, governor, agency, local government or other appropriate entity for addressing and resolving the conflict.

(6) The council may make recommendations to the governor and appropriate committees of the senate and house of representatives for local or state administrative or legislative actions to address barriers it has identified to successfully implementing the action agenda. [2007 c 341 § 17.]

90.71.360 Limitations on authority. (1) The partnership shall not have regulatory authority nor authority to transfer the responsibility for, or implementation of, any state regulatory program, unless otherwise specifically authorized by the legislature.

(2) The action agenda may not create a legally enforceable duty to review or approve permits, or to adopt plans or regulations. The action agenda may not authorize the adoption of rules under chapter 34.05 RCW creating a legally enforceable duty applicable to the review or approval of permits or to the adoption of plans or regulations. No action of the partnership may alter the forest practices rules adopted pursuant to chapter 76.09 RCW, or any associated habitat conservation plan. Any changes in forest practices identified by the processes established in this chapter as necessary to fully recover the health of Puget Sound by 2020 may only be realized through the processes established in RCW 76.09.370 and other designated processes established in Title 76 RCW. Nothing in this subsection or subsection (1) of this section limits the accountability provisions of this chapter.

(3) Nothing in this chapter limits or alters the existing legal authority of local governments, nor does it create a

legally enforceable duty upon local governments. When a local government proposes to take an action inconsistent with the action agenda, it shall inform the council and identify the reasons for taking the action. If a local government chooses to take an action inconsistent with the action agenda or chooses not to take action required by the action agenda, it will be subject to the accountability measures in this chapter which can be used at the discretion of the council. [2007 c 341 § 18.]

90.71.370 Report to the governor and legislature—State of the Sound report—Review of programs. (1) By September 1st of each even-numbered year beginning in 2008, the council shall provide to the governor and the appropriate fiscal committees of the senate and house of representatives its recommendations for the funding necessary to implement the action agenda in the succeeding biennium. The recommendations shall:

(a) Identify the funding needed by action agenda element;

(b) Address funding responsibilities among local, state, and federal governments, as well as nongovernmental funding; and

(c) Address funding needed to support the work of the partnership, the panel, the ecosystem work group, and entities assisting in coordinating local efforts to implement the plan.

(2) In the 2008 report required under subsection (1) of this section, the council shall include recommendations for projected funding needed through 2020 to implement the action agenda; funding needs for science panel staff; identify methods to secure stable and sufficient funding to meet these needs; and include proposals for new sources of funding to be dedicated to Puget Sound protection and recovery. In preparing the science panel staffing proposal, the council shall consult with the panel.

(3) By November 1st of each odd-numbered year beginning in 2009, the council shall produce a state of the Sound report that includes, at a minimum:

(a) An assessment of progress by state and nonstate entities in implementing the action agenda, including accomplishments in the use of state funds for action agenda implementation;

(b) A description of actions by implementing entities that are inconsistent with the action agenda and steps taken to remedy the inconsistency;

(c) The comments by the panel on progress in implementing the plan, as well as findings arising from the assessment and monitoring program;

(d) A review of citizen concerns provided to the partnership and the disposition of those concerns;

(e) A review of the expenditures of funds to state agencies for the implementation of programs affecting the protection and recovery of Puget Sound, and an assessment of whether the use of the funds is consistent with the action agenda; and

(f) An identification of all funds provided to the partnership, and recommendations as to how future state expenditures for all entities, including the partnership, could better match the priorities of the action agenda.

(4)(a) The council shall review state programs that fund facilities and activities that may contribute to action agenda

implementation. By November 1, 2009, the council shall provide initial recommendations regarding program changes to the governor and appropriate fiscal and policy committees of the senate and house of representatives. By November 1, 2010, the council shall provide final recommendations regarding program changes, including proposed legislation to implement the recommendation, to the governor and appropriate fiscal and policy committees of the senate and house of representatives.

(b) The review in this subsection shall be conducted with the active assistance and collaboration of the agencies administering these programs, and in consultation with local governments and other entities receiving funding from these programs:

- (i) The water quality account, chapter 70.146 RCW;
 - (ii) The water pollution control revolving fund, chapter 90.50A RCW;
 - (iii) The public works assistance account, chapter 43.155 RCW;
 - (iv) The aquatic lands enhancement account, RCW 79.105.150;
 - (v) The state toxics control account and local toxics control account and clean-up program, chapter 70.105D RCW;
 - (vi) The acquisition of habitat conservation and outdoor recreation land, chapter 79A.15 RCW;
 - (vii) The salmon recovery funding board, RCW 77.85.110 through 77.85.150;
 - (viii) The community economic revitalization board, chapter 43.160 RCW;
 - (ix) Other state financial assistance to water quality-related projects and activities; and
 - (x) Water quality financial assistance from federal programs administered through state programs or provided directly to local governments in the Puget Sound basin.
- (c) The council's review shall include but not be limited to:
- (i) Determining the level of funding and types of projects and activities funded through the programs that contribute to implementation of the action agenda;
 - (ii) Evaluating the procedures and criteria in each program for determining which projects and activities to fund, and their relationship to the goals and priorities of the action agenda;
 - (iii) Assessing methods for ensuring that the goals and priorities of the action agenda are given priority when program funding decisions are made regarding water quality-related projects and activities in the Puget Sound basin and habitat-related projects and activities in the Puget Sound basin;
 - (iv) Modifying funding criteria so that projects, programs, and activities that are inconsistent with the action agenda are ineligible for funding;
 - (v) Assessing ways to incorporate a strategic funding approach for the action agenda within the outcome-focused performance measures required by RCW 43.41.270 in administering natural resource-related and environmentally based grant and loan programs. [2007 c 341 § 19.]

90.71.380 Assessment of basin-wide restoration progress. By December 1, 2010, and subject to available funding, the Washington academy of sciences shall conduct

an assessment of basin-wide restoration progress. The assessment shall include, but not be limited to, a determination of the extent to which implementation of the action agenda is making progress toward the action agenda goals, and a determination of whether the environmental indicators and benchmarks included in the action agenda accurately measure and reflect progress toward the action agenda goals. [2007 c 341 § 20.]

90.71.390 Performance audits of the partnership. (1)

The joint legislative audit and review committee shall conduct two performance audits of the partnership, with the first audit to be completed by December 1, 2011, and the second to be completed by December 1, 2016.

(2) The audit shall include but not be limited to:

(a) A determination of the extent to which funds expended by the partnership or provided in biennial budget acts expressly for implementing the action agenda have contributed toward meeting the scientific benchmarks and the recovery goals of the action agenda;

(b) A determination of the efficiency and effectiveness of the partnership's oversight of action agenda implementation, based upon the achievement of the objectives as measured by the established environmental indicators and benchmarks; and

(c) Any recommendations for improvements in the partnership's performance and structure, and to provide accountability for action agenda results by action entities.

(3) The partnership may use the audits as the basis for developing changes to the action agenda, and may submit any recommendations requiring legislative policy or budgetary action to the governor and to the appropriate committees of the senate and house of representatives. [2007 c 341 § 21.]

90.71.400 Puget Sound recovery account. The Puget Sound recovery account is created in the state treasury. To the account shall be deposited such funds as the legislature directs or appropriates to the account. Federal grants, gifts, or other financial assistance received by the Puget Sound partnership and other state agencies from nonstate sources for the specific purpose of recovering Puget Sound may be deposited into the account. Moneys in the account may be spent only after appropriation. Expenditures from the account may be used for the protection and recovery of Puget Sound. [2007 c 341 § 23.]

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

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

90.71.902 Decodified. See Supplementary Table of Disposition of Former RCW Sections, this volume.

90.71.903 Decodified. See Supplementary Table of Disposition of Former RCW Sections, this volume.

90.71.904 Transfer of powers, duties, and functions—References to chair of the Puget Sound action

team. (1) The Puget Sound action team is hereby abolished and its powers, duties, and functions are hereby transferred to the Puget Sound partnership as consistent with this chapter. All references to the chair or the Puget Sound action team in the Revised Code of Washington shall be construed to mean the executive director or the Puget Sound partnership.

(2)(a) All employees of the Puget Sound action team are transferred to the jurisdiction of the Puget Sound partnership.

(b) All reports, documents, surveys, books, records, files, papers, or written material in the possession of the Puget Sound action team shall be delivered to the custody of the Puget Sound partnership. All cabinets, furniture, office equipment, motor vehicles, and other tangible property employed by the Puget Sound action team shall be made available to the Puget Sound partnership. All funds, credits, or other assets held by the Puget Sound action team shall be assigned to the Puget Sound partnership.

(c) Any appropriations made to the Puget Sound action team shall, on July 1, 2007, be transferred and credited to the Puget Sound partnership.

(d) If any question arises as to the transfer of any personnel, funds, books, documents, records, papers, files, equipment, or other tangible property used or held in the exercise of the powers and the performance of the duties and functions transferred, the director of financial management shall make a determination as to the proper allocation and certify the same to the state agencies concerned.

(3) All rules and all pending business before the Puget Sound action team shall be continued and acted upon by the Puget Sound partnership. All existing contracts and obligations shall remain in full force and shall be performed by the Puget Sound partnership.

(4) The transfer of the powers, duties, functions, and personnel of the Puget Sound action team shall not affect the validity of any act performed before July 1, 2007.

(5) If apportionments of budgeted funds are required because of the transfers directed by this section, the director of financial management shall certify the apportionments to the agencies affected, the state auditor, and the state treasurer. Each of these shall make the appropriate transfer and adjustments in funds and appropriation accounts and equipment records in accordance with the certification.

(6) Nothing contained in this section may be construed to alter any existing collective bargaining unit or the provisions of any existing collective bargaining agreement until the agreement has expired or until the bargaining unit has been modified by action of the public employment relations commission as provided by law. [2007 c 341 § 41.]

90.71.905 Captions not law. Captions used in this chapter are not any part of the law. [2007 c 341 § 42.]

90.71.906 Severability—2007 c 341. If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected. [2007 c 341 § 69.]

90.71.907 Effective date—2007 c 341. This act is necessary for the immediate preservation of the public peace,

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health, or safety, or support of the state government and its existing public institutions, and takes effect July 1, 2007. [2007 c 341 § 70.]

Chapter 90.72 RCW

SHELLFISH PROTECTION DISTRICTS

Sections

90.72.030	Shellfish protection districts—Establishment—Governing body—Programs.
90.72.045	Shellfish protection districts—Programs required after closure or downgrading of growing area classification—Annual report.

90.72.030 Shellfish protection districts—Establishment—Governing body—Programs. The legislative authority of each county having shellfish tidelands within its boundaries is authorized to establish a shellfish protection district to include areas in which nonpoint pollution threatens the water quality upon which the continuation or restoration of shellfish farming or harvesting is dependent. The legislative authority shall constitute the governing body of the district and shall adopt a shellfish protection program to be effective within the district. The legislative authority may appoint a local advisory council to advise the legislative authority in preparation and implementation of shellfish protection programs. This program shall include any elements deemed appropriate to deal with the nonpoint pollution threatening water quality, including, but not limited to, requiring the elimination or decrease of contaminants in storm water runoff, establishing monitoring, inspection, and repair elements to ensure that on-site sewage systems are adequately maintained and working properly, assuring that animal grazing and manure management practices are consistent with best management practices, and establishing educational and public involvement programs to inform citizens on the causes of the threatening nonpoint pollution and what they can do to decrease the amount of such pollution. The county legislative authority shall consult with the department of health, the department of ecology, the department of agriculture, or the conservation commission as appropriate as to the elements of the program. An element may be omitted where another program is effectively addressing those sources of nonpoint water pollution. Within the limits of RCW 90.72.040 and 90.72.070, the county legislative authority shall have full jurisdiction and authority to manage, regulate, and control its programs and to fix, alter, regulate, and control the fees for services provided and charges or rates as provided under those programs. Programs established under this chapter, may, but are not required to, be part of a system of sewerage as defined in RCW 36.94.010. [2007 c 150 § 1; 1992 c 100 § 2; 1985 c 417 § 3.]

Findings—1992 c 100: "The legislature finds that shellfish harvesting is important to our economy and way of life. Washington state is an international leader in the cultivation and production of shellfish. However, large portions of the state's productive recreational and commercial shellfish beds are closed to harvesting, and more are threatened, because of water pollution. The legislature finds that the problem of shellfish bed closures demands a public policy solution and that the state, local governments, and individuals must each take strong and swift action or this precious resource will be lost.

It is the goal of the legislature to prevent further closures of recreational and commercial shellfish beds, to restore water quality in saltwater tidelands to allow the reopening of at least one restricted or closed shellfish bed each

year, and to ensure Washington state's commanding international position in shellfish production.

The legislature finds that failing on-site sewage systems and animal waste are the two most significant causes of shellfish bed closures over the past decade. Remedial actions at the local level are required to effectively address these problems.

The legislature finds that existing entities, including conservation districts and local health departments, should be used by counties to address the water quality problems affecting the recreational and commercial shellfish harvest.

The legislature finds that local action in each watershed where shellfish are harvested is required to protect this vital resource. The legislature hereby encourages all counties having saltwater tidelands within their boundaries to establish shellfish protection districts and programs designed to prevent any further degradation and contamination and to allow for restoration and reopening of closed shellfish growing areas." [1992 c 100 § 1.]

90.72.045 Shellfish protection districts—Programs required after closure or downgrading of growing area classification—Annual report. The county legislative authority shall create a shellfish protection district and establish a shellfish protection program developed under RCW 90.72.030 or an equivalent program to address the causes or suspected causes of pollution within one hundred eighty days after the department of health, because of water quality degradation due to ongoing nonpoint sources of pollution has closed or downgraded the classification of a recreational or commercial shellfish growing area within the boundaries of the county. The county legislative authority shall initiate implementation of the shellfish protection program within sixty days after it is established.

A copy of the program must be provided to the departments of health, ecology, and agriculture. An agency that has regulatory authority for any of the sources of nonpoint pollution covered by the program shall cooperate with the county in its implementation. The county legislative authority shall submit a written report to the department of health annually that describes the status and progress of the program. [2007 c 150 § 2; 1992 c 100 § 4.]

Findings—1992 c 100: See note following RCW 90.72.030.

Chapter 90.76 RCW

UNDERGROUND STORAGE TANKS

Sections

90.76.005	Findings—Intent.
90.76.010	Definitions.
90.76.020	Department's powers and duties—Rule-making authority.
90.76.050	Delivery of regulated substances.
90.76.070	Enforcement.
90.76.080	Penalties.
90.76.090	Annual tank fee.
90.76.110	Preemption.
90.76.120	Repealed.

90.76.005 Findings—Intent. The legislature finds that leaking underground storage tanks containing petroleum and other regulated substances pose a serious threat to human health and the environment. To address this threat, the legislature intends for the department of ecology to establish an underground storage tank program designed, operated, and enforced in a manner that, at a minimum, meets the requirements for delegation of the federal underground storage tank program of the resource conservation and recovery act of 1976, as amended (42 U.S.C. Sec. 6901, et seq.). The legis-

lature intends that statewide requirements for underground storage tanks adopted by the department be consistent with and no less stringent than the requirements in the federal regulations and the underground storage tank compliance act of 2005 (42 U.S.C. Sec. 15801 et seq., energy policy act of 2005, P.L. 109-58, Title XV, subtitle B).

The legislature further finds that certain areas of the state possess physical characteristics that make them especially vulnerable to threats from leaking underground storage tanks and that in these environmentally sensitive areas, local requirements more stringent than the statewide requirements may apply. [2007 c 147 § 1; 1989 c 346 § 1.]

Sunset Act application: See note following chapter digest.

90.76.010 Definitions. Unless the context clearly requires otherwise, the definitions in this section apply throughout this chapter.

- (1) "Department" means the department of ecology.
- (2) "Director" means the director of the department.
- (3) "Facility compliance tag" means a marker, constructed of metal, plastic, or other durable material, that clearly identifies all qualifying underground storage tanks on the particular site for which it is issued.
- (4) "Federal act" means the federal resource conservation and recovery act, as amended (42 U.S.C. Sec. 6901, et seq.).
- (5) "Federal regulations" means the underground storage tanks regulations (40 C.F.R. Secs. 280 and 281) adopted by the United States environmental protection agency under the federal act.
- (6) "License" means the master business license underground storage tank endorsement issued by the department of licensing.
- (7) "Underground storage tank compliance act of 2005" means Title XV and subtitle B of P.L. 109-58 (42 U.S.C. Sec. 15801 et seq.) which have amended the federal resource conservation and recovery act's subtitle I.
- (8) "Underground storage tank system" means an underground storage tank, connected underground piping, underground ancillary equipment, and containment system, if any.

Except as provided in this section and any rules adopted by the department under this chapter, the definitions contained in the federal regulations apply to the terms in this chapter. [2007 c 147 § 2; 1998 c 155 § 1; 1989 c 346 § 2.]

Sunset Act application: See note following chapter digest.

90.76.020 Department's powers and duties—Rule-making authority. (1) The department shall adopt rules establishing requirements for all underground storage tanks that are regulated under the federal act, taking into account the various classes or categories of tanks to be regulated. The rules must be consistent with and no less stringent than the federal regulations and the underground storage tank compliance act of 2005 and consist of requirements for the following:

- (a) New underground storage tank system design, construction, installation, and notification;
- (b) Upgrading existing underground storage tank systems;
- (c) General operating requirements;

- (d) Release detection;
- (e) Release reporting;
- (f) Out-of-service underground storage tank systems and closure;
- (g) Financial responsibility for underground storage tanks containing regulated substances; and

(h) Groundwater protection measures, including secondary containment and monitoring for installation or replacement of all underground storage tank systems or components, such as tanks and piping, installed after July 1, 2007, and under dispenser spill containment for installation or replacement of all dispenser systems installed after July 1, 2007.

(2) The department shall adopt rules:

(a) Establishing physical site criteria to be used in designating local environmentally sensitive areas;

(b) Establishing procedures for local government application for this designation; and

(c) Establishing procedures for local government adoption and department approval of rules more stringent than the statewide standards in these designated areas.

(3) The department shall establish by rule an administrative and enforcement program that is consistent with and no less stringent than the program required under the federal regulations in the areas of:

(a) Compliance monitoring, including procedures for recordkeeping and a program for systematic inspections;

(b) Enforcement;

(c) Public participation;

(d) Information sharing;

(e) Owner and operator training; and

(f) Delivery prohibition for underground storage tank systems or facilities that are determined by the department to be ineligible to receive regulated substances.

(4) The department shall establish a program that provides for the annual licensing of underground storage tanks. The license shall take the form of a tank endorsement on the facility's annual master business license issued by the department of licensing. A tank is not eligible for a license unless the owner or operator can demonstrate compliance with the requirements of this chapter and the annual tank fees have been remitted. The department may revoke a tank license if a facility is not in compliance with this chapter, or any rules adopted under this chapter. The master business license shall be displayed by the tank owner or operator in a location clearly identifiable.

(5)(a) The department shall issue a one-time "facility compliance tag" to underground storage tank facilities that have installed the equipment required to meet corrosion protection, spill prevention, overflow prevention, leak detection standards, have demonstrated financial responsibility, and have paid annual tank fees. The facility shall continue to maintain compliance with corrosion protection, spill prevention, overflow prevention[,] and leak detection standards, financial responsibility, and have remitted annual tank fees to display a facility compliance tag. The facility compliance tag shall be displayed on or near the fire emergency shutoff device, or in the absence of such a device in close proximity to the fill pipes and clearly identifiable to persons delivering regulated substance to underground storage tanks.

(b) The department may revoke a facility compliance tag if a facility is not in compliance with the requirements of this chapter, or any rules adopted under this chapter.

(6) The department may place a red tag on a tank at a facility if the department determines that the owner or operator is not in compliance with this chapter or the rules adopted under this chapter regarding the compliance requirements related to that tank. Removal of a red tag without authorization from the department is a violation of this chapter.

(7) The department may establish programs to certify persons who install or decommission underground storage tank systems or conduct inspections, testing, closure, cathodic protection, interior tank lining, corrective action, site assessments, or other activities required under this chapter. Certification programs shall be designed to ensure that each certification will be effective in all jurisdictions of the state.

(8) When adopting rules under this chapter, the department shall consult with the state building code council to ensure coordination with the building and fire codes adopted under chapter 19.27 RCW. [2007 c 147 § 3; 1998 c 155 § 2; 1989 c 346 § 3.]

Sunset Act application: See note following chapter digest.

90.76.050 Delivery of regulated substances. (1) A person delivering regulated substances to underground storage tanks shall not deliver or deposit regulated substances to underground storage tanks or facilities that do not have a facility compliance tag displayed as required in RCW 90.76.020(5)(a). Additionally, a person delivering regulated substances to underground storage tanks shall not deliver or deposit regulated substances to an individual underground storage tank on which the department has placed a red tag under RCW 90.76.020(6).

(2) An owner or operator of an underground storage tank system or facility shall not accept delivery or deposit of regulated substances to that underground storage tank system or facility, if the system does not have a facility compliance tag displayed as required in RCW 90.76.020(5)(a). Additionally, an owner or operator of an underground storage tank system or facility shall not accept delivery or deposit of regulated substances to an individual underground storage tank on which the department has placed a red tag under RCW 90.76.020(6).

(3) A supplier shall not refuse to deliver regulated substances to an underground storage tank regulated under this chapter on the basis of its potential to leak contents where the facility displays a valid facility compliance tag as required in this chapter, and the department has not placed a red tag on the underground storage tank. This section does not apply to a supplier who does not directly transfer a regulated substance into an underground storage tank. [2007 c 147 § 4; 1998 c 155 § 4; 1989 c 346 § 6.]

Sunset Act application: See note following chapter digest.

90.76.070 Enforcement. The director may seek appropriate injunctive or other judicial relief by filing an action in Thurston county superior court or issue such order as the director deems appropriate to:

(1) Enjoin any threatened or continuing violation of this chapter or rules adopted under this chapter;

(2) Restrain immediately and effectively a person from engaging in unauthorized activity that results in a violation of any requirement of this chapter or rules adopted under this chapter and is endangering or causing damage to public health or the environment;

(3) Require compliance with requests for information, access, testing, or monitoring under RCW 90.76.060; or

(4) Assess and recover civil penalties authorized under RCW 90.76.080. [2007 c 147 § 5; 1989 c 346 § 8.]

Sunset Act application: See note following chapter digest.

90.76.080 Penalties. (1) A person who fails to notify the department pursuant to tank notification requirements or who submits false information is subject to a civil penalty not to exceed five thousand dollars per violation.

(2) A person who violates this chapter or rules adopted under this chapter is subject to a civil penalty not to exceed five thousand dollars for each tank per day of violation.

(3) A person incurring a penalty under this chapter or rules adopted under this chapter may apply to the department in writing for the remission or mitigation of the penalty as set out in RCW 43.21B.300. A person also may appeal a penalty directly to the pollution control hearings board in accordance with RCW 43.21B.300. [2007 c 147 § 6; 1995 c 403 § 639; 1989 c 346 § 9.]

Sunset Act application: See note following chapter digest.

Findings—Short title—Intent—1995 c 403: See note following RCW 34.05.328.

Part headings not law—Severability—1995 c 403: See RCW 43.05.903 and 43.05.904.

90.76.090 Annual tank fee. (1) An annual tank fee of one hundred twenty dollars per tank is effective July 1, 2007, to June 30, 2008. An annual tank fee of one hundred forty dollars per tank is effective from July 1, 2008, to June 30, 2009. Effective July 1, 2009, the annual tank fee will increase up to one hundred sixty dollars per tank unless the department has received sufficient additional federal grant funding to offset the increased cost of implementation of the underground storage tank compliance act of 2005 (Title XV, Subtitle B of the energy policy act of 2005). Annually, beginning on July 1, 2010, and upon a finding by the department that a fee increase is necessary, the previous tank fee amount may be increased up to the fiscal growth factor for the next year. The fiscal growth factor is calculated by the office of financial management under RCW 43.135.025 for the upcoming biennium. The department shall use the fiscal growth factor to calculate the fee for the next year and shall publish the new fee by March 1st before the year for which the new fee is effective. The new tank fee is effective from July 1st to June 30th of every year. The tank fee shall be paid by every person who:

(a) Owns an underground storage tank located in this state; and

(b) Was required to provide notification to the department under the federal act.

This fee is not required of persons who have (i) permanently closed their tanks, and (ii) if required, have completed

corrective action in accordance with the rules adopted under this chapter.

(2) The department may authorize the imposition of additional annual local tank fees in environmentally sensitive areas designated under RCW 90.76.040. Annual local tank fees may not exceed fifty percent of the annual state tank fee.

(3) State and local tank fees collected under this section shall be deposited in the account established under RCW 90.76.100.

(4) Other than the annual local tank fee authorized for environmentally sensitive areas, no local government may levy an annual tank fee on the ownership or operation of an underground storage tank. [2007 c 147 § 7; 1998 c 155 § 6; 1989 c 346 § 10.]

Sunset Act application: See note following chapter digest.

90.76.110 Preemption. (1) Except as provided in RCW 90.76.040 and subsections (2), (3), (4), and (5) of this section, the rules adopted under this chapter supersede and preempt any state or local underground storage tank law, ordinance, or resolution governing any aspect of regulation covered by the rules adopted under this chapter.

(2) Provisions of the international fire code adopted under chapter 19.27 RCW, which are not more stringent than, and do not directly conflict with, rules adopted under this chapter are not superseded or preempted.

(3) Local laws, ordinances, and resolutions pertaining to local authority to take immediate action in response to a release of a regulated substance are not superseded or preempted.

(4) City, town, or county underground storage tank ordinances that are more stringent than the federal regulations and the uniform codes adopted under chapter 19.27 RCW and that were in effect on or before November 1, 1988, are not superseded or preempted.

(5) Local laws, ordinances, and resolutions pertaining to permits and fees for the use of underground storage tanks in street right-of-ways that were in existence prior to July 1, 1990, are not superseded or preempted. [2007 c 147 § 8; 1991 c 83 § 1; 1989 c 346 § 12.]

Sunset Act application: See note following chapter digest.

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

Chapter 90.82 RCW WATERSHED PLANNING

Sections

90.82.043	Implementation plan—Report to the legislature.
90.82.060	Initiation of watershed planning—Scope of planning—Technical assistance from state agencies.

90.82.043 Implementation plan—Report to the legislature. (1) Within one year of accepting funding under RCW 90.82.040(2)(e), the planning unit must complete a detailed implementation plan. Submittal of a detailed implementation plan to the department is a condition of receiving grants for the second and all subsequent years of the phase four grant.

(2) Each implementation plan must contain strategies to provide sufficient water for: (a) Production agriculture; (b) commercial, industrial, and residential use; and (c) instream flows. Each implementation plan must contain timelines to achieve these strategies and interim milestones to measure progress.

(3) The implementation plan must clearly define coordination and oversight responsibilities; any needed interlocal agreements, rules, or ordinances; any needed state or local administrative approvals and permits that must be secured; and specific funding mechanisms.

(4) In developing the implementation plan, the planning unit must consult with other entities planning in the watershed management area and identify and seek to eliminate any activities or policies that are duplicative or inconsistent.

(5)(a) By December 1, 2003, and by December 1st of each subsequent year, the director of the department shall report to the appropriate legislative standing committees regarding statutory changes necessary to enable state agency approval or permit decision making needed to implement a plan approved under this chapter.

(b) Beginning with the December 1, 2007, report, and then every two years thereafter, the director shall include in each report the extent to which reclaimed water has been identified in the watershed plans as potential sources or strategies to meet future water needs, and provisions in any watershed implementation plans that discuss barriers to implementation of the water reuse elements of those plans. The department's report shall include an estimate of the potential cost of reclaimed water facilities and identification of potential sources of funding for them. [2007 c 445 § 6; 2003 1st sp.s. c 4 § 3.]

Findings—Intent—2007 c 445: See note following RCW 90.46.005.

Findings—2003 1st sp.s. c 4: See note following RCW 90.82.040.

90.82.060 Initiation of watershed planning—Scope of planning—Technical assistance from state agencies. (1) Planning conducted under this chapter must provide for a process to allow the local citizens within a WRIA or multi-WRIA area to join together in an effort to: (a) Assess the status of the water resources of their WRIA or multi-WRIA area; and (b) determine how best to manage the water resources of the WRIA or multi-WRIA area to balance the competing resource demands for that area within the parameters under RCW 90.82.120.

(2)(a) Watershed planning under this chapter may be initiated for a WRIA only with the concurrence of: (i) All counties within the WRIA; (ii) the largest city or town within the WRIA unless the WRIA does not contain a city or town; and (iii) the water supply utility obtaining the largest quantity of water from the WRIA or, for a WRIA with lands within the Columbia Basin project, the water supply utility obtaining from the Columbia Basin project the largest quantity of water for the WRIA. To apply for a grant for organizing the planning unit as provided for under RCW 90.82.040(2)(a), these entities shall designate the entity that will serve as the lead agency for the planning effort and indicate how the planning unit will be staffed.

(b) For purposes of this chapter, WRIA 40 shall be divided such that the portion of the WRIA located entirely

within the Stemilt and Squilchuck subbasins shall be considered WRIA 40a and the remaining portion shall be considered WRIA 40b. Planning may be conducted separately for WRIA 40a and 40b. WRIA 40a shall be eligible for one-fourth of the funding available for a single WRIA, and WRIA 40b shall be eligible for three-fourths of the funding available for a single WRIA.

(c) For purposes of this chapter, WRIA 29 shall be divided such that the portion of the WRIA located entirely within the White Salmon subbasin and the subbasins east thereof shall be considered WRIA 29b and the remaining portion shall be considered WRIA 29a. Planning may be conducted separately for WRIA 29a and 29b. WRIA 29a shall be eligible for one-half of the funding available for a single WRIA and WRIA 29b shall be eligible for one-half of the funding available for a single WRIA.

(3) Watershed planning under this chapter may be initiated for a multi-WRIA area only with the concurrence of: (a) All counties within the multi-WRIA area; (b) the largest city or town in each WRIA unless the WRIA does not contain a city or town; and (c) the water supply utility obtaining the largest quantity of water in each WRIA.

(4) If entities in subsection (2) or (3) of this section decide jointly and unanimously to proceed, they shall invite all tribes with reservation lands within the management area.

(5) The entities in subsection (2) or (3) of this section, including the tribes if they affirmatively accept the invitation, constitute the initiating governments for the purposes of this section.

(6) The organizing grant shall be used to organize the planning unit and to determine the scope of the planning to be conducted. In determining the scope of the planning activities, consideration shall be given to all existing plans and related planning activities. The scope of planning must include water quantity elements as provided in RCW 90.82.070, and may include water quality elements as contained in RCW 90.82.090, habitat elements as contained in RCW 90.82.100, and instream flow elements as contained in RCW 90.82.080. The initiating governments shall work with state government, other local governments within the management area, and affected tribal governments, in developing a planning process. The initiating governments may hold public meetings as deemed necessary to develop a proposed scope of work and a proposed composition of the planning unit. In developing a proposed composition of the planning unit, the initiating governments shall provide for representation of a wide range of water resource interests.

(7) Each state agency with regulatory or other interests in the WRIA or multi-WRIA area to be planned shall assist the local citizens in the planning effort to the greatest extent practicable, recognizing any fiscal limitations. In providing such technical assistance and to facilitate representation on the planning unit, state agencies may organize and agree upon their representation on the planning unit. Such technical assistance must only be at the request of and to the extent desired by the planning unit conducting such planning. The number of state agency representatives on the planning unit shall be determined by the initiating governments in consultation with the governor's office.

(8) As used in this section, "lead agency" means the entity that coordinates staff support of its own or of other

local governments and receives grants for developing a watershed plan. [2007 c 245 § 1; 2003 c 328 § 1; 2001 c 229 § 1; 1998 c 247 § 2.]

Chapter 90.88 RCW

AQUATIC REHABILITATION ZONES

Sections

- 90.88.005 Findings—Intent.
- 90.88.020 Hood Canal rehabilitation program—State lead agency—Local management board.
- 90.88.030 Aquatic zone one—Roles of Hood Canal coordinating council and Puget Sound partnership—Participation of governments and nonprofit organizations—Project funding, priorities, and criteria—Reports.
- 90.88.901 Regulatory authority not conferred.
- 90.88.902 Activities subject to appropriations.

90.88.005 Findings—Intent. (1) The legislature finds that Hood Canal is a precious aquatic resource of our state. The legislature finds that Hood Canal is a rich source of recreation, fishing, aquaculture, and aesthetic enjoyment for the citizens of this state. The legislature also finds that Hood Canal has great cultural significance for the tribes in the Hood Canal area. The legislature therefore recognizes Hood Canal’s substantial environmental, cultural, economic, recreational, and aesthetic importance in this state.

(2) The legislature finds that Hood Canal is a marine water of the state at significant risk. The legislature finds that Hood Canal has a "dead zone" related to low-dissolved oxygen concentrations, a condition that has recurred for many years. The legislature also finds that this problem and various contributors to the problem were documented in the May 2004 *Preliminary Assessment and Corrective Action Plan* published by the state agency known as the Puget Sound action team and the Hood Canal coordinating council.

(3) The legislature further finds that significant research, monitoring, and study efforts are currently occurring regarding Hood Canal’s low-dissolved oxygen concentrations. The legislature also finds numerous public, private, and community organizations are working to provide public education and identify potential solutions. The legislature recognizes that, while some information and research is now available and some potential solutions have been identified, more research and analysis is needed to fully develop a program to address Hood Canal’s low-dissolved oxygen concentrations.

(4) The legislature finds a need exists for the state to take action to address Hood Canal’s low-dissolved oxygen concentrations. The legislature also finds establishing an aquatic rehabilitation zone for Hood Canal will serve as a statutory framework for future regulations and programs directed at recovery of this important aquatic resource.

(5) The legislature therefore intends to establish an aquatic rehabilitation zone for Hood Canal as the framework to address Hood Canal’s low-dissolved oxygen concentrations. The legislature also intends to incorporate provisions in the new statutory chapter creating the designation as solutions are identified regarding this problem. [2007 c 341 § 50; 2005 c 478 § 1.]

Severability—Effective date—2007 c 341: See RCW 90.71.906 and 90.71.907.

90.88.020 Hood Canal rehabilitation program—State lead agency—Local management board. (1) The development of a program for rehabilitation of Hood Canal is authorized in Jefferson, Kitsap, and Mason counties within the aquatic rehabilitation zone one.

(2) The Puget Sound partnership, created in RCW 90.71.210, is designated as the state lead agency for the rehabilitation program authorized in this section.

(3) The Hood Canal coordinating council is designated as the local management board for the rehabilitation program authorized in this section.

(4) The Puget Sound partnership and the Hood Canal coordinating council must each approve and must comanage projects under the rehabilitation program authorized in this section. [2007 c 341 § 51; 2005 c 479 § 2.]

Severability—Effective date—2007 c 341: See RCW 90.71.906 and 90.71.907.

Findings—2005 c 479: "(1) The legislature finds that Hood Canal is a precious aquatic resource of our state. The legislature finds that Hood Canal is a rich source of recreation, fishing, aquaculture, and aesthetic enjoyment for the citizens of this state. The legislature also finds that Hood Canal has great cultural significance for the tribes in the Hood Canal area. The legislature therefore recognizes Hood Canal’s substantial environmental, cultural, economic, recreational, and aesthetic importance to Washington.

(2) The legislature finds that Hood Canal is a marine water of the state at significant risk. The legislature finds that Hood Canal has a "dead zone" related to low-dissolved oxygen concentrations, a condition that has recurred for many years. The legislature also finds this problem and various contributors to the problem were documented in the May 2004 *Preliminary Assessment and Corrective Action Plan* published by the state Puget Sound action team and the Hood Canal coordinating council.

(3) The legislature further finds that significant research, monitoring, and study efforts are currently occurring regarding Hood Canal’s low-dissolved oxygen concentrations. The legislature recognizes that federal, state, tribal, and local governments and other organizations and entities are coordinating research, monitoring, and modeling efforts through the Hood Canal low-dissolved oxygen program. The legislature also recognizes that these entities and others are continuing individual efforts to study and identify potential solutions for Hood Canal’s low-dissolved oxygen concentrations. The legislature also recognizes numerous public, private, and community organizations are working to provide public education regarding Hood Canal’s low-dissolved oxygen concentrations. The legislature recognizes and encourages the continuation of these efforts.

(4) The legislature finds a need exists for the state to provide additional resources to address Hood Canal’s low-dissolved oxygen concentrations. The legislature also finds a need exists to designate the state and local entities to develop, coordinate, and administer a Hood Canal rehabilitation program and funding." [2005 c 479 § 1.]

Forest practices—Nonapplicability of act—2005 c 479: "This act does not apply to forest practices regulated under chapter 76.09 RCW." [2005 c 479 § 4.]

90.88.030 Aquatic zone one—Roles of Hood Canal coordinating council and Puget Sound partnership—Participation of governments and nonprofit organizations—Project funding, priorities, and criteria—Reports. (1) The Hood Canal coordinating council shall serve as the local management board for aquatic rehabilitation zone one. The local management board shall coordinate local government efforts with respect to the program authorized according to RCW 90.88.020. In the Hood Canal area, the Hood Canal coordinating council also shall:

(a) Serve as the lead entity and the regional recovery organization for the purposes of chapter 77.85 RCW for Hood Canal summer chum; and

(b) Assist in coordinating activities under chapter 90.82 RCW.

(2) When developing and implementing the program authorized in RCW 90.88.020 and when establishing funding criteria according to subsection (7) of this section, the Puget Sound partnership, created in RCW 90.71.210, and the local management board shall solicit participation by federal, tribal, state, and local agencies and universities and nonprofit organizations with expertise in areas related to program activities. The local management board may include state and federal agency representatives, or additional persons, as nonvoting management board members or may receive technical assistance and advice from them in other venues. The local management board also may appoint technical advisory committees as needed.

(3) The local management board and the Puget Sound partnership shall participate in the development of the program authorized under RCW 90.88.020.

(4) The local management board and its participating local and tribal governments shall assess concepts for a regional governance structure and shall submit a report regarding the findings and recommendations to the appropriate committees of the legislature by December 1, 2007.

(5) Any of the local management board's participating counties and tribes, any federal, tribal, state, or local agencies, or any universities or nonprofit organizations may continue individual efforts and activities for rehabilitation of Hood Canal. Nothing in this section limits the authority of units of local government to enter into interlocal agreements under chapter 39.34 RCW or any other provision of law.

(6) The local management board may not exercise authority over land or water within the individual counties or otherwise preempt the authority of any units of local government.

(7) The local management board and the Puget Sound partnership each may receive and disburse funding for projects, studies, and activities related to Hood Canal's low-dissolved oxygen concentrations. The Puget Sound partnership and the local management board shall jointly coordinate a process to prioritize projects, studies, and activities for which the Puget Sound partnership receives state funding specifically allocated for Hood Canal corrective actions to implement this section. The local management board and the Puget Sound partnership shall establish criteria for funding these projects, studies, and activities based upon their likely value in addressing and resolving Hood Canal's low-dissolved oxygen concentrations. Final approval for projects under this section requires the consent of both the Puget Sound partnership and the local management board. Projects under this section must be comanaged by the Puget Sound partnership and the local management board. Nothing in this section prohibits any federal, tribal, state, or local agencies, universities, or nonprofit organizations from receiving funding for specific projects that may assist in the rehabilitation of Hood Canal.

(8) The local management board may hire and fire staff, including an executive director, enter into contracts, accept grants and other moneys, disburse funds, make recommendations to local governments about potential regulations and the development of programs and incentives upon request, pay all necessary expenses, and choose a fiduciary agent.

(9) The local management board shall report its progress on a quarterly basis to the legislative bodies of the participat-

ing counties and tribes and the participating state agencies. The local management board also shall submit an annual report describing its efforts and successes in implementing the program established according to RCW 90.88.020 to the appropriate committees of the legislature. [2007 c 341 § 52; 2005 c 479 § 3.]

Severability—Effective date—2007 c 341: See RCW 90.71.906 and 90.71.907.

Findings—Forest practices—Nonapplicability of act—2005 c 479: See notes following RCW 90.88.020.

90.88.901 Regulatory authority not conferred. Nothing in chapter 479, Laws of 2005 provides any regulatory authority to the Puget Sound partnership, created in RCW 90.71.210, or the Hood Canal coordinating council. [2007 c 341 § 53; 2005 c 479 § 5.]

Severability—Effective date—2007 c 341: See RCW 90.71.906 and 90.71.907.

90.88.902 Activities subject to appropriations. The activities of the Puget Sound partnership, created in RCW 90.71.210, and the Hood Canal coordinating council required by chapter 479, Laws of 2005 are subject to the availability of amounts appropriated for this specific purpose. [2007 c 341 § 54; 2005 c 479 § 6.]

Severability—Effective date—2007 c 341: See RCW 90.71.906 and 90.71.907.